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Report on Changes Minimum Requirements for Recall of Public Officers (State Measure No. 1)

City Club of Portland (Portland, Or.)

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Report on
CHANGES MINIMUM REQUIREMENTS FOR RECALL OF PUBLIC OFFICERS
(State Measure No. 1)

Question: "Shall a recall election be required upon petition of fifteen percent of the gubernatorial electors in a public officer's district?"

Explanation: "Amends Oregon Constitution. A recall election of a public officer now requires a petition from twenty-five percent of the number of legal voters who voted in the public officer's district at the preceding election for Supreme Court Justice. The measure would reduce the number required to file a petition for recall to fifteen percent. The required percent of electors would be determined based upon the most recent election for Governor."

To the Board of Governors,
City Club of Portland:

I. INTRODUCTION

State Measure 1, if approved by the voters at the November 6, 1984 election, would amend the provision of the Oregon Constitution that governs the recall of public officers. It would change the basis for determining the number of signatures required on a petition demanding a recall. Currently, a recall petition must contain signatures of at least 25 percent of the number of voters who participated in the most recent election for Justice of the Supreme Court in the electoral district of the public officer who is named in the petition.

Ballot Measure 1 would provide that a recall petition must contain signatures of at least 15 percent of the number of voters who participated in the most recent election at which a Governor was elected to a full term, in the electoral district of the public officer who is named in the petition.

A recall election must now be held within 20 days following the last day on which the affected official may voluntarily resign. The measure would increase this time to 35 days.

II. BACKGROUND

Article II, Section 18 of the Oregon Constitution provides that all public officers are subject to recall from office by the voters of the electoral district from which they were elected. A recall petition may not be circulated until an official has held office for six months, except for state senators and representatives for whom a petition may be filed five

days after the beginning of the first legislative session after they take office.

The Legislative Assembly as authorized by the constitution has established certain procedures for recall elections:

1. The recall sponsor must file a signed copy of the proposed petition stating in 200 words the reason for recall.
2. The filing officer (County Clerk for local elections and Secretary of State for statewide elections) approves the form of the petition.
3. The filing officer calculates the required number of signatures based on 25 percent of votes cast in the electoral district for the last election for a Supreme Court Justice.
4. Petitioners have 90 days to gather the required number of signatures.
5. The filing officer has 10 days to verify the signatures once they are submitted.
6. The subject of the recall petition has 5 days to resign.
7. At the end of 5 days the filing officer has 20 days to hold a recall election, if the subject of the recall chooses not to resign.

At the end of this process, should an official successfully retain his office, a second recall petition may not be filed during the same term of office unless the petitioners pay the cost of the first recall election. If the official resigns or is recalled, the normal procedure for filling any vacancy in that office is followed.

Measure 1, which has been referred to the voters by the legislature, seeks to address two issues of the recall procedure which have been problems for petitioners and election officials. These are (1) how signature requirements are calculated, and (2) the time frame in which the filing officer must hold a recall election.

This measure was actively supported by Oregon election officials during its legislative consideration. It passed the legislature in the 1983 regular session with minimal opposition.

