



Capitol Insider

OSB Public Affairs Newsletter for Bar Leaders

Public Affairs Committee

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Upcoming Meetings

Oregon Law Commission

On Wednesday, November 15, 2006 the full body of the Oregon Law Commission will be meeting in Salem.

The Commission will focus on the recommendations of the Government Ethics Work Group.

The meeting will be held at the State Capitol in Hearing Room C from 8:30 a.m. – 12:30 p.m.

Two more meetings will be held before the end of the year. For more information, see the Commission Website:

<http://www.willamette.edu/wucl/oregonlawcommission/>

Senate & House Judiciary Committees

On December 13, 2006 at 8:30 a.m. the Senate and House Judiciary Committees will meet jointly for testimony and pre-session filing of legislation.

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Initiative Election Results

On Election Day Oregonians rejected most of the measures placed on the ballot and financed by out-of-state interests.

- Measure 48 would have imposed a spending cap on state government. It was defeated by a vote of 70 to 30 percent.
- Measure 41 would have allowed Oregonians to choose a federal style deduction for each personal exemption on their tax returns rather than the current tax credit. It was defeated by a vote of 63 to 37 percent.
- Measure 45 would have re-imposed term limits on the legislature. It was defeated by a vote of 58 to 42 percent.

And, perhaps most significantly for the legal community, Measure 40 would have required Oregon appellate judges to be elected by geographic districts. It was defeated by a vote of 56 to 44 percent.

The Oregon State Bar took an active role in opposing Measure 40. Measure 40 was viewed as a potential disruption to Oregon's appellate courts and as a threat to judicial independence, and was therefore of particular interest to the bar.

Significant Judicial Measures in Other States Rejected

Oregon voters were not the only ones to consider and reject initiatives aimed at state judicial systems.

In South Dakota, voters overwhelmingly rejected the Judicial Accountability Initiative Law, often referred to by its proponents as "Jail 4 Judges," by a vote of 90 to 10 percent. Among other things, this initiative would have abolished judicial immunity.

In Colorado, voters rejected a measure that would have limited appellate judges to three terms of four years and would have led to the retirement of five of the seven justices of the Colorado Supreme Court in January 2009. This measure was rejected by a vote of 57 to 43 percent.

Other Judicial Election News

In other judicial election news, Court of Appeals Judge Virginia Linder defeated former labor commissioner Jack Roberts for the seat on the Oregon Supreme Court vacated by former Chief Justice Wallace Carson, who is retiring at the end of this year. Judge Linder won by a vote of 52 to 48 percent.

Nationally, the most expensive judicial election this cycle was the contest for Chief Justice of the Alabama Supreme Court. Veteran trial and appellate court judge Sue Bell Cobb defeated incumbent Chief Justice Drayton Nabers, who had held the position since 2004. Nabers raised \$4.5 million, Cobb \$1.9 million.

Measures 46 & 47 – Where Do We Go From Here?

Ballot Measures 46 and 47 were companion pieces intended to take big money out of politics. Measure 46 would have amended the Constitution to allow laws limiting or prohibiting campaign contributions. It *failed* 60 to 40 percent. Measure 46 was considered necessary in order for the statutory changes in 47 to survive a constitutional challenge.

In an unexpected turn of events, Measure 47 *passed* by 53 to 47 percent. By its terms, the measure would ban corporate and union campaign contributions and set limits on individual contributions and independent expenditures. It also contains new reporting requirements. Unless it is enjoined, Measure 47 will take effect 30 days after passage -- December 7th.

At this time it is unclear whether Measure 47 can survive a constitutional challenge without the companion enabling changes of Measure 46. It may be that some parts of Measure 47 can survive, but these may be difficult to untangle from provisions that are clearly unconstitutional. The Elections Division has requested an opinion from the AG's office, while John DiLorenzo, a Portland lawyer who represents opponents of the measure, has stated that his clients are preparing litigation to block any portion of Measure 47 from becoming law.

