

League of Women Voters
February 18, 2010
Chemeketa Community College
Prepared Remarks by Robert C. Cannon

Mrs. Lewis, Mr. Diller, Commissioner Brentano, Mrs. Gangle, Members of the League of Women Voters and Guests:

I would like to introduce the two Chief Petitioners, Mr. Rick Kimball and Mr. Rick Stucky. See biographical information at page 10. Mr. Kimball, is a member of the Salem-Keizer School Board, and Mr. Stucky is a former member of the Salem City Council. Mr. Kimball's political affiliation is that he is non-affiliated. Mr. Stucky is a Democrat, and I am a Republican.

In order to understand the proposal for a Home Rule Charter, it is important to understand the current system. My prepared remarks include a summary of this history in Marion County.

Q: Is Bob Cannon going to run for County Commissioner?

A: No. My appearance here today is in support of good government. I have no financial interest, conflicts or other disclosures to make.

Q: Marion County is a General Law County. What does that mean?

A: When Statehood was granted in 1859, Oregon had no state employees or state agencies to operate State Government. The Territorial Governor, prior to Statehood and the Oregon Legislature (after Statehood), turned to county government to carry out the State's administrative functions. This is why Oregon has four branches of Government, rather than just three (Executive, Legislative and Judicial) like the Federal Government and all other states. Oregon added the Administrative branch to the Oregon Constitution. The Administrative branch is the State Treasurer, State Secretary of State and County government.

For the next hundred years (until 1958) county government performed only those functions which were set forth in state statute (law). County discretionary function, such as enacting Ordinances, was severely limited by the Legislature. County Commissioners did not have the authority to enact

“police power” county ordinances until 1981 unless such authority was authorized by statute.

An Ordinance adopted by a county in 1859 or today is not effective inside cities unless the city adopts a concurring Ordinance.

Counties lacked discretionary authority and were limited to performing only those governmental functions which were set forth by the general laws of the state. This is the origin of the phrase, a General Law County.

Counties, then and now, are political subdivisions of the State of Oregon performing primarily State governmental functions. Today, the discretionary authority of General Law County Commissioners is primarily limited to county roads and garbage collection/disposal (regulated by State administrative rule).

Q: What State governmental functions did counties perform?

A: The same State functions counties provide today; elections, record keeping (real property, surveyor and vital statistics), assessment and tax collection, county roads, garbage disposal, prevention of communicable diseases and health services for the disabled/poor, a jail, police services (sheriff’s patrol) outside of cities, juvenile detention, land use planning, District Attorney, building permits and inspections, dog control, and to provide a Circuit Court courthouse.

These state functions are controlled by detailed state statutes, detailed State contracts and state supervisory regulatory authority which restrict and essentially eliminate county discretionary authority over these State functions.

However, in the early years in addition to the current functions, the counties ran the school system (transferred to School Districts in early 1900’s), hospitals (few county hospitals still exist; however, today many counties have health clinics) and created a local market road system. The market road system was to support an agrarian based economy to bring farm products to market (market roads). Most Oregon cities (just like Salem) have a street named Market Street.

Q: Why three county commissioners?

A: Oregon didn't start out with a three county commissioner system. We started out with a County Judge and two county commissioners. The County Judge was a Judge. In the absence of a Circuit Judge, the County Judge provided State judicial functions to each county. Even today, there are still five County Judges in eastern Oregon who have limited judicial authority.

The current State judicial function is the Supreme Court, Court of Appeals and Circuit Courts. It does not include municipal courts, county judges or justices of the peace.

Since the mid 1950's most County Judge positions have been abolished and the County Judge position has become a County Commissioner position, thereby turning all state judicial functions over to Circuit Court.

Q: Why do county commissioners and other county elected officials receive a salary?

A: In the early years, county commissioners had the full time job of running state government. This included schools, hospitals and creating a road system. The judicial function was performed by the County Judge, and the other administrative functions of State government were carried out by other elected officials: Sheriff, Clerk, Assessor, Coroner, Tax Collector, Treasurer and Surveyor.

