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## Oregon State Ballot Measure 40: Crime Victim's Rights

City Club of Portland (Portland, Or.)

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# Oregon State Ballot Measure 40: Crime Victim's Rights

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**CITY  
CLUB**  
OF PORTLAND

## Your committee found:

Ballot Measure 40 exceeds what the committee believes is appropriate for a constitutional initiative measure addressing crime victims' rights. This measure, in addition to placing in the Oregon Constitution protections for crime victims already provided by statute, greatly increases police powers, reverses long-standing practices for rules of evidence and protection against self-incrimination, and allows pretrial detention based solely on arrest. Your committee recognizes that a good case can be made for ensuring constitutional protection of victims' rights. The committee also understands and empathizes with the strong emotional support that victims' rights inspires in voters in Oregon and across the country. However, because of the objections above and others described in this report, your committee unanimously recommends a "No" vote on Measure 40.

The City Club membership will vote on this report on Friday, October 4, 1996. Until the membership vote, the City Club of Portland does not have an official position on this report. The outcome of this vote will be reported in the City Club *BULLETIN* dated October 25, 1996.

# I. INTRODUCTION

Oregon State Ballot Measure 40 will appear on the ballot as follows:

**Caption:** Amends Constitution: Gives Crime Victims Rights, Expands Admissible Evidence, Limits Pretrial Release.

**Results of "Yes" Vote:** Vote "yes" to add crime victims' rights to constitution, expand evidence admissible in criminal trials.

**Results of "No" Vote:** Vote "no" to leave state constitution without specific protections for victims, retain current evidence standards.

**Explanation:** Adds new section to state constitution. Affects adult, juvenile criminal proceedings involving victims. Prohibits pretrial release for certain defendants unless judge finds defendant will not commit new crimes if released. Victims may attend, be heard at proceedings, demand jury trials of adults, get information about defendant. Allows murder, aggravated murder conviction on 11-1 vote. Most relevant evidence admissible against defendant, except as required by federal constitution. State courts may not independently interpret some state constitutional rights to give defendants more rights than given by federal constitution.

(The language of the caption, question, and summary was prepared by Oregon State Attorney General.)

Measure 40 was placed on the ballot by citizen initiative and was selected for study by the City Club Research Board from among the 23 measures to be voted on at the November 1996 General Election. A committee was selected from among City Club members who had volunteered to participate in ballot measure studies. The Club screened committee members to ensure that no member had an economic interest in the outcome of the study or had taken a public position on the subject of the measure. Committee members met for five weeks, interviewed proponents and opponents of the measure and other interested persons, and reviewed relevant articles, reports, and other materials, as listed in the Appendices.

# II. BACKGROUND

Measure 40 responds to a continuing perception by the public that the rights of crime victims are fewer and less important than those of defendants. This ballot measure arose out of a perception of unequal treatment of crime victims by the justice system, coupled with the belief that current levels of crime are too high and that criminals avoid prison through loopholes in court proceedings. Similar in content and intent to earlier ballot measures studied by the City Club—particularly Measure 8 in 1984 and Measure 10 in 1986—this measure would amend Oregon's Constitution by adding a section that ensures constitutional protection of

victims' rights while also changing pretrial detention procedures and current rules of evidence in criminal prosecutions.

In the criminal justice system in the United States, a crime is considered to be committed against society rather than solely against the victim. The prosecution of crime, therefore, has been the state's, rather than the victim's, responsibility. Until recently, crime victims have had little control or input in the process of bringing an offender to justice, and their role has been limited to providing evidence for the prosecution.

During the past two decades the national victims' rights movement has attempted to strengthen the rights of victims compared with those of the accused. The movement's proponents believe that the criminal justice system has moved too far in its protection of defendants and has not provided equal protection for the victims of crime. This perceived imbalance has led to frustration among the public in general and crime victims in particular. Dissatisfaction with the courts has arisen because of the perception that some guilty defendants are released based on technicalities, and that in some cases defendants, upon release, inflict further harm on their victims or others. Capitalizing on such sentiments at national and state levels, the victims' rights movement has succeeded in establishing the victim as an essential participant in the criminal justice process and enhancing the rights of crime victims. All fifty states have passed laws recognizing some form of crime victims' rights. Twenty states have passed victims' rights constitutional amendments. Three states have constitutional amendments pending judicial approval, and thirteen states, including Oregon, via Measure 40, are currently attempting to amend their state constitutions. In addition, legislation has been recently introduced in Congress to add a victims' rights amendment to the U.S. Constitution.

