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Ballot Measure Studies

Oregon State Ballot Measure 21: Amends Constitution: Revises Procedure for Filling Judicial Vacancies, Electing Judges; Allows Vote for "None of the Above"

Committee Recommends “NO” on Measure 21

Your committee found:

Concerns exist about the role of citizens in the selection and retention of the judiciary in Oregon. Some contend that judicial elections are not effective tools of democracy as currently structured. It is suggested that by allowing voters to vote for "None of the Above," judges will become more responsive and aware of the voters. However, this view is flawed in that it will increase the vulnerability of judges by exposing them to direct political pressures. Increasing the role of politics in the judiciary will only weaken the court's ability to interpret and implement law, especially in controversial cases. We find Measure 21 to be a problem because it seeks to effect judicial reform by politicizing the courts.

The other major problem with the measure is its ambiguity. Under Oregon's constitution, the governor is required to fill all judicial vacancies by appointment, except when a judge's term of office ends and he or she does not run for reelection. Under the measure, this power may or may not be taken away. If not taken away by the measure, your committee believes that the measure amends the constitution to allow the legislature to revise or revoke the governor's authority to appoint judges. These ambiguities alone are sufficient reason to reject Measure 21.

Your committee unanimously recommends a **NO** vote on Measure 21.

The City Club membership will vote on this report Friday, October 4, 2002. Until the membership vote, the City Club of Portland does not have an official position on this report. The outcome of the vote will be reported in the City Club *Bulletin* dated October 18, 2002.

City Club Study on *Ballot Measure 21*

I. INTRODUCTION

Ballot Measure 21 will appear on the ballot as follows:

Caption: AMENDS CONSTITUTION: REVISES PROCEDURE FOR FILLING JUDICIAL VACANCIES, ELECTING JUDGES; ALLOWS VOTE FOR "NONE OF THE ABOVE"

Result of "Yes" vote: "Yes" vote revises manner of filling judicial vacancies; modifies ballots and election procedure in judicial elections; adds "None of the Above" as official judicial candidate.

Result of "No" vote: "No" vote retains the current manner of filling judicial vacancies and current election procedure where the judicial candidate receiving a plurality of votes is elected.

Summary: Amends constitution. Currently the governor fills midterm judicial vacancies by appointment; appointees serve until the vacancy is filled at the next general election held more that 61 days after the vacancy occurs. Measure requires midterm judicial vacancies to be filled by election at the closest May or November election held more than 90 days after the vacancy occurs. In all judicial elections, measure requires election ballot to list candidates and also list "None of the Above" as an available choice. If "None of the Above" receives more votes than all other candidates on the ballot, the judicial office remains unfilled until a candidate other than "None of the Above" receives a plurality of votes cast at subsequent May and/or November special elections. Other provisions.

Estimate of Financial Impact: No financial effect on state or local government expenditures or revenues.

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

City Club Study on *Ballot Measure 21*

Measure 21 in its entirety reads as follows:

PARAGRAPH 1. Notwithstanding any other provision of this Constitution, the Constitution of the State of Oregon is amended by adding a new subsection to Article VII (Amended), Section 1:

Elections to fill the office of judge of the supreme and other courts shall be conducted in the manner provided by this subsection. When a judge's position becomes vacant during a term of office, an election to fill the position will be held at the closest May or November election, but no sooner than 90 days after the vacancy.

In all elections for the position of judge, "None of the Above" shall be listed on the ballot as an official candidate in addition to all other candidates. The candidate who receives the most votes in the election shall be elected to the position.

When more votes are cast for the "None of the Above" candidate than for any other, special elections will be held in May and November, until the position is filled with a candidate other than "None of the Above."

Additional provisions, consistent with this subsection, governing the appointment and election of judges of the supreme and other courts, may be created by law.

PARAGRAPH 2. If any portion, clause or phrase of this Amendment is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, the remaining portions, clauses, and phrases shall not be affected but shall remain in full force and effect.

Measure 21 proposes to significantly change the way Oregon holds judicial elections. City Club created your committee to review Measure 21 and to recommend a position on the measure to City Club's general membership. City Club screened committee members for conflicts of interest to ensure that no member had an economic interest in the outcome of the study or was publicly identified with an existing position on the study topic.

Committee members met in August and early September. The committee members interviewed Measure 21 proponents and opponents. The committee simultaneously held interviews for Measure 22, and heard from witnesses interviewed in that study who had comments on Measure 21.

City Club Study on *Ballot Measure 21*

What would Measure 21 do?

Measure 21 is a citizen initiative that would amend Oregon Constitution provisions on judicial elections. Measure 21 would change the way judicial vacancies are filled. The measure would change the judicial election process in two distinct, but related aspects: how all judicial elections are decided; and the timing of elections that fill midterm vacancies. The measure may or may not revoke the governor's power to appoint judges. The measure may grant the legislature the authority to revise the appointment process.

How will judicial elections be decided?

The measure adds the option of voting for "None of the Above" as an official candidate in all judicial elections in Oregon. Should "None of the Above" receive more votes than any other candidate, another election would be held in the next May or November election. This process continues until a candidate receives more votes than "None of the Above" and fills the office.

How will midterm vacancies be filled?

Presently, a midterm judicial vacancy is filled by appointment by the governor with appointees serving until the next general election held more than 61 days after the vacancy occurs and thereafter if elected. The measure changes the scheduling of the election to the closest May or November election more than 90 days after the vacancy occurs. The text of the measure is ambiguous as to whether appointments to fill midterm vacancies could or could not be made by the governor.

II. BACKGROUND

Judges are chosen in two ways. At times, a retiring judge stays in office until the end of his or her term, leaving the choice of his or her replacement to the voters. More commonly, however, judges leave office before the end of their term. In these instances, replacement judges are appointed by the governor. Oregon's judicial elections provide the citizens of the state with an opportunity to remove judges and replace them with other candidates. Often these elections occur with an incumbent who came to office by appointment from the governor.

Many judicial races have only one candidate. Proponents of the measure cite this, and the unique incumbent status granted to the governor's appointees, as impediments to free electoral selection of

judges. Proponents have referred to the current judicial election process as "rubberstamping" the governor's choices. They believe the current process is weighted in favor of these incumbents, and this puts challengers at a disadvantage in elections. Further, proponents claim the current electoral system leads to voters feeling that they are only able to affirm the governor's choice. Measure 21 places before the voters the option to select none of the candidates listed, and to instead vote again at a later date, presumably but not necessarily, with new candidates.

The National Movement for "None of the Above"

This option of using "None of the Above" is one that groups across the United States have been pursuing through legislatures and citizen initiative processes. The movement to add "None of the Above" is seen as a way to encourage voter turnout, maintain fair elections, and guarantee choice for the voters.