Today State government has sufficient employees to perform State functions. The General Law Counties are an anachronism. It is a governmental structure that exists because highly paid elected officials want to keep their jobs. Of all the elected positions in Oregon, county commissioners make more money than other elected positions. The current Marion County Board of Commissioners receive a base salary of over \$70,000 and with benefits the total salary package is around \$100,000 per Commissioner.

This certainly exceeds the salaries of State Representatives and State Senators, and is comparable to the salaries of the Governor, Secretary of State, Treasurer, Superintendent of Public Instruction, Attorney General, District Attorneys and Circuit Court Judges.

Why are the salaries so high? The salaries are so high, because the Commissioners set their own salaries. There is no check and balance in this system.

Q: What about cities, how did they evolve?

A: Cities in Oregon evolved differently. Cities have constitutional authority to enact ordinances (laws) over matters of local concern. There were a few limitations on cities. Cities in the early years established local ordinances which generally included Green River ordinances, limitations on sale and consumption of alcohol, and criminal statutes relating to non-felony conduct, such as theft, minor assaults or disorderly conduct. Cities had their own police, court systems and jails.

With the exception of the City of Portland, all other Oregon cities (that I am aware of) have a city manager form of government. Cities employ a well educated and highly trained chief executive officer who manages the city. The city manager serves at the pleasure of the city council. City councilors are elected and for the most part are volunteers who serve without compensation. A few cities provide a stipend of several hundred dollars per month. By City Charter Salem provides no such stipend.

Today, Marion County has a city manager form of government. The County has hired a well educated and highly trained chief executive officer. This is by evolution not by design or Home Rule Charter. The Home Rule Charter would put into law a city manager form of government.

Q: When did Home Rule start?

A: In the mid 1950's there was considerable discussion about allowing counties to have the same authority as cities. In 1958 the Oregon Constitution was amended to allow counties to have a Home Rule Charter. A Home Rule Charter would allow counties to have the same discretionary authority that cities already enjoyed.

Between 1958 and today all larger counties, except Marion County, have adopted Home Rule Charters and thus have moved to a city manager form of governance.

The current proposal, which I did not write, is patterned after Lane County. Lane County functions well.

Q: Is a Home Rule Charter better than a General Law County form of government?

A: Yes, I think so. A city manager form of government is simple. A professional is hired to be the titular head of the city. This person hires and fires all employees. The city councilors are generally elected by districts or wards in larger cities and at large in smaller cities. The city council has one employee and that is the city manager. This basic format of city operations is used universally throughout the state and is common in most states. Without overstating the obvious, 200 cities in Oregon have this form of government. This system works well. The city manager form of government governs over 80% of Oregon's population. The vast majority of city councilors do not receive compensation. A few of the larger cities pay a monthly stipend.

The Primary Issues as I see them are:

- Five vs. Three Commissioners,
- Districts for Commissioners,
- Non Partisan Commissioners, and
- The elimination of the elected position of Treasurer.

Let me address each issue individually.

Number of Commissioners:

Q: What about the Public Meetings Law, does it affect General Law Counties?

A: Yes, it does. The basic concept of the Oregon Public Meetings Act is to prohibit a quorum of the governing body to meet without first giving notice of the meeting. There are other restrictions, relating to timely notice, location of meetings and minutes being taken.

In the case of a General Law County, two of the three county commissioners constitute a quorum and, therefore, a public meeting. I believe governments should strive to be collaborative. A three person Board is not collaborative.

Prior to 1973, the number of Commissioners probably did not make a lot of difference. In some counties, commissioners shared the same office and in a couple of counties, they even shared a massive three person desk. However, the need for openness in government brought about change.

The Public Meetings Law of 1973 was not easily enforceable by the public. Litigation in Circuit Court to enforce the law was expensive and not timely. The District Attorney and Attorney General have no authority to enforce the Public Meeting Act. The DA and AG are limited to enforcing Public Records Act.

