



# Capitol Insider

OSB Public Affairs Newsletter for Bar Leaders

## Public Affairs Committee

Gerry Gaydos, Chair, *Eugene*  
Mark Comstock, Vice-Chair, *Salem*  
William Carter, *Medford*  
Nena Cook, *Portland*  
Lauren Paulson, *Aloha*  
Linda Eyerman, *Portland*

## The Oregon System

In 1902, the Oregon electorate approved a ballot measure that created the initiative and referendum, a system of direct legislation by the people. The initiative and referendum process became known nationally as the "Oregon System."

Since the system has gone into effect Oregonians have passed 99 of the 288 initiative measures on the ballot. The legislature has referred 363 measures to the people of which 206 have passed.

Both houses of the legislature must vote to refer a statute or constitutional amendment to the voters. Referrals cannot be vetoed by the governor.

August 20, 2004

## 2004 Initiatives

The Secretary of state Bill Bradbury announced six of the seven initiative petitions circulated for signatures have qualified for the November 2, 2004 General Election. Although fewer initiatives have qualified for the ballot this year than in the past sixteen years, voters will decide a wide range of issues. The ballot issues range from instituting a damages cap in medical malpractice cases, the abolishment of SAIF, and the definition of marriage. Two of the measures seek to amend the constitution and several have already raised large sums of money and the public's attention.

Term limits on state legislators will not be among the issues decided this November by Oregon voters. The Elections Division determined that supporters of the initiative did not meet the signature requirement needed to qualify for the ballot. Supporters of the initiative filed suit against the secretary of state over the rejection of nearly 6,000 signatures for problems with signing and dating of the petition sheets. Last Thursday, U.S. District Court Judge Panner decided the term-limits supporters had fallen short of the number of signatures needed to qualify the initiative to ballot even if the state had accepted the excluded signatures and ruled the case moot.

Listed below are the measure numbers assigned to the initiatives and the two referrals that will appear on the November ballot.

\*Opponents of ballot measures do not file their campaign finance reports until September; therefore opponent fundraising and spending information was not available at the time of this issue.

## Measure # 33 - Amends Medical Marijuana Act

would amend the state's Medical Marijuana Act by creating a licensing program for medical marijuana dispensaries. There are a number of changes incorporated into this measure

PUBLIC AFFAIRS DEPARTMENT



Oregon State Bar  
5200 SW Meadows Road  
Lake Oswego, OR 97035  
Phone: (503) 431-6376  
Fax: (503) 598-6976  
Website: www.osbar.org

including: the amount of marijuana that registered patients may possess increases to ten plants from seven and one pound from three ounces, dispensaries would be permitted to sell marijuana to registered patients, and the definition of “attending physician” is expanded to include naturopaths and nurse practitioners.

Under current law, approved through the initiative process in 1998 by 55% of the vote, the sale of marijuana is prohibited. Today 10,000 Oregonians hold registry identification cards allowing them to engage in the medical use of marijuana. Nine states allow marijuana to be used for medical purposes.

According to the financial impact statement determined by a secretary of state’s committee, the measure would result in a one-time start-up cost of \$135,000 and would require \$340,000 to \$560,000 per year in state expenditures (most of which may be offset by fees established by DHS).

### **Measure # 34 - Balancing Timber Management**

would require state forests to be managed by balancing the protection of drinking water, conservation of wildlife and salmon habitat, expansion and protection of recreational opportunities, restoration of native forests, and watershed preservation with sustainable timber harvests. The measure requires half of Tillamook and Clatsop state forest to be set aside for forest restoration and half for timber production.

The state forest ballot measure is similar to a proposal the board of forestry previously considered and rejected. \*Supporters raised \$417,501 and spent \$448,454; the largest contributor was Wild Salmon Center of Portland. The measure will cost the state \$4.2 million to \$10.3 million in reduced timber revenue.

### **Measure # 35 - Medical Malpractice Cap on Damages**

would amend the constitution by limiting the recovery of noneconomic damages recoverable for patient injuries caused by healthcare provider’s negligence or recklessness to \$500,000. Noneconomic damages include all subjective nonmonetary losses suffered by an injured patient, including but not limited to pain, mental suffering, emotional distress, loss of care, comfort, companionship and society, loss of consortium, inconvenience, and interference with normal and usual activities.

