

# Oregon Anti-gay Ballot Measures

By George T. Nicola



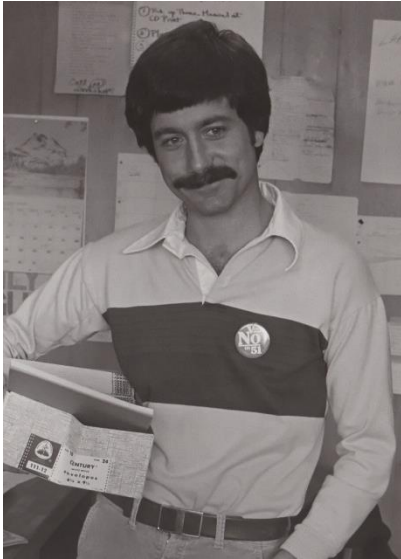
Oregon was once admired for its direct democracy processes. This has included the initiative, referendum, and recall, all of which are part what has been heralded as the “Oregon System.” These reforms have generally been beneficial but have on occasion had an unpleasant side -- they have sometimes been used by the majority to limit the rights of minorities.

We have witnessed this numerous times in Oregon, and the victims have generally been gay men and lesbians. The problem has been exacerbated by the fact that only a simple majority vote, 50% plus 1, is needed to amend the state constitution. Oregon has had about 35 anti-gay ballot measures, probably more than any other state in the country. None of these measures dealt with transgender rights, but probably would have been interpreted to include them. Only one measure mentioned bisexuality specifically, but most would have affected bisexuals by preventing protection from discrimination based on sexual orientation.

This document is not intended to be a source of legal advice or analysis. If you have a question about legal rights, please contact a legal professional. If you believe you are the victim of discrimination based on your sexual orientation or your gender identity, please contact the Oregon Bureau of Labor’s Civil Rights Division through [http://www.oregon.gov/boli/CRD/Pages/C\\_Crcompl.aspx](http://www.oregon.gov/boli/CRD/Pages/C_Crcompl.aspx).

If you discover any inaccuracies in this article, or if you suggest any additions, please contact GLAPN at [info@glapn.org](mailto:info@glapn.org) and we will review your input.

## Oregon Anti-gay Ballot Measures 1978: City of Eugene Measure 51



Terry Bean was a Eugene gay activist who worked to defeat Measure 51. He later moved to Portland and became involved in the statewide LGBT movement. On a national level, he was cofounder of the Human Rights Campaign and the Gay and Lesbian Victory Fund.

In the 1970s, the City of Eugene had an ordinance that banned discrimination based on a number of criteria. Eugene's gay community worked for many years to get sexual orientation added. They finally succeeded in 1977. *The Oregonian* newspaper reported that the "measure prohibited discrimination on the basis of sexual orientation in the areas of employment, housing and public accommodations within the city."

The following year, a group called VOICE (Volunteers Organizing and Involved in Community Enactment) collected signatures and managed to get a referendum on the ballot to repeal the ordinance.

**About 64% favored Measure 51, winning by a 29% margin, so the civil rights protection given to gays was repealed.**

**About two decades later, the City of Eugene again passed an ordinance that banned discrimination based on sexual orientation. This time, the law was not challenged and remained on the books.**

# Oregon Anti-gay Ballot Measures 1988: State of Oregon Measure 8



Harriet Merrick, plaintiff in the lawsuit that overturned Measure 8

In 1987, Oregon Governor Neil Goldschmidt issued an executive order which banned discrimination based on sexual orientation in the executive department of state government. *The Oregonian* described the order as “dealing with sexual orientation and the state government workplace.” The newspaper elaborated that “This included both personnel actions and the delivery of services to the public. The order didn't apply to state employees not under Goldschmidt’s control, such as judicial workers.”

Unfortunately, the order was overturned by an initiative called Ballot Measure 8. Measure 8, sponsored by a group called the Oregon Citizens Alliance (OCA), also prohibited any state official in the future from requiring non-discrimination against state employees based on sexual orientation. This initiative won by a 5.4% margin.

Harriet P. Merrick, a lesbian employee of the University of Oregon, took the new law to court in cooperation with the American Civil Liberties Union of Oregon. In *Merrick v. Oregon*, 1992, the Oregon Court of Appeals ruled Measure 8 unconstitutional because its effect was “to restrain the right of free expression.”

