OFFICIAL

Republican Voters' Pamphlet

Containing

Proposed Constitutional Amendments and Measures

(With Arguments)

To Be Submitted to the Voters of Oregon

at the

SPECIAL ELECTION, MAY 18, 1934

and

Statements of Candidates for Nomination for State and District Offices

PRIMARY ELECTION, MAY 18, 1934

Compiled and Issued by
P. J. STADELMAN
Secretary of State

Pursuant to Chapter 90, Oregon Laws, Second Special Session, 1933, and Section 36-2404, Oregon Code 1930.

LAW DIRECTING THE HOLDING OF A SPECIAL ELECTION AND AUTHORIZING THIS COMPILATION

(From Chapter 90, Oregon Laws, Second Special Session, 1933)

Section 1. A special election shall be held in the several voting precincts throughout the state of Oregon on Friday, May 18, 1934. There shall be submitted to the people for their approval or rejection at the said special election, (1) all constitutional amendments proposed by the second special session of the thirty-seventh legislative assembly of the state of Oregon; (2) all measures and questions enacted at said session and referred to the voters, either directly by the legislature, or by referendum petition; and, (3) such constitutional amendments and measures as may be proposed by completed initiative petitions filed with the secretary of state not less than four months prior to the said special election, ordering specifically or optionally their submission thereat. The said election shall be held during the same hours on said day and in all respects in the same manner as are other elections as provided by law relating to regular general elections, and the votes cast on such constitutional amendments, measures and questions shall be counted, canvassed, returned and declared in the same manner as provided by law for measures voted upon at regular general elections.

Section 2. On or before April 3, 1934, any person or association of persons may file with the secretary of state any argument or statement favoring or opposing any of said constitutional amendments, measures or questions to be voted on by the people at such special election on the same terms and conditions as are provided therefor by law for the filing of such arguments or statements on any amendments or measures referred to the people at a regular general election. Any argument favoring or opposing any of such constitutional amendments, measures, or questions prepared and presented by any legislative committee pursuant to authority of said thirty-seventh legislative assembly, second special session, shall be filed with the secretary of state not later than April 3, 1934.

Section 3. Immediately after the time shall have expired for filing arguments or statements, as provided in section 2 hereof, the secretary of state shall cause to be printed in pamphlet form, in the manner now provided by law, a true copy of the title and text of each constitutional amendment, measure, and question herein mentioned to be submitted at such election, together with any such arguments or statements so filed, and shall, not less than 10 days prior to the date of said election, mail to each registered voter of the state a copy of such pamphlet; provided, that if the secretary of state shall, at or about the same time be mailing any other pamphlet to every voter, he may, if practicable, bind the matter herein provided for in the first part of said pamphlet, numbering the pages of the entire pamphlet consecutively from one to the end, or he may inclose the pamphlets under one cover.

* * * * *

(On Official Ballot, Nos. 302 and 303)

AN AMENDMENT

To section 11, article I of the constitution of the state of Oregon, to be submitted to the legal voters of the state for their approval or rejection at the special election to be held May 18, 1934; proposed by the second special session of the thirty-seventh legislative assembly by senate joint resolution No. 4 filed in the office of the secretary of state December 12, 1933.

The following is the form and numerical designation of the proposed amendment as it will be printed on the official ballot:

Constitutional Amendment—Referred to the People by the Legislative Assembly

CRIMINAL TRIAL WITHOUT JURY AND NON-UNANIMOUS VERDICT CONSTITUTIONAL AMENDMENT—Purpose: To provide by constitutional amendment that in criminal trials any accused person, in other than capital cases, and with the consent of the trial judge, may elect to waive trial by jury and consent to be tried by the judge of the court alone, such election to be in writing; provided, however, that in the circuit court ten members of the jury may render a verdict of guilty or not guilty, save and except a verdict of guilty of first degree murder, which shall be found only by a unanimous verdict, and not otherwise.

302 Yes. I vote for the proposed amendment. **Vote YES or NO**

303 No. I vote against the proposed amendment.

The following is the 25-word voting machine ballot title of the proposed amendment:

CRIMINAL TRIAL WITHOUT JURY AND NON-UNANIMOUS VERDICT CONSTITUTIONAL AMENDMENT—Purpose: Authorizing accused, with judge's consent, to waive jury trial, except in capital cases; verdict, except guilty of first degree murder, by ten circuit court jurors.

SENATE JOINT RESOLUTION NO. 4

Be It Resolved by the Senate of the State of Oregon, the House of Representatives jointly concurring:

That section 11, article I of the constitution of the state of Oregon be, and the same hereby is, amended so as to read as follows:

ARTICLE I.

Sec. 11. *Rights of Accused in Criminal Prosecution.* In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor; provided, however, that any accused person, in other than capital cases, and with the consent of the trial judge, may elect to waive trial by jury and consent to be tried by the judge of the court alone, such election to be in writing; provided, however, that in the circuit court ten members of the jury may render a verdict of guilty or not guilty, save and except a verdict of guilty of first degree murder, which shall be found only by a unanimous verdict, and not otherwise; provided further, that the existing laws and constitutional provisions relative to criminal prosecutions shall be continued and remain in effect as to all prosecutions for crimes committed before the taking effect of this amendment; be it further

Resolved, That said proposed amendment be submitted to the people for their approval or rejection at the next election held throughout the state of Oregon, whether the same be a general or special election; be it further

Resolved, That the secretary of state of the state of Oregon be, and he hereby is, authorized and directed to set aside one page in the official pamphlet containing initiative and referendum measures to be voted upon at the next election, whether the same be a general election or a special election, in which articles in support of the foregoing amendment may be printed, and that a joint committee, consisting of one senator, to be appointed by the president of the senate, and two representatives, to be appointed by the speaker of the house, be appointed to prepare such arguments for publication and file the same with the secretary of state, and the page in which arguments against the foregoing amendment may be printed, which arguments may be furnished by any person interested; provided, that in case more material is offered than can be printed on one page of the pamphlet, the secretary of state shall select the part of such material to be printed.