In 1994, The Government Ethics Commission was given concurrent jurisdiction with Circuit Court to review alleged violations of the Public Meeting Laws. This was an inexpensive means for citizens to complain when they believed a violation of the Public Meeting Laws had occurred.

In General Law Counties, two or three commissioners getting together for coffee, lunch or a beer after the workday had the appearance of impropriety.

To avoid the appearance of an illegal meeting, General Law Counties have severely limited joint appearances/social gatherings or have described these gatherings as public meetings. Such meetings are official meetings, so notice and minutes needed to be taken. This concept has placed significant and unnecessary strain on county commissioners in General Law Counties. Consider the difficulty of having two or three county commissioners at a local Rotary luncheon meeting to discuss the county issues.

Compare and contrast other governmental structures in Oregon. With the exception of General Law Counties, it is very unusual to find a three person board, commission or agency. The minimum number is usually five. There is a reason for this. Two persons of a five member commission can meet and not constitute a quorum.

I do not subscribe to the conspiracy theory that elected officials are bad people who are trying to deny citizens their rights by talking about county issues outside of a public meeting. In the last 30 years of working with and meeting with city and county elected officials, I have never found one person who fits this conspiratorial description. Local elected people are good people who work hard and give of their time and efforts to the public.

Q: Are five commissions better than three, and if so why ?

A: Yes, five minds are better than three. We are talking about policy makers making policy decisions. In my opinion five people will arrive at a better result and ultimately make better policy and legislative decisions than three.

Working with others, whether in business, government or as an elected official is all about personal relationships. Elected officials need to know what other people think. This is basic to the legislative process. Do City Councilors, School District Board Members, Transit District Board Members, State Representatives and State Senators talk shop with one another? Sure they do. Why? To find the best solutions to the immense problems we face in our communities. Do they violate the Public Meeting laws? No, they do not.

I'm an elected city councilor. There are nine members of the Salem City Council, (including the Mayor), and I talk on the phone or have coffee with many of them on a regular basis. I want to know what these people think about the various issues facing the council.

This is good, not bad. Candid remarks are seldom heard on the floor of the city council. When microphones and digital cameras are turned on, elected officials' opinions become rather muted. People don't do well in front of cameras. They freeze. I want to know what others think. I want candid conversations.

The proposal is for **five Commissioners and if passed, just think, two Commissioners would be able to have coffee at a local coffee shop without violating the law or appearing to violate the law.**

Cost of two new Commissioners:

Q: If passed will the Charter cost the taxpayers more money?

A: No, it should not cost more money. The total cost to the taxpayer of the salary and benefit package for **five commissioners should be neutral.**

However, let me be very clear on this point, the County Commissioners set their own salary and benefits. There is no check and balance in this system. The cost of five Commissioners in Marion County should be \$300,000.

That is a salary and benefit package of \$60,000 per Commissioner. That is a very generous and fair wage for the current duties of a County Commissioner.

Districts for Commissioners:

Q: How are Commissioners elected today ?

A: Commissioners are elected “at large” which simply means each person runs countywide. I believe in one person, one vote. I believe the person who represents me should live close to my neighborhood. This is the same format for the Oregon Legislature, the City of Salem and Lane County. This is a pretty basic philosophy.

By the numbers: The current Commissioners are elected at large. That means each commissioner is elected to represent over 300,000 citizens. That seems high to me. For example a State Representative represents around 50,000 people and a State Senator twice that number or 100,000. In Salem each ward has around 20,000 residents. If passed, the Commissioners would represent about 60,000 residents by district.

Marion County is a very large County, geographically. If you were to take the Marion County Road system and put the roads end to end, you would drive from Salem to Denver.

Non Partisan Commissioners: In my 30 years as a county attorney and city attorney I have never seen a Republican vs. Democrat issue at the local level. The reality is that local government is non partisan, and the Home Rule Charter provision will simply state the obvious.

