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2006 Ballot Measure Report Measures 41 & 43

City Club of Portland (Portland, Or.)

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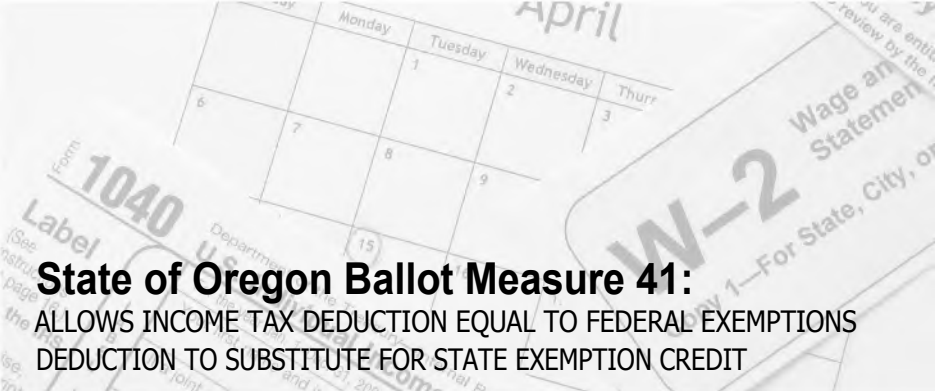
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2006 Ballot Measure Report Measure 41

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State of Oregon Ballot Measure 41: ALLOWS INCOME TAX DEDUCTION EQUAL TO FEDERAL EXEMPTIONS DEDUCTION TO SUBSTITUTE FOR STATE EXEMPTION CREDIT

Ballot Measure 41 would allow Oregon income taxpayers to calculate their personal state income tax liability in one of two ways, both of which are linked to their federal tax liability. Proponents of Measure 41 proposed the measure as a means to reduce the amount of personal income taxes collected by the state of Oregon. They argue it is a necessary remedy for waste in government and an appropriate response to an ever-increasing cost of living for taxpayers.

Your committee acknowledges that state government, like other public and private organizations, could improve its service delivery and reduce unnecessary spending. However, Measure 41 is not the way to accomplish this goal. Your committee concludes that voters have no way of knowing the specific budgetary consequences of their vote on Measure 41, though your committee believes that public education, health and human services, and public safety are the programs most likely to be adversely affected by Measure 41.

Your committee concludes that the small tax benefit some taxpayers would receive from Measure 41 does not justify the negative impact on public services that benefit the state as a whole.

Therefore, your committee unanimously recommends a NO vote on Measure 41.

City Club membership will vote on this report on Friday, October 6, 2006. Until the membership vote, 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 20, 2006 and online at www.pdxcityclub.org.

I. INTRODUCTION

Ballot Measure 41 will appear on the ballot as follows:

ALLOWS INCOME TAX DEDUCTION EQUAL TO FEDERAL EXEMPTIONS DEDUCTION TO SUBSTITUTE FOR STATE EXEMPTION CREDIT

Result of "Yes" Vote: "Yes" vote allows personal income tax deduction equal to total federal deduction for all exemptions to substitute for state exemption credit; reduces revenue to state.

Result of "No" Vote: "No" vote rejects allowing personal income tax deduction equal to total federal deduction for all exemptions to substitute for state exemption credit.

Summary: To determine taxable income for federal personal income tax, taxpayers generally may claim deduction (\$3,100 maximum in 2004) for each exemption; exemption exists for taxpayer, spouse, each dependent. For state income tax purposes, taxpayers currently may not claim deductions based on federal return's exemptions but may subtract exemption credit (\$151 in 2004, multiplied by number of federally-allowed exemptions) from state income tax liability. Measure authorizes a deduction on state income tax return for each dependent, taxpayer, and spouse claimed as exemption on federal return; exemption credit may substitute for the deduction if lower tax results. Reduces revenue available for state expenditures; provides no replacement revenue. Other provisions.

The language of the caption, question and summary was certified by the Oregon Secretary of State.

Ballot Measure 41 was placed on the November 2006 ballot by initiative petition. Russ Walker, director of Oregon FreedomWorks, the state chapter of a national lower-tax, smaller-government organization, and Abner and Carol Bobo are the chief petitioners. If approved, Ballot Measure 41 would reduce Oregon state revenue through a personal state income tax reduction. Proponents of Measure 41 propose the measure as a means to reduce the amount of personal income taxes collected by the state of Oregon, asserting it is a necessary remedy for waste in government and an appropriate response to an ever-increasing cost of living for taxpayers.

City Club created a committee of eight Club members to analyze Measure 41 and issue a voting recommendation. Committee members were screened to ensure that no member had a direct stake in the outcome of the study (other than as a taxpayer) or has taken a public position on the subject of the measure. Your committee conducted its research from July 25 to September 14 by interviewing proponents and opponents of the measure, as well as relevant experts on state revenue. Your committee also reviewed numerous articles, reports and other pertinent documents and attended a public hearing on the explanatory statement and financial estimate statement for Measure 41.

11. BACKGROUND

Ballot Measure 41 would allow Oregon income taxpayers to calculate their personal state income tax liability in one of two ways, both of which are linked to their federal tax liability. Under the current system, taxpayers calculate their state income tax liability by their taxable income and then subtracting a fixed credit amount (currently \$151) multiplied by the number of allowable exemptions.* If passed, Measure 41 would allow state income taxpayers to reduce their taxable income by the same amount deducted on their federal income tax (\$3,200 per exemption in 2005).† Proponents of Measure 41 assert that most filers would benefit from taking the deduction rather than the credit, but the measure allows taxpayers to choose one of the two options, but not both.

Using the federal tax exemption rather than a state credit has precedent in Oregon. Oregon used the federal deduction until 1983 when the state passed a measure temporarily instituting a tax credit to replace the federal deduction in an effort to raise more revenue. That tax credit was made permanent in 1985 and indexed for inflation in 1987. Should Measure 41 pass, any future changes to federal tax exemption deduction rates would consequently be adopted in Oregon's state tax system as well.

Estimate of Financial Impact

The state's financial estimate committee is required by statute to estimate only the *direct* financial effects of ballot measures. The committee is comprised of the Oregon Secretary of State, State Treasurer, director of the Department of Administrative Services, director of the Department of Revenue, and a representative of local government (currently the chief financial officer for Tualatin Valley Fire and Rescue).

Measure 41 would



exemption in 2005).

* A **tax deduction** is any allowable item or expenditure subtracted from gross income to reduce the amount of income subject to tax. A **tax credit** is a dollar-for-dollar reduction in the tax payment required from a person. Deductions and exemptions reduce the amount of your income that is taxable. Tax credits reduce the actual amount of tax owed.

† The 2005 federal personal tax deduction was \$3,200 (maximum). The ballot measure summary published by the Secretary of State's office cites the 2004 figure of \$3,100.

The committee estimates Measure 41 would reduce state revenue by approximately \$151 million for fiscal year 2006-07. In fiscal year 2007-08 the measure would reduce state budget revenues by \$385 million and reduce the 2007 personal income tax “kicker” by \$151 million. The measure would reduce state budget revenues \$407 million for fiscal year 2008-09 and \$430 million for fiscal year 2009-10. The annual impact would increase over time due to population growth and increases in the amount of the federal income tax personal exemption, which is indexed for inflation.

Measure 41 would require \$114,750 in state expenditures to pay for the cost of implementation. The measure would have no *direct* financial effect on local government revenue or expenditures.

III. ARGUMENTS PRO & CON

Arguments Advanced in Favor of the Measure 41

Proponents of Measure 41 made the following arguments in support of the measure:

1. Working families in Oregon pay more than they should in taxes. Measure 41 redresses an excessive level of taxation in Oregon.
2. Oregonians can spend their money better than government can.
3. With constant increases in the cost of living, families deserve to keep more of their money. Measure 41 will provide \$600 to \$1,000 per year in tax relief for the typical family of four.
4. Measure 41 is fundamentally fair to all Oregonians in that every Oregonian will receive the same benefit from the measure.
5. Measure 41 is a response to government inefficiency. Waste in government, particularly public employee retirement benefits (PERS) and in the public school system, would be reduced as a byproduct of lowering income tax revenue.
6. Measure 41 could force state government to privatize some public services thereby reducing public spending.