This measure would restore the \$500,000 noneconomic damages cap instituted by the 1987 Legislature. The limit remained in effect until it was found unconstitutional in 1999 by the Oregon Supreme Court. In 2000, voters rejected a constitutional amendment that would have allowed the Legislature to set limits on damages.

\*Sponsors of the damages limit have raised \$4 million from hospitals and doctors and have banked over \$3 million for the campaign.

### **Measure # 36 - Definition of Marriage**

would amend the constitution to define marriage as the union of one man and one woman. If successful, the Oregon Constitution would read “only a marriage between one man and one woman shall be valid or legally recognized.”

Current Oregon law provides “marriage is a civil contract entered into person by males at least 17 years of age and females at least 17 years of age...”

Oregon will be one of as many as twelve states in which voters will be faced with the gay-marriage issue at the ballot box. Voters from Missouri, Louisiana, Montana, Georgia, Kentucky, Mississippi, Oklahoma, and Utah will decide the gay-marriage issue this year. In August, Missouri was the first state to decide the issue since Massachusetts ruling last year on same sex weddings. Missouri voters approved a constitutional amendment banning same sex marriage. The ban received 70% of the vote.

### **Measure # 37 - Land Use Restriction and Property Owner Compensation**

requires that if either the state or one of its political subdivisions “enacts or enforces” a land use regulation against a piece of private property, that government entity must pay compensation to the owner of that property in the amount of any reduction in the fair market value of that property as a result of the regulation.

There are a number of exceptions to the rule, perhaps most importantly that persons who purchase a piece of property after the land use measure in question went into effect are not entitled to compensation. Additionally, compensation need not be paid for regulations that related to health and safety or to public nuisances.

It is projected that this measure would cost the state \$18 million to \$44 million a year to respond to claims (this amount does not include compensation) and local governments \$46 million to \$300 million in administration costs.

### **Measure #38 - Abolishes SAIF**

would require the state of Oregon to sell off the assets of the State Accident Insurance Fund (SAIF). SAIF is a quasi-public company that provides workers compensation insurance to private employers in Oregon. Oregon employers are not currently required to purchase insurance from SAIF; rather SAIF competes for such business with private insurance companies.

The proceeds of the sale of SAIF would go into a specially created fund, the proceeds of which would be available for a variety of state programs including education, public safety, and job training.

\*Oregonians for Accountability spent a record-breaking \$1.6 million to qualify the initiative for the ballot. The majority of the money was contributed by SAIF’s chief competition, Liberty Northwest Insurance Co. According to the measure’s financial impact statement, dismantling SAIF would reduce state revenue by \$405 million per year, reduce state expenditures by \$301 million per year; require additional state government expenditures of \$1.8 million to \$5.5 million, and a one-time expenditure of at least \$2.2 billion.

\*\*Ballot measures 31 and 32 were referred to the voters by the Oregon Legislature.

**Measure # 31 - Postponement of Election Due to Death of Candidate**

would allow the legislature to pass statutes addressing the problems that occur if a candidate for office dies after vote-by-mail ballots are sent out and before the general election. Among other things, ballot measure 31 would allow the postponement of an election for a particular office due to the death of a candidate. The replacement election would be held in January.

A couple of high profile candidate deaths in other states, including Sen. Mel Carnahan of Missouri in 2000, and Sen. Paul Wellstone of Minnesota in 2002 prompted several Oregon legislators to wonder what would happen in Oregon if a candidate were to die. However, Ballot measure 31 applies only to state offices, not to federal offices.

**Measure # 32 - Deletes Mobile Home Reference from Tax Provision**

deals with a nuance in Oregon’s constitutional requirement that taxes raised from motor vehicle use be used only for highway construction and maintenance. Currently, the Oregon Constitution lists “mobile homes” as one of the types of vehicles subject to this section of the Constitution. Measure 32 deletes “mobile homes” from this list.

**General Election Timeline**

|               |   |
|---------------|---|
| August 24     | Candidate filing deadline   |
| August 24     | Voters' pamphlet filing deadline                                      |
| September 18  | Ballots mailed to long-term absent voters (overseas and military)     |
| October 4     | Ballots mailed to out-of-state voters                                 |
| October 6-8   | Voters' pamphlets are mailed  |
| October 12    | Voter registration deadline   |
| October 15-19 | Ballots mailed to voters other than long-term and out-of-state voters |
| November 2    | Election day  |