Elimination of Treasurer Position: This position moves over \$300,000,000 (three hundred million dollars) through that office on an annual basis. This is not about personalities. There are no statutory checks and balances with this position. In the early 1980’s a different Marion County Treasurer almost brought Marion County, City of Salem and Salem-Keizer School District to their knees by making legal, but ill advised investments in an attempt to time the market and make money in the high interest rate environment. Local governments lost around \$20,000,000 (twenty million dollars) during that event. This should be an appointed position. The citizens of this community deserve a professional money manager. This is pure and simple good government. No different than

Chemeketa, Salem-Keizer School District, City of Salem or any government with the exception of Marion County.

If you had a business that brought in over \$300,000,000 dollars, would you have **one person** totally in charge of this function? I would think not. Other local governments in Oregon have well educated and trained financial departments to handle this function.

Collateral Issues:

Q: If the Home Rule Charter passes, will this disrupt county government?

A: No. The arguments to the contrary are just a red herring. If the Charter passes, the current functions of the County Treasurer would be transferred to the County Financial Department. This is what should be done anyway. The two additional County Commissioners would be elected at the November General Election as per the initiative.

Q: Is the proposed Home Rule Charter lawful and constitutional?

A: Marion County Clerk and Marion County Legal Counsel both reviewed the proposal and concluded it meets constitutional standards. I too have reviewed the initiative and have come to the same conclusion. See attached letter. It is true that other attorneys feel differently. This Charter is modeled after Lane County. Many of the provisions are similar to the Salem City Charter. Both Charters work well. If someone wants to bring litigation, then that is their right. The Circuit Court will resolve the disputes.

Conclusion:

This initiative is not about being a Republican or Democrat. It is not about land use decisions. It is about good government. All government is local. The closer we can bring government to the people the better off we will be.

I believe having five commissioners is better than three. Representing your neighbors and the area in which you live is very good. Since the policy choices commissioners are making are all non partisan, then commissioners should run for election as non partisan commissioners. This is really basic government. All other county offices are non partisan!

The County Treasurer has three hundred million dollars going through her office. No matter how nice this elected official is, that system is designed to fail, and it has failed in the past.

Vote for good government. It's the right thing to do.

Respectfully Submitted
Robert C. Cannon

Chief Petitioners

Rick Stucky has worked in the education field for over 23 years. He currently is a Policy and Board Development Specialist for the Oregon School Boards Association. Rick served for five years on the Salem Planning Commission, two years as commission president, and six years on the Salem City Council, two of those years as council president.

Rick Kimball has worked in the food industry for the past 33 years and joined the Truitt Bros. staff in 1993 as their Technical Director overseeing the Quality Assurance, Product Development and Food Safety functions. He was elected to the Salem-Keizer School Board in May of 2005 and re-elected this last May.

Responses to Opponents' Published Statements presented to the Salem Chamber of Commerce on February 11, 2010

This material was prepared by Mark D. Shipman, Attorney at Law, Saalfeld Griggs, 250 Church St SE, Ste 300, PO Box 470, Salem, OR 97308

To be open and fair, I've attached the two page statement presented at the Chamber meeting on Thursday, February 11. I wanted the LWV to have the Opponents' statement with my responses. See *infra*.

Point 1: Adding two new Commissioners will cost more money.

Response: The cost to the taxpayer should be neutral. The current three Republican Commissioners all claim to be fiscal conservatives, so I would expect the cost of adding two new commissioners would also be a neutral cost to the taxpayer. Neutral means each Commissioner (five) would receive a salary and benefit package valued at \$60,000.

Point 2: Adding two new Commissioners would require adding two Policy Advisors.

