

Supreme Court rules against two-thirds tax vote; Senate leaders vow they'll mirror restriction court said was unconstitutional

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Published: Feb. 28, 2013 at 11:00 p.m. PST

The state Supreme Court made history Thursday by unlocking 20-year-old tax handcuffs that voters placed on state lawmakers, but it's unclear how much the court's decision will change the direction of the 2013 legislative session.

Democrats will be able to dust off their tax wish lists, with new hope that it will be "easier to look at a wide variety of options," as House Majority Leader Pat Sullivan cautiously phrased it.

But they will have to reach consensus with the more conservative Senate, where Majority Leader Rodney Tom and his Republican allies insisted they would continue to erect obstacles to tax increases.

Even GOP Sen. Pam Roach of Auburn, who warned that the court ruling "opened the floodgates of taxation," predicted taxes wouldn't go up this year with her allies in control of the levers of power in the Senate.

"We're going to stand behind the will of the people. They've been very clear that they want it to be difficult to raise taxes," Tom said. The breakaway Democrat from Medina said tax increases "will not come up for a vote in the Washington state Senate unless we have two-thirds votes."

A divided court ruled Initiative 1053 violated the state constitution, which the court said requires only a majority of all members of the House and Senate to pass laws.

The 2010 initiative and similar measures before and after it, championed by anti-tax activist Tim Eyman and approved by voters, forbid tax increases without either a public vote or two-thirds supermajorities in both the House and Senate.

The ruling could help the Legislature tackle a budget shortfall and face up to another state Supreme Court decision, this one mandating more dependable funding for schools. The total price tag could top \$2 billion.

House Democratic leaders Sullivan and Ross Hunter, the House budget chairman from Medina, say they don't believe the money for schools can be found solely through new budget cuts on top of four years of cuts. But they vowed to move cautiously.

"There's not going to be a jump to raise taxes," said Sullivan of Covington. Hunter said: "The Legislature's pretty cautious about raising taxes. People don't like it. But they also don't like it if we don't educate their children."

The decision may also ease the path for a labor-and-business coalition that is pushing for increases in transportation taxes – but House leaders made clear their first priority is to decide how to meet the court's education mandate.

ROAD TO THE COURT

Thursday's ruling was the culmination of a long strategy by Democrats to force the Supreme Court's hand.

In the past, the court had refused to wade into what it saw as a matter for the legislative branch. But in 2011, House Democrats pushed forward proposed legislation sponsored by freshman Rep. Laurie Jinkins to take a tax break away from the biggest banks and use the money to reduce school class sizes in lower grades.

Democrats would later get Republican help to pare back the tax exemption, but at the time, they knew the measure was doomed to fall short of a supermajority needed to pass. They staged an elaborate bit of theater on the House floor to make clear they couldn't bypass tax restrictions without authority from the courts.

They hoped the failure would be enough to spur action from a court that had previously taken a pass when asked to decide the legality of the two-thirds vote requirement. This time, the lawmakers who sued – led by Jinkins of Tacoma and Rep. Jamie Pedersen and then-Rep. David Frockt of Seattle – recruited education groups to join them in arguing they had been harmed by the supermajority requirements.

“I consider this to be a victory for my son and for other kids who are going through our K-12 education system,” Jinkins said Thursday. “This case started as us seeing the outrageous loophole that we thought should be closed, because we thought it was worth much more for us to be spending that money educating our kids.”

In Thursday’s decision, Justice Susan Owens wrote for the 6-3 majority, declaring “the supermajority requirement substantially alters our system of government, thus enabling a tyranny of the minority.”

Dissenting Justice James Johnson countered: “I regretfully observe that this court has become the tyrannous minority it purports to guard against.”

Johnson said the ruling would reduce respect for the court among a public that has voted for the two-thirds rule at least five times over two decades. Lawmakers have frequently suspended the rule.

If the decision heartened Democrats, it also energized Republicans to put up new barriers to taxes.

Tom said he would bring forward a change to Senate rules that would mirror the restrictions passed by voters.

Lt. Gov. Brad Owen, as the Senate’s presiding officer, has authority to rule on such procedural matters and said that he is consulting lawyers on this one. “My gut feeling is that they can’t do it,” the Democrat said, “but I’m not going to say that absolutely.”

