



Capitol Insider

OSB Public Affairs Newsletter for Bar Leaders

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Oregon State Bar and Oregon Lawyers Chapter of the American Constitution Society Sponsor Debate on Constitutional Amendment 40

On Wednesday, October 18th, four Oregon lawyers participated in a debate on Constitutional Amendment 40, which would require that appellate court judges be elected or appointed by geographic districts.

Speaking in favor of the measure was former gubernatorial candidate Kevin Mannix and James Huffman, professor of law at Lewis & Clark Law School.

Speaking against the measure was Charles Hinkle of Stool Rives, and Susan Marmaduke of Harrang Long Gary Rudnick.

Nena Cook, immediate past president of the Oregon State Bar, moderated the debate.

To see a streaming video of the debate, please visit the bar's website at: www.osbar.org/_docs/public/cable/measure-40-forum.wmv

The Board of Governors and House of Delegates have voted to take a position in opposition to Constitutional Amendment 40. For more information about the bar's position on this measure go to: www.osbar.org/_docs/lawimprove/06_OS_Bposition40.pdf

For the complete text of the initiative: www.sos.state.or.us/elections/irr/2006/024text.pdf

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“Rainy Day Amendment”? Maybe Not So Much...

Constitutional Amendment 48, if passed, will limit state spending to the previous cycle's spending budget, adjusted for inflation and population growth. Its proponents like to call it the “Rainy Day Amendment.”

The measure itself says nothing about any kind of rainy day fund – a fund on which the state could draw in a recession when it collects less income tax than when the state's economy is expanding. The measure neither requires nor prohibits the legislature from establishing a rainy day fund – money not budgeted for spending but retained in a reserve. The idea of a rainy day fund is to provide a reserve that could be used to make up for lost revenue in a recession, to maintain spending up to the level of the spending limit.

A closer look shows that a rainy day fund may be largely irrelevant. Constitutional Amendment 48 would apply to almost all state spending; including unemployment compensation and the rainy day fund itself. In a recession, general fund spending decreases with decreasing tax revenues. At the same time spending for unemployment compensation, paid out of a trust fund separate from the general fund, increases significantly. The increased spending on unemployment would likely consume most of the increase in spending allowed under the measure. General fund programs would not benefit by the increases allowed under the population plus inflation formula.

The Board of Governors and the House of Delegates have both passed resolutions opposing Constitutional Amendment 48, focusing on the effect it would have on funding for the courts. The resolutions urge members of the bar to oppose the measure in their communities.

Measure 41: Affordable Tax Cut for Average Oregonians or Threat to State Services?

Of the two measures on the 2006 general election ballot that most directly affect the state budget, Measure 41 definitely has the lower profile. Written by Bill Sizemore, funded by Nevada businessman Loren Parks and promoted by conservative activist Russ Walker, Measure 41 would allow taxpayers a choice in using personal exemptions in calculating state income tax liability. Under Oregon law in effect for 2006, taxpayers are given a tax credit of \$165 for each personal

exemption. Under the federal tax code, next year taxpayers will be entitled to a deduction of \$3,400 for each personal exemption. Measure 41 creates a choice for Oregon taxpayers: either take the tax credit available under current Oregon law or use the same deduction for state taxes that is available under federal law - whichever reduces tax liability the most.

The committee charged with the responsibility to estimate the financial impact of proposed measures had this to say about the financial impact of the measure's passage:

This measure will reduce state budget revenues from personal income taxes. The reduction will be approximately \$151 million for 2006-07. In 2007-08 the measure will reduce state budget revenues by \$385 million and reduce the personal income tax "kicker" by \$151 million. The measure will reduce state budget revenues \$407 million for 2008-09 and \$430 million for 2009-10. The annual impact will increase over time due to population growth and increases in the amount of the federal income tax personal exemption, which is indexed for inflation.

The total reduction in revenue for the 2007-09 biennium is \$792 million, of a projected total net general fund revenue of \$12.517 billion as predicted by the state economist in September – a reduction of 6.3 percent.

The proponents argue that this is a modest measure that will cut the taxes of nearly four of five Oregonians. The Legislative Revenue Office says that the measure will reduce state income taxes for single adults by an average of \$97 per year, and \$340 for families filing joint returns. In the Voters Pamphlet, the proponents emphasize the significance of the cut for taxpayers in one argument and minimize its impact on the state government as "modest" in another.

Opposing the measure is a coalition of labor unions, large corporations, trade groups, and advocates for seniors and education. They point out that a loss of 6.3 percent of state revenue will be significant to any part of state government dependent on the general fund – schools, social services, the justice system and others.

Further, according to the Oregon Center for Public Policy, the tax cuts that the measure provides will not be evenly distributed, with low income Oregonians benefiting least and the wealthiest Oregonians benefiting most. The measure would benefit few low-income seniors – one of the groups most dependent on the services that would have to be cut to balance the budget if the measure were to pass.

The bar did not take a position on Measure 41. More bar members than not probably benefit from the measure on a personal level, but it's worth considering whether the benefit is worth the potential damage that might result to the justice system in particular and to state services in general.

Legislative Races to Watch

A few key races may decide which party controls the Oregon legislature in 2007.

In the Senate, there are competitive races in at least three districts.

