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Report on Dicipline of Judges (State Measure no. 2)

City Club of Portland (Portland, Or.)

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**REPORT
ON
DISCIPLINE OF JUDGES
(State Measure No. 2)**

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

I. INTRODUCTION

This Committee was assigned to study and report upon State Measure No. 2 which proposes to expand the authority granted to the Supreme Court for disciplining of judges.

More specifically, the purpose is to amend the constitutional section providing that the Supreme Court may remove a judge from office for certain misconduct by adding authority of the Supreme Court to suspend or censure as well as remove a judge from office. The present grounds for discipline (felony conviction, failure to perform judicial duties, habitual drunkenness and illegal drug use) are expanded to include wilful misconduct in office related to performance of judicial duties, general incompetence, and wilful violation of any rule of judicial conduct. [See Appendix for a reference to the Rules of Judicial Conduct]

The specific language of the proposed amendment reads as follows: The bracketed words are deletions and the words in boldface type are the suggested additions to the State Constitution.

"Paragraph 1. Section 8, Article VII (Amended) of the Constitution of the State of Oregon is amended to read:

Sec. 8 (1) In the manner provided by law, and notwithstanding Section 1 of this Article, a judge of any court may be removed **or suspended** from his judicial office by the Supreme Court, **or censured by the Supreme Court**, for:

(a) Conviction in a court of this or any other state, or of the United States, of a crime punishable as a felony or a crime involving moral turpitude; or

(b) **Wilful misconduct in a judicial office [involving moral turpitude] where such misconduct bears a demonstrable relationship to the effective performance of judicial duties;** or

(c) Wilful or persistent failure to perform judicial duties; or

(d) **Generally incompetent performance of judicial duties;** or

(e) **Wilful violation of any rule of judicial conduct as shall be established by the Supreme Court;** or

[[d)] (f) Habitual drunkenness or illegal use of narcotic or dangerous drugs.

***"

II. SCOPE OF RESEARCH AND BIBLIOGRAPHY

The present State Measure No. 2 is an extension of State Measure No. 2 approved by the voters in 1968. The 1968 measure was carefully studied by a City Club committee under the chairmanship of Associate Justice Thomas Tongue of the Oregon Supreme Court. Thus, the present report used the 1968 study as a point of departure. The Committee reviewed the legislative history of the proposed amendment, the biannual reports of the Commission on Judicial Fitness, the applicable statutory and constitutional framework as well as the case law of the State of Oregon.

The Committee also interviewed the following: Nels Peterson, Portland attorney, Chairman, Judicial Fitness Commission; William Snouffer, Law Professor, Lewis & Clark College, Northwestern School of Law, Executive Secretary, Judicial Fitness Commission; William Dale, Multnomah County Circuit Court Judge and Judicial Fitness

Commission member; Associate Justice Thomas Tongue, Oregon Supreme Court, First Chairman, Commission on Judicial Fitness; Judge Edward E. Allen, District 2, Circuit Judge of the State of Oregon for the County of Lane.

III. BACKGROUND

In 1965, the Legislative Assembly established a Judicial Council of Oregon. Its report, as well as recommendations by the Oregon State Bar and others culminated in Senate Joint Resolution No. 9 proposing an amendment to the Oregon Constitution which was accepted by the voters in 1968 as State Measure No. 2 as set forth above. The creation of the Commission on Judicial Fitness became effective at the same time.

The present ballot measure is a recommendation of the Commission on Judicial Fitness and is supported by the Oregon Judicial Conference.¹

The Commission on Judicial Fitness created by the 1967 Legislature (Oregon Revised Statutes 1.410, et seq) and operative since the subsequent voter approval of State Measure No. 2 in 1968 is composed of nine members from the bench, the bar, and the citizenry at large. It has power to investigate claims of judicial unfitness and to recommend to the Supreme Court discipline of a judge.

The Commission receives complaints from all sources, investigates and processes the complaints under the Rules of Procedure which the Commission adopted at its second meeting, and when appropriate, after a hearing makes recommendations to the Oregon Supreme Court which makes the ultimate decision on the case.

The Commission has issued three biannual reports to the Oregon Legislative Assembly, the last dated January 13, 1975.²

The 1975 Commission Report revealed: (1) All three hundred fifty-nine judges in Oregon are subject to the authority of the Commission; (2) the complaints emanate from disgruntled litigants, lawyers, prison inmates, the Governor's Office, Oregon State Bar Office, private citizens, and the Commission members themselves; and (3) the nature of the complaints included the following claims against the judiciary: erroneous judgment, 46%; prejudice, 21%; administrative inefficiency, 13%; injudicious temperament, 10%; improper influence, 5%; incapacity, 2%; extrajudicial misconduct, 3%; and corruption, 2%.