Proponents of "None of the Above" claim that voters have been increasingly forced to choose either between the lesser of two evils or to abstain from voting. They argue that with the introduction of "None of the Above" voters are granted a veto with which to reject candidates and demand a new candidate or candidates.

The backers of this new election tool also claim that "None of the Above" would compel candidates to be more responsive to voters. Supporters claim that in instances where "negative" campaigning comes into play and candidates engage in attacks on each other, the voters could toss out all of the candidates. In doing so, supporters say, candidates would be made more aware of the voters' desires.

Finally, the supporters of "None of the Above" take issue with uncontested races. They claim that in some states and races, the number of uncontested candidates is rising too fast. So, in order to give the voters control over their representation, "None of the Above" allows the people to remove uncontested candidates, or at least with this threat, cause uncontested candidates to become more responsive to voters. In the 2002 Oregon judicial elections, approximately one-half of the races were uncontested.

At present, only one state uses "None of the Above" in its elections. In 1975 the State of Nevada implemented a non-binding "None of the

Above" option. This version of "None of the Above" allows voters to register their displeasure with the choice of candidates, but the votes do not count toward the actual selection of a candidate. In other words, when "None of the Above" receives the most votes, the candidate who receives the second most takes office. This has occurred in Nevada four times in the last twenty-five years.

Relevant City Club Positions

Measure 21 is a proposed amendment to the Oregon Constitution and thus the committee considered City Club's February 1996 report, *Initiative and Referendum in Oregon*. The measure at hand does "relate only to the ... rights of the people," which the 1996 report prefers of initiative-based amendments. The measure was offered to the legislature, but it did not receive a hearing.

III. ARGUMENTS PRO AND CON

A. Arguments Advanced in Favor of Measure 21

Measure 21 proponents offered the following arguments:

Judicial elections lack true voter input as the choices are constrained by the governor. "None of the Above" would increase voter input, voter turnout, and judicial accountability by creating an effective method for voter involvement.

Measure 21 will brings judges into the public. The current system reinforces an insular judiciary that is not responsive to the people. Measure 21 will make all judges responsive to the public as they may be voted out of office due to "None of the Above."

Measure 21 increases the separation of powers in government by changing the current governor-dominated system and returning the selection and retention of judges to the people by creating a viable alternative to the candidates.

Increased voter input will result in court decisions and actions that

better reflect the values and mores of Oregon and its communities. Selection of judges is presently too dominated by lawyers and special interests from the Willamette Valley.

B. Arguments Advanced Against Measure 21

Measure 21 opponents offered the following arguments:

Elections are meant to fill offices, not to empty them. "None of the Above" is destructive to the democratic process.

Oregon currently has a good system of having the governor appoint judges and having these choices validated or rejected by the people. There is no problem for Measure 21 to fix.

If Oregon truly lacks good candidates running for judgeships, "None of the Above" will not encourage more candidates to run. Better salaries or other methods of reform would be more successful.

By allowing the voters to remove judges, the role of politics in courts will increase. This will violate the core strength of the courts, that of a neutral and fair judiciary. In Oregon, judges have not been politicians. This measure could change that.

Increasing the political influence on the courts will be followed by an increase in campaign spending by candidates.

Language in the measure is ambiguous in its relation to the role of the governor to appoint judges when a seat opens up in the middle of a term.

Measure 21 would make judges vulnerable to negative campaigns made by special interest groups who want to "get" a particular judge for a certain issue or set of issues.

IV. DISCUSSION

As your committee conducted its research, two main issues came up time and time again. First is the role of elections in the judiciary. What is the appropriate role of elections in the judiciary and is it in need of improvement? Is this truly the best way to conduct elections? The second issue is the ambiguous language of the measure as it may relate to the governor's duty to initially fill judicial vacancies by appointment.

The Role of Judiciary Elections in a Democracy

The committee recognized that we must first evaluate how elections work in the current system. Judicial elections are markedly different from other elections in Oregon. Judicial candidates are banned from taking public positions or endorsing platforms by the rules of judicial conduct. Candidates are also prohibited from directly soliciting campaign contributions. These special circumstances reveal a basic ethic that underlies all judicial elections, an ethic that judges are expected to rule on points of law and fact, not on ideology. Judges are expected to interpret and implement the laws passed by a representative body, or to determine a law's constitutionality, and not to stray into their own personal beliefs.

The proponents of this measure cite a growing dissatisfaction with judges, in particular those identified as "activist judges." These "activist judges" are accused of abusing their discretion to interpret laws in order to make public policy. The proponents thus state that since we cannot expect judges to be truly neutral, we must make them accountable to the voters. The theory at hand is that judges cannot be unbiased, so we must remove the façade of neutrality and return the courts to the people.

In opposition to this viewpoint, a number of witnesses expressed their fears that opening up judicial elections would compromise the court. Witnesses who had a background with the courts expressed their personal conviction that judges in Oregon take their oath seriously and leave politics at home when they rule on cases. While they acknowledge occasional problems in the courts, bad decisions are made only rarely. Ours is not a perfect system, but it also is not a

broken one. To move towards a more politicized court would only make matters worse. Opponents also noted that the people are not without options. The Oregon Constitution (Article II, Section 18) as supplemented by Oregon Revised Statutes, Chapter 249, permits voters to recall judges. This is in addition to the Supreme Court's constitutional authority to remove or otherwise sanction judges, as provided for in Article VII, Section 8. Since 1965, two judges have been removed, four suspended, four censured, three reprimanded, and one otherwise disciplined. (See research material item four in Appendix B.)

An additional problem arises due to a requirement that an appointed candidate who is filling a judicial vacancy must run in both the primary and the general elections, regardless of the outcome of the primary. In an interview with the compliance specialist of the Division of Elections we were told that judicial positions filled by appointment are considered vacant until a general election retains or replaces the appointee. In other words, Measure 21 would require every appointed candidate to run against "None of the Above" twice in six months, including candidates who receive an absolute majority of the votes in the primary. A likely scenario would have an appointed judge running against an ideological opponent in the primary, along with "None of the Above," winning that election perhaps by an absolute majority and then running against "None of the Above" in the general election. This would give the opponents of an appointed judge two quite different lines of attack.

The Language of the Ballot Measure

Article V, Section 16, of the Oregon Constitution provides: "...when at any time a vacancy occurs...in the office of judge of any court, the governor shall fill such vacancy by appointment, which shall expire when a successor has been elected and qualified."

As has been alluded to in this report, there is some question whether this measure will revoke the governor's constitutional duty to appoint judges when midterm vacancies occur. The language of the measure does not explicitly state that it is superceding the section in the Constitution quoted above. However, the first and third subparagraphs of the measure are confusing:

> "Elections to fill the office of judge of the supreme and other courts shall be conducted in the manner provided by this

> subsection. When a judge's position becomes vacant during a term of office, an election to fill the position will be held at the closest May or November election, but no sooner than 90 days after the vacancy."
>
> "When more votes are cast for the "None of the Above" candidate than for any other, special elections will be held in May and November, until the position is filled with a candidate other than "None of the Above."

