

# Once Again, Democrats Will Turn to Courts to Challenge Successful Eyman Initiative

Facing a choice between \$8 billion in cuts or a two-thirds rule on raising taxes, Democrats look to legally challenge I-1366.

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Last week's election came with a big asterisk for Seattle voters. Despite passing three exhilarating liberal measures—a \$930 million transportation spending levy, an innovative campaign finance reform initiative, and a countywide measure to fund preschool—Seattle progressives are grinding their teeth in frustration about a separate Election Day result, [Initiative 1366](#), yet another successful Tim Eyman initiative. I-1366, which passed statewide 51.7 percent to 48.2 percent, will either curb the Washington legislature's ability to raise taxes with a constitutional amendment against tax increases or take a substantial chunk out of state sales tax revenue with a tax cut. Democrats and progressives are now banking on a legal challenge in the courts to make sure the initiative doesn't see the light of day.

Eyman's I-1366, or the "Taxpayer Protection Act," would slash the state sales tax rate from 6.5 percent to 5.5 percent on April 15 of next year unless lawmakers put a constitutional amendment requiring a two-thirds majority vote by both the state house and the senate to raise taxes (or cut tax loopholes) before voters. This puts lawmakers in a bind, forcing them to choose between an immediate tax cut that would cost the

state about \$1.4 billion annually, or establishing a steep threshold for ever bringing in new tax revenue.

The initiative comes at a time when state lawmakers continue to [struggle to meet the McCleary mandate to fully fund the K–12 education](#).

Eyman, the longtime conservative initiative guru who has been fielding anti-taxation ballot measures since the late 90's, is thrilled. On election night [Eyman told reporters](#) at a North Seattle Krispy Kreme (after downing [numerous glazed donuts](#)) that I-1366 was a “huge victory for taxpayers.”

Eyman's previous voter-approved two-thirds measure was invalidated by the Washington State Supreme court in early 2013 when [the court ruled that it was unconstitutional because it violated the legislature's power to raise taxes](#). After that ruling, Eyman told *PubliCola* this week, Democratic legislators started behaving “like an alcoholic who falls off the wagon after a couple of years,” referring, for example, to a Democratic [proposal to enact a capital gains tax](#) last session to help balance the budget and fund basic education. “They [the legislature] kind of went bonkers in the 2015 legislative session.”

Democrats don't see I-1366 as a “win” for taxpayers, nor do they characterize attempts by the legislature to balance the budget and raise revenue as excessive. “It would be devastating,” said [David Rolf](#), president of the progressive local healthcare workers union, the Service Employees International Union 775; Rolf and his union are best known for sparking the \$15 minimum wage movement. “It would blow a 1.4 billion dollar hole in the state budget [in its first year] for funding of mental health care, public safety, and education.” Dropping the sales tax from 6.5 percent to 5.5 percent would cost the state \$8 billion over 10 years.



Eyman on election night. Courtesy Tim Eyman.

“It’s a blackmail scheme,” said longtime Tim Eyman arch nemesis Andrew Villeneuve, founder and director of the [Northwest Progressive Institute](#), a progressive advocacy organization. “It’s about him [Eyman] trying to blackmail the legislature.”

I-1366 is the latest in a string of successful Eyman initiatives—see 2007’s [I-960](#), which passed by roughly 51 percent, 2010’s [I-1053](#) which got 63 percent, and 2012’s [I-1185](#), which passed with 63 percent—aiming to impose the two-thirds majority vote rule on tax increases. After the 2013 supreme court ruling, though, Eyman went with the nuclear option, a constitutional amendment (voters would eventually have to approve the two-thirds rule at the polls by a simple majority after a two-thirds legislative vote required to send a constitutional amendment to the ballot) backed up with the \$1.4 billion budget busting threat. (Eyman proposed a similar initiative in 2014, but that one, 1325, [failed to get enough signatures to even make the ballot.](#))

“He [Eyman], very specifically, wants all the crap that was in the previous initiatives such as if you close a tax loophole that’s considered a tax increase,” said state Senator Jamie Pedersen (D-43, Capitol Hill).

In tax friendly King County, I-1366 lost big, 61-39; Jefferson and Thurston counties were the only other counties to vote down the measure, though. Liberals have a number of theories why the rest of the state went for it. Rolf attributes the results to Eyman offering false hope to struggling voters. “If you offer people something for nothing, there’s going to be a certain percentage of people who think ‘Hey, why not?’ Those [the rural counties that voted for I-1366] are all struggling counties, so it’s not surprising that voters say ‘If we can pay a little less, we’ll pay less.’”

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“This was the cunning genius of this initiative. Eyman knows that people hate the sales tax but don’t know about our reliance on the sales tax,” said NPI’s Villeneuve. Washington state’s reliance on the sales tax makes Washington state’s tax system one of the most regressive in the country where the poorest 20 percent (those making \$21,000 or less annually) end up paying more than 16 percent of their income in sales tax, while the top one percent, the richest Washington residents, pay less than three percent, according to a study published early this year by the DC based Institute on Taxation and Economic Policy. That same study ranked Washington’s tax system the most regressive in the nation, explicitly noting the state’s lack of a personal income tax, utilizing a B&O tax in lieu of a corporate profits tax, and heavy reliance on sales tax as a few of the defining features justifying the ranking.