Filed in the office of the secretary of state December 12, 1933.

For affirmative argument see page 7.
For negative argument see page 8.

(On Official Ballot, Nos. 302 and 303)

ARGUMENT (Affirmative)

Submitted by the joint committee of the senate and house of representatives, thirty-seventh legislative assembly, second special session, in behalf of the **Criminal Trial Without Jury and Non-Unanimous Verdict Constitutional Amendment.**

The laws of Oregon now prohibit the court from commenting on the fact that the accused in a criminal case has failed to take the witness stand and testify in his own defense, and the judge is also prevented from commenting on the value of the evidence introduced on behalf of the defendant no matter how flimsy the defense of the accused may be. Our laws also require that the evidence against the defendant must be so conclusive as to the culprit's guilt that the jury must be convinced beyond any reasonable doubt or to a moral certainty of that guilt before it is privileged to find a verdict of guilty. Twelve jurors trying a criminal case must be unanimous in their decision before the defendant may be found guilty.

The proposed constitutional amendment is to prevent one or two jurors from controlling the verdict or causing a disagreement. The amendment has been endorsed by the district attorney's association of this state and is approved by the commission appointed by the governor to make recommendations amending criminal procedure.

Disagreements not only place the taxpayers to the expense of retrial which may again result in another disagreement, but congest the trial docket of the courts.

The amendment provides that a jury of ten may return a verdict save and except in first degree murder. A notable incident of one juror controlling the verdict is found in the case of State v. Silverman recently tried in Columbia county. In this case 11 jurors were for a verdict of murder in the second regree. One juror was for acquittal. To prevent disagreement 11 jurors compromised with the one juror by returning a verdict of manslaughter. This they were compelled to do to prevent large costs of retrial.

Disagreements occasioned by one or two jurors refusing to agree with 10 or 11 other jurors is a frequent occurrence.

One unreasonable juror of the 12, or one not understanding the instructions of the court can prevent a verdict either of guilt or innocence.

We believe that the people of Oregon will clearly see the reasonableness of the proposed change and vote favorably for this measure, which certainly is a step in the right direction.

ASHBY C. DICKSON,
State Senator, Portland, Oregon.

FRANK H. HILTON,
State Representative, Portland, Oregon.

F. H. DAMMASCH,
State Representative, Portland, Oregon.

(On Official Ballot, Nos. 302 and 303)

ARGUMENT (Negative)

Submitted by Richard Deich, opposing the **Criminal Trial Without Jury and Non-Unanimous Verdict Constitutional Amendment.**

It has been stated through the public press and otherwise that shrewd lawyers have been enabled to defeat justice because of the age-old custom of requiring a unanimous jury in criminal cases, by centering upon one or more jurors perhaps and getting what is known as a "hung jury" and eventually winning the case or causing the dismissal thereof. But as a matter of fact, no lawyer need care whether it would be a 12 man jury, the court itself, a majority jury or a 10 man jury who decides the case, because the lawyer will take the cloth as he finds it and cut the suit accordingly and he will win or lose his case just the same; but to the citizens of our great country who have paid dearly to establish this 12 man jury, it is all important.

"LAW

Laws, as we read in ancient sages,
Have been like cobwebs in all ages,
Cobwebs for little flies are spread.
And Laws for little folks are made;
But if an insect of renown,
Hornet or beetle, wasp or drone,
Be caught in quest of sport or plunder,
The flimsy fetter flies in sunder."

The particular amendment in question to section 11, Article 1 of the constitution of Oregon, is objectionable for other reasons than the above. One objection that seems overwhelming to me is the fact that anyone charged with murder in the first degree which means premeditated with malice aforethought, killing of a human being, is allowed the special privilege of no conviction unless 12 jurors unanimously agree; whereas, the small fry, the embezzler, the second degree murderer, the forger, the rapist and all lesser crimes, must take his chance on 10/12 jury. It would seem that it is putting a premium on what our law-makers and the public in general seem to believe is the worst criminal in the world. It would seem that the poet quoted above had this same idea in mind when he wrote his little known or heeded couplet.

In practically 10 years experience as a deputy prosecutor in Multnomah county, Oregon, I cannot recall a single instance in my own experience where I regretted the fact that less than a unanimous jury could bring in a conviction in a criminal case and I tried a goodly number of cases. I can remember probably a quarter of a century ago when the district attorney was considered one of the best, if not the best, lawyer in the community; whereas I do not necessarily need to call your attention to the fact that now he is possibly considered one of the poorest if not the worst. This is not necessarily a reflection on the legal ability of a district attorney of a large district like Seattle, Portland, San Francisco or Los Angeles because as a matter of course he cannot try all of the cases or even the most important ones but he should be able to organize his force whereby he would be represented by able and competent lawyers as deputies. In other words, the greatest asset of a district attorney in a large community is executive ability. This, of course, would be somewhat difficult to secure without adequate compensation for said deputies, even though the district attorney was possessed of the necessary executive qualifications.

I am against the amendment not because I feel it is an ill-advised move. It is a weak and ill-advised attempt to correct an evil that will be abortive because it will not get the results sought for. It is an attempt to repair the engine in your automobile by patching up a hole in the exhaust pipe.

RICHARD DEICH,
State Representative,
Fifth District, Portland, Ore.