### **History of Victims' Right in Oregon**

After unsuccessful attempts in 1984 to promote victims' rights legislation in the Oregon Legislature, victims' rights proponents used the initiative process to place a statutory measure on the ballot—*1984 Measure 8: Revises Numerous Criminal Laws Concerning Police Powers, Trials, Evidence, Sentencing*. This measure included sweeping statutory changes in criminal proceedings and was rejected by Oregon's voters in the general election of 1984. A City Club study committee recommended a "No" vote on the measure. The committee opposed the changes the measure would have made in a variety of criminal procedures, the lack of a clear analysis of the potential costs of the measure, and the highly technical nature of the measure, which the committee said was inappropriate for an initiative. The committee felt the measure went far beyond victims rights and included many elements primarily designed to strengthen the hands of prosecutors at the expense of defendants rights.

Two years later victims' rights proponents were successful in passing a new statutory measure—*1986 Ballot Measure 10: Revises Many Criminal*

*Laws Concerning Victims' Rights, Evidence, Sentencing, Parole.* Measure 10 incorporated many of the elements of 1984 Measure 8 but left out Measure 8's most controversial provisions. Measure 10 enacted statutes assuring victims' rights in the criminal justice process. The City Club studied the measure, and a majority of the study committee recommended a "Yes" vote. Club members voted instead to adopt a minority recommendation, and the Club opposed the measure. The Club's position was that the "pro-victim" aspects of the measure were "largely symbolic" and the measure might "substantially affect the ability of persons accused of crimes to obtain a fair trial." Voters approved the measure.

### **1996 Measure 40**

Even with 1986 Measure 10's victims' rights provisions in place, crime and public safety remain key issues for many citizens in Oregon. Measure 40 was drafted for the November 7, 1996 ballot with input from many of the original sponsors of 1984 Measure 8 and 1986 Measure 10. These individuals are convinced that current statutory provisions are insufficient and that the rights of crime victims deserve constitutional status.

Ballot Measure 40 would amend the Oregon Constitution to guarantee victims certain rights throughout the criminal justice process. Many of the rights proposed in the measure that would ensure victims equal treatment in the criminal justice system already exist in statute as a result of 1986 Measure 10 and subsequent actions of the legislature. Backers of Measure 40 claim that the measure is necessary to elevate these protections to the constitutional level to safeguard current statutory protections from any future changes by the legislature. Other provisions in this measure would affect pretrial detention of those accused of crimes, change Oregon constitutional standards of search and seizure and rights against self-incrimination, and change the rules of evidence for criminal prosecutions.

The table on the opposite page compares the elements of Measure 40 with provisions already in place in statute as a result of 1986 Measure 10. Measure 40 would also add the following provisions not currently in Oregon statute or the state constitution:

- Right to admit all relevant evidence.
- Pretrial detention for persons arrested for crimes for which mandatory sentences have been established by a vote of the People (i.e. 1994 Ballot Measure 11 including: Murder; Manslaughter, 1st and 2nd degree; Assault, 1st and 2nd degree; Kidnapping, 1st and 2nd degree; Rape, 1st and 2nd degree; Sodomy, 1st and 2nd degree; Unlawful Sexual Penetration, 1st and 2nd degree; Sexual Abuse, 1st degree; Robbery, 1st and 2nd degree.
- Right to a jury trial (at victim's request).