Arguments Advanced Against Measure 41

Opponents of Measure 41 made the following arguments in opposition to the measure:

1. Measure 41 would force budget cuts to vital state services as a result of decreases in revenue to the general fund. The services most likely to incur the greatest reductions would be education, health and human services, and public safety because they are the largest budget categories in the general fund.
2. The benefits that proponents claim would result from Measure 41 are illusory. Measure 41 would offer little tax relief to low-income individuals or to fixed-income seniors.
3. The immediate individual tax relief promised by Measure 41 would be partially offset by a one-time reduction in personal kicker refunds in 2007.
4. Any economic stimulus that would result from tax relief to individual Oregonians would be outweighed by the negative impact that would result from curtailed public spending.
5. Privatization is not a panacea for alleged misuse of public funds; some of the most egregious cases of government inefficiency occur with public-private partnerships. Oregon's current method of delivering health care services is an example.
6. By decreasing the amount of paid state income tax that is deductible when calculating federal tax liability, Measure 41 would increase the amount of taxes Oregonians will send to the federal government by an estimated \$40 million per year.
7. Oregon would likely lose some federal matching dollars as a result of state budget cuts.
8. Measure 41 would connect Oregon's state income tax to the federal tax system, thereby ceding some local control to the federal government because state revenues would be affected by future changes to the amount of the allowable exemption in the federal tax code.
9. If Measure 41 and Measure 48 (state spending limit) both pass, their collective impact will have a devastating effect on state services.

IV. DISCUSSION

Your committee used City Club's *Tax Reform in Oregon* report adopted by Club members in 2002 as a framework for evaluating Measure 41. The tax reform report is the product of a thorough and objective effort by City Club to analyze the tax system in Oregon. The report serves as a guide for evaluating tax reform efforts, both comprehensive and singular.

The report established six major criteria for evaluating a state tax system based in large part on Adam Smith's *The Wealth of Nations*. The criteria are sufficiency, fairness, certainty, clarity, efficiency and neutrality. The report states, "While this set of criteria is most appropriately applied when judging an overall tax system, some of them can also be relevant in attempting to measure the nature and likely effects of individual taxes and tax proposals to change the system." Acknowledging the precedent that has been established with the tax reform report, and your committee's belief in its usefulness as a guiding tool, we accepted and used these six principles to evaluate Measure 41.

SUFFICIENCY: what effect would Measure 41 have on the ability of the state to fund public services deemed necessary by citizens and the legislature?

State income tax revenue is directed to Oregon's general fund—a discretionary pool of money that the state Legislature budgets every two years primarily for education, health and human services and public safety. Ninety-six percent of the general fund is spent on these services. Other state programs, such as the Department of Transportation, Department of Motor Vehicles and the Department of Forestry, are funded primarily by other sources (e.g., dedicated fees and taxes). Should Measure 41 pass, the overall state budget would decrease by 1 percent while decreasing the general fund by 6 percent in the first full fiscal year (2007-08) and 6.5 percent beginning in fiscal year 2008-09.

Proponents argue that this budget reduction is desirable because state government already has more than adequate funds to pay for public services. They hope the measure will indirectly force the Legislature to address specific areas of alleged misspending, such as funding unstaffed positions as a means to maintain budget levels from year to year and the prevailing wage law. Proponents of Measure 41 also believe the measure will be a catalyst for rectifying what they identify as overpaid non-teaching positions in K-12 education and wasteful transportation projects. "Budget growth at the state level has

* Fifty-eight percent of state income tax revenue is spent on education, including K-12, community colleges and universities; 22 percent is health and human services, such as welfare and the Oregon Health Plan; and 16 percent is spent on public safety, including prisons and state police. (League of Women Voters of Oregon, Fact sheet "Oregon Tax Myths and Facts").

been going up 10 to 11 percent when averaged out over 20 years. This does not fit any economic model. No private industry has that growth, but the state thinks they have that right," argued one proponent. Further, proponents reason that government should play a smaller role in people's lives.

Your committee did not research or evaluate funding levels for or the performance of specific government programs. However, to the degree that proponents raised the issue of government waste and sufficiency of funding, your committee sought information from other parties to help analyze these arguments. A 2006 survey by the Center on Budget and Policy Priorities, a national nonpartisan research organization, finds that Oregon's general fund spending for fiscal year 2007—five years into an economic recovery—remains below pre-recession levels as a share of gross domestic product. Of the 26 states where general fund budget remains below pre-recession levels, only six other states are spending less than Oregon relative to 2000 spending levels.

Proponents assert that spending on education exceeds what is reasonably warranted. One proponent suggested that Oregon's neighboring states do a better job of spending less money on education than Oregon with better results. However, the National Education Association, in a 2005 report, ranked Oregon 31 out of 51 in per student spending. Oregon's spending is in line with its west coast neighbors. In academic year 2004-05, Oregon spent \$7,842 per student for operating expenses compared to \$7,858 in Washington (ranked 30th) and \$7,815 in California (ranked 32nd). In addition, this report indicates that Washington's spending on students was up 6.9 percent in the 2004-05 school year from the previous year while California's spending was up 3 percent in the same time frame. Oregon increased spending by 1.8 percent.

As mentioned earlier, Measure 41 would reduce state revenue by approximately \$151 million for fiscal year 2006-07 and \$385 million in fiscal year 2007-08. Proponents agree with this estimate. Your committee, along with state officials, can only speculate as to how these reductions in state revenue would be absorbed by the state since the Legislature is responsible for adopting the general fund budget. It is your committee's belief that because 96 percent of the general fund is currently spent on education, health and human services, and public safety, these are the programs that would be most affected.

It is your committee's belief that because 96 percent of the general fund is currently spent on education, health and human services, and public safety, these are the programs that would be most affected.

As reported by the state's financial estimate committee, Measure 41 would have no *direct* effect on local government revenue or expenditures. However, state general fund dollars have historically been allocated to local services such as health care, social services and public safety—often through contracts with counties and, in some cases, with private entities. Though the indirect effect of these proposed changes is unknown, your committee believes it is logical to conclude that Measure 41 would reduce state funding for services provided by local governments.

In response to lower state income tax revenue should Measure 41 pass, proponents of the measure recommend privatization of some government services as a means to reduce government spending. A leading proponent of the measure acknowledged that privatization also has the potential for corruption and waste but that "it doesn't hold a candle to the waste in government spending."

Though the indirect effect of these

provided by local governments.

While proponents of the measure offer privatization as a response to the reduction in state revenue that the measure would create, the language of Measure 41 does not promote or enforce privatization of government services. For that reason, researching the effectiveness of privatization falls outside the scope of your committee's work. Your committee offers no conclusion on the merits of privatization or the likelihood that Measure 41 would promote privatization of government services.*

FAIRNESS: would Measure 41 make Oregon's tax system more or less fair?

To analyze the fairness of Measure 41, your committee considered three definitions of fairness: (1) the fairness of the tax burden on Oregon citizens compared to citizens of other states, both currently and in the event of Measure 41 passing; (2) the fairness of Measure 41 in terms of the different levels of tax relief it would deliver to Oregon taxpayers; and (3) the effect Measure 41 would have on the fairness of Oregon's overall tax system as measured in terms of "progressivity". Your committee found Measure 41 to fall short in terms of the first two definitions and to have little positive or negative effect in terms of the third definition.

* Readers are encouraged to read and consider City Club's 1999 research report entitled *Privatization of Government Services*. Available online at www.pdxcityclub.org.