- District 7 features a choice between two well known Lane County politicians: incumbent Democrat Vicki Walker and Republican Jim Torrey, former Eugene mayor.
- In District 26, Republican Carol York, a Hood River County Commissioner and business woman, is challenging incumbent Democrat Rick Metsger.
- The entry of independent candidate Ron McCarthy in District 24 (East Portland) may make the contest between Republican T.J. Reilly and Democrat Rod Monroe to

succeed retiring Sen. Frank Shields closer than expected. Both Monroe and McCarthy are former Democratic legislators.

In 2005, the Senate Democrats enjoyed an 18-12 majority. Since the end of the 2005 session, Senators Avel Gordly (former Democrat from Portland) and Ben Westlund (former Republican from Deschutes County) have withdrawn from their caucuses and declared themselves independents. If Republicans were to win two of the races described above, the Democrats would hold only 15 of 30 seats and the independents could play central roles in how the Senate is organized.

In 2005, Republicans controlled the House 33-27. With competitive races in at least six districts, Republicans could see their majority margin slip, if not disappear completely.

- In central coast District 10, Democrat Jean Cowan, former Lincoln County Commissioner, again takes on incumbent Republican Alan Brown who barely prevailed in 2004.
- In Lane County District 14, incumbent Republican Debi Farr is defending her seat against Democrat Chris Edwards, a Eugene businessman.
- Salem's District 21 features a close contest in which Democrat Brian Clem, a small businessman and orchardist, is attempting to unseat incumbent Republican Billy Dalto.
- Republican Domic Biggi, an executive manager of Beaverton Foods, and Democrat Tobias Read, a Nike executive, are vying to succeed retiring Democrat Mark Hass in Beaverton District 27.
- Further west in Hillsboro District 30, Republican Everett Curry and Democrat David Edwards are running for the seat being vacated by Republican Derrick Kitts. Curry is a minister and a financial planner, while Edwards is the CEO of a high-tech firm.
- Incumbent Democrat Larry Galizio, a speech teacher at Portland Community College, is attempting to retain his seat in Tigard District 35 against a strong challenge from Republican Shirley Parsons, a retired Portland police officer.

Although these are not the only hotly contested races for the Oregon legislature, the results in these elections are most likely to determine who will be in charge in 2007.

The 'Big Look' at Land Use

The Oregon Task Force on Land Use Planning submitted its preliminary work plan to the Governor on June 2. The plan is designed to promote a focused discussion of the issues inherent in Oregon's land use system. The work product of the task force is available at <http://www.oregon.gov/LCD/BIGLOOK/reports.shtml>.

In July, the task force identified the following six major issues facing the existing Oregon land use system:

- What are the appropriate roles of state and local governments in land use in Oregon?
- What is the appropriate role of citizen involvement in land use?
- What role should land use planning play in enhancing Oregon's economy now and in the future?
- What are the most effective tools to manage population growth to achieve community goals?

- How should Oregon's system of infrastructure, finance, and governance influence land use?
- How can the land use process appropriately address the benefits and burdens that fall on individual land owners and the general public?

During the next phase of its work (July-December 2006), the task force will frame the issues and develop options to address them, including identification of trade-offs inherent in the possible solutions. In addition, the task force will decide what, if any, legislation to submit to the 2007 legislature. In 2007, the task force will conduct public outreach organized around specific questions, issues, and trade-offs, not around open-ended generalities.

The final phases will be to assemble the information gained in the outreach activities, debate the issues, and propose recommendations to the 2009 legislature.

The work plan emphasizes the direct involvement and work of the ten task force members, and places a high premium on cutting to "those difficult and contentious issues" the group is charged with addressing. The group may have little patience with posturing and hot air:

The most useful "public involvement" engages informed stakeholders and forces debate about actual trade-offs, by presenting specific choices and eliciting reactions about real conflicts which exist. Open-ended "public involvement" on generalized topics yields unrepresentative anecdotes and ideological platitudes, which will not help anyone resolve real issues.

Oregon Law Commission Ethics Work Group: Reviewing the Influence of Lobbyists and Money in the Political Process

House Democratic Leader Jeff Merkley recently endorsed tighter limits on gifts to legislators, and increased penalties for violations of government ethics laws. Rep. Merkley provided testimony to a panel of the Oregon Law Commission, which is in the process of reviewing changes to government ethics rules. This review is particularly timely. Recently a number of prominent legislators have revealed previously unreported trips to Hawaii and elsewhere, paid for by interest groups.

However timely it may now seem, a comprehensive review of Oregon's governmental ethics laws has actually been underway since 2003. In 2003 the Oregon Legislature passed House Bill 3328, which was designed to clarify Oregon ethics laws and to make other changes to disclosure and investigation requirements. The Governor vetoed this bill but requested that the Oregon Law Commission develop recommendations for a comprehensive revision of the government ethics laws for the 2007 Legislative Assembly. During the 2005 Legislative session, because of continuing concerns regarding ethics issues, additional funding of \$224,000 was appropriated to the Commission to conduct an even more detailed review of ethics laws.

The Oregon Law Commission created a Government Ethics Work Group composed of fifteen members representing diverse interests. The group has reviewed substantive ethics laws for state and local government public officials dealing with the receipt of financial gain in all of its forms, restrictions on and reporting of conflicts of interest, and penalties and remedies for violation of government ethics laws. After the 2005 funding increase, the charge was expanded to include a review of lobbying, campaign finance, and funding the administration of government ethics laws. The Commission intends to make recommendations for the 2007 Legislative Assembly by the end of the year.

For more information on the Oregon Law Commission Ethics Work Group, visit http://www.willamette.edu/wucl/oregonlawcommission/home/work_groups55.html.