Tax hike initiative wasn't clearly unconstitutional, Supreme Court says

By Jim Camden
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OLYMPIA -- Initiative 1366 could be viewed as a way to amend the state constitution and require the Legislature to pass tax increases with two-thirds majorities, the state Supreme Court said Thursday.

But it could also be viewed as a way to cut the sales tax unless the Legislature takes that action by sending an amendment to voters, the court said in a unanimous decision written by Chief Justice Barbara Madsen.

If it was only the former, as critics claimed, it could have been kept off this year's ballot as unconstitutional. If it was only the second, as supporters claimed, it can't.

Because it offered two alternatives, and the court couldn't determine that one was the true purpose of I-1366 and the other just "an ephemeral stepping stone", the court refused to block the initiative. It was on the Nov. 3 ballot, and in the most current count is passing with slightly less than 52 percent of the vote.

Although the court turned down opponents' request to keep the initiative off the ballot in September, it waited until Thursday to publish the reasons behind the decision.

That ruling says opponents "failed to demonstrate a clear legal right for relief." Such a right requires the court to find that I-1366's "fundamental, stated and overriding purpose" was to amend the constitution. If there was any doubt about that, the court couldn't grant an injunction.

The state Constitution can't be amended by initiative. Opponents said it was, pointing to the heading of "2/3 Constitutional Amendment" and supporters calling it "2/3rds for Taxes Constitutional Amendment." But supporters countered that it was a way to reduce taxes.

To get an injunction keeping the I-1366 off the ballot, opponents needed to clear a high bar. They didn't, the court said.

That doesn't mean the initiative is or is not within the scope of the state's initiative power, the court said in a footnote. "To definitively decide that question in this context would be inappropriate," it said.

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