Response: In 1999 I was the County Administrator. In 1999 the Commissioners were supported by an office staff of three secretaries and the County Administrator. The County had additional property tax funds, and the Commissioners wanted to increase staff in their office. Instead of putting the money into the jail or sheriff's office, the Commissioners chose to hire their own political appointees. The Commissioners each selected a person to be hired. This was clearly an extravagance. In 2001 the economy started to slide with the "Dot-Com Bubble," and subsequently in 2007 the Great Recession occurred. The Commissioners have continued to fund the extravagance of having personal political aids. It was a questionable decision in 1999 to add political appointees. Today with the current economy depressed and with unemployment running at 10%, I think having political aids for each Commissioner is not justified by any standard. The cost of each Policy Advisor is in excess of \$100,000.

Point 3: Additional Duties for County Clerk:

Response: Yes, once every ten years, I would expect a law student from Willamette College of Law would be hired to review the census data compiled by the Secretary of State elections division and apply the data to the five county districts. I would expect it would take several months of work. I can only guess at what that might be in ten years, but it would be several thousand dollars for sure.

Point 4: Increased costs because Amendments to the County Charter can only be made by a countywide election.

Response: I'm not sure I understand this Point. Yes, it is true that if the Charter passes and the Commissioners or others want to Amend the Charter, an election would have to take place.

There would be no appreciable additional cost for a proposed Charter Amendment submitted to the voters at a Primary or General Election. However, if a proposed Amendment was submitted to the voters at other than a Primary or General Election, then costs would be high. The Chief Petitioners, in such case, could be held liable for the costs of the election, if the initiative failed. For example, the City of Salem library special district initiative which failed, resulted in the Chief Petitioners for the library district paying the cost of the election. A countywide election would be very expensive.

Point 5: Requires Special Election for new Board Members.

Response: I'm not sure I understand this Point. Charter Section 12 (vii) provides the new Commissioners will be elected at the next November General Election. This means no Special Election and no additional costs.

Point 6: Governance by Charter.

Response: I'm not sure I understand this Point either. Except for the county attorney being familiar with the new Charter, I don't see or foresee any additional costs. I would hope for savings, but again the Commissioners set their own salaries for which there is no check or balance.

Point 7: Eliminating the elected Treasurer position which would increase costs.

Response: The Treasurer's office costs the taxpayers around \$350,000 per year. The functions performed by the Treasurer are followed closely and monitored by the county financial office today. This is already a duplication of costs. The elimination of this elected office would reduce staff, not add staff.

Point 8: County Commissioners elected by district would weaken public accountability.

Response: This is one of the primary questions presented by the Charter. Should commissioners be elected by district or be elected at large. The Jeffersonian Constitution is based upon a Republican or representative form of government.

It is my philosophy that the closer we bring government to the people the better government we will have. I'm elected by the people I see at the grocery store, the people who live within a couple miles of my house and the people I play golf with. While I don't know all of them, I do understand the needs of each of the neighborhoods in my ward. I attend Salem Neighborhood Association meetings in my Ward every month. It is very important for the people to know who their representative is. I am local and accountable. The Commissioners are not local or accountable now.

Point 9: If elected by districts, citizens will only have access to one Commissioner.

Response: This point is just wrong. The Charter does not change the governance of Marion County. Five commissioners will still make the decisions regarding Marion County. Any voter or citizen can contact any

Commissioner, just like today. The Commission as a whole will make decisions regarding policies in Marion County.

In my case, I receive more emails and telephone calls from people not in my Ward, than I do from people in my Ward.

Point 10: A five member Board would be less transparent than a three member Board.

Response: A strict reading of the Public Meetings Act prohibits Commissioners from having any business contact outside of a Public Meeting. Two Commissioners constitute a quorum. This means no conversation between any two Commissioners at all concerning county business. Does a “code of silence” or “no contact rule” sound right to you? Marion County as with other larger counties and local governments need a five member board.

Point 11: The Commissioners being non partisan would create a new political party “Friends of Marion County.”

