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Report on Constitutional Amendment Changing Initiative - Referdem Requirements (State Measure No. 2)

City Club of Portland (Portland, Or.)

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REPORT
ON
CONSTITUTIONAL AMENDMENT CHANGING
INITIATIVE - REFERENDUM REQUIREMENTS
(State Measure No. 2)

Purpose: Amendment changes basis for determining number of signatures for initiative and referendum petitions from total votes cast for Supreme Court Justice to total votes cast for governor at preceding election at which governor was elected for four-year term. New petition signature requirements:

Initiative for constitutional amendment:
8% of votes cast (presently 10%)

Initiative for law:
6% of votes cast (presently 8%)

Referendum: 4% of votes cast (presently 5%)

Additional 15-day period for verifying signatures.

To the Board of Governors,
The City Club of Portland:

I. INTRODUCTION

Your Committee was asked to study a proposed amendment to the initiative and referendum provisions of Article IV of the Oregon Constitution. This amendment was referred to the voters by the 1967 Legislative Assembly and will appear on the May 28, 1968 state ballot as Measure No. 2.

a. Persons Interviewed

During its investigation, your Committee interviewed the following persons: Jack Thompson, Director of Elections, State of Oregon; Keith D. Skelton, State Representative, Lane County and Chairman, House Constitutional Revision Committee; Don S. Willner, State Senator, Multnomah County; and Jake Bennett, State Representative, Multnomah County.

In addition, telephone interviews were held with State Senators Ted Hallock, Thomas R. Mahoney and Vernon Cook (Multnomah County); State Representative Connie McCready (Multnomah County), and with representatives of the Oregon AFL-CIO, Oregon State Grange, League of Women Voters, Association of Oregon Counties, League of Oregon Cities, Bureau of Municipal Research, and the Oregon Home Owners Association.

b. Source Materials

Your Committee also reviewed materials from the following sources: Secretary of State; Office of Legislative Counsel; *Book of the States*; and *State and Local Government* (2d Ed.) by Russell W. Maddox and Robert F. Fuquay.

II. THE PRESENT SITUATION

The Oregon Constitution (Article IV) vests the state's legislative authority in a Legislative Assembly, reserving to the people "power to propose laws and amendments to the Constitution and to enact or reject the same at the polls, independent of the Legislative Assembly," and the power "at their own option to approve or reject at the polls any act of the Legislative Assembly."

The base now used is "legal voters." As defined in Article IV, the term "legal voters" means the "whole number of votes cast for Justice of the Supreme Court at the regular election last preceding the filing of any petition for the initiative or for the referendum . . ."

The requirements for the people to exercise their powers to propose laws or amendments are now as follows:

To propose a *constitutional amendment* by initiative now requires a petition supported by signatures equal to "not more than" ten per cent of the state's "legal voters."

To propose a *statute* requires supporting signatures equal to "not more than" eight per cent of the state's "legal voters."

Except for measures bearing the emergency clause (which are not subject to referendum), a *referendum* may now be ordered by signatures equal to not more than five per cent of the state's "legal voters." The Legislative Assembly, of course, may refer any measure (except one carrying the emergency clause) by a majority vote of both houses.

Although the "not more than" language suggests that current percentages are maximums and could be reduced by statute, the Legislative Assembly has never attempted to do so, and the Supreme Court of Oregon has not expressly ruled on this question.

Prior to 1967, statutes required that signatures supporting an initiative or referendum petition be verified prior to the deadline for filing the petition. In 1967, the Legislative Assembly by statute provided an additional fifteen days after the petition deadline to verify signatures filed with the Secretary of State before the petition deadline. As noted below, the extension is included in the proposed constitutional amendment.

III. THE PROPOSED CHANGES

The amendment proposed by Ballot Measure No. 2 would effect five major constitutional changes in Oregon's initiative and referendum system:

1. The base for determining required signatures would be changed to the total vote cast for all candidates for governor at the most recent election at which a governor was elected for a four-year term;

2. The number of signatures required to initiate a *constitutional amendment* would be changed to eight per cent of the new base;

3. The number of signatures required to initiate a statute would be changed to six per cent of the new base;

4. The number of signatures required to order a *referendum* would be changed to four per cent of the new base;

5. Signatures supporting initiative or referendum petitions could be verified, after filing with the Secretary of State, up to fifteen days after the last date on which the petition may be filed.