Proponents of Measure 41 state that Oregonians pay a disproportionately high level of taxes and thus deserve the tax relief the measure would deliver. Your committee found little evidence to support proponents' claims that the tax burden on Oregon's citizens is unjustifiably high.

(1) Taxes in Oregon Relative to other States

Generally, there are two ways to compare the tax burden in Oregon to the tax burden in other states: by comparing only personal income tax liability or by comparing all taxes paid. Because Oregon depends heavily on income tax and has no sales tax, individual income tax liability tends to be high compared to other states that have an income tax. The Legislative Revenue Office has used data from 2003-04, the most recent year for which information is available, to compare the tax burden in Oregon to that of other states. (See Figures 1 and 2 below.) The LRO found that Oregon ranks second in terms of the percentage of personal income paid in personal income taxes (4.2 percent). According to the LRO, Measure 41 would cause Oregon to move to third, with the percentage of personal income paid in taxes falling to 3.9 percent. In terms of overall taxes paid, however, the LRO found that Oregon ranks near the bottom nationally: 42nd in 2003-04, with Oregonians paying 10.1 percent of their income in total state taxes. Should Measure 41 pass, Oregon would drop to 44th nationally, with individuals owing 9.8 percent of their personal income in total state taxes.

Figure 1 Personal Income Tax as a Share of Personal Income

Current Law Scenario			Measure 41 Scenario		
State	Rank	Percent	State	Rank	Percent
New York	1	4.4%	New York	1	4.4%
Oregon	2	4.2%	Maryland	2	4.0%
Maryland	3	4.0%	Oregon	3	3.9%
Ohio	4	3.6%	Ohio	4	3.6%
Massachusetts	5	3.5%	Massachusetts	5	3.5%
Kentucky	6	3.4%	Kentucky	6	3.4%
Minnesota	7	3.3%	Minnesota	7	3.3%
North Carolina	8	3.2%	North Carolina	8	3.2%
Wisconsin	9	3.1%	Wisconsin	9	3.1%
Maine	10	3.1%	Maine	10	3.1%

Source: Oregon Legislative Revenue Office (fiscal year 2003-2004)

Figure 2 Total Taxes as a Share of Personal Income

Current Law Scenario			Measure 41 Scenario		
State	Rank	Percent	State	Rank	Percent
Montana	41	10.1%	Montana	41	10.1%
Oregon	42	10.1%	Virginia	42	10.0%
Virginia	43	10.0%	Texas	43	9.9%
Texas	44	9.9%	Oregon	44	9.8%
Missouri	45	9.7%	Missouri	45	9.7%
Colorado	46	9.3%	Colorado	46	9.3%
New Hampshire	47	9.2%	New Hampshire	47	9.2%
South Dakota	48	9.1%	South Dakota	48	9.1%
Tennessee	49	9.0%	Tennessee	49	9.0%
Alabama	50	8.9%	Alabama	50	8.9%

Source: Oregon Legislative Revenue Office (fiscal year 2003-2004)

Ken Rocco, Oregon's legislative fiscal officer, told your committee that Oregonians' individual tax burdens relative to their incomes, on the whole, have decreased over the past 15 to 20 years. Although the amount of dollars collected in state income taxes has increased, the increase reflects the effects of inflation and increases in population and income levels—not an increase in the percent of personal income paid in taxes. A report by the League of Women Voters of Oregon demonstrates that, as a percent of taxpayers' personal incomes, state and local taxes have gone down from more than 12 percent in 1990 to less than 10 percent in 2005.⁴ Given this evidence, your committee found that there is not an inherent unfairness in the current tax burden in Oregon that would be redressed by Measure 41.

(2) levels of Tax Relief Provided by Measure 41

Proponents of Measure 41 further argue that it is fair because, according to a press release from FreedomWorks Oregon, "every Oregonian receives the same benefit from the tax cut." Your committee found this statement to be inaccurate.

Because Measure 41 offers the alternative of a deduction for each exemption, rather than a credit, the measure would not affect some taxpayers at either extreme of the economic scale. Twenty-one percent of taxpayers would receive no benefit—mostly in the bottom two-fifths of the income scale. About half of the lowest income quintile would receive no benefit. In addition, under current law, only about

one in ten of the top 1 percent would receive a tax benefit from Measure 41, but federal law is changing. By 2010, the benefit would be extended to all taxpayers in the highest 1 percent of income earners.⁵ On average, if this measure becomes law, the middle three income quintiles would receive a tax reduction of \$160 annually per person. Because the amount a taxpayer benefits depends on income and on the number of dependents claimed, many single and elderly taxpayers would receive less of a tax benefit from Measure 41, and some would receive no benefit at all. Generally, taxpayers earning between \$27,000 and \$72,000 who can claim multiple dependents would have the greatest reduction in taxes should Measure 41 pass.

Your committee found that there is not an inherent unfairness in the current tax burden in Oregon that would be redressed by Measure 41.

(3) Measure 41's effect on the "Progressivity" of Overall Taxation in Oregon

Although taxpayers would not all benefit equally from Measure 41, proponents and opponents agree that this measure would have little effect on the overall "progressivity" of Oregon's tax system. In simple terms, a progressive income tax is one

where the tax rate increases or decreases proportional to income. In isolation, Oregon's personal income tax could be considered mildly progressive—almost flat—in that those at the very bottom of the income scale have a slightly lower tax burden proportional to their income than those just above them. Oregon's overall tax structure is also mildly progressive, relative to other states, because Oregon does not have a sales tax, which tends to be regressive. Your committee found that Measure 41 would not have a substantial effect—positive or negative—on the overall “progressivity” of Oregon's entire tax system.

CeRTAINTY. what effect would Measure 41 have on the certainty or predictability of Oregon's tax system?

Changes in the amount allowed for federal deductions would directly affect Oregon's tax collections. Currently, federal taxpayers can take a deduction of \$3,200 (2005 tax year) for each personal exemption allowed under federal law. This personal income exemption is adjusted for the cost of living each year and is not immune to other changes.

A look at the recent history of the federal personal exemption reveals that it has increased every year since 2001; increasing from \$2,900 to \$3,300 per exemption. Connecting Oregon's state tax deduction to the federal tax code would bind to Oregon whatever changes to the exemption levels are made in the federal tax code, which could be more extensive than the increases based on inflation. Your committee found that connecting Oregon's state tax deduction to the federal tax code has,

in the past, produced uncertainty in state revenue. Measure 41 would increase this uncertainty.

Your committee concludes that Oregon should not subject its income tax collections to changes in the amount of the federal deduction.

CLARITY. Are the potential effects of Measure 41 on Oregon and its taxpayers understandable and described in clear and simple terms?

Your committee applied City Club's clarity criteria to individual taxpayers' ability to understand their tax situation as well as voters' abilities to understand the budgetary implications of the tax reduction proposed by Measure 41.

Measure 41's state tax benefit for individual households is calculable even though it is not uniform for every taxpayer. Proponents state that Measure 41 would result in \$600 to \$1,000 in tax relief for the typical family of four.⁶ When it comes to federal taxes, however, some taxpayers who itemize deductions would pay more federal income taxes because the state tax they are allowed to deduct from their federal tax returns would be less. Oregon tax code includes three situations which are not addressed in federal tax code. The measure would have unclear consequences for the following exemption categories: (1) taxpayers with severe disability and handicapped children; (2) non-resident filers; and (3) taxpayers subject to the federal alternative minimum tax.

All parties interviewed by your committee agree that Measure 41 would substantially

reduce revenue available to the general fund. However, uncertainty lies in which specific programs would suffer budget cuts or freezes to compensate for the loss in revenue. Thus, your committee concludes that Measure 41 does not make clear the consequences of voting for the measure.

EFFICIENCY: what effect would Measure 41 have on the complexity and cost of taxpayer compliance, as well as the burden of collection and enforcement?