Most of the Committee initially interpreted these paragraphs to remove the authority of the governor to appoint. This was furthered by the summary of the measure provided by the Oregon Attorney General's Office and the Secretary of State's office. The summary states:

> "Currently, the governor fills midterm judicial vacancies by appointment; appointees serve until the vacancy is filled at the next general election held more than 61 days after the vacancy occurs. Measure requires midterm judicial vacancies be filled by election at the closest May or November election held more than 90 days after the vacancy occurs. ...
> If "None of the Above" receives more votes than all other candidates on the ballot, the judicial office remains unfilled until a candidate other than "None of the Above" receives a plurality of votes cast at subsequent ...elections."

The ambiguity is whether the language is meant to direct the only way in which midterm and "None of the Above" vacancies are filled, or whether it is simply stating when elections will be held, presumably after an appointment has been made by the governor.

When asked about this, chief petitioner Don McIntire stated that nowhere in the language of the ballot measure does the revocation of the governor's power to appoint come up. When asked about the attorney general's summary, Mr. McIntire said that he disagreed with the summary that was drafted, particularly the sentence which reads: "If "None of the Above" receives more votes than all other candidates on the ballot, the judicial office remains unfilled until a candidate other than "None of the Above" receives a plurality of votes cast at subsequent May and/or November special elections." However, Mr.

McIntire did not challenge the summary in court as permitted if there is disagreement. When asked why no one challenged the response, Mr. McIntire claimed that the process is too time consuming and involved. According to Mr. McIntire, if a challenge had been filed the attorney general's office and the Supreme Court could have stalled the measure's certification until it was too late to obtain the necessary number of signatures on the petition. In a telephone interview, the assistant attorney general assigned to ballot measures told your committee that the process of petitioning the Supreme Court to challenge the ballot title and summary, a decision by the court, and (if ordered) a revision of the ballot title or summary would not take longer than four months. This would have left seven and a half months to gather signatures, which should have been sufficient.

The final piece of ambiguity is the final subparagraph in PARAGRAPH 1 of the measure. The subparagraph states:

> "Additional provisions, consistent with this subsection, governing the *appointment* and election of judges of the supreme and other courts, may be created by law." (Emphasis added.)

Committee members repeatedly asked Mr. McIntire if this language was intended to amend the constitution to allow the legislature to deal with judicial appointments by statute. Mr. McIntire did not have an answer to this question.

The committee believes that if subparagraphs one and three, quoted above, do change the governor's authority, then they supercede the authority granted to the governor in the Oregon Constitution. If subparagraphs one and three do not do this, then the committee believes that the final subparagraph will authorize the legislature to make changes to the governor's power to appoint.

V. CONCLUSIONS

If we find that Oregon's judicial election process is in need of reform we must be careful of the reforms we implement. Oregon can choose from many electoral systems when attempting to change judicial

elections. In regard to Measure 21, the committee questions the logic of testing a unique voting method on a branch of government that is not meant to be representative. Introducing this novel notion of voting in other races that are defined by more traditional politics appears to be wiser. Some other states use a system of elections where voters choose whether or not to retain a judge, but these states use the governor's power to appoint to find the qualified replacement. It is not clear to the committee why a "None of the Above" structure is better than this system of retention voting. As one opponent commented, it just seems to be a negative vote for the judiciary, not a constructive vote for society. One scenario the committee can see occurring with this measure is a constant revolving door on certain judicial races where judges are removed every six months. The results of this would clearly not be in the best interest of a community, where the constant change could cause different applications of the law every six months and increased administrative costs. Of course, this scenario is dependent on the governor still being able to appoint the replacement for the position left empty by "None of the Above."

The committee fails to see a real problem that would be remedied with the passage of this measure. While certain court cases and decisions have recently attracted public criticism, there does not appear to be a systemic problem that requires the changes proposed in this measure. The members of this committee are convinced that the passage of this measure would produce a new dynamic in the court that would require judges to cultivate and maintain a public image in order to stay in office. This would compromise the neutrality and fairness of the court. It would allow political influence and campaign finance to enter the courtroom and would worsen the problem the proponents believe exists today. If judges are overly influenced by special interests in the present system, then opening the floodgates on campaign contributions, political influence, and lobbying would only make matters worse.

The other major problem with the measure is that the language is far from clear regarding the governor's duty to fill judicial vacancies by appointment. Ironically, the resolution of this question would be made by our Supreme Court or possibly the Court of Appeals. Whatever its decision, it is doubtful that the court's decision would reflect the understanding or intent of the voters. Either the governor

would lose the power of appointment, or the legislature would be given the authority to revise or eliminate this power. Because the measure would amend the Constitution in two respects; i.e., revising the procedure for filling judicial vacancies by election and revoking or revising the governor's unfettered duty to fill vacancies by appointment, the measure's passage would appear to be vulnerable to revocation as embracing more than one subject. However, PARAGRAPH 2 of the measure provides that if any portion of the measure is held to be invalid or unconstitutional, the remaining portions shall remain in full force and effect. Would the court throw out the election portion or the appointment portion or declare the entire measure inoperative? We don't know.

If the authority of the governor to appoint judges is revoked, then the current process of selecting judges will no longer be used. Presently the Oregon State Bar Association offers a pool of candidates to the governor from which to choose. The process of generating this pool involves input from the entire bar for candidates for the Tax Court, Court of Appeals, and Supreme Court, from members of the bar from the districts to which candidates for trial courts will be appointed, and from a small group of lay people. While the governor is not bound by the choices in the pool, this process helps the governor select skilled and respected candidates. The committee fears this important selection process would no longer play a role in judicial elections if all judicial positions were filled only by election.

VI. RECOMMENDATION

Your Committee unanimously recommends a **NO** vote on Measure 21.

Respectfully submitted,

Kenneth Dueker
Jack Featheringill
David Mandell
Paul Manson
Steve Olson
Bob Shoemaker, chair

Chuck Stuckey, research advisor
Wade Fickler, research director

VII. APPENDICES

A. Witness List

Jas Adams, assistant attorney general, responsible for ballot measures

Margie Franz, compliance specialist, Division of Elections, Office of the Secretary of State

Angel Lopez, president, Oregon State Bar Association

Don McIntire, chief petitioner

Edwin Peterson, retired chief justice, Oregon Supreme Court

Jacob Tanzer, retired justice, Oregon Supreme Court and Court of Appeals

B. Research material

1. Certified ballot title, initiative petition #67 (Measure 21), Office of the Secretary of State, 7/18/02.

2. Wording of Measure 2 1, Office of the Secretary of State, 7/ 15 / 02.

3. Detailed information on initiative petition #67 (Measure 21) from website of the Secretary of State, 8/12/02. www.sos.state.or.us

4. Letter to the committee chair from Commission on Judicial Fitness and Disability, received 8/22/02.

5. Two articles on None of the Above, NOTA advocacy organization, 8/15/02. http://www.nota.org/washjm nota.html

6. Proposed resolution of Oregon State Bar Association in opposition to Initiative 67 (Measure 21), received 8/19/02.

7. Voters' pamphlet information from Taxpayer Association of Oregon, proponents of Measure 21, received 8/28/02.

8. Oregon Constitution.

9. Portland General Electric Company v. Bureau of Labor and Industries, 317 OR 606 (1993). Leading Oregon Supreme Court case on statutory construction.