<b>Elements of 1996 Measure 40</b>	<b>Provisions Already in Statute (via 1986 Measure 10)</b>
Victims may refuse an interview with defendant's attorney or his/her representative.	Victims may refuse an interview with defendant's attorney or his/her representative.
Defendants detained unless the court has clear and convincing evidence the defendant will not commit future offenses.	Prohibits defendant from contacting the victim.
Protects the victim through pretrial detention.	Protects the victim from harm through restraining orders and bail.
Right to be present at all court proceedings when the defendant is present and to be informed in advance of court dates.	Requires court to contact victim before setting trial dates; court cannot exclude victims from court proceedings; victim can speak at sentencing or give impact statement.
Right to restitution.	Several provisions attempt to improve the likelihood of receiving restitution.
Right to a trial without delay with a jury composed of registered voters, excluding felons.	Several provisions regarding jury selection, none specifically parallel, however.
Right that no law shall limit consecutive sentences.	Court has the flexibility to apply consecutive sentence.
Right to have all charges heard in a single trial.	Court can have all charges heard in a single trial under certain conditions.
Right to transcripts of court proceedings.	Available under current law (not necessary to mention in 1986).

- Elimination of Oregon Constitutional protections regarding admission of evidence, self-incrimination, and search and seizure.
- Right to be consulted during plea bargaining.
- Right that no law shall set aside a sentence imposed in court, except by the governor.
- Section 9 and Section 12 of Article I of the Oregon Constitution not to be construed more broadly than the United States Constitution.
- 11 to 1 conviction for murder or aggravated murder.

### III. ARGUMENTS FOR AND AGAINST

#### A. Arguments advanced in favor of the Measure 40:

1. By amending the Oregon Constitution, the measure more permanently increases the rights of crime victims and reduces the rights of defendants.
2. Victims would be better protected from additional harm through pre-trial detention of defendants arrested for crimes for which the People have set mandatory sentences (i.e. 1994 Measure 11).
3. The measure would establish a constitutional right of victims to have access to all court proceedings, criminal histories, and transcripts, and to participate in all court proceedings related to their case.
4. The measure would increase the likelihood of convictions and reduce the likelihood of acquittals by ensuring that all relevant evidence is used and that Oregon courts will be bound by the less-restrictive federal guidelines for admitting evidence.
5. Victims would have a constitutional right to restitution.
6. The justice system would be more likely to obtain convictions for aggravated murder or murder because the measure allows a jury to convict on those two charges with a vote of 11 to 1 instead of the current requirement of 12 to 0.
7. The measure would provide a better chance of convicting defendants of more serious crimes because of the victim's right to require a jury trial with a jury composed of registered voters without felony convictions.

#### B. Arguments advanced in opposition to Measure 40:

1. Current law already provides victims of crime many of the rights contained in this ballot measure and those protections are working well.
2. Oregon state constitutional rights that protect defendants and all citizens against unlawful search and seizure, self-incrimination, and inadmissible evidence are restricted or eliminated by this measure.
3. The expansion of pretrial detention negates the assumption that defendants are innocent until proven guilty.
4. Valuable limits to police powers with regard to pretrial detention and collecting evidence are significantly reduced under this measure, increasing the risk of abuse of those powers.
5. The measure reduces valuable judicial discretion for admitting or excluding evidence and for sentencing.
6. Reduction of the vote required for conviction from 12-0 to 11-1 may lead to improper convictions of innocent people for aggravated murder and murder.

7. Although victims would have a constitutional right to restitution under this measure, compensation for a crime would be no more likely than under the current law because of the limited resources of most defendants.
8. The measure includes multiple issues, mixes victims' rights issues with substantive and procedural criminal law issues, and is unlikely to survive a court challenge based on the Oregon Constitution's single-subject rule for citizen initiatives.
9. Amendments to the Constitution should only be made after serious, thorough, and open public debate of all changes and with full public understanding of the impact of such changes.
10. The changes included in this measure, such as pre-trial detention, apply equally to both adult and juvenile offenders (with the exception of the right to a jury trial), although they may be much less appropriate to juvenile defenders.

## IV. DISCUSSION

Measure 40 includes a great number of separate provisions. This section first discusses the high number of issues addressed in the measure and then examines the measure's individual elements.