Measure 41 would present an estimated one-time expense of \$114,750 to implement. Your committee concludes this is an insignificant amount in this context.

Measure 41 would allow the federal deduction to be used as an alternative to the state credit. While allowing both options does not simplify the collection process, your committee found no evidence that collecting taxes would be more difficult under this measure.

NEUTRALITY: would Measure 41 create significant incentives or disincentives for particular economic behavior?

Certain tax policies, such as cigarette taxes or taxes on particular types of fuels, are likely to influence commerce and consumers' actions. Although passage of Measure 41 could cause mild changes in economic behavior by providing some taxpayers with increased disposable income, your committee determined that it would be neutral in that it would not create incentives or disincentives that would influence how that income would be spent.

ECONOMIC IMPACT: what effect would Measure 41 have on economic activities and private-sector decisions? would Measure 41 adversely affect the ability of businesses within the state to compete with those outside of Oregon?

In addition to evaluating Measure 41 using the six criteria adopted by City Club, your committee also considered the potential economic impact of Measure 41 on the state of Oregon. It is difficult to determine specific long-term consequences for Oregon's economy and business climate should Measure 41 pass. Your committee considered evidence from several neutral sources in regard to the economic impact of the measure.

An analysis using the Oregon Tax Incidence Model by the Legislative Revenue Office showed a modest short-term stimulus to Oregon's economy, driven by increased purchasing demand on the part of Oregon households. The increased demand, however, would not be sufficient to offset the expected loss in state income tax revenue. In the long-term, the LRO expects Measure 41 would have little impact on the state's overall competitive position.

Several business groups are opposing Measure 41, citing its failure to address pressing concerns about Oregon's tax structure, revenues and expenditures. The Oregon Business Association states that although the measure would provide some tax relief to low- and middle-income earners, it fails to address what they see as a need for a more progressive tax structure across the board. OBA argues that meaningful tax reform must be broad and

comprehensive, and that the relatively small amount of relief Measure 41 would deliver to individual taxpayers would not offset the significant cuts it would cause to programs and services that are critical to Oregon and its citizens.

The Oregon Business Council voices similar concerns with Measure 41. OBC finds the measure incompatible with their stated public finance priorities:

1. Making selective investments in education and other services as the economy grows;
2. Building a rainy day fund to avert steep funding cuts during future recessions;
3. Developing a long-term revenue and spending plan to determine appropriate tax levels; and
4. Reforming the tax code with an aim to stabilize revenue and create stronger incentives for economic growth.

OBC notes that through property tax limitations and the kicker rebate system, Oregon has already adopted policies to lower state taxes per capita to among the lowest in the nation. The result is that spending for education (particularly higher education), health care and other services have been in decline relative to other states. OBC argues that before adjusting tax rates further, Oregon needs a long-term budget plan that addresses how the state will fund essential public services.

While neither OBA nor OBC nor any other source could predict the exact effects of Measure 41 on private-sector economic activities or on the competitiveness of Oregon businesses, your committee believes that the cuts to education likely to result should Measure 41 pass would have detrimental economic effects. The Portland Development Commission, which has not taken a public position on Measure 41, confirms that most businesses considering relocating to Oregon are concerned about the quality of the state's K-12 and post-secondary education systems, in terms of both the preparedness of our workforce and the effect on the families of employees relocating to the state.

Your committee believes that the cuts to education likely to result should Measure 41 pass would have detrimental economic effects.

V. CONCLUSIONS

- Voters have no way of knowing the exact budgetary consequences of their vote on Measure 41; however, your committee concludes that the measure would inhibit the state's ability to provide sufficient revenue for essential public services.

- Public education, health and human services, and public safety are the programs most likely to be negatively affected by Measure 41.
- The small tax benefit some taxpayers would receive from Measure 41 does not justify the negative impact on public services that benefit our state as a whole.
- Oregon may need tax reform, but piecemeal measures such as Measure 41 draw attention and resources away from enacting comprehensive reforms.
- Oregon should not subject its income tax revenue to changes in the amount of the federal deduction.
- Cuts to Oregon's education budget, which likely would result from the passage of Measure 41, would have a long-term detrimental effect on the state's economy.
- Measure 41 would not make Oregon's tax structure any more or less fair than it is now.
- Measure 41 would have no appreciable effect on the state's government ability to collect taxes.
- Measure 41 would create no significant incentives or disincentives for particular economic behavior.

VI. RECOMMENDATION

Your committee unanimously recommends a No vote on Measure 41.

Respectfully submitted,

Vern Faatz
Brien Flanagan
Lois Leveen
Guenevere Millius
Pauline Krips Newman
Paul Schmidt
Mike Schryver
Jodi Heintz, chair

Thane Tienson, research adviser
Wade Fickler, policy director

ACKNOWLEDGEMENTS

Your committee thanks our research adviser, Thane Tienson, City Club's policy director Wade Fickler, and all witnesses who shared their time, knowledge and dedication to this issue with us.

CITATIONS

- 1 FreedomWorks press release. Available from www.freedomworks.org.
- 2 "Oregon Still Playing 'Catch-Up' In New State Budget," Center for Budget and Policy Priorities, August 2006.
- 3 2005 *Rankings and Estimates: A Report on School Statistics* by the National Education Association, August 2005.
- 4 League of Women Voters Oregon, Fact sheet "Oregon Tax Myths and Facts."
- 5 "Fool's Gold: How Measure 41 would leave seniors and others behind," Oregon Center for Public Policy, August 25, 2006.
- 6 FreedomWorks press release at www.freedomworks.org; interview with Tim Trickey.

VII. APPENDICES**witnesses**

Phil Donovan, Campaign Manager, Defend Oregon Coalition
Michael Leachman, Policy Analyst, Oregon Center for Public Policy
Steve Novick, Pyramid Communications, consultant to Defend Oregon Coalition
Anita Olson, President-elect, Oregon PTA
Ken Rocco, Legislative Fiscal Officer, State of Oregon
Tim Trickey, President, Democracy Direct Inc.
Paul Warner, Legislative Revenue Officer, State of Oregon

Your committee had a challenging time finding people willing to testify in favor of Measure 41. For various reasons of their own, Kevin Mannix, a proponent of the measure on the state's explanatory statement committee; Bill Sizemore, author of the measure; Russ Walker, chief petitioner for Measure 41; and Loren Parks, a major contributor to the signature-gathering effort for this initiative declined to be interviewed by your committee. When contacted, the staff of the national FreedomWorks organization referred your committee to Mr. Walker.

Nonetheless, your committee collected considerable information in support of Measure 41 from other sources including the Web site for FreedomWorks Oregon as well as newspaper articles and published interviews with proponents. Tim Trickey, whose company collected most of the signatures to put the initiative on the ballot, was a valuable firsthand source of information.

Publications

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- Shannon Spillane, "Oregon Still Playing 'Catch-Up' In New State Budget," Center on Budget and Policy Priorities, August 2, 2006.
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2006 Ballot Measure Report Measure 43

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State of Oregon Ballot Measure 43:

REQUIRES 48-HOUR NOTICE TO UNEMANCIPATED MINOR'S PARENT PROVIDING ABORTION; AUTHORIZES LAWSUITS, PHYSICIAN DISCIPLINE

For minors 15 years and older, Oregon law currently leaves parental notification for all medical procedures, including abortions, to the discretion of the minors and their medical providers. Existing law allows medical providers to notify the parents of minors 15 years and older about their child's health care, if the provider determines it is in the best interest of the patient.

Measure 43 would change the law for minors 15 years and older who are seeking an abortion and their medical providers. The measure would authorize civil suits and professional sanctions if medical providers fail to (a) give notice to the parents of minors 15 years and older seeking an abortion and (b) wait 48 hours after the parents have received notice before providing an abortion. Exceptions to the mandatory notification and waiting period do not include rape or incest.

