

EDITORIALS MARCH 15, 2016 9:35 AM

I-1366 threat is too big for court to abide

HIGHLIGHTS

Tax-cutting initiative gave voters a dangerous new tool

Lower court judge already ruled it unconstitutional

Supreme Court should do the same, as soon as possible



FROM THE EDITORIAL BOARD

In the hardball game of politics, elected leaders in Olympia aren't bashful about using brass-knuckle tactics from time to time.

Republicans did it this year by sacking Gov. Jay Inslee's transportation chief, implicitly threatening to fire more department heads. Inslee did it last week by vowing to veto dozens of bills if legislators didn't agree on a budget. And while he didn't remind anyone of Clint Eastwood growling the famous "Go ahead, make my day" taunt, the governor — like Eastwood's Harry Callahan character — followed through on his ultimatum.

Even the apolitical Supreme Court isn't above issuing threats and making good on them. Under the McCleary decision, it established a deadline for lawmakers to fully fund public schools, and when benchmarks were missed, the court imposed a \$100,000 a day penalty.

Ordinary Washingtonians have a substantial threat at their disposal, too: They can vote these folks out of office. Citizens also tried out a new blunt instrument in November when they approved Initiative 1366.

Don't mistake this for just another Tim Eyman production, another quixotic chapter in his long quest to require a two-thirds vote of the Legislature for lawmakers to raise revenues.

I-1366 is more menacing because it sticks elected leaders with a double bind: Either accept a sales tax cut that will slash roughly \$8 billion from the state budget over six years, or ask voters to enshrine the supermajority rule. No matter which poison they pick, legislators would struggle to pay for schools, mental health care and other mandates crucial for the well-being of taxpayers.

A King County judge put the threat on hold in January when he ruled I-1366 unconstitutional. He essentially called it a contrived attempt to amend the constitution by initiative, something not allowed in Washington.

The judge averted a train wreck between a penny-per-dollar sales tax cut, which would've kicked in April 15, and a divided Legislature, which would sooner pass a bill approving snowballs in hell than place the two-thirds rule on the ballot this year.

Now it's up to the Supreme Court to do away with the danger for good. On Tuesday, it heard compelling arguments on why it should uphold the lower court ruling.

The plaintiff's attorney underscored the usual points that have spelled doom for previous Eyman measures. For one, I-1366 violates the constitution's single-subject rule by connecting two unrelated tax propositions. The result is that the will of the voters last November was left fuzzy, as Chief Justice Barbara Madsen observed Tuesday.

"Maybe the people who voted for (I-1366) wanted to see the sales tax reduced ... maybe they didn't really care about whether the constitution is amended," Madsen surmised. "How do we know what they voted for?"

The initiative also suffers from the usual Eyman malady: Its goal is to give veto power of the purse to a relative handful of lawmakers — 17 Republicans in the 49-member Senate could block a tax increase. A Supreme Court majority in 2013 called this "the tyranny of the minority."

If anyone needs a new reason to reject I-1366, consider the unique threat posed by its gun-to-the-head approach. The justices seemed aware of this Tuesday as they pondered possible legal precedent. They speculated aloud about the extreme "X will happen, unless you do Y" ballot scenarios initiative activists might try.

The sales tax will roll back, unless the governor resigns his office by a certain date.

The sales tax will roll back, unless the McCleary sanctions are removed.

Now *there's* a scenario that would leave the court seething.

Eyman is correct that voters have spoken, multiple times, and more than 51 percent of them supported I-1366. But voters have also spoken for expensive concerns — smaller class sizes is the most recent example — that are incompatible with Eyman's world.

The Supreme Court should leave no doubt that I-1366 is unconstitutional. The sooner, the better.



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