### **Multiple issues**

Opponents of Measure 40 are very concerned that this measure addresses too many subjects. The Oregon Constitution, in language that defines the initiative process, states that "A proposed law or amendment to the Constitution shall embrace one subject only and matters properly connected therewith." (Article IV, Sec. 1 (d).) A retired Oregon Supreme Court justice who spoke to the committee was outraged that this measure, as currently written, had even been sent to the voters since it so clearly and repeatedly violates the "single issue" requirement for initiatives. He said that Court interpretations of the single-subject rule allow for wide leeway for initiatives, but that combination of provisions for victims and multiple reductions of current constitutional guarantees "strains that tolerance." Proponents do not feel that the measure violates the single-subject rule.

### **Balancing the rights of defendants and victims**

The proponents of Measure 40 believe the measure, if passed, will balance the rights of the accused and the victim. Proponents argue that, although 1986 Measure 10 enacted in statute many of the rights included in this measure, some judges selectively ignore its provisions. They further argue that if victims' rights are only defined by statute, the legislature can later restrict those rights in the same fashion as it modified the statutory mandatory sentencing guidelines enacted by 1994 Measure 11. Proponents believe that amending the Oregon Constitution would provide a permanent and uniform set of rules, create a system



which would equally protect defendants and victims, and help restore people's faith in government.

Opponents to the measure hold that existing statutes and court procedures already adequately safeguard victims' rights. Although the support provided to crime victims in Oregon varies by county, the committee heard convincing testimony from both proponents and opponents that the justice system in the state has significantly improved its treatment of crime victims in response to the passage of 1986 Measure 10. Opponents also suggest that, given the current political climate, it is highly unlikely that any legislator would sponsor a bill to reduce protections for crime victims.

### **Protecting crime victims from further harm**

Proponents intend that this measure would ensure the protection of crime victims throughout the criminal justice process. Part of this protection would be based on significant changes in the rules governing pretrial detention. Under existing law, the purpose of bail is to insure that a defendant appears in court. Judges cannot consider public safety in setting bail. Judges can detain persons accused of murder, treason, or where there is significant risk of flight, and when reviewing requests for supervised release.

Measure 40 would require the pretrial detention of any person arrested for a crime for which mandatory minimum sentences have been set by an initiative passed by voters, unless a court determines that the person will not commit new criminal offenses while on release. At this time, the only crimes that fall into this category are those listed in 1994 Measure 11. Proponents of Measure 40 cite this change as one of its most important provisions, noting that victims should be protected both from the fear of future attacks as well as the possibility of further harm. Advocates of the measure presented powerful anecdotal evidence of how victims are inadequately protected by current statutes and judicial practice in Oregon. Testimony on this topic often focused on domestic abuse incidents, where a defendant, upon release, injured or murdered a spouse or partner. Proponents of this portion of the ballot measure also objected to the pretrial release of a suspected perpetrator of a violent crime when probable cause has been determined by a grand jury and a judge that the perpetrator is likely to have committed the violent crime. Measure 40 would require the pretrial detention of such a defendant.

Opponents objected strongly and persuasively to the language that states that a defendant shall not be released prior to trial unless a court determines by clear and convincing evidence that the person will not commit new criminal offenses. This change marks a drastic departure from the present judicial system which holds that people are innocent until proven guilty. Under this measure, the *arrest* of a person for a crime covered by the law, not their *conviction*, would be sufficient to detain that individual. In addition, since this measure would change the Oregon Constitution, any future crime which received a mandatory sentence

passed by the People would also result in pretrial detentions. Anyone arrested under this section would be detained until trial unless the court could provide clear and convincing evidence that the detained person would not commit future crimes. This high standard could, in effect, prevent the release of almost any person, innocent or guilty, arrested under this measure. Opponents had two major concerns about this provision of the measure. First, they objected to the expansion of police power that this provision contained, and second, they were concerned that *innocent people could be detained for long periods awaiting trial, based solely on their arrest.*

### **Equal access to information from the judicial system**

Measure 40 would ensure that victims have the right to be present at, to be heard at, and upon specific request, to be informed in advance of any critical stage of the proceedings where the criminal defendant is present, including trial. In addition, this measure would ensure a victim's right to information about the criminal background of the defendant and the sentencing, confinement, and release of that person. A related provision in the measure would also give victims the right to refuse an interview or give other information for use in preparing the defense. Proponents stated that victims are not always accorded these rights because the rights are in statute rather than part of the state constitution. Proponents believe that courts give less weight to statutory provisions protecting victims than they give to the constitutional rights of the accused.