Proponents and opponents of Measure 43 disagree about the need for mandatory notification and its value in assisting minors in making informed and wise decisions. Proponents and opponents also disagree about Measure 43's exception for medical emergencies and whether its bypass option would meet the needs of minors seeking an abortion in special circumstances, including victims of abuse, rape and incest.

While your committee concludes that parents have a substantial interest in knowing when their 15-, 16- or 17-year-old daughter intends to have an abortion, we also conclude that voters should not transform parental interest into a parental right that is binding on medical providers. Current law has established and mainstream scientific research shows that minors 15 years and older are generally competent to understand treatment alternatives, consider risks and benefits and responsibly consent to abortion.

Your committee was further troubled that Measure 43 does not include an exception for victims of rape or incest, and its definition of medical emergency may endanger the health of some minors seeking an abortion. Your committee also concluded that, as reflected in current law, medical providers are better suited, by virtue of training and experience, than administrative law judges to determine whether to notify parents of a minor's intent to have an abortion.

Your committee unanimously recommends a NO vote on Measure 43.

City Club membership will vote on this report on Friday, October 6, 2006. Until the membership vote, 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 20, 2006 and online at www.pdxcityclub.org.

I. INTRODUCTION

Ballot Measure 43 will appear on the ballot as follows:

REQUIRES 48-HOUR NOTICE TO UNEMANCIPATED MINOR'S PARENT BEFORE PROVIDING ABORTION; AUTHORIZES LAWSUITS, PHYSICIAN DISCIPLINE

Result of "Yes" Vote: "Yes" vote requires abortion provider to give 48-hour written notice to unemancipated minor's parent, with certain exceptions. Authorizes administrative discipline for physicians, parental lawsuits.

Result of "No" Vote: "No" vote retains current law allowing medical provider to provide minor 15 or older medical treatment, abortion, without parental notification; younger minors require parental consent.

Summary: Current law provides that minor 15 years or older may consent to and obtain medical treatment, including abortion, without parent notification; physician may notify parent without minor's consent. Minors 14 years or younger must obtain parental consent before treatment. Measure requires that provider notify unemancipated minor's parent 48 hours before performing abortion. Notification means written notice to parent by certified mail at parent's residence. Exceptions to notice requirement for documented medical emergencies, which do not include rape or incest. Unemancipated minor may apply for administrative hearing requesting abortion without notice to parent. Hearing shall be confidential, open only to minor, counsel, witnesses, judge. Failure to notify parent may subject provider to civil liability to parent; physicians face administrative sanctions, license suspension, or revocation. Other provisions.

The language of the caption, question and summary was certified by the Oregon Secretary of State.

A coalition led by Oregon Right to Life placed Measure 43 on the November 2006 state ballot by initiative petition. With minimal modifications, its provisions reflect state House Bill 2605, which passed in the House of Representative in 2005 and stalled in a Senate committee. If Measure 43 is adopted, it would amend Oregon law to require that medical providers wait 48 hours after providing written notification to the parents of a unemancipated minors before providing an abortion. The measure would also authorize civil suits and professional sanctions for medical providers' failure to comply.

City Club created a study committee of eight Club members to analyze Measure 43 and issue a voting recommendation. Committee members were screened to ensure that no member had an economic or personal interest in the outcome of the study or had taken a public position on the subject of the measure. The study was conducted from August 8 to September 12. Your committee interviewed proponents and opponents of the measure, expert witnesses and other individuals, and reviewed relevant articles, reports and other materials.

II. BACKGROUND

Current Oregon Law and Measure 43's Provisions

Oregon law currently permits, but does not require, medical providers to inform parents before providing any type of medical care, including abortions and prenatal care, to 15-, 16- and 17-year-old unemancipated minors who do not want their parents to be notified.^{*} While existing law allows this notification to take place, it also gives these minors the right to independently decide to have any medical treatment, including an abortion, against the wishes of their parents.[†]

Measure 43 would change Oregon law to stipulate that a "person may not perform an abortion on an unemancipated minor or a ward until 48 hours after the parent receives written notice from the person of the proposed abortion by certified mail," except in cases of medical emergency. Under Measure 43, medical emergencies would be limited to situations in which "failure to terminate the pregnancy or a delay in terminating the pregnancy would result in the death of the woman, serious impairment to bodily function or serious and permanent lack of function of any bodily organ or part." The measure does not allow exceptions for pregnancies that result from rape or incest.

The measure also authorizes parents to sue medical providers for civil damages and provides professional sanctions for those medical providers who fail to meet the measure's provisions.

The measure permits minors seeking an abortion to apply to the Department of Human Services for a hearing before an administrative law judge for permission to have an abortion without parental notification.

Following notification, parents of minors ages 15 years and older currently have no legal right, and under Measure 43 would still have no legal authority, to prevent their child from having an abortion.

*** Emancipated and Unemancipated Minors:** Under Oregon law, emancipation of a minor by court order generally terminates the parents' authority for care and treatment of the minor and recognizes the minor as an adult for the purposes of contracting and conveying, establishing a residence, suing and being sued, and for the purposes of the criminal laws of this state. (ORS 109.510, 109.520, 419B.552, 419B.373(4)) Unemancipated minors are subject to their parents' authority until they reach the age of majority by attaining age 18 or by marrying under Oregon law, with certain exceptions.

[†] Current law requires parent's permission for all medical care, including abortion, for minors under 15 years of age. Measure 43 would not change this law.

History of Abortion in Oregon

In 1969, Oregon made abortion legally available under restricted conditions. Four years later, in 1973, the United States Supreme Court's *Roe v. Wade* decision made Oregon's restrictions unconstitutional. *Roe* established a right to abortion, with "the medical judgment to be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well being of the patient."

In 1981, in *Planned Parenthood, Inc., et. al. v. Dept. of Human Resources of Oregon*, the Oregon Court of Appeals ruled the state was required to fund medically necessary abortions under the Oregon Constitution.

In 1983, Oregon updated its abortion laws to conform with *Roe v. Wade*. The restrictions on abortion contained in the 1969 law were repealed. Since 1983, there has been no doubt that anyone, 15 years or older, has the right to an abortion on the same basis as provided by the Supreme Court in *Roe v. Wade* and subsequent decisions.

Many attempts have been made through the legislative and initiative processes to limit the availability of abortion and to require parental notification in Oregon. Notable efforts are listed below.

- In 1978 and 1986 Oregonians considered ballot measures that would have prohibited state funding of abortions. City Club opposed both measures and voters rejected both.
- In 1990, Oregon voters by almost two to one rejected a ballot measure that would have banned abortions and voted 577,806 to 530,851 against a measure requiring parental notification for minors seeking an abortion.
- In 1999, the Legislature passed and Governor Kitzhaber vetoed House Bill 2633, which would have required parental notification before providing an abortion to a minor.
- As previously noted, in 2005 the Oregon House of Representatives passed House Bill 2605. The bill was stalled in a Senate committee when the Legislature adjourned and has now been resurrected through initiative petition as Measure 43.

The constitutionality of parental notification laws was first tested by the U.S. Supreme Court in 1979 in *Bellotti v. Baird*. The *Bellotti* court struck down a Massachusetts parental notification law because it lacked an adequate judicial bypass for minors in specific situations. Subsequently, the court has upheld other states' parental notification laws when they provide an adequate judicial bypass procedure.

