

## **OREGON LAW COMMISSION**

**Date** May 28, 2014  
**8:30 a.m.**

**Oregon Civic Justice Center**  
**Melvin Henderson-Rubio Hearing Room**  
**Salem, OR**

**MEMBERS PRESENT:**

**Lane Shetterly, Chair**  
**Prof. Bernie Vail (on phone)**  
**Mark Comstock**  
**John DiLorenzo, Jr.**  
**Hardy Myers**  
**Scott Shorr**  
**Prof. Symeon Symeonides**  
**Sen. Floyd Prozanski (on phone)**  
**Justice Martha Walters**  
**Rep. Jennifer Williamson**  
**Chief Judge Haselton**  
**Attorney General Rosenblum**  
**Judge Bushong**

**MEMBERS EXCUSED:**

**Susan Gary**  
**Julie McFarlane**  
**Wendy Johnson**

**STAFF PRESENT:**

**Jeffrey C. Dobbins, Executive Director**  
**Lisa Ehlers, Legal Assistant**  
**Jenna Jones, Student Work Study**

**GUESTS:**

**Susan Grabe**  
**Senator Whitsett**  
**Gina Zejdlik**  
**Alana Cox**  
**Dan Gilbert**  
**Stephen Elzinga**  
**Becky Straus**

**MEASURE/ISSUES HEARD:**

**Introduction of Rep. Williamson**  
**Approval of past meeting minutes**  
**Request for Standing Modernization Work Group**  
**Request for Election Code Modernization Work Group**  
**Next steps for current Work Groups**

| Speaker  | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| Myers    | <p>Welcome. I'll be acting chair until Lane arrives.</p> <p>Congratulations and welcome Rep. Williamson as a new commissioner. Now let's go through the minutes date by date if you have any problems we'll go over them. Any corrections?</p> <p>Motion to approve minutes- no objections.</p> <p>Moving on to recommendations. Up first Senator Whitsett with Standing Modernization.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Whitsett | <p>Thank you, I appreciate the opportunity to present. I want to point out that there is a lack of standing for private citizens to defend a law in Oregon courts. That lack of standing also applies to the legislatures. Standing on laws is given to the Attorney General and the Governor can advise the attorney general to defend the law. The Legislative Counsel Committee may intervene to defend on behalf of the legislature. Many other states give standing to the legislature. Arizona gives proponents of initiatives petitions of standings to defend law by the initiative process. However, Oregon law does not offer standings to defend a law enacted by initiative or referendum. This makes it so no one has standing to defend an Oregon law given that elected officials in the executive or legislative branch choose not to defend that law. Worse a law enacted by initiative as a result of the inaction of an elective official can overturn that same initiative that elected official prompted to be written and passed in the first place. The Oregon people are denied the right to have the Oregon Supreme Court determine the constitutionality because no one with standing decides to defend the law in court. The executive and legislative branches should not have the power to effectively trump review by the Supreme Court by refusing to defend a law in court. The OLC can create a solution for this issue. For that reason I would ask any the effective legislation recommended by the Commission be made after these have been dealt with in 2017. There are pros and cons to public funding for defending laws by private citizens. Why should all taxpayers bear the court expense of a law that a few men want defended? Why should private citizens bear the court expense to defend laws enacted by the majority? I ask that the Commission recommend putting together a work group to address this deficit when it comes Oregon standing. Any questions?</p> |