### **Relevant evidence**

Passage of this measure would create a constitutional directive to admit all relevant evidence against criminal defendants by replacing Oregon's rules governing evidence with existing, less-restrictive federal guidelines. A district attorney representative reported that Oregon's laws regarding relevant evidence are inconsistent with good police procedure and the change proposed in this section of Measure 40 would be very beneficial to police and prosecutors. Under the current Oregon Constitution and Oregon search and seizure case law, evidence unrelated to the crime for which the arrest is made may not be used to prove another crime. The example used by the witness was that if someone was robbed of his or her wallet, and the criminal fled the scene and was subsequently arrested for speeding, the wallet might be found on the criminal, but could not be used as evidence of the robbery. Federal laws of search and seizure, on the other hand, allow probable cause to determine use of the evidence. Proponents view federal guarantees of civil liberties as adequate and consider it inappropriate that prosecutors should be required to meet two different sets of standards.

Opponents object strongly to this provision on two grounds. Their first concern relates to the potential impact of this change on the justice system. Evidence previously excluded in trials for good reasons would now become admissible so long as it passed the test of "relevance."

Over 130 years of Oregon's case law on search and seizure would be discarded under this measure. Defense attorney opponents to the measure provided many chilling examples of how they believe that the change would eliminate current curbs on police actions. For example, they claim that "government agents could put a tracking device on your automobile and trace your every movement without calling that a 'search.'" Opponents also pointed out that the change in search and seizure procedures would affect businesses and all citizens, not just those charged with criminal behavior. Random police roadblocks, currently prohibited in Oregon, for example, would be legal if Measure 40 passes.

The second general argument by critics of this provision involves the replacement of Oregon's constitutional evidence protection with federal guidelines. Opponents stated that protections against self-incrimination, restrictions on search and seizure, and limits on admissible evidence are part of the Oregon Constitution. They believe that the elimination of those protections under the label of "victims' rights" is misleading, and they claim that Measure 40 actually broadens the powers of the police and prosecution under these provisions, rather than establishing rights for crime victims.

### **Restitution**

Measure 40 would create a constitutional right for crime victims to receive restitution from a person convicted of an act that caused the victim financial loss. More than any other change contained in this measure, this appears to have a symbolic rather than practical value. According to all witnesses, the majority of the criminal defendants arrested for the crimes covered by this measure lack the resources to provide compensation to victims. Elevating restitution to constitutional status does not change that fact.

### **Increased convictions**

Advocates pointed to several provisions in this measure that would be likely to lead to more frequent and more appropriate convictions, i.e., convictions on more serious charges. These provisions include the right in a criminal prosecution to a speedy trial by a jury selected from registered voters who have not been convicted of a felony within the last 15 years (not applicable to juvenile proceedings); the right to have a defendant convicted of murder or aggravated murder by only eleven jurors instead of all twelve—unanimous agreement of all twelve jurors would still be required to impose the death sentence; and the right to be consulted regarding plea negotiations involving any violent felony. The measure also gives victims the right to have a public jury trial in a criminal prosecution. The measure states that district attorneys are authorized to assert these rights on behalf of the victim.

Courts in Oregon presently draw jurors from the pool of individuals listed with the Oregon Department of Motor Vehicles (DMV) as having an Oregon drivers license. At present, felons are not currently screened out prior to the initial call for jurors nor always eliminated during jury

selection. Convicted felons have been selected for both trial and grand juries and were therefore in a position to affect the outcome of a verdict or indictment. Courts also have a high rate of no-shows—people who are sent jury duty notices but who do not appear to serve. Courts must send out a high number of notices to ensure that enough jurors will actually appear on a particular trial day. Measure 40 proponents say that drawing jurors from the more restrictive list of registered voters would reduce the chance that convicted felons could get on a jury. The Multnomah County Elections Office reported that incarcerated felons are not allowed to register to vote. Felons who have served their time and have been released can register to vote. Proponents believe that drawing jurors from the pool of registered voters would reduce the cost of recruiting juries because registered voters are more likely to appear when they are called to jury duty allowing courts to send out fewer notices.

