

## **Failure to enact permanent 1% limit could lead to \$1.5 billion property tax increase**

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The legislature is considering two bills, HB 2117 (Representative Hurst) and SB 5001 (Senator Benton), which would make permanent the 1% limit on how much officials in a taxing district could increase the property tax burden each year. The bills come after King County Superior Court Judge Mary E. Roberts struck down voter-passed Initiative 747, thus voiding the limit. Her ruling is on appeal.

Should legislators fail to confirm the 1% limit, the state would return to the law as it was before Initiative 747 was passed. That would allow state and local officials to increase their yearly property tax collections by up to 6%, in addition to all the increases that would have been allowed if Initiative 747 had not been in place.

### **Background**

In November 2001, Washington voters enacted Initiative 747, which limited how much a taxing jurisdiction can increase its regular property tax collections to no more than 1% per year. Other forms of property-based taxation, such as revenue from new construction and the Real Estate Excise Tax remain unaffected by the 1% limit.

For six years the law has functioned successfully, limiting how much officials in Washington's 1,720 taxing districts can increase the property tax burden they place on citizens.

Opponents of the 1% limit challenged Initiative 747 in court, and on June 13th, 2006 Judge Roberts struck down the Initiative, paving the way for state and local officials to increase the tax burden by as much as 6% a year. Her ruling is currently on hold, pending review by the state Supreme Court. Until then, the 1% limit remains in place.

In her ruling Judge Roberts said Initiative 747 is unconstitutional because the underlying law it sought to amend was itself declared unconstitutional 47 days before the election. She says voters were "incorrectly led" (her phrase) about what they were voting on. She concludes that in approving Initiative 747 voters thought they were reducing the tax limit from 2% to 1%, instead of from 6% to 1%.

### **Judge Roberts Wrong in Two Ways**

The Judge Roberts' ruling is wrong in two ways. She is wrong that voters were misled, and she is wrong on the constitutional point about amending underlying law. I'll explain these two mistakes in turn.

First, voters were not misled about what Initiative 747 would do. Here is what voters read when they cast their ballots:

Ballot Title: “Initiative Measure No. 747 concerns limiting property tax increases. This measure would require state and local governments to limit property tax increases to 1% per year, unless an increase greater than this limit is approved by the voters at an election. Should this measure be enacted into law?  Yes.  No.

This language is clear and straightforward. Whether the initiative reduced the limit from 6% or from 2% just didn’t matter to most people, especially since the courts changed the rules part way through the election campaign (see below). And even if this secondary point did apply, it is not as important as upholding the people’s basic right to make law by initiative.

Initiative 747 passed by almost 58% of the vote. It passed in every county except King and Whitman. Voters knew exactly what they were doing. There was a vigorous campaign, and even activists who favor higher taxes knew what they were trying to stop.

Second, Judge Roberts is wrong that Initiative 747 is unconstitutional. In drafting and filing Initiative 747, sponsor Tim Eyman followed all the rules that were in place at the time. Here is what happened:

- Pre-2000 – under a 1970s-era law, state and local officials can increase the overall property tax burden they place on citizens by as much as 6% a year.
- November 2000 – voters pass Initiative 722, reducing the limit on annual property tax increases to 2%. The new law is immediately challenged in court.
- January 2001, Eyman files I-747, to reduce the limit to 1%. As required, he cites the law he seeks to amend. That law, though under legal challenge, is Initiative 722.
- September 20, 2001, the state Supreme Court affirms a lower court ruling that Initiative 722 is unconstitutional. At that point Initiative 747 has already qualified for the November ballot and cannot be changed.
- November 6, 2001, the people of Washington overwhelmingly approved Initiative 747.
- June 13, 2006, Judge Roberts strikes down Initiative 747, again allowing government officials to increase yearly property taxes by as much as 6%.

Initiative 747’s sponsor did everything right. He drafted the initiative to amend state law as it existed at the time. There was no other choice; he followed the procedure required by law. Neither he or anyone else could know that nine months later a court would change the underlying law, thus rendering Initiative 747 “unconstitutional.” According to Judge Roberts’ reasoning, Initiative 747 was fully constitutional on September 19th, but not on September 20th, even though nothing about the initiative itself had changed.

## **Judge Roberts' ruling deprives the people of the right to initiative**

Judge Roberts has set a neat trap for voters. Since no one can tell how the law might change between January, when an initiative is filed, and November, when the people vote on it, her ruling effectively deprives the people of the right to make law through initiative. The legislature or another judge could use the Roberts Rule to sabotage any future initiative simply by changing underlying law after the initiative has been filed but before election day. That would automatically make any initiative, regardless of subject or content, “unconstitutional.” Simply put, it is not possible to draft an initiative that meets Judge Roberts' test for constitutionality.

## **Possible \$1.5 billion property tax increase**

The state Supreme Court may reverse this misguided decision, but if it doesn't the Initiative 747 law will be deemed to have never been in effect. That means officials in taxing districts across the state will suddenly be allotted \$1.5 billion in banked taxing authority, the amount of taxing authority they would have had if Initiative 747 had not been enacted. In the years ahead elected officials could increase the property tax burden until their banked authority was exhausted, then continue to increase it by up to 6% more every year thereafter.

## **Initiative 695 precedent**

There is good precedent for permanently enacting Initiative 747's property tax limit. When a judge struck down voter-passed Initiative 695, to reduce the yearly car tab tax to \$30, the legislature passed and then-Governor Locke signed legislation which reduced car tab taxes to the level called for in the Initiative.

## **Conclusion**

Court rulings do not operate in a vacuum. The *effect* of a ruling is as important as the train of reasoning that led to it. In this case, the effect of Judge Roberts' ruling is to repeal voter-approved tax policy and nullify the initiative process. The form of the initiative process remains in place – but the practical use of it by the people is lost. It doesn't make sense that a ruling that is supposed to uphold the state constitution results in the people losing a basic constitutional right.

These proposals would prevent property tax increases above the 1% limit from going into effect and would return the formulation of tax policy to the legislature. Alternatively, if state leaders believe the 1% limit should be repealed, then the legislature should pass a bill that does that. Either way, policy decisions about how much we pay in taxes should be made by the people through initiative or by the people's elected representatives in Olympia, not by judges.

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