IV. BACKGROUND OF THE PROPOSED CHANGES

The proposed amendment flows from the procedural disaster that befell a major initiative movement in 1966. That year proponents of the 1½ per cent property tax limitation were reaching the end of their drive to win a place on the November general election ballot. The Director of Elections advised initiative sponsors that the applicable base for computing the required number of signatures was the highest vote cast for an individual candidate for the Supreme Court in 1964, rather than the highest total vote cast for all candidates for any position. The distinction was important because in 1964 one position on the court was contested, and the two opposing candidates drew a substantially higher vote than the unopposed candidate for the other position being filled. The tax limitation sponsors filed enough certified signatures to satisfy the base specified by the Director of Elections. The sponsors also filed several thousand uncertified signatures which, if proven valid, would have satisfied a base measured by the highest total vote for a position.

A suit was filed to enjoin the Secretary of State from certifying the limitation measure for inclusion on the general election ballot. A three-judge circuit court granted the injunction and, on appeal, the Supreme Court of Oregon affirmed.⁽¹⁾ The Court held that the highest total vote for any one court position was the proper base, and therefore the initiative proponents had filed insufficient valid signatures. The Court also held that only signatures certified on or before the last day for filing a petition could be counted.

Change of the base from Supreme Court to gubernatorial vote was approved by the Oregon Constitutional Revision Commission in 1962 and was considered by the Legislative Assembly as part of proposed revised constitutions in 1963, 1965 and 1967. Initiative and referendum provisions of the 1962 Constitutional Revision Commission draft, and of subsequent proposed constitutions, were as follows:

Proposals	Base	Percentages		
		for INITIATIVE		REFERENDUM
		Constitutional Amendment	Statute	
1962: Constitutional Revision Commission	Governor	8 %	6 %	4 %
1965: Engrossed HJR 1 (House)	Governor	10 %	6 %	4 %
1967: Engrossed SJR 7 (Senate)	Number of Registered Voters	7 %	5½ %	4 %
1967: Re-engrossed SJR 7 (House)	Governor	10 %	6 %	4 %

⁽¹⁾*Kays et al v. McCall et al*, 244 Or 381, 418 p.2d 511 (1966).

The following chart⁽²⁾ shows the bases utilized by other states having initiative or referendum, or both.

<u>State</u>	<u>Base Used</u>
Alaska	Those who voted in the preceding general election and resident in at least two-thirds of the election districts of the state
Arizona	Governor
Arkansas	Governor
California	Governor
Colorado	Secretary of State
Idaho	Governor
Maine	Governor
Maryland	Governor (Referendum only)
Massachusetts	Governor
Michigan	Governor
Missouri	Governor
Montana	Governor
Nebraska	Governor
Nevada	Supreme Court Justice
New Mexico	Governor (Referendum only)
North Dakota	10,000 (Initiative); 7,000 (Referendum)
Ohio	Governor
Oklahoma	Based on number of votes cast for state officer receiving highest number of votes in last general election.
Oregon	Supreme Court Justice
South Dakota	Qualified electors of the state
Utah	Governor
Washington	50,000 (Initiative); 30,000 (Referendum)

Under Article XVI of the Oregon Constitution, the proposed amendment, if approved, would be effective upon the Governor's proclamation which must be made "forthwith" after a canvass of votes by the Secretary of State.

Assuming the amendment will thus apply to initiative petitions circulated for the 1968 general election ballot, according to figures of the State Director of Elections, the number of signatures required for a constitutional amendment will increase from 48,020 to 54,629 and for a statute, from 38,416 to 40,972.