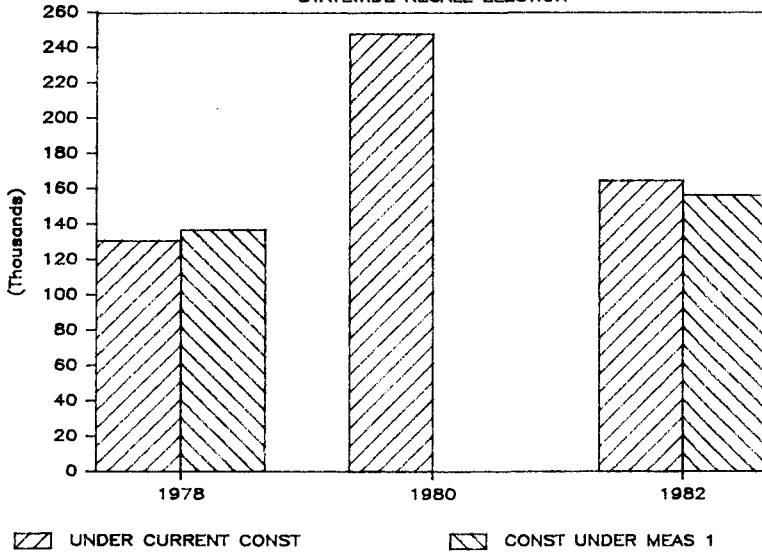
A. Signature Requirements

Currently, a recall petition must contain signatures of at least 25 percent of the number of voters who participated in the most recent election for Justice of the Supreme Court in the electoral district of the public officer who is named in the petition. The measure would change the signature base to 15 percent of the number of voters who voted for governor in the last election. This change would not make the required number of

signatures significantly higher or lower, but would tend to stabilize the signature base.

Figure 1 shows the number of signatures that would have been needed in recent years to require an election to recall a state official, compared to the signature requirements had its base been 15 percent of the race for governor, as proposed in Measure 1. Fluctuations in the signature base for local elections are roughly proportional to statewide fluctuations.

FIGURE 1: SIGNATURES REQUIRED FOR STATEWIDE RECALL ELECTION



B. Time Frame For Recall Election

Recall is the only type of election that does not fall on one of the state's six regular election days per year. Instead, a recall election must be held within 20 days after the 5-day period in which an official subject to recall may choose to resign. The short time period also effectively eliminates long-distance absentee voting.

C. Recent Use Of Recall

Following is a history of recall elections in Oregon that was prepared by John Houser, research analyst for The Oregon Legislative Research Office, based on a survey of county clerks, who serve as elections officers for all county, city, school district, and special district elections.

Table 1 summarizes statewide data on recall elections from 1974 to 1981. These data show that use of the recall has fluctuated, with an average of 27 officials involved in recall elections each year and 38 percent of these actually recalled. Of the 78 recall elections held during this period, 45 percent resulted in the recall of at least one official. There were no statewide or legislative recall elections during the period surveyed.

TABLE 1

RECALL ELECTIONS BY YEAR

[JAN. 1, 1974-JULY 1, 1981]

<u>YEAR</u>	<u>OFFICIALS INVOLVED IN RECALL ELECTIONS</u>	<u>NO. OF RECALL ELECTIONS</u>	<u>OFFICIALS SUCCESSFULLY RECALLED</u>
1974	42	14	11
1975	17	9	8
1976	36	10	20
1977	24	9	10
1978	12	8	6
1979	37	15	14
1980	22	8	5
1981 (to 7-1)	15	05	03
TOTAL	205	78	77

SOURCE: Legislative Research Survey of County Clerks, 1979 and 1981.

NOTE: More than one official may be subject to recall at the same election.

1. Geographic Breakdown

During the period reviewed in Table 2, recall elections were conducted in 23 of the 36 counties. Six counties (Clackamas, Douglas, Jackson, Lane, Marion, and Polk) accounted for 62 percent

of these elections and 68 percent of the officials who faced recall. In several cases more than one recall election has been held in the same jurisdiction. In Falls City (Polk County), for example, there were three recall elections involving members of the school board and one involving the mayor and the city council. Data on recall elections by county are shown in Table 3.

TABLE 2

OREGON RECALL ELECTIONS BY COUNTY
JAN. 1, 1974 - JULY 1, 1981

<u>YEAR</u>	<u>OFFICIALS INVOLVED IN RECALL ELECTIONS</u>	<u>NO. OF RECALL ELECTIONS</u>	<u>OFFICIALS SUCCESSFULLY RECALLED</u>
Douglas	35	10	13
Clackamas	31	10	11
Lane	20	06	06
Jackson	19	09	13
Polk	19	08	02
Marion	15	05	07
Linn	11	04	01
Yamhill	08	03	03
Curry	07	04	03
Umatilla	07	02	03
Klamath	06	02	03
Columbia	04	02	00
Coos	03	02	03
Harney	03	01	03
Malheur	03	01	02
Multnomah	03	01	00
Josephine	02	02	02
Washington	02	01	02
Deschutes	02	01	00
Jefferson	02	01	00
Benton	01	01	00
Grant	01	01	00
Tillamook	01	01	00
TOTAL	205	78	77