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Ballot Measure Studies

Oregon State Ballot Measure 22: Amends Constitution: Requires Oregon Supreme Court Judges and Court of Appeals Judges to be Elected by District

Committee Recommends "NO" on Measure 22

Your committee found:

Measure 22 seeks to increase the accountability of Oregon's Supreme Court and Court of Appeals by guaranteeing that these courts reflect the geographic diversity of the state with judges selected from districts. While a disproportionate number of Oregon Supreme Court and Court of Appeals justices reside in the northern Willamette Valley and disproportionately few in the eastern, southern, and coastal parts of the state, there is insufficient evidence that this geographical imbalance has seriously hurt the courts' performance and jeopardized their ability to render impartial and objective decisions. Having courts that better reflect the regional diversity of Oregon is a laudable goal. But without stronger evidence that either of the current courts is seriously flawed, we cannot recommend such a major overhaul of Oregon's judicial system, especially one that has such potential for politicizing the courts. Electing judges by district will make it easier for small groups of citizens to unseat judges who have voted for or written unpopular decisions. Furthermore, selecting judges by districts may lead to the impression that these justices serve as representatives of specific constituencies in whose interest they are obligated to act, rather than on behalf of the entire state, its constitution and laws. Finally, the goal of increasing the courts' regional diversity could be achieved by other less intrusive and more informal means that do not require constitutional or statutory change, and that do not formally tie judges to specific constituencies.

Your committee unanimously recommends a **NO** vote on Measure 22.

The City Club membership will vote on this report Friday, October 4, 2002. Until the membership vote, the City Club of Portland does not have an official position on this report. The outcome of the vote will be reported in the City Club *Bulletin* dated October 18, 2002.

City Club Study on *Ballot Measure 22*

I. INTRODUCTION

Ballot Measure 22 will appear on the ballot as follows:

Caption: AMENDS CONSTITUTION: REQUIRES OREGON SUPREME COURT JUDGES AND COURT OF APPEALS JUDGES TO BE ELECTED BY DISTRICT.

Result of "Yes" Vote: "Yes" vote creates judicial districts based on population and requires Oregon Supreme Court judges and Court of Appeals judges to be elected from these districts.

Result of "No" Vote: "No" vote retains the current system for electing Oregon Supreme Court judges and Court of Appeal judges by statewide vote with no district residency requirements.

Summary: Amends constitution. Currently, all Oregon Supreme Court judges and Court of Appeals judges are elected by statewide vote. Judges must live within state but have no other residency requirements. Measure divides state into seven districts based on population, for purpose of electing Supreme Court judges; electors within each district elect only one Supreme Court judge. Measure divides state into five districts for election of judges of other appellate courts created by law (except Tax Court), with two judges elected from each district. Requires Supreme Court and Court of Appeals judges elected or appointed to office to reside within their districts. Requires reapportionment of judicial districts when legislative districts are reapportioned. Revises procedure and requirements for appointments to judicial vacancies and recall of judges. Other provisions.

Estimate of Financial Impact: No financial effect on state government expenditures or revenues. Indeterminate financial effect on local government expenditures. No financial effect on local government revenues.

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

City Club Study on *Ballot Measure 22*

Measure 22 proposes significant changes in the way that Oregon Supreme Court and Court of Appeals judges are selected. City Club created our committee to review Measure 22 and recommend a position on the measure to the City Club membership. City Club screened members of the committee for conflict of interest to ensure that no member had an economic interest in the outcome of the study or was publicly identified with an existing position on the study topic.

Committee members met during August and early September. The committee interviewed Measure 22 proponents and opponents, retired members of the Supreme Court and Court of Appeals, the president of the Oregon State Bar Association, and the district attorney of Clatsop County. The committee simultaneously held interviews for Measure 21, and heard from witnesses interviewed for that study who had comments on Measure 22. Committee members also reviewed relevant articles, reports and other material on judicial selection in other states.

II. BACKGROUND

In Oregon as in other states and at the federal level the role of the courts has become an issue of conflict. According to proponents of Measure 22, the courts have become too politicized, too prone to judicial activism and too out of touch with the common sense of the people of Oregon. According to these critics, the courts act as if their constituency is a group of elite lawyers living in the northern Willamette Valley, rather than the citizens of Oregon.

The controversy over the courts in Oregon has been intensified by their role in overturning criminal convictions on procedural grounds and their role in the initiative process, especially after the Supreme Court's decision in *Armatta v. Kitzhaber* (1998). That decision overruled Measure 40, the "Crime Victim's Bill of Rights," which had passed in 1996. The court ruled that if an initiative introduces more than one change to the constitution, all of the changes must be closely related to each other. This decision was based on the court's interpretation of Article XVII, Section 1 of the Oregon Constitution. Since the Armatta decision, the Oregon Supreme Court has struck down a number of constitutional initiatives that had been approved by the voters but were ruled to have introduced more than one

change. Measure 3, a constitutional amendment that introduced term limits and was passed by Oregon voters ten years ago, was recently struck down on these grounds. The Oregon Supreme Court is also currently reviewing Measure 7 (2000), a measure that requires landowners to be compensated for the cost of regulatory changes. For critics of the Oregon Supreme Court, these decisions not only exemplify judicial activism, but also demonstrate that the Court has become an impediment to democracy. These decisions, it is argued, demonstrate that political preferences, not the law, currently guide the Supreme Court.

The make-up of the current Supreme Court and Court of Appeals has led to the perception that these courts do not reflect the citizenry of Oregon. At present, only one judge on either the Supreme Court or the Court of Appeals lives outside of the Willamette Valley. Of the seven members of the Oregon Supreme Court, three are from Portland and four are from Salem. The membership of the Oregon Court of Appeals is similarly skewed toward the Valley, with six justices from Portland, one from Salem, two from Eugene and one from The Dalles. Furthermore, recent governors have broken an informal tradition of ensuring through appointment the presence of eastern Oregonians on these courts.