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| Myers     | Stephen do you have anything to add? Any discussion?                                                                                                                                                                                                                                                                   |
| Elzinga   | No.                                                                                                                                                                                                                                                                                                                    |
| DiLorenzo | Is this prospective only or when can legislation be enacted?                                                                                                                                                                                                                                                           |
| Whitsett  | I believe 2017 as the earliest to be enacted. It could become law during 2015-16. I want it to be considered on merits, it should be settled away from politics.                                                                                                                                                       |
| Bushong   | I have two questions. Is this only addressing standing to defend laws or to challenge legislative action? Second is this an ongoing problem?                                                                                                                                                                           |
| Whitsett  | On defending or challenging, I believe that if a person is given standing, I don't know how you give standing to defend without giving them standing to challenge a law. That is a loaded second question, I'm just looking for what is right to do by the law.                                                        |
| Elzinga   | I don't think the senator is trying to change voter or taxpaying standing, just defense standing. As far as this being a one-time thing there are examples of this happening in other places. This will give the Attorney General more flexibility and less pressure instead of having to play "political hot potato". |
| Dobbins   | I know that Attorney Generals will occasionally not defend things they believe obviously unconstitutional. I know it happens on the federal level. The question will be how strong does that consensus have to be on unconstitutionality?                                                                              |
| Bushong   | Massachusetts comes to mind they have a law that allows the legislature to get an advisory opinion from the state Supreme Court. Would this be in the scope?                                                                                                                                                           |
| Whitsett  | The Oregon Supreme Court tries to avoid this. It usually goes the legislature makes laws and the judiciary decides whether laws are appropriate after they are made.                                                                                                                                                   |
| Myers     | Any more questions? I know that the program committee wanted the Work Group to decide the fine details that we are discussing now.                                                                                                                                                                                     |
| Rosenblum | Thank you Senator for taking this on, it's important. Intends to vote in favor. We tried to address this in our latest issue in our                                                                                                                                                                                    |

brief.

DiLorenzo

Supports proposal and compliments Senator and staff. I see this like the pope who is appointed to play devil's advocate when a person is up to become a saint. "Defending" or standing to defend a law doesn't mean they approve of it. It just means the judge is presented with all of the arguments conceivable to make a better ruling.

Myers

If and when a policy issue becomes a judicial issue you need all of the arguments, like the devil's advocate function.

Whitsett

This also applies to appellate law, because they can only go off of the previous record. If the record has not been fully developed they wouldn't have the opportunity to find out anything that adds to their scope.

Dobbins

What's the difference between standing law for state and federal courts? We might not have as much flexibility in the federal courts as we do in state courts.

Myers

Discussing federal laws will be very interesting.  
Motion.

Dobbins

Caveat- sensitivity to dates.

Myers

Motion- approved.  
Next to Election Code recommendation. Staff anything?

Dobbins

No.

Zejdlik

Background on herself. This proposal is broader than Senator Whitsett's proposal. Every year there is a very long omnibus bill or clean-up bill full of technical fixes. The last comprehensive revision was 1979 which was before vote by mail (this is in one statute). If you are an elections worker this doesn't help you to know how elections actually run. There are a lot of manuals to help, but don't all match up with the code. We need a comprehensive umbrella. Election bills are hard on legislatures. Bills can be politically charged when they are not meant to be. This isn't in the proposal, but I think Election law can be separated into subsets like Campaign Finance, Elections Administration, and Referendum and Initiative. Then we can have experts working on each work group. Clarity can go a long way. This is a nonpartisan issue and we need a nonpartisan outlet.

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| Shetterly  | Questions?                                                                                                                                                                                                                                                                                                                                                                                                       |
| DiLorenzo  | Secretary of State has technology to count every signature, but relies on a statute that requires sampling. Would Secretary of State be open to count every signature instead of sampling?                                                                                                                                                                                                                       |
| Zejdlik    | The Secretary of State has no particular agenda on this.                                                                                                                                                                                                                                                                                                                                                         |
| Symeonides | Separate Campaign Finance? Would there be subgroups?                                                                                                                                                                                                                                                                                                                                                             |
| Zejdlik    | Yes there would be subgroups, one being Campaign Finance.                                                                                                                                                                                                                                                                                                                                                        |
| Walters    | Are they going to be working simultaneously?                                                                                                                                                                                                                                                                                                                                                                     |
| Zejdlik    | A lot of the laws are unrelated, but they are woven throughout different chapters so someone has to look across the whole thing.                                                                                                                                                                                                                                                                                 |
| Myers      | First I think there needs to be a Work Group to organize and break this apart.                                                                                                                                                                                                                                                                                                                                   |
| Dobbins    | Multiple options.                                                                                                                                                                                                                                                                                                                                                                                                |
| Shetterly  | Work Group should first evaluate the scope of work and then break it down, maybe even doing this over more than one legislative session.                                                                                                                                                                                                                                                                         |
| Bushong    | After the Commission does its work would the Secretary do a comprehensive rewrite?                                                                                                                                                                                                                                                                                                                               |
| Zejdlik    | Yes. My recommendation should look at rules in manuals to make them into statutes.                                                                                                                                                                                                                                                                                                                               |
| Shetterly  | Discussions or questions?                                                                                                                                                                                                                                                                                                                                                                                        |
| Myers      | Motion to form an Elections Modernization Work Group.                                                                                                                                                                                                                                                                                                                                                            |
| Shetterly  | Motion- Approved. No objections. Now Jeff you have news for us.                                                                                                                                                                                                                                                                                                                                                  |
| Dobbins    | Former Rep. Garrett is now gone and Jennifer Williamson is his replacement. There are three commissioners whose terms are coming up. Further staff updates; Jenna Jones is our work study Willamette student and then we have a law student who is externing for us, Christina Andreoni. On our last budget update we got an additional two percent back. We've had a calm last two cycles. Questions? Comments? |