Measure No. 8 STATE OF OREGON	
EXPLANATION	ARGUMENT IN FAVOR
<p>Ballot Measure 8 would revoke the Governor's Executive Order banning discrimination based on sexual orientation. That order prohibits discrimination based on sexual orientation in employment in Executive Branch agencies and in the provision of services by those agencies.</p> <p>Ballot Measure 8 would also prohibit any state official in the future from requiring non-discrimination against state employees based on sexual orientation.</p> <p>Ballot Measure 8 would not limit the authority of any state official to forbid generally the taking of personnel action against state employees based on non-job-related factors.</p> <p>This measure defines "sexual orientation" to mean heterosexuality, homosexuality or bisexuality.</p> <p>Ballot Measure 8 specifies that if any part of the measure is declared unconstitutional, the remaining provisions are not affected.</p> <p><b>Committee Members:</b>            Ms. Janice Wilson            Mr. John Baker            Thomas J. Dohy            Mike A. Wiley            Mr. Arno Deuelke</p> <p><b>Appointed by:</b>            Secretary of State            Chief Petitioners            Chief Petitioners            Members of the Committee</p> <p><i>(This Committee appointed to provide an impartial explanation of the ballot measure pursuant to ORS 261.215.)</i></p>	<p><b>STOP SPECIAL RIGHTS FOR HOMOSEXUALS</b>            VOTE YES ON MEASURE 8</p> <p>Gov. Neil Goldschmidt's Executive Order 87-20 has the effect of giving special preferences and special protections, SPECIAL RIGHTS, to homosexuals.</p> <p><b>HOMOSEXUALS ARE ALREADY PROTECTED BY STATE LAW.</b></p> <p>ORS 261.308 states that personnel decisions in state employment cannot be made based on non-job-related factors. Sexual orientation is a non-job-related factor unless an employee discriminates on her sexual orientation in a way that disrupts the work place.</p> <p><b>Q. WILL MEASURE 8 ALLOW DISCRIMINATION BASED ON SEXUAL ORIENTATION?</b></p> <p>A. Absolutely not. This claim is an attempt by opponents of Ballot Measure 8 to divert attention away from the real issue, which is the fact that Executive Order 87-20 gives special protection to homosexuals. Homosexuals, like all Oregonians are already protected by existing state law. Additionally, they are protected from discrimination by Oregon State Constitution Article I, Section 20, and by the Fourteenth Amendment to the United States Constitution. Section Three of Measure 8 states clearly that it does not limit the authority of state officials to forbid discrimination based on non-job factors generally.</p> <p>The Oregon Chapter of the ACLU, which claims to be a non-partisan legal group, but is actually in the legal attack arm of leading cases, attempted to claim before both the Oregon Supreme Court in a challenge to the Measure 8 ballot title and the five member Voters Pamphlet Explanatory Committee that Measure 8 would allow discrimination. Both the Oregon Supreme Court, in deciding the Ballot Title, and the Ballot Measure 8 Explanatory Committee declined to agree that Measure 8 would allow arbitrary discrimination against homosexuals or any other group.</p> <p>In rendering extensively with legal counsel, Oregon Citizens Alliance has determined that Measure 8 will in no way allow arbitrary discrimination based on sexual orientation. In plain, non-legalistic terms, Ballot Measure 8 simply revokes the Governor's Executive Order and says that he can't do it again. It would be foolish to revoke the Executive Order and then allow it to be reimposed the very next day.</p> <p>Ballot Measure 8 will not allow discrimination, it simply returns state policy to the way it was prior to Executive Order being issued last October. How discriminatory was state policy against homosexuals prior to the Governor's Order? There was not even one claim of discrimination against homosexuals.</p> <p><b>STOP SPECIAL RIGHTS FOR HOMOSEXUALS</b>            VOTE YES ON MEASURE 8</p> <p><b>Submitted by:</b> Oregon Citizens Alliance            Leo T. Mahon            810 SW Pioneer Ct, Suite W            Wilsonville, OR 97071</p> <p><i>(This space purchased for \$300 in accordance with ORS 261.215.)</i></p>

Voters' Pamphlet entry explaining Measure 9

# Oregon Anti-gay Ballot Measures

## 1992: State of Oregon Measure 9



Lesbian activist Kathleen Saadat campaigned tirelessly against Ballot Measure 9.

