



Measure 87--Judges may be employed by state public universities or the National Guard (Referral)

This constitutional amendment would permit state judges to be paid for teaching at state public universities or for serving in the National Guard. Currently, judges may teach at private colleges and may volunteer to teach at public colleges, but the state constitution prohibits state officials from serving in two different branches of government. Supporters say that judges should be able to share their knowledge with students at public universities. Opponents say that judges should focus on their primary judicial duties.

<i>EASY READ GUIDE</i> Information

Official Title:

Amends Constitution: Permits employment of state judges by National Guard (military service) and state public universities (teaching).

The way it is now:

Under the Oregon Constitution, no state judge can work in another branch of the state government. They cannot teach at the University of Oregon Law School or serve in the Oregon National Guard, but they can teach at private law schools like Lewis and Clark or Willamette University.

What Measure 87 would do:

State judges could serve in the Oregon National Guard and teach at state public universities. They could teach at public law schools such as the University of Oregon.

How much would it cost:

There is no new cost.

Argument for:

Law students at the University of Oregon will benefit from learning from current state judges, just like students at private law schools.

Argument against:

Nobody has given a reason to vote no on Measure 87.



State of Oregon Measure 87: Allow Judges to Work in Other Branches of State Government

VOTERS' GUIDE INFORMATION

State of Oregon Measure 87: Allows Judges to Work in Higher Education & National Guard

Official Title: Amends Constitution: Permits employment of state judges by National Guard (military service) and state public universities (teaching)

Referral: This measure is a constitutional amendment referred to voters by the 2014 Oregon Legislature with a vote of 51 yes votes and 7 no votes in the House and a vote of 29 yes votes and 0 no votes in the Senate.

Financial Impact: There is no financial effect on either state or local government expenditures or revenues.

Probable Results of a YES Vote: If this measure passes, it would allow state court judges to be paid to teach at public universities or work in the Oregon National Guard.

Probable Results of a NO Vote: If this measure fails, Oregon law will retain the current constitutional restriction that persons employed by one branch of the state government (in this case, the judiciary) may not also serve in a second branch.

Background: The Oregon Constitution, under its separation of powers clause, does not allow people to serve in more than one branch of the government at the same time. The separation of powers clause refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another; the intent is to prevent the concentration of power and provide for checks and balances. There is less concern regarding conflict of interest arising if a judge were teaching at a public university or serving in the Oregon National Guard. If such a court case arose, it could be assigned to a different judge.

There are three laws schools in Oregon. Currently, judges may teach at either private law school (Lewis & Clark and Willamette) but may not be paid to teach at the University of Oregon Law School because of the constitutional clause. (A judge may volunteer to teach at the University of Oregon without pay.) The Legislature endorsed a referral on this topic in 2013, but that bill included reference to the "State Board of Higher Education" as the employing entity for the public universities. The Legislature subsequently changed that governing structure, which made the 2013 language obsolete.

The prohibition on judges being employed in the Oregon National Guard has not been tested in the legal system but would likely be interpreted as contrary to the separation of powers clause.

The Proposal: Ballot Measure 87 would amend the Oregon Constitution to allow state court judges to be employed for the purpose of teaching at public universities and to receive compensation for performing military service in the Oregon National Guard.

Currently, Article III, Section 1, of the Oregon Constitution (separation of powers clause) prohibits persons from serving in more than one branch of government at the same time. As one result of this prohibition, state court judges may not be employed as teachers at institutions of public education. Article II, Section 10, of the Oregon Constitution further prohibits state court judges from receiving compensation for performing military service.



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Ballot Measure 87 removes reference to the State Board of Higher Education to reflect the current structure due to recent legislative changes and also rescinds Senate Joint Resolution 34 (from 2013), which referred to the old structure of higher education.

Supporters Say:

- Measure 87 will allow judges to contribute their wisdom and experience to the preparation of the next generation of lawyers and judges attending the University of Oregon and to be paid for it.
- Measure 87 will allow judges to serve in the Oregon National Guard for pay without concern for a constitutional challenge.

Opponents Say:

- Judges should focus on their courtroom jobs and not be distracted by a teaching job.
- Judges should not risk being called away from their courtrooms for National Guard duty.

BACKGROUND INFORMATION

Proposals to allow judges to be employed at Oregon's public universities have been considered by the Oregon legislature at least since 2010.

In testimony submitted to the legislature in 2013, Judge Karsten Rasmussen of the Oregon Circuit Court, 2nd Judicial District (Eugene), noted that both private laws schools listed sitting judges as adjunct professors (as well as retired Oregon Supreme Court Justices) (Letter to Senate Committee on Rules, June 19, 2013). The judge also noted that he personally volunteers to teach at the University of Oregon Law School, to share his practical skills and judicial perspectives. In 2010, Margaret Paris, who was then Dean of the University of Oregon Law School, also recommended that this change occur.

References and Resources:

Oregon Secretary of State ORESTAR site as of August 18, 2014.

Oregon Legislative Information System (OLIS).

Phone interview with Richard Donovan, Committee Administrator, Oregon Legislature, August 21, 2014.

Email Message from Oregon Senator Floyd Prozanski, Sponsor of Senate Joint Resolution 203, August 26, 2014.

National Council of State Legislature web site, ncsl.org/research/about-state-legislatures/separation-of-powers-an-overview.aspx, as of August 22, 2014.

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