Washington: Supreme Court strikes down the "supermajority initiative" as violation of the state constitution

David M. Kall | Thursday, June 16, 2016

Last November, Washingtonians approved Initiative 1366 (I-1366), which called for the lowering of the state sales tax from 6.5 percent to 5.5 percent unless the legislature took certain action to raise taxes. The legislature could raise taxes in two ways: by a two-thirds - a supermajority - vote in the legislature, or by putting an increase on a ballot for voter approval. The amendment passed 51.52 to 48.48 percent.

The intent of I-1366 was to force fiscal restraint on the state by making it more difficult to increase taxes by requiring more than the bare majority currently needed pass such increases. A voter guide published prior to the November 2015 vote explained that current law only requires a yes vote by more than half of the members of each house of the legislature, the bare majority that I-1366 rejects. The only way to change this is by constitutional amendment.

Simply put by the voter guide, "[i]f the legislature proposes the constitutional amendment before April 15, 2016, then the state retail sales tax would stay at 6.5 percent. If the legislature does not propose the constitutional amendment and the state retail sales tax is reduced to 5.5 percent, that would cut the amount of taxes that individuals and businesses pay for goods and services. It would also lower the state's revenue for government services."

The lawsuit

Shortly after voters passed Initiative 1-1366, a group of taxpayers, including the League of Women Voters, filed a lawsuit that the Colorado Supreme Court recently resolved in the plaintiffs' favor. The suit sought declaratory relief that I-1366 was unconstitutional in its entirety. The court below also agreed with the plaintiffs, holding that the measure violated the state's constitutional provisions regarding the single-subject rule and the amendment process.

The single-subject rule, set forth in Article II, section 19 of the Washington constitution prohibits a bill from embracing more than one subject, and from having a subject not expressed in its title. This is to avoid "logrolling," or the inclusion of one piece of legislation with another that is necessary or desirable, and also to ensure that lawmakers and the public are aware of what is contained in proposed laws.

Here, the arguments focused on the single subject rule only. Thus, the key question before the court was whether the subjects of 1-1366 were so unrelated that "'it is impossible for the court to assess whether either subject would have received majority support if voted on separately.' If so, the initiative is void in its entirety."

The court's rationale

Disagreeing with all of the state's arguments, the court opined that a sales tax rate reduction is unrelated to a constitutional amendment, which would impact future

legislatures, and to the way that future taxes and fees are approved. For example, the court found no connection between the constitutional amendment and the reduction to the current sales tax rate, even though the amendment deals with future taxes and fees. And although there is no previously established requirement that there be such a connection, “it is a matter of common sense.” The fact that I-1366 does not enact both provisions does not save it from violating the constitution.

Additionally, the court held that I-1366 violates section 1 of Article XXIII addressing the amendment process; the initiative does not contain any provision for the proposal or enactment of a constitutional amendment by ballot initiative. The court deemed I-1366’s “do this or else” structure to create a new process for amending the constitution such that the “new norm would be for initiative sponsors to pair one drastic or undesirable measure with an ultimatum that it go into effect unless a specific constitutional amendment is proposed to the people…amount[ing] to a small percentage of voters effectuating a constitutional amendment by two majority votes.”

The court criticized this process as “simply not one contemplated by the constitution, even if further action is required by the legislature. ”

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