After their initial Measure 8 success, the OCA went on to sponsor Ballot Measure 9 in 1992. The measure was titled “Government Cannot Facilitate, Must Discourage Homosexuality, Other Behaviors.”

Measure 9 would have amended the Oregon constitution to ban civil rights protection based on sexual orientation. It mandated that schools “shall assist in setting a standard for Oregon's youth that recognizes homosexuality, pedophilia, sadism and masochism as abnormal, wrong, unnatural, and perverse and that these behaviors are to be discouraged and avoided.” A section of the measure stating the government could not “promote, encourage, or facilitate homosexuality” could have had many negative results, such as banning gay positive books from public libraries.

Opposition to the measure was bipartisan and included people of many faiths, identities, and ethnicities. Gay men and lesbians came out to people they knew. Straight people increasingly realized that we are their friends, their family, their neighbors, their coworkers. Oregonians began to understand that when gay people as a group are being threatened, someone they love is probably being threatened. Voters defeated Measure 9 by an impressive 12.9% margin.

Official 2000 General Election Voters' Pamphlet—Statewide Measures	
Measure No. 9	
Proposed by initiative petition to be voted on at the General Election, November 7, 2000.	<b>EXPLANATORY STATEMENT</b>
<b>BALLOT TITLE</b>	Ballot Measure 9 amends state statutes relating to public school instruction regarding homosexuality and bisexuality. The measure prohibits public schools from providing instruction on behaviors relating to homosexuality and bisexuality in a manner that encourages, promotes or sanctions such behaviors. For purposes of this measure, "public schools" include public elementary schools, public secondary schools, community colleges, state colleges and state universities, and all state and local institutions that provide education for patients or inmates. The measure also provides sanctions for noncompliance by any public elementary school, public secondary school or community college. For public elementary and secondary schools, noncompliance, including guidelines for determining noncompliance, will be determined by the Superintendent of Public Instruction. For community colleges, noncompliance, including guidelines for determining noncompliance, will be determined by the Commissioner of Community College Services. Sanctions may include the withholding of all or part of state funding. The sanctions are based on rules to be adopted by the State Board of Education.
<b>9 PROHIBITS PUBLIC SCHOOL INSTRUCTION ENCOURAGING, PROMOTING, SANCTIONING HOMOSEXUAL, BISEXUAL BEHAVIORS</b>	<b>Committee Members:</b> Philip Z. Ramsdell Bary Williams Roger Gray Maure Roche Jack Roberts
<b>RESULT OF "YES" VOTE:</b> "Yes" vote prohibits public school instruction encouraging, promoting, or sanctioning homosexual/bisexual behaviors, provides penalties.	<b>Appointed by:</b> Chief Petitioners Secretary of State Members of the Committee
<b>RESULT OF "NO" VOTE:</b> "No" vote rejects proposal to prohibit public school instruction encouraging, promoting, sanctioning homosexual/bisexual behaviors.	(This committee was appointed to provide an impartial explanation of the ballot measure pursuant to ORS 201.271.)
<b>SUMMARY:</b> Amends statutes. Prohibits public schools from instructing on behaviors relating to homosexuality and bisexuality in a manner that encourages, promotes or sanctions such behaviors. Provides sanctions for noncompliance by any public elementary or secondary school or by any community college, including loss of all or part of state funding.	
<b>ESTIMATE OF FINANCIAL IMPACT:</b> There is no financial effect on state or local government expenditures or revenues.	
<b>TEXT OF MEASURE</b>	
<b>BE IT ENACTED BY THE PEOPLE OF THE STATE OF OREGON:</b>	
Section 1. ORS 330.087 is amended to read (new section): (6) Sexual Orientation as it relates to homosexuality and bisexuality is a divisive subject matter not necessary to the instruction of students in public schools. Notwithstanding any other law or rule, the instruction of behaviors relating to homosexuality and bisexuality shall not be provided in a public school in a manner which encourages, promotes or sanctions such behaviors.	
Section 2. ORS 656.155 is amended to read (new section): (1) Any public elementary or secondary school determined by the Superintendent of Public Instruction or any community college determined by the Commissioner for Community College Services to be in noncompliance with provisions of ORS 330.087 (6) or ORS 656.150 and this section shall be subject to appropriate sanctions, which may include withholding of all or part of state funding, as established by rule of the State Board of Education.	