Pedersen tried to wring some good news out the close margin for I-1366 (51 percent is a far cry from 63 percent.) “What’s surprising is that a large number of the people said no. I think that’s a sign that people are starting to see that we don’t have enough money to meet our [funding] obligations and the last thing we should be doing is heading in the direction of Alabama and Mississippi in terms of spending on public services.”

Villeneuve attributes I-1366’s success to this election’s [abysmally low voter turnout](#). “A lot of urban, liberal voters stayed home,” he said, adding that low turnout in crucial counties like Snohomish and Pierce helped Eyman carry the election. “When Eyman says, ‘Oh,

the voters have spoken,' a lot of them never spoke. A small number of people have decided for the rest of the state.”

Before last week’s election, state senators David Frockt (D-46, North Seattle) and new state senator Reuven Carlyle (D-36, Queen Anne), alongside King County elections director Sherril Huff, Seattle Parent Teacher Association state lobbyist Eden Mack, and others, tried to keep I-1366 off the ballot by going to the King County Superior Court, claiming that the initiative exceeded the scope of initiative power. Obviously, they weren’t successful. In late August, Superior Court Judge Dean Lum [ruled](#) that the initiative could not be withheld from the ballot because while the initiative may be unconstitutional, it might infringe on first amendment rights to prevent the ballot measure from going before voters.

However, now that the Eyman measure won, Democrats are heading back to the court, confident they have sufficient legal standing to attack I-1366 once again. Pedersen, an attorney [who led the legal maneuvering](#) along with state representative Laurie Jinkins (D-27, Tacoma) that eventually got the two-thirds rule declared unconstitutional in 2013, says that the next legal challenge will likely come in three different arguments. One is that I-1366 violates the “single-subject rule.” Washington law requires that bills and initiatives affect strictly one unified subject; Pedersen says the unruly I-1366 mixes a tax decrease with a constitutional amendment. The second challenge, Pedersen says, would be a procedural argument that amendments can’t be approved by initiative. And the third, Democrats maintain, I-1366 gets in the way of the legislature fulfilling the court mandate in *McCleary* that the legislature fully fund education; that be pretty difficult with a \$10 billion shortfall over the next 10 years.

Eyman declined to comment on the legal arguments directing me instead to [a legal analysis of I-1366 done by Bellevue law firm Stephens & Klinge](#). The analysis strictly addresses the *McCleary* obstructionism argument, stating that “Protecting taxpayers and funding government services are not mutually exclusive propositions. Initiative 1366 does not limit how the Legislature prioritizes spending.” (This reasoning, of course, ignores the fact that other public services will have to be cut to fund K–12 without any increase in tax revenue, Pedersen argues. “If you want to cut taxes you also have to cut services,” he told me yesterday.)

“His ultimate goal is not to actually win any initiatives. It’s actually to keep himself paid and advance this anti-government, anti-tax narrative,” said Rolf.

Pedersen thinks the courts likely won’t hear any challenge to I-1366 until January or February of next year, a timeline which could potentially complicate next year’s spring legislative session if lawmakers have to assume that \$1.4 billion dollars in revenue is missing. Democrat Carlyle said the Washington State Economic and Revenue Forecast Council—a body which informs the legislature on the state’s economic activity and projected tax revenue—will have to decide whether or not to include the \$1.4 billion cut in their February 2016 forecast if the courts take no action by February.

“At the end of it all, this adds a layer of complexity to the paramount duty of fully funding education and divided government. In the absence of clarity, I will stick with the wisdom of James Madison who was fiercely opposed to the tyranny of the minority,” Carlyle said of the whole ordeal with a patiently exasperated air.

As for Eyman, he sent out a provocative press release this week saying the “beyond sleazy” Democrats were trying to pull off a deal with the GOP to repeal I-1366 if the Democrats agreed to repeal I-1135, last year’s voter-approved smaller class size initiative (which neither side funded in the final budget deal anyway.) Telling us he’d heard the rumor from lobbyists, staffers, and legislators, Eyman concluded: “Here we are less than a week after the election and already the Democrats’ default is to convince the Republicans to join them in a Faustian bargain: join us in screwing over your voters in exchange for us screwing over our voters.”

Pedersen scoffed, saying, though, that the “baseless” claim “wasn’t out of character” from Eyman: “That is a complete fabrication. I spoke [yesterday] morning with [Democratic leader state senator] Sharon Nelson and [second in command, Democratic state senator] Andy Billig, and they both laughed at that. There has been no such offer.”

An [investigation](#) into Eyman’s alleged misuse of initiative campaign funds is currently underway by the Washington Attorney General’s Office. In a [224 page report](#) published by the state Public Disclosure Commission, it claims (among other allegations) that Eyman took \$120,000 in campaign money from his 2012 I-1185 initiative to support himself and his family.