Oregon Among the States

Proponents of Measure 43 point to Oregon's place among a minority of states that do not have laws requiring parental notification, parental consent or both. Thirty-four states have parental involvement laws in effect and another 10 have enacted them. In eight of those states, the laws are permanently enjoined by court order and are not in effect; in one the laws are not in effect due to pending litigation

and in another the state’s newly adopted policies are scheduled to take effect in November. Oregon is one of six states that has not adopted a parental involvement law. ¹

Proponents of Measure 43 say the prevalence of these laws indicates Oregon is out of step with societal norms. Opponents exult in Oregon’s history of support for women’s right to choose an abortion. The Guttmacher Institute, whose studies and statistics are widely used in such debates, notes that “Oregon does not have any of the major types of abortion restrictions—such as waiting periods, mandated parental involvement or limitations on publicly funded abortions—often found in other states.”²

Oregon Statistics

The Oregon Vital Statistics Report, published by the Department of Human Services, provides annual data from 1974 to 2004. (Data are not yet available for 2005.) One of the most notable statistical trends is the declining abortion rate in Oregon. Figure 1 demonstrates that the number of abortions among 15-, 16- and 17-year-old minors is decreasing as a proportion of the number of pregnancies. Not only are pregnancies among the target age group decreasing, but so is the proportion of these pregnancies ending in abortion.

Figure 1

**OREGON PREGNANCY AND ABORTION STATISTICS
For Minors 15 Years and Older**

YEAR	Average Annual Pregnancies (A=B+C)	Average Annual Births (B)	Average Annual Abortions (C)	Percent Pregnancies Aborted (D=C/A)
1974-1979	3,752	1,850	1,902	51%
1980-1984	3,139	1,532	1,608	51%
1985-1989	2,680	1,458	1,222	46%
1990-1994	2,880	1,792	1,088	38%
1995-1999	3,002	1,909	1,093	36%
2000-2004	2,131	1,368	763	36%

Pregnancy estimates are based on the total number of births and abortions. For 1985 and 1988 to current abortion estimates are based on reports for Oregon residents whether occurring in Oregon or another state. For years prior to 1985 (and 1986-1987) abortion estimates were based on Oregon occurrences only, but included abortions obtained by out-of-state residents. Because some neighboring states do not report abortions to state of residence (especially California), this results in minimal estimates for both abortions and pregnancies. Data summarized from Oregon Vital Statistic Report 2004, Volume 1, Table 4-1.

The Oregon Vital Statistics Report also states that for minors 15 years and older, the largest number of abortions (2,069) was reported in 1980, with the rate being 31.9 per 1,000 females in this age group; the smallest number (662) was reported in 2004, the rate being 8.8 per 1,000. Since 1994, the abortions in this age group declined by 51.6 percent and pregnancies declined 50.4 percent. In 2004, of all those in this age group having an abortion, 96 percent were unmarried, 87 percent were having their first abortion and 68 percent did not use contraception.

Your committee found no reliable statistics for how many parents of unemancipated minors having abortions are informed by their daughters or by the medical providers. Anecdotal information from proponents and opponents indicates that between 40 percent and 60 percent of parents are informed. Additional anecdotal information from abortion providers indicates that approximately 75 percent of minors seeking an abortion involve a responsible adult who may or may not be their parent.

III. ARGUMENTS PRO & CON

Arguments Advanced in Favor of the Measure

“Protect Our Teen Daughters,” the coalition working for passage of Measure 43, includes Oregon Right to Life, Oregon Family Council, Democrats for Life, Stronger Families of Oregon, Catholic Conference, Restore America and the Oregon Republican Party.

Proponents made the following arguments in favor of Measure 43:

1. Measure 43 will help parents meet their responsibilities.

Parents are notified before their daughter can have her ears pierced or receive an aspirin from a school nurse; they should be notified before their daughter can have an abortion. Parents are in a stronger position to support and counsel their daughter if they know she is pregnant and wants to have an abortion. This measure will ensure that parents’ need to know is met by written notification from medical providers.

2. Measure 43 will help pregnant minors make better decisions.

Many unemancipated minors do not tell their parents of the decision to have an abortion and later regret their silence. If told, parents could offer support and information.

3. Measure 43 provides a responsible bypass option.

The bypass option is easy to access, provides timely decisions and allows minors to report abuse, rape, incest or other problems in a safe setting.

4. Parental involvement will work in Oregon; it is already working in 34 other states.

Some states have had parental involvement laws on the books for more than two decades.

Arguments Advanced Against the Measure

The coalition leading the campaign to defeat Measure 43 includes Planned Parenthood of the Columbia/Willamette, Planned Parenthood of Southwestern Oregon, American Civil Liberties Union of Oregon and the Democratic Party of Oregon. Joining in opposition to the measure are the Oregon Education Association, the Oregon Nurses Association and the Oregon Medical Association.

Opponents made the following arguments against Measure 43:

1. Measure 43 is unnecessary.

Current law already allows physicians to notify parents of their daughter's intent to have an abortion without the minor's consent, if it is in the best interest of the patient. No law can successfully mandate good family communication.

2. Measure 43 makes no exceptions for rape or incest.

Many states with laws mandating parental involvement provide an exception for rape or incest.

3. Measure 43 provides a poorly designed bypass process that will not protect minors.

Administrative law judges are not as well equipped by training and experience as medical providers to decide whether to notify parents over the objections of a minor. Faced with the requirement to notify parents or to plead her case before an administrative law judge, a desperate minor may make a rash decision, trusting unscrupulous people offering unsafe medical procedures or even taking self-induced treatments.

4. Measure 43 is about the politics of abortion, not family life or health care.

This measure is part of a national political agenda to erode all women's right to choose abortion.

5. Measure 43 will have a chilling effect on medical providers.

The measure would put medical providers at risk for performing a legal medical procedure and would further reduce the availability of abortion services.

IV. DISCUSSION

Do parents have a substantial interest in knowing when their 15-, 16- or 17- year-old daughter intends to have an abortion?

Witnesses on both sides of this issue agreed that parents have a substantial interest in the welfare of their unemancipated minor children. This interest is affirmed in our culture by individuals, families and institutions and, when judged appropriate, is reflected in our laws. For example, minors under the age of 15 must have parental consent for all medical care, including an abortion.

***Witnesses interviewed
by your committee
agreed on the value of***

Without exception, witnesses interviewed by your committee agreed on the value of healthy, supportive communication between minors and their parents, and on the responsibility of medical providers to enhance that communication whenever they can appropriately do so. Your committee also recognizes that in some situations parents fail to meet their responsibility to care for their children. Some parents neglect, abuse or abandon their children. Sometimes, even in homes where all agree they love each other, communication breaks down, particularly in times of family crisis.

***communication
whenever they can
appropriately do so.***

Your committee concludes that parents have a substantial interest in knowing when their 15-, 16- or 17-year-old daughter may have an abortion.

If parents have a substantial interest in knowing when their 15-, 16- or 17- year-old daughter intends to have an abortion, should Oregon transform that parental interest into a legal right only for this medical procedure?

To answer this question, your committee first considered three subsidiary questions.

(a) Who should decide whether to notify parents, if a minor seeking an abortion does not want them informed?

While your committee speaks of parents' "substantial interest," proponents of the measure prefer to speak of parents' "need to know" and assert that it is appropriate

to employ the authority of the state to transform parents' need to know into a legal right, binding medical providers to ensure notice is given unless the pregnant minor can convince an administrative law judge or, on appeal, a circuit judge, that her parents should not be informed.

Your committee believes parents' need to know must be balanced against society's interest in allowing medical providers to act in the best interests of their patients. Current law now relies on the professional discretion of medical providers to determine whether to notify the parents of minors 15 years and older who intend to have an abortion.

Your committee found that medical providers bring extensive medical and clinical experience to bear when dealing with the discretionary decision of whether to inform the parents of a minor seeking an abortion. Your committee heard no credible evidence that medical providers in Oregon are abusing this discretion. Your committee believes that, with time and experience, administrative law judges would be able to competently make these decisions as well. However, your committee found no evidence that suggests that administrative law judges would be more competent than the medical providers currently making these decisions.

Proponents also argue that a hearing before an administrative law judge would allow minors to report abuse, rape, incest or other problems in a safe setting. While this could happen, this need is already met by current law. Medical providers are required to report evidence of these occurrences to legal authorities.

Your committee concludes that medical providers, rather than administrative law judges, should determine when parental notification is in the best interest of a minor seeking an abortion who does not voluntarily consent to the notice.