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| Shetterly | No. Take us to the Work Groups.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Dobbins   | DiLorenzo, adoption, want to talk on that.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| DiLorenzo | Stage one was successful. We did wonderful things and passed legislation. One of the few states in country to address this. Phase two will be more controversial. Next thing to do is establish a schedule and unify.                                                                                                                                                                                                                                                                                                                                |
| Shetterly | Congrats on a great first effort.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Dobbins   | Appellate Judicial Selection- Headed by former Chief Justice de Muniz. There is room for discussion, but we can't come to a consensus. We plan to have comprehensive report with the issues we see here and in other states. We don't want an opinion and we'll see after the report were to go.                                                                                                                                                                                                                                                     |
| Walters   | I think the report will be helpful.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Dobbins   | We've had enough meetings and discussion.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Shetterly | Might come back to the commission later this year?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Dobbins   | Yes. Child Abuse- has to do with definitions and was put into abeyance about a year and a half ago. Wendy, Senator Winters and DHS may try to bring it back.<br>Decisions by Disqualified Public officials- this group hasn't come together in a while. It came in the aftermath of ethics. Deals with public officials participate in a decision that they weren't allowed to. Discussion to reassemble or not? I'll discuss it with Commissioner Myers.<br>Juvenile Records- We'll check in with Wendy and send out an email about it.<br>Probate? |
| Shetterly | Probate is zipping along. Legislation for the next session on intestacy and wills. Then we'll go on to the probate process itself. Anticipate legislation toward the end of the year. Questions?                                                                                                                                                                                                                                                                                                                                                     |
| Dobbins   | Uniform Collateral Consequences of Conviction Act- Work Group on consequences of convictions. It has been assembled and will be starting up shortly. More information next time.                                                                                                                                                                                                                                                                                                                                                                     |
| Shetterly | Who is the head on that? Julie?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

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| Ehlers    | I think so.                                                                                                                                  |
| Dobbins   | Anyone interest in being on this Work Group, we're looking for you.                                                                          |
| Shetterly | Pleased to Oregon moving in this direction. It's growing nationally.                                                                         |
| Dobbins   | There is another project coming from OJD for the program committee.                                                                          |
| Shetterly | Commissioners please let me, Wendy, or Jeff know if you are interested in Standing or Election Law.<br>Anything else? Anything from the Bar? |
| Grabe     | No.                                                                                                                                          |
| Shetterly | We will honor and acknowledge Chris Garrett's service at the next meeting.                                                                   |
|           | Adjourned 9:40 a.m.                                                                                                                          |

Submitted By,

Reviewed By,

Jenna Jones  
Student Work Study

Wendy Johnson  
Deputy Director and General Counsel

**EXHIBIT SUMMARY**

**Minutes for December 12, 2012 meeting**

**Minutes for January 25, 2012 meeting**

**Minutes for March 20, 2013 meeting**

**Minutes for April 1, 2013 meeting**

**Minutes for October 3, 2012 meeting**

**Standing Modernization Proposal**

**Election Law Modernization Proposal**

**Staff Suggested Motion Language**

**List of OLC Current Projects**