Proponents intend the right to a speedy trial to reduce “shopping for judges,” a practice where a defendant’s attorney will try to delay a scheduled trial until a more lenient judge is available. The committee was unable to determine the extent or impact of this practice. Proponents intend that the provision that requires only eleven juror votes to convict a defendant of murder or aggravated murder will eliminate the possibility that one juror might oppose, and thereby block, conviction for reasons unrelated to guilt or innocence. Louisiana is the only state which currently permits a murder conviction without a unanimous jury vote. Oregon permits a murder acquittal on a 10-2 vote, and only requires unanimity for conviction. Proponents believe that individual jurors who refuse to vote with the majority because of personal motives can cause a defendant to be convicted on a lesser charge than the one of which the defendant is actually guilty. Proponents cite instances where jury members have perjured themselves, for example, by stating during jury selection that they could vote for a verdict of aggravated murder and then in the jury room revealing that they could never do so. Proponents believe that allowing an 11-1 verdict will allow convictions of guilty defendants despite such jurors.

Opponents to this change believe that meeting the standard of proof beyond a reasonable doubt requires a unanimous jury vote. They also believe that, Measure 40 passes, the final determination of the constitutionality of this provision will have to be made by the U.S. Supreme Court. Since appeal to the U.S. Supreme Court would take many years, one possible outcome of the passage of this measure would be the expensive retrial of individuals convicted under it if the provision were ultimately held to be unconstitutional.

Measure 40 would give a victim the right to a jury trial in criminal proceedings. The committee heard conflicting testimony on this particular provision. On the one hand, the measure seems to imply that a victim can demand a jury trial even when a district attorney believes the expense of the trial is unjustified and pointless. This provision also seems to conflict with the rights of defendants to plead guilty to lesser charges. In any case, this section of the measure would appear to invite an endless

round of lawsuits over what it actually means or how it might be interpreted.

### **Costs**

The final significant area of disagreement between proponents and opponents concerns the practicality of implementing the initiative if passed. Opponents say that, were the measure to pass, the lack of clarity and doubtful constitutionality of many of Measure 40's provisions would result in expensive and lengthy litigation. Opponents also warn that the pre-trial detention provision will require the expenditure of significant additional funds to hold the increased number of people in custody. This expected litigation and the expense of holding in custody individuals who would otherwise be released, would lead to prohibitively high costs for Oregonians. On the other hand, the Oregon voter's pamphlet estimates that the fiscal impact of Measure 40 on state government will be approximately \$223,000. Opponents contend this estimate represents only the initial cost of direct state expense rather than the true cost of housing additional pre-trial detainees in the state corrections system.

Proponents note that many attorneys participated in drafting the initiative and that areas of supposed ambiguity will be clarified by statements in the voters' pamphlet. They do not believe that the measure will increase litigation substantially and note that the 1986 initiative led to similar dire predictions which were not in fact realized. They also point out that the state recently spent a million dollars to defend one murder suspect and consider that the costs that would result from Measure 40 are relatively minor compared to the potential improvements its passage would bring.

### **Appropriate Subjects for Inclusion in the State Constitution**

Proponents of Measure 40 insist that the provisions of the measure need to be amended to the state constitution to increase their stature and to prevent the legislature from weakening them. Opponents equally strongly insist that there is no good reason to place many of the measure's provisions into the state constitution. They maintain that material in the constitution should be limited to significant matters having to do with the structure, function, organization, finances, and limitations of government, and should not include detailed instructions on law enforcement and criminal prosecution procedures. One opponent noted that it is unnecessary to amend the state constitution to clarify the role of victims in criminal trials, and said there was reason to conclude that the victims' rights provisions of Measure 40 were in reality a cover for weakening existing constitutional provisions that have served to protect the rights of all Oregonians for over 130 years.