In 1974, the Commission recommended discipline of a circuit court judge by suspension for three months.

IV. LEGISLATIVE HISTORY

There is a thorough review of the Legislative history of Article VII, Section 8 of the Oregon Constitution and related statutes in two Oregon Supreme Court opinions of April 17, 1975.³

A review of that history reveals that the 1968 Senate Judiciary Committee which considered the original proposal, incorporated provisions for suspension or censure and a reference to conduct that brings judicial office into disrepute, however, those provisions were eventually deleted by the Committee.

The 1971 legislature provided via ORS 1.420 and 1.430 an avenue for the recommendation by the Commission on Judicial Fitness for the suspension or censure of a judge; however, the Supreme Court has no specific constitutional authority to enforce the disciplines of suspension or censure.

¹See minutes and report of the Oregon Judicial Conference April 16-19, 1975, page three.

²These reports are available through the Commission's Executive Secretary, William Snouffer, Lewis & Clark College, Northwestern School of Law, Portland.

³*In Re Complaint as to the Conduct of Donald A. W. Piper*, Or. Sup. Ct. 75 Adv. 1366, 534 P2d 159 (1975) and *In Re Complaint as to the Conduct of Orth Sisemore*, Or. Sup. Ct. 75 Adv. 1381, 534 P2d 167 (1975).

V. ARGUMENTS IN FAVOR OF THE MEASURE

1. The experience of the Judicial Fitness Commission dictates a need for some disciplining of judges short of removal and for additional grounds upon which a judge may be disciplined.

2. There is a conflict between the statutory authority granted to the Commission for censure and suspension and a silence in the Constitution of Oregon on whether the Supreme Court has the authority to discipline judges other than by removal.

3. The Supreme Court has expressed a need for strengthening the clarity of the present constitutional provision in two recent opinions.

4. This ballot measure has the overwhelming approval of the Judicial Conference of the State of Oregon.

VI. ARGUMENTS AGAINST

While there seems to be no organized opposition to the ballot measure, the following objections have been voiced:

1. A constitutional provision for disciplining of judges dilutes the doctrine of separation of power and no other branch of government is restrained in like manner.

2. Judges as elected public officials should be subjected only to recall and the public scrutiny.

3. The constraints of the Bar and the Ethics Commission are sufficient review of the judiciary.

VII. DISCUSSION

The citizens of the State of Oregon have a right to an efficient and effective judiciary. The integrity and fitness of Oregon's judiciary have rarely been questioned, however, the need for review of judicial misconduct is present and cannot be left to the costly, cumbersome and ineffective measures of impeachment and recall.

This ballot measure strengthens the authority of the Commission on Judicial Fitness and the Supreme Court by providing additional grounds upon which a judge may be reviewed for discipline.

The experience of the Commission and the Court dictate the need for these additions.

The Commission has been given the authority to recommend to the Supreme Court discipline short of removal in the nature of suspension and censure. The measure would grant similar constitutional authority to the Supreme Court which is ultimately responsible for resolving the issue.

The public would be better served if the ballot measure is passed.

VIII. CONCLUSIONS AND RECOMMENDATION

1. Your Committee concludes it is in the public interest that this constitutional amendment pass because it is an important tool towards providing an effective means of disciplining judges who are found guilty by the Supreme Court of general incompetence and wilful violation of judicial rules, as well as the grounds presently provided in the Constitution.

2. The Supreme Court should have the additional constitutional latitude to discipline a judge short of removal, by means of suspension or censure.

3. Your Committee recommends that The City Club of Portland favor a "yes" vote on State Measure No. 2 in the May 25, 1976 election.

Respectfully submitted,

Kem Cadwell

Ann Kendrick

Phyllis Proppe

Stanley N. Swan

Diane Spies, *Chairman*

Approved by the Research Board April 22, 1976 for transmittal to the Board of Governors. Received by the Board of Governors April 26, 1976 and ordered published and distributed to the membership for consideration and action on May 14, 1976.

APPENDIX

The code of Judicial Conduct as adopted by the Oregon Supreme Court March 11, 1975, sets forth in some detail an explanation of the following Canons:

CANON 1, A Judge Should Uphold the Integrity and Independence of the Judiciary.

CANON 2, A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities.

CANON 3, A Judge Should Perform the Duties of His Office Impartially and Diligently.

CANON 4, A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice.

CANON 5, A Judge Should Regulate His Extra-Judicial Activities to Minimize the Risk of Conflict with His Judicial Duties.

CANON 6, A Judge May Receive Reasonable Compensation and Reimbursement for Extra-Judicial Activity Permitted by this Code.

CANON 7, A Judge Should Refrain from Political Activity Inappropriate to His Judicial Office.