SOURCE: Legislative Research Survey of County Clerks, 1979 and 1981

2. Types of Officials Recalled

Members of school boards account for 60 percent of the total number of officials subjected to recall. Recall efforts also have been directed at city council members (20 percent), county commissioners (7 percent), and fire district directors (6 percent), as is shown in Table 3.

TABLE 3

OFFICIALS SUBJECT TO RECALL
1974-JULY 1, 1981

<u>Type of Official</u>	<u>Officials Involved In Recall Elections</u>	<u>No. of Recall Elections</u>	<u>Officials Successfully Recalled</u>
School Board Member	123	46	44
City Councilman	42	15	13
County Commissioner	14	09	06
Fire District Board Members	12	04	09
Mayors	07	**	01
Other*	07	04	04
TOTAL	205	78	77

SOURCE: Legislative Research Survey of County Clerks, 1979 and 1981.

* Includes three water district directors, one sanitary district director, one assessor, one city recorder, and one justice of the Peace.

** Because mayoral recall elections also involved city councilmen, the number of such elections is included in the number shown for city councilmen.

III. ARGUMENTS ADVANCED IN FAVOR OF MEASURE 1

1. The measure, by providing a more stable base for determining the number of signatures required on a recall petition, would give greater consistency and clarity to the recall process.
2. The measure would make the recall process more equitable because citizens would not face a widely varying burden of signature collection from one year to the next.
3. The measure would allow more time for scheduling and preparing for a recall election for optimum voter participation.

IV. ARGUMENTS ADVANCED IN OPPOSITION TO MEASURE 1

The committee heard no arguments in opposition to the measure.

V. DISCUSSION

A. Stable Signature Base

The current constitutional language basing the required number of petition signatures on the Supreme Court Justice race results in wide variations of that number.

First, voter turnout varies greatly between contested and uncontested races; the number of votes cast in a contested race may be double or more than that cast for an uncontested race. (1)

Second, voter turnout is significantly higher in presidential than in non-presidential years.

Third, legislation enacted in 1979 provides that a Supreme Court Justice is elected at the primary election if a candidate received more than 50 percent of the vote. This means that the turnout for a primary election, which is usually lower than for a general election, could determine the number of signatures required for a recall petition, possibly leading to a great fluctuation in signature base from year to year. (2)

Elections for Governor for a full term are always held in a non-presidential general election held every four years. A Supreme Court Justice election occurs every two years. The longer four-year period in the measure will provide another element of consistency to the number of signatures required. Fluctuations would be neither as frequent nor as erratic.

The 15 percent proportional figure was presented to the committee as neither appreciably raising nor lowering the number of signatures required. Voting statistics for 1978 and 1982 indicate that 15 percent of a Governor's race vote approximates 25 percent of an uncontested, but high vote in a Justice race (see Table 1).

Based on the 1978 Governor's race, the signature requirement (on the statewide level) would have remained stable from 1978 until the 1982 election, at 136,671. In fact, the signatures required (statewide) jumped in 1980 from 130,745 to 247,679, based on a contested Supreme Court race.

A widely varying signature requirement can be unfair to citizens attempting to utilize recall. Plans based on the need to gather a particular number of signatures may be drastically affected if an intervening election sharply changes the requirement.

(1) 1980, S. Field/E. Peterson, total votes =990,715; 1982, B. Lent, total votes = 360,558.

(2) Testimony of Ray Phelps, Director, Elections and Public Records, to House Committee on Elections, March 14, 1983.