V. ARGUMENTS FOR THE PROPOSED AMENDMENT

Arguments favoring the proposed amendment made to your Committee were:

1. Change of base from Supreme Court vote to gubernatorial vote.

The proposed gubernatorial base is more stable than the present base. Candidates for the Supreme Court usually run unopposed and therefore the total vote for any Court position rises markedly if a contest does occur. The vote for Supreme Court candidates also reflects the heavy variation in voter turnout between presidential and non-presidential election years. By contrast, the governorship is always contested, and no governor is elected for a four-year term in a presidential election year. The graphs in this report show dramatically the variation in the present Supreme Court voter base and the fairly stable growth of the gubernatorial vote.

⁽²⁾From Maddox, Russell W. and Fuquay, Robert F., *State and Local Government*, 2nd ed., D. Van Nostrand Company, Inc., Princeton, New Jersey, 1966, pp. 320-321.

2. Change of required percentages.

The proposed reduction of applicable percentages is designed to offset the effect of an increased base and to keep total signature requirements basically unchanged from previous requirements. The reductions are thus consistent with the "house-keeping" nature of an amendment that is meant only to smooth the operation of the initiative and referendum system. Based upon the testimony heard, your Committee believes the percentage reductions reflect a legislative desire to avoid jeopardizing passage of the base change and thus are not meant to change significantly the signature requirements. Although witnesses heard by your Committee disagreed about the desirable level of signature requirements, all witnesses supported the proposed reductions as part of a "housekeeping" package.

As noted earlier, this extension is now provided by statute. Some officials, however, have questioned the constitutionality of this law and believe a constitutional provision is essential.

3. Provision of additional 15-day period to verify signatures.

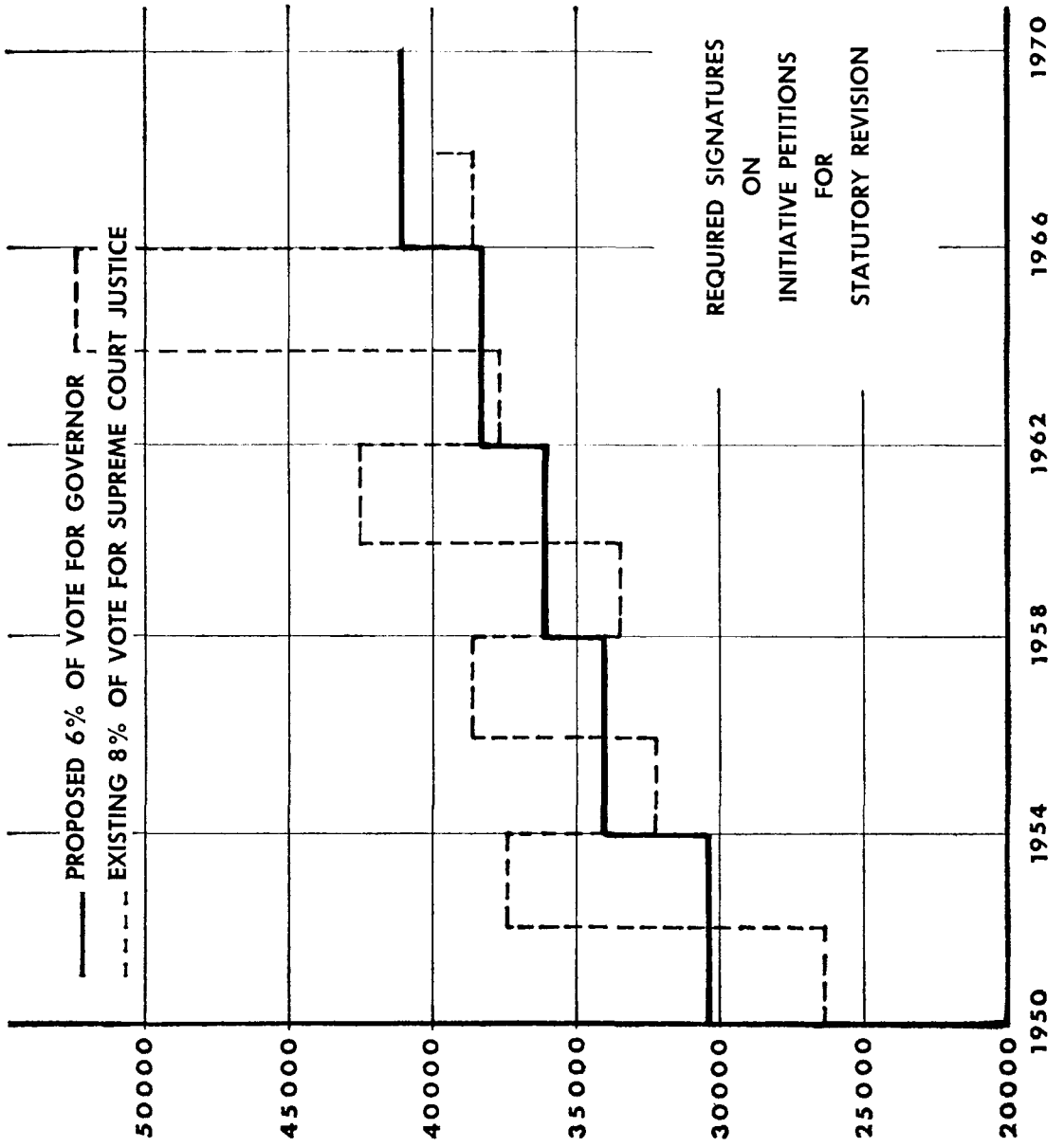
The argument supporting this change is the desirability of reducing the danger that petitions will fail of validation because of the inability of election officials to verify supporting signatures collected before the petition filing deadline. The proposed extension would apply only to unverified signatures filed with the Secretary of State before the applicable deadline. Witnesses agreed the extension of time would not unduly delay the determination of measures to be certified for election ballots.