The regional imbalance on the appellate courts also reflects an imbalance in the applicant pool. Far more individuals from the northern Willamette Valley than from the rest of the state apply for these judgeships. Of the twenty applicants for the Court of Appeals in December 2000, four-fifths were from the northern Willamette Valley. The other applicants were from Ashland, Hood River and Klamath Falls, and another applicant was from Charlotte, Virginia. In August 2000, the Oregon State Bar Association received eight applications for the Supreme Court. All of the applicants resided in the Portland-Salem area.[1]

If Oregon adopts Measure 22, Oregon will not be alone in selecting judges by districts. Approximately one-third of the states elects their appellate judges from districts and nine states elect their Supreme Court justices by district. Oregon also had a districting system in the past. The Oregon Constitution of 1859 called for Supreme Court justices to be elected from districts. A 1910 amendment to the constitution granted the legislature the power to change the judicial

[1] Numbers provided by Kateri Walsh, Oregon State Bar Community Relations Administrator.

system by statute, which the legislature subsequently did, eliminating judicial districts for the Supreme Court (the only state appellate court at that time).

Measure 22 would create five districts for the Court of Appeals and seven districts for the Supreme Court. While the districts would be divided evenly by population, the exact shape of the districts would be determined by the legislature. Both proponents and opponents of Measure 22 assume that the districts for the Court of Appeals would match the five congressional districts. The legislature would have to create new districts for the Supreme Court.

III. ARGUMENTS PRO AND CON

A. Arguments Advanced in Favor of Measure 22

Measure 22 would create a Supreme Court and Court of Appeals that are more accountable to, and more representative of, the people of Oregon.

Measure 22 would create a Supreme Court and Court of Appeals whose memberships better reflect the ideological and regional diversity of Oregon. Courts that better reflect Oregon and are more accountable to its people would not be out of touch with common sense.

Measure 22 would make it more difficult for the courts to make political decisions while claiming that they are impartial. It would be difficult for the courts to hide their political bias.

Measure 22 would make the constituency of judges the people of Oregon, rather than a group of elite lawyers from the northern Willamette Valley.

Measure 22 would increase the legitimacy of the courts by ensuring that citizens from outside the northern Willamette Valley have their voices heard.

Measure 22, by reducing the area in which judges campaign, would reduce the cost of judicial elections and de-politicize the judiciary.

Measure 22 would make it easier for citizens to make informed choices when voting for judges. Voters would have fewer candidates to choose among. Since candidates would be residents of the voters' districts, the voters would also be more likely to know something about the candidates.

Measure 22 would help the court draw on the untapped talent pool of capable lawyers who reside outside of the northern Willamette Valley.

Measure 22 would not weaken the Oregon Constitution by adding another new and needless amendment. Measure 22 would restore the original Oregon Constitution of 1859.

Measure 22 would not reduce the collegiality of the courts. Federal circuit courts that cover a much wider geographic area than the proposed Oregon districts are able to maintain their collegiality. Moreover, new communication technology, such as teleconferencing, reduces the need for face-to-face contact.

B. Arguments Advanced Against Measure 22

Measure 22 is a solution in search of a problem. The Oregon Supreme Court and Court of Appeals are impartial bodies that effectively carry out their missions. The courts have not reached a single decision that has been affected by a geographic bias.

Measure 22 would make Supreme Court and Court of Appeals justices the representatives of particular constituencies, rather than responsible to the entire state. Judges are not representatives and should not have constituencies.

Measure 22, by turning judges into representatives, would politicize the courts. Unlike legislatures, courts do not reach decisions by bargaining and compromise, and therefore justices do not and should not act as the representatives of specific interests or areas.

Measure 22 would lead to political witch-hunts. It would make it easier for a small group of mobilized and well-financed voters to unseat a judge because the judge had made a politically unpopular decision.

Measure 22 would prevent the governor from appointing and the citizens from electing the most capable judges; the governor and the voters would be forced to choose someone from a particular district possibly overlooking the most qualified candidate.

The number of Supreme Court and Court of Appeals judges from the northern Willamette Valley reflects Oregon's demography. A disproportionate number of lawyers live in this region. The specialty law firms located in the Portland and Salem area act as magnets attracting talented and ambitious lawyers from around the state. These law firms provide lawyers the experience they need for the Supreme Court and Court of Appeals.

Measure 22 would undermine the collegiality of the Supreme Court and Court of Appeals. Because there would be more judges on these courts who, to avoid a long commute, would have to do most of their work away from Salem, judges would have difficulty building the camaraderie they need to do their job effectively.

IV. DISCUSSION

Are the Supreme Court and Court of Appeals Serving Oregon Well?

Is the current selection process for the Oregon Supreme Court and Court of Appeals in need of reform? Does the process select the most fit judges, or does it exclude potential candidates who are not insiders or who reside in the wrong part of the state? Do the Supreme Court and Court of Appeals act as if their constituency is the small group of elite lawyers who inhabit the northern Willamette Valley, or have they served well the citizens of Oregon in their entirety?

These are difficult questions to answer as courts are notoriously hard institutions to evaluate objectively. Those who disagree with the substance of a decision are more likely to argue that the courts are making political assessments rather than judgments of law. Similarly, groups that are satisfied with a ruling are also more predisposed to view favorably the process by which that outcome was reached. The very fact that a case reaches these courts means that it is difficult and contentious. Any decision that the court reaches on such a case will undoubtedly be strongly criticized by one group or another. The fact

that there are aggrieved individuals who are angered by recent court decisions is insufficient evidence that the judiciary is failing to do its job or that it is has acted without impartiality. Nor is strong partisan approval evidence in the courts' favor.

For the most part, the committee found that those individuals interviewed who had spent time on the courts had the most positive view of them. The retired Supreme Court and Court of Appeals justices whom the committee interviewed expressed extremely evaluations of the integrity, competence and impartiality of the fellow justices with whom they served. Both of these retired justices emphatically denied that regional bias crept into any decision that they witnessed. Both were deeply impressed by the intelligence and hard work of their colleagues on the bench.

These positive evaluations by judicial insiders may simply reflect the extent to which a biased and insular group controls the Supreme Court and Court of Appeals. However, the committee found no evidence to support such a bleak conclusion. These positive assessments of the courts ought to be taken sincerely. Finally, the proponents of Measure 22 failed to offer any concrete evidence that dissatisfaction with the courts is either particularly deep or widespread nor did they offer any non-anecdotal evidence that regional distrust of the courts is growing. Furthermore, they could not point to a specific decision that demonstrated a regional bias.

However, if the perception exists that the judiciary is ruled by insular insiders it may suggest another kind of problem: the failure of the courts and the Oregon State Bar Association to adequately educate the public about how judges are selected and how they make decisions. The problem may not be bias, but instead a lack of public awareness as to what the courts do and the constraints to which they are bound. If this pattern of elite approval and popular distrust toward the courts in Oregon does exist it would mirror a pattern found over the last thirty years across America's political and social institutions. Explanations for this widespread gap between elite and popular perceptions of public institutions are complex. However, the existence of such a gap does not necessarily indicate that these institutions are performing poorly.[2]

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[2] John Hibbing and Elizabeth Theiss-Morse. *Congress as Public Enemy*, (Cambridge University Press, 1995; Joseph Nye et al., (eds.), *Why People Don't Trust Government*, (Harvard University Press, 1997).