Legislative Election Results

Although there will be minimal turnover in the Oregon Senate, there will be just enough turnover in the Oregon House of Representatives to effect a significant change: for the first time since the 1989 session both chambers of the legislature will be in the hands of Democrats.

In 1990, the Republicans took control of the House and have held control ever since. In 2005, they enjoyed a 33-27 advantage. In 2006, House Democrats concentrated on holding on to seats they had narrowly won in 2004, and aggressively pursued seats held by Republicans in Districts where the Democrats enjoy a registration advantage.

In Lane County, newcomer Chris Edwards (D) defeated one term incumbent Debi Farr (R). On the central coast, former Lincoln County Commissioner Jean Cowan (D) defeated Alan Brown (R). And in north Salem, Brian Clem (D) beat incumbent Billy Dalto (R). David Edwards (D) picked up an open seat in Hillsboro previously in Republican control – where his Republican opponent enjoyed a 4 point registration edge. By holding the seats they had and picking up these four seats, the Democrats reached 31 seats: the magic number needed to control the House.

At a meeting on Sunday, November 12, the House Democrats elected Jeff Merkley as Speaker and Dave Hunt as Majority Leader. House Republicans have chosen Wayne Scott as Minority Leader.

House committee assignments will undoubtedly hold some surprises. For example, none of the three Democratic House members who served on the Joint Ways and Means Committee in 2005 will return, and there is no obvious frontrunner for House Ways and Means Co-Chair, although Mary Nolan is a possible contender. Greg Macpherson, a practicing attorney and Oregon State Bar member, is likely to be considered for Chair of the House Judiciary Committee.

The Senate is likely to look much like it did in 2005, when the Democrats took control. In 2005 the Democrats enjoyed an 18 to 12 majority. In 2007, they will enjoy a majority of 17-11, with two independents.

All Senate incumbents who ran in the general election were re-elected. The most competitive race was in Eugene and pitted Democratic incumbent Vicki Walker against the former mayor of Eugene, Jim Torrey. Walker turned back Torrey's challenge on a vote of 51 to 49 percent.

Key Senate leadership positions are likely to remain unchanged, with Peter Courtney returning as Senate President, Kate Brown as Majority Leader, Kurt Schrader as Ways and Means Co-Chair, and Ted Ferrioli as Republican Leader.

What these developments portend for the bar and the justice system is not clear. Neither party has shown a particular interest in the justice system, which is badly in need of additional state funds for operations of court facilities, judicial salaries, indigent defense, civil legal services, and technology improvements. The public safety issue that received the most attention in the gubernatorial campaign was the woeful underfunding of the state police.

Measure 39 -- Oregonians Again Vote in Favor of Property Rights

On Tuesday, Oregonians voted overwhelmingly in favor of Measure 39 – by a vote of 67 to 32 percent. Under the new law, state and local governments will now be prohibited from using their power of eminent domain to seize private property and give it to another private entity, with some exceptions. Its chief sponsor was Oregonians in Action.

Measure 39 is part of a national reaction by property rights advocates to the 2005 Supreme Court decision in *Kelo v. City of New London*, 545 U.S. 469 (2005), which held that a city's exercise of eminent domain was appropriate to further an integrated development plan under which the condemned property would pass to another private party. The Court, however, noted that a state could prohibit such takings.

An additional change, which was not as widely publicized, relates to attorney fees. Currently, attorney fees are available to a landowner who appeals to circuit court, if the court determines that the property is valued at an amount higher than *the greatest* amount offered by the government. Under the new law, attorney fees are available if the court determines that the property is valued at an amount higher than the *initial* offer made by the government. And costs and attorney fees are also available if the court determines that it was a prohibited condemnation.

Proponents of 39 argued that this new provision would result in a decrease of the number of undervalue offers made by the government and provide landowners more leverage. Opponents, on the other hand, argued that the threat of an attorney fees award would reduce the ability of the parties to negotiate and would drive up costs of legitimate condemnation proceedings.