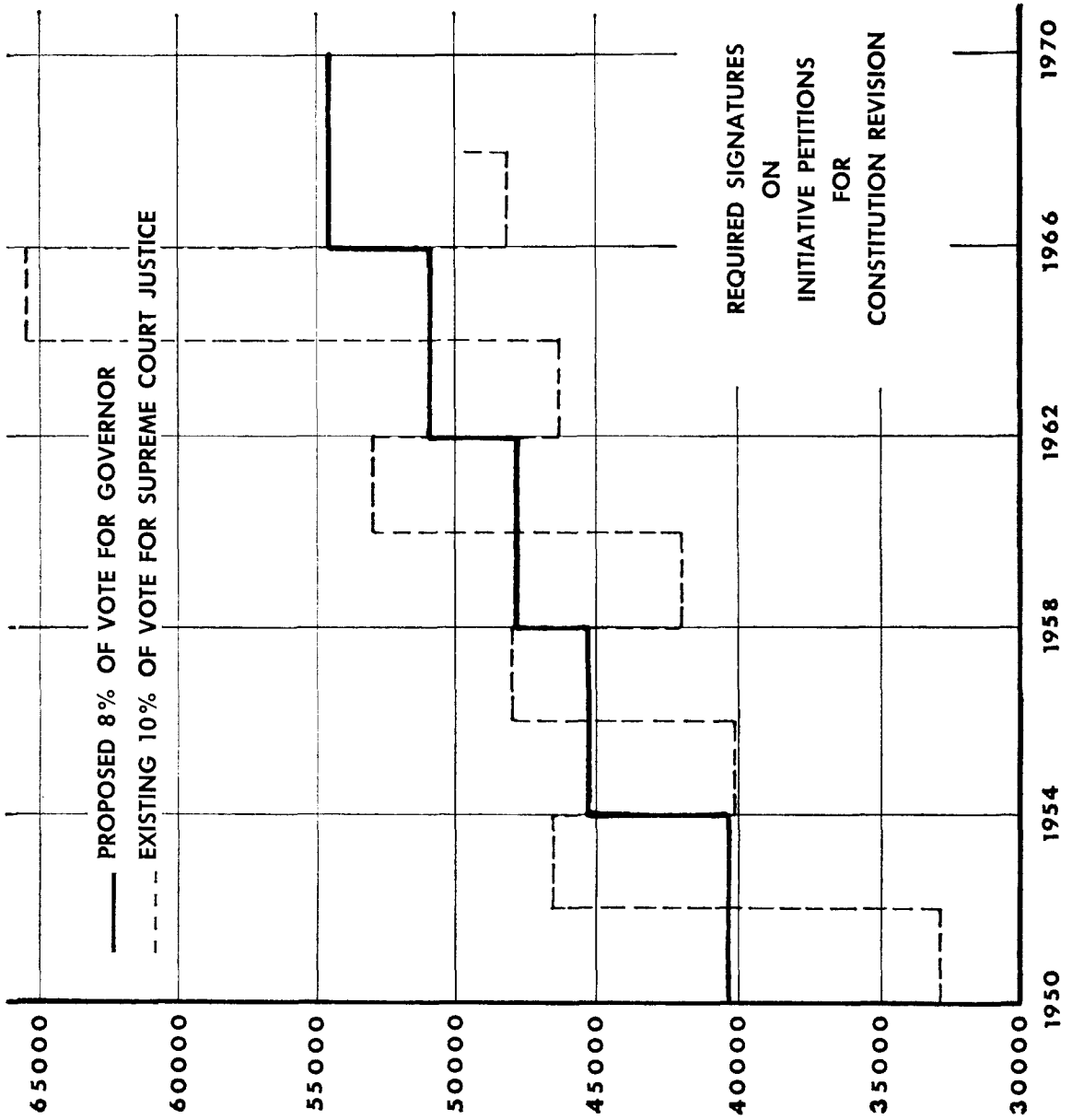
VI. ARGUMENTS AGAINST THE PROPOSED AMENDMENT

