

Oregon State Bar Constitutional Amendment 40 Position Paper

On August 4th, 2006, the Oregon State Bar Board of Governors voted to oppose Constitutional Amendment 40 and on September 16th, the Oregon State Bar House of Delegates held its annual meeting and voted to join the Board in opposing Constitutional Amendment 40.

About Constitutional Amendment 40.

If passed, Constitutional Amendment 40 would amend Oregon's constitution to require that our 17 appellate court judges be elected or appointed by geographic districts. Oregon voters would no longer be able to vote for all seventeen appellate judges and instead would be allowed to vote for only three judges.

How it would work.

- The seven Supreme Court Justices would be elected from seven separate districts.
- The ten Court of Appeals Judges would be elected from five separate districts, with two from each district.
- The new judicial districts would be drawn based upon population. The Oregon Legislature would establish the districts in 2007. After 2007 the districts would be reapportioned periodically at the same time as legislative districts.
- Judicial candidates would be required to be residents of their districts for at least one year before election or appointment, and would have to remain a resident of the district throughout the term of office.
- Judges currently serving would finish their terms, but each would be assigned a district. In order to run for re-election, a judge would have to establish residence in his or her assigned district at least one year before the election. Most appellate judges live in the Willamette Valley to be near the courts. Many may be unwilling or unable to move their residences, which would create numerous vacancies as their terms expire.

Judicial elections should be about legal expertise, not about regional politics.

Oregonians recently polled cited fairness and impartiality as the most important qualities for a judge. Judges are not elected to represent people, regions, or political viewpoints; rather they interpret, administer and uphold the constitution and laws. Unlike legislators, who are charged with representing regional constituents, the role of judges is to fairly and impartially apply the law without regard to political ideology or geography.

Constitutional Amendment 40 would dramatically reduce the pool of lawyers from which we draw for these critical positions, from 12,000, to in some cases, as few as 700 lawyers. Oregon is fortunate to have talented and scholarly lawyers in every corner of the state. But in filling these positions, the state is better served by drawing from the largest pool of lawyers, ensuring that the best and brightest – whether from Banks, Pendleton or Portland -- sit on our highest court.

Constitutional Amendment 40 would fundamentally change Oregon's Highest Courts and alter a system that has worked since 1910.

The current system for electing appellate judges has been in place and has operated effectively for nearly 100 years. Changing the entire system will be complicated and costly without providing any meaningful benefit to Oregon citizens.

Constitutional Amendment 40 will make judges more beholden to special interests than accountable to the law.

Constitutional Amendment 40 supporters confuse the roles of elected officials like the governor and legislators, who are accountable to the voters, with the role of judges, who should only be accountable to the law. Judges are not elected to be political representatives and are responsible solely for interpretation and

application of the law equally across the state. The place for partisan, regional politicking is the state legislature, not the court system.

It is often said that our government is a government of laws, not of men. This means that a judge must be free from political considerations in deciding issues before the court. A judge must make rulings based on the judge's view of the law, regardless of the judge's personal feelings and who the parties are.

If passed, Constitutional Amendment 40 will politicize judicial election and encourage special interests to try to defeat judges who have made rulings with which they disagree, or to elect judges who they believe will align more closely with their interests.

Constitutional Amendment 40 unnecessarily complicates how the courts function.

It is unclear how Constitutional Amendment 40 would be implemented, but will certainly distract the appellate courts from their appropriate functions. Will judges from Pendleton, Burns or Medford or other outlying districts bear the burden of maintaining a residence in Salem as well as in their districts? Appellate judges work full time at the Supreme Court Building in Salem. Few highly qualified candidates would split their lives between two residences. Or will the court make provision for a judge to spend most of his or her time in the residence district? If so, the crucial collegiality of the appellate courts will be dramatically impacted.

The disruption would be especially hard on the Court of Appeals – one of the busiest appellate courts in the country. Oregonians should have the right to elect the most qualified judges possible, and deserve capable, efficient appellate courts. Passage of Constitutional Amendment 40 would work against both of these goals.

Constitutional Amendment 40 will reduce voter input in the selection of appellate judges.

This constitutional amendment will diminish the total number of judges each Oregonian gets to select. Right now, every Oregonian has the right to vote in every judge's race for both the Supreme Court (seven justices) and the Court of Appeals (10 judges) – a total of seventeen positions. Constitutional Amendment 40 reduces that number to three. Under Constitutional Amendment 40, each Oregonian would be involved in electing just 2 of the 10 Court of Appeals Judges and just 1 of the 7 Supreme Court Justices.

This reduction of voter input and the "localization" of elections will allow single issue special interest groups to manipulate the elections process.

Who is behind this Initiative?

The chief petitioners include Russ Walker, head of Citizens for a Sound Economy/Freedom Works – Oregon. Nevada businessperson Loren Parks contributed \$100,000 to the Oregon Family Farm Association PAC, which had contributed a total of over \$170,000 to the initiative campaign through July 24, 2006. Other significant financial supporters were Citizens for a Sound Economy (\$120,000) and Oregonians in Action (\$101,000).

Financial Impact.

Estimates of the cost to implement the constitutional amendment are indeterminate. Ultimately the cost would depend on how the courts restructure operations to allow for district residence.