The Committee heard no arguments for increasing the number of signatures required, nor for attempting to approximate the highest level of past signature requirements which has occurred in a contested judicial race during a presidential election year. The Committee heard arguments for decreasing the signature base, but considered this issue to be separate from the measure under study.

B. Increased Time for Recall Election

There were two reasons presented to the committee for extending the number of days in which to hold the recall election:

1. Twenty days does not allow time for preparation of absentee ballots. Oregon law now requires those ballots to be prepared 28 days before an election. The change to 35 days would give 7 days for such preparation, allowing full participation by overseas or housebound voters.
2. The 15-day increase would permit greater flexibility in scheduling the election day. The current 20-day period often prevents holding the election on a Tuesday. Also, it can force an election at a time that guarantees a low turnout (such as near a holiday or just before or after another election).

The measure would therefore allow greater participation of voters in recall elections. The Committee found nothing to indicate that there would be any adverse impact on the public interest by an additional 15-day period. At the most, the maximum time for the recall process from initial circulation of petitions to recall election would be increased from 115 days (90 + 5 + 20) to 130 days (90 + 5 + 35).

C. Possible Arguments in Opposition

Although the Committee found no opposition to this measure, there are two issues inherent in all constitutional change measures:

1. The Constitution should not be tampered with -- leave it as written.
2. The measure does not go far enough -- it does not "fix" everything.

The first argument is generally based on the premise "if it ain't broke, don't fix it." In this case, that may be countered by the evidenced effect of recent Justice elections on the signatory requirement. The wide fluctuations of the number cannot reasonably be seen as the original intent of the Constitutional recall provision. The provision, if not "broke", is at least not functioning with any consistency.

With regard to the second issue, the Committee has heard arguments that recall should be made more difficult and that it should be made easier. Advocates of the first position believe that the criteria or reasons for

which an official can be recalled should be made more specific to prevent abuse of the process. Advocates of the second position would like to see a significant reduction in the required number of signatures. However, even if there are some who would like to see recall made easier (or harder), there is no logic to opposing this measure for such a reason. Providing more consistency and clarity to a process is not the antithesis of a change or lack of change in concept.

VI. CONCLUSIONS

1. Measure 1 is a procedural reform.
2. Measure 1 would add consistency to recall petition requirements.
3. Measure 1 would not significantly alter the average number of signatures needed for a recall petition.
4. Measure 1 would facilitate participation of absentee voters in recall elections.
5. The procedural changes resulting from Measure 1 would not make recall either more or less available to citizens who are unhappy with the performance of public officials.

VII. RECOMMENDATION

Your committee unanimously recommends that the City Club of Portland favor a "Yes" vote on Measure No. 1.

Respectfully submitted,

Emil Berg
Carolyne Nelson
Karen Trangmar
Carl Abbott, Chairman

Approved by the Research Board on September 20, 1984 for transmittal to the Board of Governors. Received by the Board of Governors on September 24, 1984 and ordered published and distributed to the membership for consideration and action on October 19, 1984.

APPENDIX A

Persons Interviewed

C. Gregory McMurdo, Deputy Secretary of State
Vicki Ervin, Multnomah County Clerk
Allen Robertson, Multnomah County Elections Manager
Charles Stern, Yamhill County Clerk
Michael Cox, Washington County Clerk
Jerry Orrick, Association of Oregon Counties
Paget Engen, League of Oregon Cities
Glenn Whallon, Chair, House Elections Committee
Donald Bassist, sponsor of 1978 Multnomah County recall effort
Tom Hanlon, Oregon House of Representatives

APPENDIX B

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Oregon Legislative Research Office, "Recall of Public Officials in Oregon,"
Research Monograph, August, 1983.

House Interim Task Force on Election Law Revision, Minutes, Dec. 2, 1982

House Elections Committee, Minutes, March 14, 1983.

Senate Committee on Local Government and Elections, Minutes, April 13, 1983.

Text of statement of explanation of Ballot Measure 1 for Oregon Voters'
Pamphlet, submitted by Sen. Jim Gardner, et al.