The Causes, Consequences and Remedies for the Courts' Regional Imbalance

While the courts' performance is difficult to assess objectively, the imbalance in the courts' membership is easily discerned. At present, all of the members of the Oregon Supreme Court are from either Portland or Salem, and only one of the members of the Court of Appeals lives outside of the Willamette Valley. These facts raise three questions: Has this geographic imbalance affected the performance of the court? What is the cause of this regional disparity? Would Measure 22 turn the court into a more diverse body?

As noted earlier, biases of the courts are difficult to measure. However, neither of the retired justices with whom we spoke could think of a single instance in which regional differences were of significance for questions before the courts. It may still be argued that even if the courts have not demonstrated a real regional bias in their decisions, greater regional representation would still improve their performance. Increasing the regional diversity of the courts might still increase the range of perspectives discussed, help unearth unarticulated biases, and enrich the courts' deliberations. Even if the performance of the current courts has been good, the performance of more regionally balanced courts might be even better.

What has led to this regional imbalance? The severity of the current imbalance, at least for the Oregon Supreme Court, is readily explained: Since the late eighties, no governor has appointed an eastern Oregonian. It is beyond the scope of this study to explain why this tradition has ended. However, if this regional disparity continues, and this issue becomes politically salient, it is likely that a future governor will respond and make sure that eastern, southern and coastal Oregonians are on the appellate courts.

The geographical imbalance on the courts also reflects a skewed judicial applicant pool. Extremely few individuals from other parts of the state are choosing to apply for these positions. Three explanations for this regional imbalance have been offered.

According to the first explanation offered by proponents of Measure 22 outsiders do not apply because they know they will not get the jobs. The absence of their applications reflects their belief that

the process is biased against them. If this explanation were valid there should be at least a few complaints from aggrieved applicants. No proponent of the measure provided evidence of such complaints.

The second explanation, also offered by opponents of Measure 22, is that while there are very talented lawyers practicing in all parts of the state, the specialty law firms that attract the lawyers who are most likely to seek positions on the Supreme Court or Court of Appeals are located in the Portland and Salem areas. The lawyers who practice with this type of firm are also more likely to have experience arguing cases before the Supreme Court and Court of Appeals, experience that is often seen as especially valuable for positions on Oregon's appellate courts. While this is a reasonable explanation for some of the regional imbalance in the applicant pool, it does not explain its extent. Proponents of Measure 22 argued that the popularity of this claim is evidence of elitist snobbery against eastern Oregonians.

The third explanation was also offered by opponents of Measure 22: Individuals from outside the northern Willamette Valley do not apply for these positions because they don't want the onerous commute that serving in Salem while living far away would require. This is a plausible explanation. However, even if this explains the imbalance in the applicant pool, it does not fully explain the imbalance on the court. We can imagine reasons why the governor or the voters would go out of their way to choose worthy candidates who are from other parts of the state.

Would Measure 22 improve the regional diversity of the courts? It would certainly ensure that some justices formally reside in other parts of the state. But this may only mean that they maintain legal residency in that area; it would not guarantee that they would bring a regional viewpoint to the courts.

Also, if one goal of Measure 22 is to create a judiciary that engages in richer and more open deliberations, Measure 22 may not be the answer. Electing judges from districts rather than at-large reduces the likelihood that a judge will dissent against a majority vote to uphold the death penalty.[3] In other words, Measure 22 may actually reduce the diversity of opinion expressed by the courts.

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[3] Melinda Gann Hall, "Electoral Politics and Strategic Voting in State Supreme Courts," *TheJournal of Politics*, Vol. 54, No. 2 (May 1992), 427-446.

Justices as Representatives: Does Measure 22 Politicize the Judiciary?

The sponsors of Measure 22 argue that districting will make judges more accountable and more representative. Judicial accountability is undoubtedly an important goal. Mechanisms for removing incompetent and irresponsible judges already exist. The Oregon Constitution (Article II, Section 18), as supplemented by Oregon Revised Statutes Chapter 249, permits voters to recall judges. This law is in addition to the Supreme Court's constitutional authority to remove or otherwise sanction judges, as provided for in Article VII, Section 8. Since 1965, two judges have been removed, four suspended, four censured, three reprimanded, and one otherwise disciplined. [4] There are reasons to believe, however, that electing judges from districts rather than at-large would improve accountability. At-large elections require voters to evaluate a large number of judicial elections. Districting reduces the number of judicial positions each voter has to evaluate so that the voter can focus on candidates running in his or her district. This reduction would increase the probability that voters are informed about the candidates.

Judicial accountability must be balanced against the all too real dangers of political witch-hunts. Removing a judge who has violated a code of ethics or acted incompetently is one thing. Removing a judge who has made an unpopular decision based on the law is another. Large districts, such as those created by an at-large electoral system, enable incompetent judges to be removed while reducing the likelihood that a judge will be kicked out for purely political reasons. Smaller districts make it easier for disgruntled and mobilized groups to vote out a judge who has made a decision with which they disagree. While smaller districts might reduce the escalating cost of judicial campaigns, they would also make it easier for outsiders to pump money into local elections, and influence their outcome.

Whether judges ought to be representatives is a different question. Judges are not supposed to act on behalf of particular groups or constituencies; they are supposed to serve the entire community by deciding matters of law. Nor are they well equipped to act as representatives. Proponents of Measure 22 who criticize Oregon's judges for "making law from the bench" acknowledge this distinction: They are criticizing judges for acting as legislators.

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[4] Letter to committee chair from Oregon Commission on Judicial Fitness and Disability, August 22, 2002.

Research demonstrates that judges respond to electoral pressure. [5] Judges who face competitive elections are more likely to make decisions that are popular with their constituencies but go against previously expressed views than are judges who do not face competitive elections. [6] According to one study, judges who were confronted by electoral pressures were less likely to dissent when a majority of their colleagues voted to uphold a death penalty. [7] Another study that looked at the effects of electing judges from districts found that judges who are elected from districts are even less likely to dissent in death penalty cases than are judges elected at-large. [8]

If the problem is judicial activism judges acting like legislators Measure 22 cannot be the solution. Giving judges a political mandate by making them the representatives of a particular district would invite political decision-making rather than reduce its likelihood. Having judges serve as representatives of districts may yield a court whose decisions are more popular. However, to argue in favor of Measure 22 on these grounds is to argue in favor of politicizing the courts.

If judges have high ethical standards, why should electing them from a particular district damage either their integrity or their impartiality? One would hope and assume that districting would not dramatically change the ethical standards of Oregon's judges. The relevant question is whether districting would create institutional pressures on judges that go against their better sense and higher calling. As discussed above, it seems likely that it would. Moreover, districting is likely to create the public perception that judges do and should act as the representatives of particular constituencies. This public perception can only increase the electoral pressure to do so.