(b) Are minors competent to decide whether to have an abortion without their parents' providing information and counsel?

Proponents and opponents of Measure 43 presented conflicting views of minors' abilities to make responsible decisions about abortion. Proponents say a legal requirement for parental notification would help protect unemancipated minors from the regrets some experience after an abortion when, as one witness said, "In hindsight many realize they were just children forced to make an adult decision without proper information and support." Opponents agree that good information and counsel are important but they insist that minors ages 15, 16 and 17 years are generally capable of responsibly making this decision.

Your committee reviewed current law and considered expert opinion to resolve the conflicting views presented by proponents and opponents. The state of Oregon has determined that minors 15 years and older have not only the capacity, but also the right, to make decisions about their own medical care, including abortion. A minor 15 years of age or older has a right to medical or dental care by licensed physicians, dentists and nurse practitioners without parental consent. (See Appendix C for the full text of ORS 109.640.)

Scientific research appears to support state law. The American Psychological Association reports that, by middle adolescence (ages 14 to 15), teens have developed the intellectual and social capacities necessary for understanding treatment alternatives, considering risks and benefits and giving legally competent consent to abortion.³ The association also says that minors 15 years of age or older usually do talk to their parents before having an abortion.

Your committee found it worth noting that the proponents of Measure 43 did not attempt to address parents' need to know when their minor child is pregnant and receiving prenatal care from a medical provider.

Your committee concludes that minors 15 years and older are generally competent to decide whether to have an abortion without their parents' providing information and counsel, and in Oregon they have the legal right to do so. Your committee emphasizes that Measure 43 would not change the rights of minors 15 years of age or older to consent to their own medical care, including abortion, but it would require an unnecessary and burdensome notification process if the minor chooses to have an abortion.

(c) For minors seeking an abortion, who would choose not to notify their parents, do the practical effects of mandating such a notification justify eliminating that choice for those minors and their medical providers?

Proponents argue that, since parents are notified before their daughter can have

her ears pierced or receive an aspirin from a school nurse, they should be notified before their daughter can have an abortion. Opponents point out that, while sometimes true, these realities have more to do with concerns about liability than with medical care. In both instances, parental notification is required by non-medical institutions. While personnel with no medical training typically do ear piercing, doctors could provide this service without parental notification or permission. School districts are also sensitive to potential liability and to parent-school relationships and are therefore cautious when providing health care services.

According to medical providers and other witnesses (both proponents and opponents), many of the minors who choose not to inform their parents are homeless, or abused, or desperate for some other reasons that may include incest or rape. For minors from abusive families, or who are victims of incest, a mandatory notification letter arriving at home may endanger that minor's health and safety.

Proponents argue that Measure 43's bypass process was designed to meet the needs of minors in these situations. Opponents argue that, faced with the requirement to notify parents or to plead her case before an administrative law judge, a troubled minor may make rash decisions, trusting unscrupulous people offering unsafe medical procedures or even taking self-induced treatments. Minors need a trusted counselor, a licensed medical provider and safe medical care, not a state-mandated legal process.

Your committee concludes that healthy family communication cannot be imposed by a government mandate. Your committee also concludes that Oregon should not transform the substantial interest parents have in knowing when their 15-, 16- or 17- year-old daughter intends to have an abortion into a legal right to notification for this medical procedure.

If Oregonians want to make parental notification a legal obligation of medical providers, is Measure 43 the appropriate means to do so?

Measure 43 specifies that an abortion may be performed without giving notice to parents in a medical emergency or if an administrative law judge or circuit judge authorizes it. Notably, Measure 43 does not create an exception in the case of rape or incest.

Measure 43 mandates that parents be notified of an adolescent's pregnancy in all but two circumstances. Parental notification is not necessary if, for some reason notification is not possible or if the person performing the abortion documents the medical emergency in the minor's medical record. Measure 43 defines a medical emergency as follows:

Medical emergency means a medical condition that places the health of a pregnant woman in such serious jeopardy that failure to terminate the pregnancy or a delay in terminating the pregnancy would result in the death of the woman, serious impairment to bodily function or serious and permanent lack of function of any bodily organ or part.

Under Measure 43, several critical reasons for performing an abortion without parental notification would not be allowed. A minor would not have ready access to an abortion if she was the victim of rape or incest, nor if she had a medical problem that could only be addressed by an abortion. The only exceptions allowed would be threat of death, serious impairment to bodily function or serious and permanent lack of function of any bodily organ or part.

Your committee identified two problems with Measure 43's treatment of medical emergencies. First, time may be a factor. The pregnancy may present such a substantial risk of future medical complications that waiting for a condition to actually develop may cause harm to the minor seeking an abortion. If the medical provider believes parental notification is not in the patient's best interest, the measure puts the medical provider in the untenable position of facing potential civil liability if the physician carries out his or her legal and ethical duty to provide appropriate medical care.

Second, determining whether a medical condition satisfies the measure's definition of a medical emergency necessarily involves the exercise of medical judgment. Because medical providers would face civil liability and professional sanctions if the determination later is found to be not justified, your committee anticipates that some medical providers will opt not to invoke the medical emergency exception. This reluctance could result in parental notification in cases where the medical provider believes that notifica-

tion is not in the best interest of the patient, or it could force the patient into the bypass procedure.

For these reasons, your committee concludes that the medical emergency exception provided by Measure 43 would not provide sufficient safeguards for the health of minors seeking an abortion. Your committee also laments that Measure 43 would not create an exception for victims of rape or incest.

Measure 43's Bypass

Under Measure 43, a minor seeking an abortion and wanting to avoid parental notification must apply to the Department of Human Services for a hearing before an administrative law judge, who could permit an abortion without parental notice on one of two grounds. The administrative law judge must determine (a) that the applicant is mature and capable of giving informed consent to the abortion or, (b) that obtaining an abortion without parental notification is in the best interest of the applicant. DHS would then have three days to process the application and the administrative law judge would have seven days in which to render a decision. Should the application be denied, the applicant could appeal the decision to the Circuit Court. The court would have two days to decide the case after receiving the appeal.

Proponents characterized the bypass process as a minor formality, probably conducted by telephone with minimum inconvenience for the minor. Opponents described the bypass provision as poorly written and overly burdensome for a minor. Expert testimony taken by the committee noted that there is little useful guidance in the measure for executing the bypass provision.

Your committee concludes that Measure 43, as written, could be difficult to administer. The two key elements of the bypass procedure require administrative law judges to determine if the applicant is "mature" and that not informing the parents "is in best interest of the applicant." These terms will require clarification after the measure has been adopted. Therefore, voters cannot fully understand how the bypass procedure would be implemented.

Your committee concludes that Measure 43's bypass procedure presents a complicated and unnecessary barrier for unemancipated minors seeking an abortion.

Would Measure 43 have a significant long-term negative impact on medical providers and females of all ages who choose to have abortions?

Opponents of Measure 43 argue that the measure would likely have a negative effect on medical providers, since they would be vulnerable to lawsuits and to losing their medical license if parents allege they were not properly notified. Your committee finds the language of the measure vague in this regard. Measure 43 would require medical providers to establish that they “reasonably relied upon the representations of the minor” using information the minor provided about her parents. One obstetrician/gynecologist told your committee that uncertainty about this requirement and other factors would further reduce the already limited number of physicians willing to perform abortions. Your committee shares the concern that fear of litigation would result in fewer doctors willing to perform abortions.

According to a physician interviewed by your committee, some medical providers, particularly in small towns and cities, prefer to provide abortion services without drawing attention to this fact. Measure 43 would require doctors to send written notification to parents thereby making it known that the medical provider conducts abortions. If Measure 43 passes, some providers could choose to discontinue providing abortions because having this fact known in their communities could adversely affect their medical practices or lead to harassment. Your committee believes that public identification of medical providers who perform abortions could also reduce the availability of medical providers willing to perform abortions.