Your Committee neither heard nor perceived any arguments against the proposed base change, nor any against the proposed reduction of percentages when viewed as part of a "housekeeping" measure.

The principal argument against the extended time for verifying signatures is that this change could, and has already been, legally effected by statute,⁽³⁾ thereby simplifying future change, if any is necessary, and avoiding another instance of statutory material being placed in the Oregon Constitution.

⁽³⁾In its *Kays* decision, discussed above, the Supreme Court of Oregon noted: "Art. IV, sec. 1 of the Oregon Constitution provides that 'initiative petitions shall be filed with the Secretary of State not less than four months before the election at which they are to be voted upon.' The constitution does not purport to prescribe all of the requirements for a valid petition. It contemplates implementation by legislation. ORS 254.040 implements the constitution by requiring certification of signatures for a valid petition."





VII. CONCLUSIONS

Your Committee supports the proposed base change because of the greater stability of the new base. Your Committee sees no objection to the proposed percentage reductions when viewed as an effort to avoid controversy that might endanger the base change and not as an endorsement of the present level of signatures required. Your Committee, however, objects to the proposed 15-day extension of time for verifying signatures being included in a constitutional amendment, believing this reform should remain statutory. Indeed, were that reform proposed as a separate constitutional amendment, your Committee would recommend its rejection for that reason.

Your Committee believes, however, that State Measure No. 2, viewed as a whole, deserves support as an effort to stabilize the initiative and referendum system while carefully avoiding the more explosive question of whether the system's use should be easier or more difficult. Given this limited yet vital objective, your Committee believes any objections to separate provisions of the amendment are outweighed.

Your Committee's position reflects no judgment that the proposed signature requirements, as a matter of policy, are adequate, or even a judgment that the initiative and referendum system is a desirable facet of modern American state government. In view of the strength of Oregon's commitment to the initiative and referendum, the question of its desirability may be purely academic. But the inquiry relative to signature requirements is realistic and, indeed, has been the subject of recurring consideration during the efforts since 1962 to bring about Oregon overall constitutional revision. Your Committee suggests further examination be given this question of signature requirements—preferably as part of a renewed effort to achieve overall constitutional revision, but separately if necessary.

VIII. RECOMMENDATION

Your Committee therefore recommends that the City Club go on record in favor of this constitutional amendment and urges a vote of "yes" on State Measure No. 2.

Respectfully submitted,
Dr. Ronald C. Cease
Walter H. Daggett
Charles Gary Peterson
Wayne M. Pidgeon, M.D.
Hardy Myers, Jr., *Chairman*

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