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[5] Philip L. Dubois, *From Ballot to Bench*, (University of Texas Press, 1980).

[6] Paul R. Brace and Melinda Hall, "The Interplay of Preferences, Cases Facts, Context, and Race in the Politics of Judicial Choice," *The Journal of Politics*, Vol. 59, No. 4 (November 1997), 1206-1231.

7Hall, 1992.

[8] Melinda Gann Hall, "Justices as Representatives: Elections and Judicial Politics in the American States," *American Politics Quarterly*, Vol. 23, No. 4 (Oct., 1995), pp. 485-503.

V. CONCLUSIONS

Is the selection process for judges for the Oregon Supreme Court and Court of Appeals in need of major reform? The Committee does not believe so. It is the responsibility of proponents of Measure 22 to demonstrate that there is a serious problem that needs to be addressed and they failed to do so. They did not offer compelling evidence that the courts have engaged in improper judicial activism or that they have been biased. The proponents of Measure 22 also failed to demonstrate that there is widespread and deep dissatisfaction with the Oregon courts. Furthermore, the committee heard strong testimony attesting to the high ethical standards of the judges who sit on the Oregon Supreme Court and Court of Appeals.

The committee acknowledges that a geographic imbalance in the courts exists. However, it is unclear that this results from, or results in, any regional bias. Even if the courts ought to be more regionally diverse, Measure 22 should still be rejected. Its solution to this problem is too rigid and too drastic, especially when this problem can be more easily addressed through the governor's power of appointment.

Most importantly, if the problem Measure 22 seeks to remedy is an overly politicized judiciary, it is exactly the wrong solution. Turning justices into representatives can only further politicize the courts. Judges should not have constituencies, but rather ought to serve on behalf of the entire state. Judicial impartiality is too valuable to jeopardize by districting, even if it is done for the sake of the laudable goal of a more regionally balanced court.

Electing judges by district rather than at-large also increases the likelihood of political witch-hunts against the judiciary. It would make it easier for a small highly mobilized and well-funded group to unseat a judge whose decisions the group found politically distasteful. Fear of such political reprisals would threaten judicial independence and stifle dissent on the bench.

The issues raised by the proponents of Measure 22 speak to a perceived need for more accountability by the judiciary for their decisions. Members of your committee recognize the need for

judicial accountability and are sympathetic to the appeal of restoring the districting of appellate court justices, as originally called for in Oregon's 1859 Constitution. Ultimately, however, the entire committee found that the adoption of Measure 22 would be less likely to improve accountability to voters than it would be to politicize what are not intended to be political bodies in the usual sense. Judicial "correctness" lies with the courts correctly and impartially interpreting the law as it applies to the cases that come before them. The ability of the courts' members to act responsibly is less dependent upon how or in what manner they obtain office, but in their intelligence, training, and integrity and in the seriousness with which they take their judicial duties. In the committee's opinion, that seriousness should be protected from external impediment, be it from an electorate with a political agenda, political action committees, or special interest groups attempting to exert undue influence over the members of the courts. The committee believes that the districting of appellate court judges would weaken that protection.

VI. RECOMMENDATION

Your Committee unanimously recommends a **NO** vote on Measure 22.

Respectfully submitted,

Kenneth Dueker
Jack Featheringill
David Mandell
Paul Manson
Steve Olson
Bob Shoemaker, chair

Chuck Stuckey, research advisor

Wade Fickler, research director

VII. APPENDICES

A. Witness List

Steve Doell, chief petitioner

Angel Lopez, president, Oregon State Bar Association

Joshua Marquis, Clatsop County district attorney

Daniel Meek, attorney

Edwin Peterson, retired chief justice, Oregon Supreme Court

Lynn Rosik, assistant attorney general, assigned to the elections division of the Office of the Secretary of State

Jacob Tanzer, retired justice, Oregon Supreme Court and Court of Appeals

B. Research Material

1. Certified ballot title for initiative petition #90 (Measure 22), Office of the Secretary of State, August 9, 2001.

2. Wording of Measure 22, chief petitioner to Office of the Secretary of State, August 15, 2001.

3. Letter from Douglas F. Zier, assistant attorney general, to John Lindback, director, Elections Division, re: requested changes in draft ballot title, August 9, 2001.

4. Detailed information re: initiative petition #90, website of the Secretary of State, www.sos.state.or.us, August 12, 2002.

5. Oregon Constitution, Article V1 1, The Judicial Department, in original form and as amended by initiative petition, adopted November 8, 19 10. Provided to the committee by the chief petitioner.

6. Initiative petition to revise Article V1 1 of the Oregon Constitution, July 7, 1910.

7. Proposed resolution of the Oregon State Bar Association in opposition to Measure 21, August 19, 2002.

8. Memo from Oregon State Bar Association providing names and cities of residence of applicants for appointment to the Supreme Court in July and August, 2001 and Court of Appeals in December, 2000; August 27, 2002.

9. Portland General Electric Company v. Bureau of Labor and Industries, No. 317 OR 606, 1993. Leading Oregon Supreme Court case on statutory construction. Referred to committee by witness Edwin Peterson, former chief justice, Oregon Supreme Court.

10. American Judicature Society, www.ajs.org.

11. Brace, Paul. R. and Melinda Hall. "The Interplay of Preferences, Cases Facts, Context, and Race in the Politics of Judicial Choice," *The Journal of Politics*, Vol. 59, No. 4, November 1997, pp. 1206-1231.

12 Dubois, Philip L. *From Ballot to Bench: Judicial Elections and the Quest for Accountability*, University of Texas Press, 1980.

13. Green, Ashbel S. "Courts' Rulings Change Balance of Power," *The Oregonian*, November 5, 2001, www.afrd.org/news/news1052001.htm.

14. Hall, Melinda Gann. "Electoral Politics and Strategic Voting in State Supreme Courts," *The Journal of Politics*, Vol. 54, No. 2, May 1992, pp. 427-446.

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16. Hibbing, John and Elizabeth Theiss-Morse. *Congress as Public Enemy*, Cambridge University Press, 1995.

17. MacDowell, James L. "Constitutional Restraints on State Legislative Procedure: The Application of Single Subject Rules." State Political and Policy Conference, University of Wisconsin-Milwaukee, May 24-25, 2002, http://garnet.acns.fsu.edu/~tcarsey/McDowell.pdf.