Voters' Pamphlet entry explaining Measure 9

## Oregon Anti-gay Ballot Measures

### 1992 to 1994: Local measures similar to Measure 9



Pioneering gay attorney Charlie Hinkle worked to defeat many of the anti-gay ballot measures.

Both before and after the statewide Measure 9, the Oregon Citizens Alliance also took local action. Initiatives similar to Measure 9 were placed on the ballots of about 29 Oregon cities and counties. However, it is difficult to arrive at exact details because there is no one primary online source to research local elections. The vast majority of measures passed, some by huge margins.

These local initiative all appear to be similar to each other. Like the statewide measure, they forbade civil rights protection based on sexual orientation and prohibited public money from being spent to “promote” homosexuality. However, they apparently differed from the statewide initiative in that the local measures did not require an anti-gay curriculum in the schools.

In 1993, the Oregon Legislature invalidated these local measures with House Bill 3500, which prohibits local measures that “single out citizens or groups of citizens on account of sexual orientation.” The law was upheld by the Oregon Supreme Court in 1995.

# Oregon Anti-gay Ballot Measures 1994: State of Oregon Measure 13



Lesbian activist Cathy Abbruzzese worked to defeat Measure 13.

The OCA went on to sponsor more statewide initiatives. In 1994, Ballot Measure 13 was titled: “Amends Constitution: Governments Cannot Approve, Create Classifications Based on, Homosexuality.” This measure failed by a 3.1% margin.

Here is what the ACLU had to say about this initiative:

The OCA has tried to sell this effort as a "kinder and gentler" version of Measure 9, but they have been quick to admit to their supporters and, on occasion, even the news media, that the effect of this measure would be virtually identical to Measure 9. We agree. The effects of both measures are the same: discrimination, censorship and government intervention in our families, schools, workplaces and daily lives. That's why Measure 13 is the "Son of 9."

## Oregon's Prop. 13 How Conservative Values Were Used to Defeat an Anti-Gay Rights Referendum

by Bob Mendlow, Dawn Lagares, Heidi Van Sledright and Michael Teris

Interpretations of the 1994 Republican landslide showed, from articles in the *Wall Street Journal* to the *Los Angeles Times*, that it was a watershed moment in the history of the United States. It was a signal that change had arrived and that the 1992 election, regardless of how one interprets it, had opened a new chapter in American history. The strategies to come focused on "traditional family values."

These ballot measures ranging from tax reduction to

restrictions on immigrant services were successful. Further evidence of the notion that, on social issues at least, the country is moving rightward.

However, amid the election's broad conservative tilt, a few candidates and measures bucked the trend. One notable example was Measure 13 in Oregon, an anti-gay measure that was rejected by a margin of 53 to 47 percent. The successful campaign to defeat this measure provided a dramatic example of how a disciplined campaign can channel the conservative values of the electorate against a right-leaning measure.

The "No on 13" victory demonstrates that campaigns based on fundamental values aren't necessarily the sole province of the right. They can be launched by others as well.

### Consensus Language

In 1992, the Christian Coalition-inspired "Oregon Citizens Alliance" (OCA) qualified Measure 9 for the Oregon ballot. The heavily worded measure (it referred to gays as "persecuted" and "discriminated") was defeated, by a 44 percent margin. In that defeat, the OCA concluded that opponents had given compromised and their funding had dried up. Measure 13 was the third attempt in six years in which the OCA placed a gay-related measure on the ballot.

Between 1992 and 1993, the OCA focused its energies on local anti-gay ordinances, with 20 initiatives pending and only one defeated throughout the state. Emboldened by local victories, the OCA once again turned its attention to a statewide measure. Assuming that their previous hardships was the reason for their defeat in 1992, the Oregon Citizens

Alliance returned in 1994 with what they claimed was a kinder, gentler, measure to amend the Oregon Constitution, entitled "The Minority Rights and Child Protection Act." In reality, the new measure was tougher to defeat because it employed consensus language that tapped into voters' broad conservatism.