## **V. CONCLUSIONS**

Your committee is concerned that the enactment of the many sweeping changes to the Oregon Constitution proposed by Measure 40, without adequate open public debate and a full understanding by

Oregonians of the potential impact of those changes, is not in the best interests of Oregon.

The committee holds that the fact that this measure contains multiple, confusing, and unnecessary changes to Oregon's constitution is sufficient and compelling reason to reject it. The committee believes that the people of Oregon, given the opportunity to vote on individual items in the measure, may be willing to support some and would outright reject many others. The committee did find that some of the provisions deserved further consideration, especially if worded carefully and restricted in scope.

After reviewing 1986 Measure 10 and hearing testimony related to the provisions related to equal access to information, the committee was unconvinced that these particular provisions deserved constitutional status. Most of the items, although important, appeared more procedural than constitutional, and according to testimony, were already common and expected practice in the courts. Elevating these items to constitutional status seemed unnecessary and inappropriate. In February 1996, the City Club took a strong stand against amendments to the state constitution that do not relate to the "structure, organization, and powers of government, and the rights of the people with respect to their government."

Measure 40, although labeled "Victims' Rights," makes sweeping changes in the jury system, the admissibility of evidence in criminal cases, and current constitutional protections against search and seizure, self-incrimination, and double-jeopardy. The committee agreed that the best possible jury should be selected for all trials. Eliminating felons from the jury pool is a reasonable request that most committee members thought was already standard practice. However, the provision regarding jury selection, like many provisions in this measure, appears to be more of an administrative or procedural than constitutional. The committee also recognizes that the use of DMV data, since it draws from a larger pool, encourages juries that are more representative of Oregon's increasingly diverse ethnic and racial population, and that this outcome should not be discarded without further debate.

Based on the testimony of opponents and proponents, and its own analysis of the impact of this measure, your committee concludes Measure 40 should be overwhelmingly rejected by Oregon's voters. If passed as written, the measure would eliminate protections currently provided by the Oregon Constitution. Further, these protections are not described or mentioned in the measure, nor does the measure make clear that these protections are presently extended to all citizens, not only defendants. What the measure actually does is broaden the powers of the police and prosecutors rather than ensure victims' rights. The majority of the committee feels it is essential that the voting public understand that this change, although cloaked in the attractive language of victims' rights, is actually a reduction in the freedoms long guaranteed by our state constitution; freedoms extended to all citizens, not just criminals.

The committee also is concerned that should the measure pass and then be found in violation of the state constitution's single subject rule, that the voting public will feel misled and that government, through a technicality (albeit an essential one), has again ignored their wishes.

In summary, the committee believes that Oregon voters should strongly oppose Measure 40 primarily because:

1. The measure contains multiple issues and will in all likelihood be found unconstitutional because it violates the single subject rule, resulting in a pointless exercise for the state's voters.
2. The measure reduces valuable limits to police powers under the guise of victims' rights.
3. The majority of the provisions contained in this measure are procedural rather than constitutional in nature, and current statutory protections for crime victims enacted in 1986 appear to be working well.
4. The measure severely restricts the right of a person accused of crime, but not convicted, to be released on bail. The presumption of innocence is eliminated, and the court would have to prove by clear and convincing evidence that the arrested person will not commit another violent crime before releasing that person. The measure gives the courts almost unlimited power to detain an arrested person pending trial.

The committee believes that the drafters of this measure should consider preparing another measure with a scope that is limited to a single, compelling victims' rights issue that is worthy of constitutional status.

## VI. RECOMMENDATION

Your committee unanimously recommends a NO vote on Measure 40.