18. Nye, Joseph et al., eds., *Why People Don't Trust Government*, Harvard University Press, 1997.

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Ballot Measure Resolutions

Ballot Measure 26-34, Parks Levy

Vote "YES" on Measure 26-34

RECOMMENDATION TO SUPPORT BALLOT MEASURE 26-34: Five-year Levy to Restore Park Services, Repairs, Recreation Programs

"While there are many things, both small and great, which may contribute to the beauty of a great city, unquestionably one of the greatest is a comprehensive system of parks and parkways. "
-- Olmsted Brothers, 1903 Report to the Portland Parks Board

The Portland City Council passed Ordinance No. 176201 referring a "five-year levy to continue park services, repairs and recreation programs" to the May 21, 2002 ballot as Ballot Measure 26-28.

Ballot Measure 26-28 received 70% voter support but did not take effect because the 50% voter turnout requirement to pass levies was not met.

On July 24, 2002 the City Council passed Resolution No. 36088 which revised the ballot title to read "restore" rather than "continue" Parks & Recreation funding and programs but made no substantive changes.

The Council voted to refer the new levy measure to the November 2002 ballot as Ballot Measure 26-34.

The measure will levy $.39 per $1,000 of assessed valuation to produce an estimated $49.4 million over 5 years, averaging'$9.88 million per year, and costing the average homeowner (based on a home valued at $150,000) $59.00 per year, or $5.00 per month.

City Club Resolution on *Ballot Measure 26-34*

The levy funds from Ballot Measure 26-34 will be spent on:

. Restoration of basic park maintenance programs including litter removal, restroom cleaning and mowing;

. Correction of urgent safety problems with playground equipment, play fields, community centers and pools;

. Repair of some playing fields around schools in the Centennial, David Douglas, Reynolds, Parkrose and Portland Public Schools districts;

. Prevention of additional cuts to after school tutoring, recreation activities, and summer playground programs.

In 1938, 1950, 1978, and 1994, City Club of Portland conducted ballot measure studies on parks levies. In each case, the Club came out firmly in support of the ballot measures.

In 1994, the Club also produced a long-term study report entitled *Portland Metropolitan Area Parks*. The longer report supported improving maintenance, effecting deferred repairs, upgrading and adding facilities, and restoring or expanding programs. Several of the major recommendations in that report have been realized, in part because of the funds provided by the 1994 levy.

Since 1997, budget constraints have again led to curtailed programs, deferred maintenance of property and facilities, diminished safety on playgrounds and equipment, and closure or curtailment of open hours at certain facilities.

Common themes in the Club's earlier reports still hold true today:

"Portland's parks are the jewels in the crown of our city and represent one of the most favorable aspects of life in Portland. Portland, however, lacks the capacity to meet the parks needs of its existing and expanding population." (*Portland Metropolitan Area Parks*, Sept. 1994, Section VI, Conclusions, p. 137) While this may be less true now, the pressure of increasing population and park use continue to tax the system.

Proper physical maintenance of the parks, and of the buildings

City Club Resolution on *Ballot Measure 26-34*

and facilities that are contained within, is an ongoing necessity. However, budget pressures force deferred repairs, curtailed programs, and decreased staff available to run programs.

The programs conducted in those facilities, by the Portland Bureau of Parks and Recreation, benefit all citizens; from elders taking a quiet walk in Laurelhurst Park, to joggers and hikers in Forest Park, to swimmers and basketball players who use the pools and courts in the parks and community centers around the city.

In particular, youth- oriented programs run by the Bureau of Parks and Recreation offer constructive, creative, and healthy outlets for young minds and bodies, and offer safe, positive activities for their time away from home and school.

The collaboration between the Bureau of Parks & Recreation and the area's public schools, which includes collocated facilities and Parks & Recreation programs run in schools, has been positive and beneficial to both agencies and to the public they serve.

Although City Club taxation studies have found that the property tax is undesirably regressive and properties are now inequitably assessed because of Measure 50 (1997), fundamental tax reform is not being considered at this time, and no realistic alternative exists to raise needed revenue for parks services.

THEREFORE, BE IT RESOLVED;
in light of the ongoing needs of the Bureau of Parks and Recreation for maintenance and improvement of the facilities and programs which well serve our community, and the need to restore funding and programs cut since July 1, 2002, and following City Club's support of past levies to meet those needs, the Board of Governors recommends that the membership vote “YES” on Ballot Measure 26-34 on the November 2002 ballot.

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Ballot Measure Resolutions

Ballot Measure 26-36, Library Levy

Vote "YES" on Measure 26-36

RECOMMENDATION TO SUPPORT BALLOT MEASURE 26-36:
Renew Five-year Local Option Levy for County Library Services

Recognizing the great importance of the Multnomah County Library as an educational and cultural resource available to all adults and children of the county, the City Club of Portland has studied and supported library levies on four occasions (1976, 1984, 1986 [as part of an extensive study of the library] and 1987). The following resolution includes a summary of the reports from these studies updated to current conditions. This resolution is essentially the same as the resolution passed by the Club in support of Ballot Measure 26-32 that appeared on the ballot in May 2002. Ballot Measure 26-36 (November 2002) and Ballot Measure 26-32 (May 2002) are identical with the exception of a revised starting date of July 2003 for the current measure (as compared to July 2002 for the previous measure).

On May 21, 2002 Measure 26-32 was approved by 59% of voters but could not take effect because of inadequate voter turnout.

The Board of County Commissioners for Multnomah County on August 1, 2002 passed Resolution No. 02-109 referring a "five-year local option levy for library services" to the November 5, 2002 ballot as Ballot Measure 26-36.

Measure 26-36 seeks to maintain the current level of library service through 2007.

Ballot Measure 26-36 will levy 75.5 cents per $1000 of assessed value

to produce an estimated $145.5 million over five years, averaging $29.1 million per year, and costing the average homeowner (based on a home valued at $150,000) $95.00 per year (an increase of $20 per year), or $7.93 per month.

The library is critically dependent on levy money--more than 48% of its budget comes from this source.

The library provides educational and cultural resources to the majority of county residents--77% of adults and children in Multnomah County hold library cards.

Library users check out an average of 24 books for every child, woman and man each year- -the highest rate compared to ten library systems of similar size in the country.

Library financial support is $64.15 per person, compared to a median level of per capita support of $62.15 among ten comparable library systems.

Thirty-four thousand (34,000) children participate in the library's summer reading program.

The library is the major provider of computer and digital information resources to roughly half of the county residents who do not own a computer.

The library is a major provider of information needed for the formation and maintenance of businesses.

The library is a major provider of information needed for career planning.

This measure will support the restoration of Monday operating hours for the library.

The total county library support including this measure will amount to about four percent (4%) of the total county budget.

Although City Club taxation studies have found that the property tax is undesirably regressive and properties are now inequitably assessed

City Club Resolution on *Ballot Measure 26-36*

because of Measure 50 (1997), fundamental tax reform is not being considered at this time, and no realistic alternative exists to raise needed revenue for library services.

THEREFORE, BE IT RESOLVED that the Board of Governors recommends that the membership vote "YES" on Ballot Measure 26-36 on the November 2002 Ballot.