For example, the measure would have banned anti-discrimination ordinances based on sexual orientation and prohibited the use of public funds to "promote" homosexuality in schools. In addition, the measure would have established any minority issues based on sexual orientation, banned any discussion of homosexuality in school curricula, prohibited private benefits, and established counseling boards on licensed advisory services in health and disability which referred to homosexuality.

Nevertheless, the OCA's new focus on "child protection" suggested that the OCA would be staying in campaign message away from anti-gay rhetoric to the more broadly appealing notion of child protection. It also signaled their intention to reach the support of parents, and especially suburban women voters whose data and previous voting patterns have shown to be the strongest opponents of anti-gay measures.

The statewide organization previously formed to fight local anti-gay measures — the Oregon Out Community Political Action Committee (OOCAPAC) — merged on the No on 13 Committee. This committee multiplied a broad base of business and community groups to fight the measure. John Davis, executive director of OOCAPAC and the No on 13 campaign manager, brought the movement in conjunction with the professional campaign team of Dawn Lagares (Christian League), general state director (and OCA's treasurer), Bob Mend-



The No on Measure 13 campaign's first TV spot aired on the evening of November 10, 1994. It was the first anti-gay initiative ever placed on the Oregon ballot. The No on Measure 13 is a "No on 13" campaign logo.



The second TV spot was targeted to women with advertising aimed at the women who voted for the measure. The woman who said that she had a child and that she was a mother.

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NOV 1994, CHRISTIAN & BROADCAST

A published article analyzing the defeat of Measure 13.

August 4, 2014

Gay & Lesbian Archives of the Pacific Northwest (GLAPN)

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## Oregon Anti-gay Ballot Measures 2000: State of Oregon Measure 9

In 2000, the OCA sponsored its last statewide anti-gay initiative which was also named Measure 9: “Prohibits Public School Instruction Encouraging, Promoting, Sanctioning Homosexual, Bisexual Behaviors.”

The Oregon Parent Teachers Association submitted an opposition statement in the Voters’ Pamphlet clarifying that “There is NO curriculum in Oregon public schools that ‘encourages or promotes’ homosexuality or bisexuality.” The statement warned that “this measure endangers the health of our children and the quality of our schools.” It also cautioned that the measure would cut:

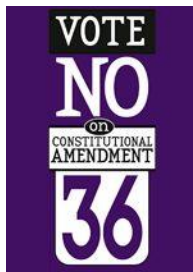
1. “Access to all health education related to sexuality including abstinence, birth control, sexually transmitted diseases, and HIV/AIDS. It would deny all students information they need to make responsible, healthy choices.”
2. “Counseling or support programs for all adolescent students, making it even more difficult for teenagers to come to terms with their sexuality or for counselors to give teenagers information about support groups.”
3. State funding “because of what one person might say. We can't let the agenda of one extremist organization endanger the health of our children and the quality of their schools.”

**This initiative lost by a 5.7% margin.**



Lesbian activist Kathleen Sullivan headed the campaign against the OCA’s final anti-gay ballot measure in 2000.

## Oregon Anti-gay Ballot Measures 2004: State of Oregon Measure 36



Ad opposing  
Measure 36.



U.S. District Court  
Judge Michael  
McShane



The final anti-gay initiative to date, Measure 36, was sponsored by a group called the Defense of Marriage Coalition. Its purpose was to ban same -gender marriage in Oregon by amending the state’s constitution.

The ballot title read “AMENDS CONSTITUTION: ONLY MARRIAGE BETWEEN ONE MAN AND ONE WOMAN IS VALID OR LEGALLY RECOGNIZED AS MARRIAGE.” The actual amendment text was “It is the policy of Oregon, and its political subdivisions, that only a marriage between one man and one woman shall be valid or legally recognized as a marriage.” The Measure passed by a 13% margin.

When it was challenged through a law suit, *Martinez v. Kulongoski*, the measure was affirmed by the Oregon Court of Appeals. The decision was appealed to the Oregon Supreme Court, but the high court denied the petition to hear the case.

In late 2013, two federal lawsuits -- *Geiger v. Kitzhaber* and *Rummell v. Kitzhaber* – were filed challenging the ban. The two cases were consolidated by U.S. District Court Judge Michael McShane, who issued his decision on May 19, 2014. McShane ruled that Oregon’s laws banning same-gender marriage “violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.” Same-gender weddings started the same day.