Your committee concludes that Measure 43 would likely reduce the availability of medical providers who perform abortions, not just for minors, but for women of all ages.

V. MAJOR FINDINGS

Your committee emphasizes key findings below:

- The frequency of abortions for minors 15 years and older has generally declined since Oregon began keeping records in 1974 and has dropped over 50 percent in the last decade.

If Measure 43 passes, some providers could choose to discontinue providing abortions because having this fact known in their communities could adversely affect their medical practices or lead to harassment.

- Oregon law currently permits, but does not require, medical providers to inform parents before providing medical care, including abortions, prenatal care and other procedures to 15-, 16- or 17-year-old unemancipated minors who do not want their parents informed.
- Measure 43 would change the law for 15-, 16- and 17-year-old pregnant unemancipated minors seeking an abortion, their parents and their medical providers, by requiring providers to wait 48 hours after notifying the minors' parents before providing an abortion. The measure authorizes civil suits and professional sanctions if parents allege a medical provider did not meet the requirements of Measure 43.
- Oregon has determined by law that minors 15 years and older have both the capacity and the right to consent to medical care, including abortion.

VI. CONCLUSIONS

Your committee concludes the following:

- Parents have a substantial interest in knowing when their 15-, 16- or 17-year-old daughter intends to have an abortion.
- Voters should not transform parental interest into a parental right binding on medical providers.
- Minors 15 years and older are generally competent to understand treatment alternatives, consider risks and benefits and responsibly consent to abortion.
- Medical providers, rather than administrative law judges, should decide when involuntary parental notification is in the best interest of a minor seeking an abortion.
- Measure 43 does not include an exception for rape or incest, and its medical emergency exception may be inadequate in ways that endanger the health of minors seeking an abortion.
- Your committee concludes that Measure 43's bypass procedure presents a complicated and unnecessary barrier for unemancipated minors seeking an abortion.
- Your committee concludes that Measure 43 would likely reduce the availability of medical providers who perform abortions, not just for minors, but for women of all ages.
- Healthy family communication cannot be imposed by a mandate of the state.

VII. RECOMMENDATION

Your committee unanimously recommends a NO vote on Measure 43.

Respectfully submitted,

Benjamin Buhayar
Clifford Droke
Adam Gamboa
Tom Iverson
Mary Ella Kuster
Maegan Vidal
Wynne Wakkila
Mike Greenfield, chair

Jeannie Burt, research adviser
Wade Fickler, policy director

ACKNOWLEDGEMENTS

Your committee thanks the witnesses who shared information and opinion with your committee in order to help City Club produce this report. Your committee is also grateful for the able support received from Jeannie Burt, research adviser from City Club's Research Board, and Wade Fickler, City Club's policy director.

CITATIONS

- 1 "State Policies in Brief," August 1, 2006, The Guttmacher Institute Web site.
- 2 "State Facts About Abortion: Oregon," The Guttmacher Institute Web site.
- 3 Ambuel, B. & Rappaport, J. (1992). "Developmental trends in adolescents' psychological and legal competence to consent to abortion." *Law & Human Behavior*, 16(2), 129-153.

VIII. APPENDICES

A. Witnesses

Richard Allen, M.D., Assistant Dean for Graduate Medical Education and Adjunct Professor of Obstetrics and Gynecology, Oregon Health Sciences University

Mike Burkesmith, Director of Development, Pregnancy Resource Center

Melissa D'Agostine, Services Assistant, Pregnancy Resource Center

Terry Daley, Pregnancy Counselor, Downtown Women's Center

David Greenberg, Executive Director, Planned Parenthood of the Columbia/Willamette

Dee Anna Hassanpour, Deputy Chief Administrative Law Judge, Northern Region, Oregon Department of Administrative Hearings

Chris Jensen, Founder, Madison House

Mindy Johnson, HEART Director, Pregnancy Resource Center

Katherine McDowell, Legal Counsel, No on 43 Campaign

Mark McKechnie, Social Worker, Juvenile Rights Project

Sarah Nashif, Campaign Director, Committee to Protect our Teen Daughters

B. Publications

Oregon Revised Statutes, Rights of Minors, www.leg.state.or.us.109.

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"A pregnant pause for family values," *The Oregonian*, July 28, 2006.

Brad Cain, "Supporters of Oregon abortion measure hopeful," *The Oregonian*, August 13, 2006.

Lynn Harris, "Criminals Like Me," *The New York Times*, September 6, 2006.

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David Reinhard, "Parental Notification: 'I didn't want to bring shame on my family,'" *The Oregonian*, July 30, 2006.

Edward Walsh, "Abortion measure on fall ballot," *The Oregonian*, July 26, 2006.

Judith Warner, "When The Parents Can't Know," *The New York Times*, July 29, 2006.

C. Relevant Excerpts from Oregon Revised Statutes

ORS 109.610 Right to treatment for venereal disease without parental consent.

(1) Notwithstanding any other provision of law, a minor who may have come into contact with any venereal disease may give consent to the furnishing of hospital, medical or surgical care related to the diagnosis or treatment of such disease, if the disease or condition is one which is required by law or regulation adopted pursuant to law to be reported to the local or state health officer or board. Such consent shall not be subject to disaffirmance because of minority.

(2) The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize such hospital, medical or surgical care and without having given consent the parent, parents, or legal guardian shall not be liable for payment for any such care rendered. [Formerly 109.105; 1977 c.303 §1]

ORS 109.640 Right to medical or dental treatment without parental consent; provision of birth control information and services to any person.

Any physician or nurse practitioner may provide birth control information and services to any person without regard to the age of the person. A minor 15 years of age or older may give consent to hospital care, medical or surgical diagnosis or treatment by a physician licensed by the Board of Medical Examiners for the State of Oregon, and dental or surgical diagnosis or treatment by a dentist licensed by the Oregon Board of Dentistry, without the consent of a parent or guardian, except as may be provided by ORS 109.660. A minor 15 years of age or older may give consent to diagnosis and treatment by a nurse practitioner who is licensed by the Oregon State Board of Nursing under ORS 678.375 and who is acting within the scope of practice for a nurse practitioner, without the consent of a parent or guardian of the minor. [1971 c.381 §1; 2005 c.471 §7]

ORS 109.650 Disclosure without minor's consent and without liability. A hospital or any physician, nurse practitioner or dentist as described in ORS 109.640 may advise the parent or parents or legal guardian of any minor of the care, diagnosis or treatment or the need for any treatment, without the consent of the patient, and any hospital, physician, nurse practitioner or dentist is not liable for advising the parent, parents or legal guardian without the consent of the patient. [1971 c.381 §2; 2005 c.471 §8]

ORS 109.660 Construction. The provisions of ORS 109.640, 109.650 and this section do not amend or supersede the provisions of ORS 109.610 or 435.435. [1971 c.381 §3; 1973 c.827 § 16]

ORS 109.672 Certain persons immune from liability for providing care to minor.

(1) No person licensed, certified or registered to practice a health care profession or health care facility shall be liable for damages in any civil action arising out of the failure of the person or facility to obtain the consent of a parent to the giving of medical care or treatment to a minor child of the parent if consent to the care has been given by the other parent of the child.

(2) The immunity provided by subsection (1) of this section shall apply regardless of whether:

(a) The parents are married, unmarried or separated at the time of consent or treatment.

(b) The consenting parent is, or is not, a custodial parent of the minor.

(c) The giving of consent by only one parent is, or is not, in conformance with the terms of any agreement between the parents, any custody order or any judgment of dissolution or separation.

(3) The immunity created by subsection (1) of this section shall not apply if the parental rights of the parent who gives consent have been terminated pursuant to ORS 419B.500 to 419B.524.

(4) For the purposes of this section, "health care facility" means a facility as defined in ORS 442.015 or any other entity providing medical service. [Formerly 109.133; 1993 c.33 §296; 2003 c.576 §158]



NOTES



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