

Washington Judge Says Supermajority Tax Initiative Can Stay on Ballot

By

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A Washington superior court judge has ruled that a state initiative to reinstate a two-thirds majority threshold for tax increases can stay on the November 2015 ballot.

Constitutional amendments in Washington have to originate in the Legislature. In an effort to circumvent that limitation, Initiative 1366 , filed by conservative political activist Tim Eyman, would lower the state's sales tax from 6.5 percent to 5.5 percent unless lawmakers approve putting a constitutional amendment before voters to require a two-thirds legislative majority to pass tax increases. (Prior coverage )

The Washington secretary of state's office qualified I-1366 for the ballot July 29, but opponents filed a legal challenge  arguing the initiative exceeds the constitutional scope of the state's initiative process.

In an August 14 decision in *Huff v. Wyman* , King County Superior Court Judge Dean S. Lum agreed that the initiative appears to be unconstitutional but ruled against removing the initiative from the ballot.

"Although I-1366 appears to exceed the scope of the initiative power, our Supreme Court has not clearly and squarely ruled on whether the First Amendment to the United States Constitution and/or Article I Section 5 of the Washington State Constitution provide additional protections against pre-election challenges even in circumstances where the initiative may itself be invalid," Lum wrote.

The "fundamental, stated and overriding purpose of I-1366 is to amend the constitution," Lum wrote, adding that the initiative text and supporting material link the proposed constitutional amendment to a reduction in the sales tax.

"The purpose of the initiative is not to legislate, but to invoke the constitutional amendment process," Lum wrote.

Opponents say they're planning to appeal the superior court decision, which could send the case directly to the Washington Supreme Court. Although it's rare for Washington state courts to remove ballot initiatives, Andy Nicholas with the Washington State Budget and Policy Center, which opposes the initiative, said he believed a higher court would strike it from the ballot.

Nicholas said courts generally prefer to "wait until after the law has been enacted . . . but we think this is one of those cases where they can say this is clearly beyond the power of the initiative process." The legislation "is an unconstitutional attempt to blackmail the people's

representatives," he added.

Eyman said in an e-mailed statement that he's confident the issue will ultimately go to voters.

"In our state's 100 year history, the courts have never -- not once -- prevented the people from voting on a statewide initiative that turned in the required signatures and was certified," Eyman said. "Opponents' desperate attempt to prevent the people's vote on I-1366 failed . . . and their antidemocratic effort vividly illustrates their lack of trust in the voters."

Previous efforts by Eyman to impose a two-thirds majority requirement were passed by voters but struck down by the state supreme court.

In a July legal analysis  of I-1366, attorney Richard Stephens of Stephens & Klinge LLP argued the initiative isn't unconstitutional because it only asserts authority to reduce the sales tax.

"The legislature has the power to refer a constitutional amendment to the ballot," Stephens wrote. "It may choose to; it may not."