Respectfully submitted,

Libby Barber  
Anne Marie Claire  
Jonathan Hutchison  
Edd Keudell  
John McDonald-Lear  
David Rees  
Kathleen Sweeney, vice chair  
Andy Sommer, chair

Stephen Cook, research advisor  
Paul Leistner, research director

## VII. APPENDICES

### A. WITNESSES INTERVIEWED

*Kathy Armstrong*, education director, American Civil Liberties Union—Oregon Chapter

*John Bradley*, first assistant to Multnomah County District Attorney Michael Schrunk

*Peter Cogswell*, Oregon Attorney General's Office

*James Cunningham*, public defender, Oregon Criminal Lawyers Defense Association

*Steve Doell*, Crime Victims United

*Norm Frink*, chief deputy district attorney, Multnomah County

*William Keys*, presiding judge for criminal law, Multnomah County

*Doris Kouns*, Crime Victims United

*Robert Kouns*, Crime Victims United

*Hans Linde*, professor, Willamette Law School, and former justice, Oregon Supreme Court

*Jim Lockwood*, Oregon Department of Corrections

*Helen Smith*, chief deputy, Family Justice Division, Multnomah County District Attorney's Office

*Ingrid Swenson*, public defender, Oregon Association of Defense Lawyers

### B. RESOURCE MATERIALS

"Abandon amendment." *Oregonian*, July 6, 1996.

City Club of Portland:

"Report on Ballot Measure 8: Revises Numerous Criminal Laws Concerning Police Powers, Trials, Evidence, Sentencing." *BULLETIN*, Vol. 65, No. 24, November 2, 1984.

"Report on Ballot Measure 10: Revises Many Criminal Laws Concerning Victims' Rights, Evidence, Sentencing, Parole." *BULLETIN*, Vol. 67, No. 20, October 17, 1986.

Linde, Hans. Memorandum to the City Club Measure 40 Study Committee, August 20, 1996.

National Victim Center:

"Victim Impact Statements." 1995.

"State Compensation Laws." 1995.

"The Rights of Crime Victims." 1995.

Oregon Criminal Lawyers Defense Association, "Initiative Analysis" (draft).

Oregon Secretary of State's Office, "Measure 40 Financial Impact Statement," 1996.

United States Senate. *Federal Victims' Rights Amendment* (introduced on April 22, 1996).

"Victims' Rights." *Christian Science Monitor*, July 1, 1996.



# Resolution from the Membership

Prepared by the Research Board for consideration by City Club members on Friday, October 4, 1996.

## **Re: State of Oregon Ballot Measure 32—Authorizes Bonds for Portland Area Light Rail, Transportation Projects Elsewhere**

To the Board of Governors:

WHEREAS, in 1994 voters in Portland and the Portland metropolitan area voted overwhelmingly to approve the raising and expenditure of funds to pay for the local portion of the costs of Tri-Met's planned South North light rail line; and

WHEREAS, in 1996 the Oregon Legislature adopted, and the Governor signed, HB 3480 which, among other things, permitted the State of Oregon to issue lottery revenue bonds to fund \$375 million of the state's share of the costs of Tri-Met's south North light rail line; and

WHEREAS, a citizen referendum known as Measure 32 will appear on the November ballot asking voters whether they approve of the actions taken by the legislature in HB 3480;

WHEREAS, in 1977 the City Club Report on Choices for Metropolitan Portland's Mass Transit System concluded that "light rail vehicles should be re-introduced into our mass transit system," and on June 17, 1977 the City Club's general membership adopted the report recommendations; and

WHEREAS, in 1982 the City Club report on Long-Term Funding for Tri-Met concluded that "In the long run, a healthy, efficient, and comprehensive transit system is essential to the prosperity and livability of the Portland metropolitan area," and on January 15, 1982 the City Club's general membership adopted the report recommendations; and

WHEREAS, in 1996 the City Club report on Planning for Urban Growth in the Portland Metropolitan Area, recommended that "All levels of state, regional and local government should place greater emphasis on supporting a variety of transportation options...in order to help slow the growth in vehicle miles traveled and bring into balance various transportation modes," and on March 29, 1996 the City Club's general membership adopted the report recommendations; and

WHEREAS, the City Club has long supported mass-transit's contribution to the Portland metropolitan area, and this support is expected to include the South North light rail line, subject to the satisfactory result of the economic and environmental analysis now being conducted in the Draft Environmental Study Process, slated for completion in March 1997; and

**THEREFORE BE IT RESOLVED**, that the City Club membership directs the Board of Governors to publicly express the Club's support of Ballot Measure 32 on the November 5, 1996 ballot.