House leaders made it clear they were not interested in changing the constitution to permanently enshrine the two-thirds rule – which itself would require two-thirds of the House and Senate.

That didn't stop advocates of an amendment from redoubling their efforts. Hours after the court issued its ruling, Senate Republicans pushed a bill through the Ways and Means Committee to write the two-thirds rule into the state constitution, a change that would require voter approval.

Eyman kept the heat on legislators to support such a change by emphasizing the widespread voter support for his initiatives – in the home districts of 88 of 98 House members and 44 of 49 senators, he said.

"I'm as passionately in favor of this policy today as I ever was," Eyman said, speaking to reporters in front of the Capitol. "I know based on a lot of experience that the voters feel that way too."

The Associated Press contributed to this report.

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Timeline

1993: Voters approve Initiative 601, which required a public vote or a two-thirds vote in the Legislature for tax increases.

1994: The state Supreme Court refuses to block I-601's implementation.

1998: Referendum 49 passes with 57 percent of the vote, affirming I-601's tax limitations.

2005: The Legislature suspends I-601 for two years.

2007: Tim Eyman files Initiative 960 to reassert the two-thirds requirement. It passes with 51 percent of the vote and prompts an unsuccessful legal challenge by then-Senate Majority Leader Lisa Brown, D-Spokane.

2010: Voters approve Initiative 1053, Eyman's answer to majority Democrats' plan – later accomplished – to suspend I-960.

May 2011: The latest Supreme Court case begins as a scripted question-and-answer session between three Democratic House members and Speaker Frank Chopp, during which Chopp was asked how many votes it would take to end a tax loophole.

May 2012: King County Superior Court Judge Bruce Heller rules Initiative 1053 unconstitutional.

November 2012: Voters approve Initiative 1185, reaffirming the two-thirds requirement by 64 percent of the vote.

February 2013: The state Supreme Court rules that a supermajority vote requirement for tax legislation must be imposed by constitutional amendment.

Excerpts of Thursday's decision in *League of Education Voters v. State*:

From the majority opinion, written by Justice Susan Owens (and signed by Justices Barbara Madsen, Mary Fairhurst, Tom Chambers, Charles Wiggins and Steven Gonzalez):

“The Supermajority Requirement unconstitutionally amends the constitution by imposing a two-thirds vote requirement for tax legislation. More importantly, the Supermajority Requirement substantially alters our system of government, thus enabling a tyranny of the minority.”

“Under the State's theory, (court) review would be proper only if the legislature ignored the Supermajority Requirement and passed a tax bill without a two-thirds majority vote. ... Given that the legislator respondents cannot ignore the Supermajority Requirement without violating their obligation to uphold the laws of the state, the State's position would render the Supermajority Requirement unreviewable and is therefore unacceptable.”

“This preference for simple majority rule is evident from the very language of the constitution, which required only a simple majority vote for ordinary legislation and reserved a supermajority vote for special circumstances. ... These circumstances included expelling a member of the legislature or overriding a veto. Thus, the framers were aware of the significance that a supermajority vote requirement entailed and consciously limited it to special circumstances; the passage of ordinary legislation is not one of those.”

“Our holding today is not a judgment on the wisdom of requiring a supermajority for the passage of tax legislation. Such judgment is left to the legislative branch of our government. Should the people and the legislature still wish to require a supermajority vote for tax legislation, they must do so through constitutional amendment, not through legislation.”

From a dissent written by Justice Charles Johnson (and signed by Justices James Johnson and Debra Stephens):

“In its eagerness to embroil itself in the political arena, the majority abandons any semblance of judicial restraint to declare the process of legislative enactment constitutionally infirm. For the past two decades, the people of this state have repeatedly voted for the supermajority provision, as has the legislature when no initiative occurred. The majority hardly recognizes, let alone analyzes, that this court has been repeatedly asked to step in and decide this issue, and we have consistently held and rejected that invitation.” From a dissent written by Justice James Johnson: “There is considerable irony in today’s decision given the majority’s claimed fear of tyrannical minority control. Through a single decision, a court of nine people (actually only six) is imposing their policy preferences over that of the 1,575,655 voters who passed Initiative 1053 and the millions who qualified and passed similar tax protections.”