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Court questions constitutionality of Eyman's I-1366

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OLYMPIA – Last year's initiative that told legislators to pass a constitutional amendment or face a cut in the sales tax presents several thorny questions for the Washington Supreme Court.

On Tuesday, justices posed those questions to attorneys representing the people who want to save Initiative 1366 and those who want it thrown out.

Does it violate a rule that an initiative have only one topic? That's not allowed because the state's founding fathers were concerned with legislative "log rolling," Justice Steven Gonzalez said.

Yes, said opponents. A constitutional amendment and a sales tax reduction are clearly two subjects, opponents' attorney Paul Lawrence said.

No, said supporters. "The people did not log roll," said Callie Castillo, an assistant attorney general. "The overall subject is tax reform."

Under that topic I-1366 presents the option of lower sales taxes or a higher bar for passing tax increases, she said.

Does I-1366 make an improper threat to cut taxes if lawmakers don't pass an amendment to require all future tax increases to pass the Legislature with two-thirds majorities?

Yes, said Lawrence: "You can't have a contingency based on a threat or a prod, basically a loading of the dice to get to a particular outcome."

No, said Castillo: "The people didn't demand that other action. They didn't force the Legislature to take up that amendment."

But whether the sales tax is reduced is in the hands of the Legislature, Chief Justice Barbara Madsen said. Under the state constitution, voters act as a legislative body when passing an initiative. But the constitution also doesn't allow the current Legislature to require a future Legislature to take any particular action. So that could be like one Legislature requiring a specific action of another, she said.

The initiative would have cut the state sales tax by 1 cent on the dollar on April 15 unless the Legislature sent voters a constitutional amendment for passing tax increases by a supermajority. Would an initiative be constitutional if it said the sales tax would be reduced unless the court removes its contempt order in the McCleary school funding case, the Legislature impeaches the governor or the governor resigns by a certain date, the justices asked.

Probably not if it was directing the court to do something or impeach the governor, supporters said, because of constitutional issues surrounding those actions. But it probably would be on the governor resigning, Richard Stephens, the attorney for I-1366 sponsors, said: "The court has never articulated what kind of conditions are appropriate for conditional legislation."

I-1366 passed in November with 51.5 percent approval. In January, a King County Superior Court overturned it as an illegal way to try to amend the state constitution.

The Supreme Court is expected to rule on the case in the coming months. If I-1366 is overturned, initiative sponsor Tim Eyman said he has a backup ballot measure that would limit tax increases to one year unless they receive a supermajority in the Legislature or approval from voters.

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