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## Surprised over court's tax ruling? Shouldn't have been

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The biggest surprise about last week's state Supreme Court ruling on the two-thirds tax-hike initiative is how surprised so many people were – or pretended to be – about the outcome.

The only real mystery about the ruling was whether the court would finally find a way to endorse what most lawyers and legal scholars already knew – that the state constitution reserves to itself the number of legislative votes needed to raise taxes.

Once a court majority of six figured out how to get around 20 years of precedence that had allowed it to skirt the relatively easy but politically unpopular legal issue, the result was obvious. Want to make it harder to raise taxes? Amend the constitution, the court majority said.

So why were so many people shocked by the result?

Politics, probably. Anytime a supreme court – state or federal – overturns something politically popular, someone seizes the opportunity to take political advantage. They do this even when they know that the court isn't supposed to take an opinion poll to decide what constitutions say.

Opponents of the ruling needed look no further than the dissenting opinion by Justice James Johnson for rhetorical points. He, like most others, lit into the majority opinion by Justice Susan Owens for its provocative description of supermajority requirements as "the tyranny of the minority."

"There is considerable irony in today's decision, given the majority's claimed fear of tyrannical minority control," James Johnson wrote. "Through a single decision, a court of nine people (actually only six votes) is imposing their policy preference over that of the 1,575,655 voters who passed Initiative 1053 and the millions who qualified and passed similar tax protections."

James Johnson's dissent, though entertaining, was more political than legal, partly because the legal arguments for what is clear language in the constitution often read more like an exercise in wishful reasoning. And once proponents of two-thirds recognized that the court had run out of excuses not to rule on the merits of the rule, they did what they should have done 20 years ago – they began campaigning for a constitutional amendment.

The other dissent, this one drafted by Justice Charles Johnson, had some fun with his fellow justices past and current. How is it, Charles Johnson asked, that this time the court considered the issue on the merits when it had used technicalities to avoid doing so before?

In three previous cases, the court “rejected the invitation to engage in this political dispute, exercising the wisdom, restraint, and temperance not to step outside the court’s constitutional authority,” Charles Johnson wrote. “Evidently something has changed, though the majority does not tell us what, to cause it to abandon these limiting principles and chart a new course for the court to more actively engage in the political process.”

That presumes, of course, that the court refused to take part in this debate in those earlier cases out of wisdom. Like the Legislature, the court is elected and its members can't help but tread lightly into politically controversial issues. And they appeared unwilling to take a tough vote regarding taxes when the legislators refused.

In one of the earlier cases, now-retired Justice Tom Chambers – who voted with the majority last week – suggested as much.

“There is an elephant in the courthouse,” Chambers wrote. “The majority knows the elephant is there. The majority maps out a course around the elephant. The majority never acknowledges the presence of the elephant.”

Despite the loud complaints and dire warnings last week, the short-term effects of the court's recognition of the elephant are mouse-sized. Senate Majority Leader Rodney Tom won't let tax bills come to the Senate floor and House Speaker Frank Chopp won't let a constitutional amendment come to the House floor.

So what is the real result of the court's ruling? Hard civic work will replace automatic restraints.

“If the history of this great state can teach us anything, it is this: The power of the people will prevail,” wrote James Johnson. “If the Legislature passes a tax the people oppose, the people will find a way to repeal it. ... Consistent with the spirit and history of our Washington Constitution, I am sure democracy will carry the day; the voters will not be denied their rights.”

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