Response: I’m not sure I understand this point. I don’t know this organization. Is this a different type of group than the Salem Area Chamber of Commerce, Salem Realtors Association or the Home Builders Association? The issue here is having a non partisan election, not a partisan election. I don’t see how that would effect an election for Commissioner. However, I’m in favor of people becoming actively involved and working with their governments. I’ve always said, if you don’t like what’s going on, then it is your fault, not mine. Get involved!

Point 12: The Clerk would appoint the Compensation Committee and thus give the Clerk more authority.

Response: The statement seems to be correct. I really don’t understand this point either. Under both systems there is a Compensation Committee. The Compensation Committee makes a recommendation. It is only a recommendation. Nothing more! The Commissioners still can set their own salaries and benefits. The current salary and benefit package for a County Commissioner is \$100,000.

Point 13: Non elected department heads will have to report to five commissioners rather than three.

Response: Since 1999, Marion County has been operating with a strong County Administrator (a city manager form of government). This is similar to over 200 cities in Oregon. The current County Administrator is well



Marion County
OREGON
COUNTY CLERK

June 30, 2009

COUNTY CLERK

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Re. Prospective Initiative Petition

I have reviewed, along with County Counsel, the prospective initiative petition you filed today and determined the text of the proposed charter meets applicable Oregon constitutional requirements.]*

RECORDS

MANAGEMENT

Voice (503) 588-5490

A copy of this prospective petition has been forwarded to the Marion County District Attorney for preparation of a ballot title.

BOARD OF PROPERTY

TAX APPEALS

Voice (503) 588-3578
FAX: (503) 373-4408
E-Mail: bopta@co.marion.or.us

Upon receipt of the ballot title, I will provide you a copy and publish the required notice in the Statesman Journal newspaper.

Sincerely,

Sharon K. Ricks, CERA
Marion County Elections Supervisor

M 24-292

Increases Government Spending

RESPONSE #5
1.2

Current (Statute)	Proposed (Charter)	Result
Three Members and Three Senior Policy Advisors	Five Members and Additional Policy Advisors	Initial and Annual Cost Increase Adds two more board members (Salary; Benefits; Equipment; Office Space; Overhead)
County Clerk has Duties Authorized by Statute	Increases duties of County Clerk	Initial and Annual Cost Increase
Board Can Make Changes to Structure and Function	No Changes to Charter without Countywide election	Increased Cost
No Special Elections unless Authorized by Board	Imposes requirement for special election for new board members	Initial Cost \$100,000 - \$250,000
Governance by Statute	Governance by Charter	Increased Cost
County Treasurer has Duties Authorized by Statute	Eliminates County Treasurer's office	Increased Cost Incorporating County Treasurer's team within the finance department

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Weakens Representation and Public Accountability

Current (Statute)	Proposed (Charter)	Result
Board elected at large	Board elected by district	Disenfranchises voters; Gerrymandering
Marion County residents have access to all three of their elected representatives under the at large structure	Under the District structure, you will only have access to one elected representative	Disenfranchises voters
Board meetings must be public	Board can avoid sunshine laws	Less Transparency

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Current (Statute)	Proposed (Charter)	Result
11 Partisan	"Non partisan"	Creates third party: "Friends of Marion County"; Candidates retain affiliation
12 Compensation committee appt. by Board	Appt. by County Clerk	Clerk given more authority

Increases Bureaucracy and Special Interests

Current	Proposed	Result
13 Dept. Heads now report to 3 members	reporting to 5 members	Will make practice of running County more difficult
14 At Large representation is non-political	Apportionment of Districts	Will make running of County subject to special interests
15 Managed Growth	No Growth	No expansion of UGB = loss of new business in Marion Co.

Violates Constitution and Will Create Litigation

Current	Proposed	Result
16 Justice of the Peace Elected	Justice of the Peace Appointed	Violates Oregon Constitution
17 No prohibition on running for public office	prohibits a county employee from run for public office	Violates Oregon Constitution
18 No known Ambiguities	Multiple Ambiguities	Confusion can lead to litigation