

MARIJUANA REPORT

by John Sajo

The Oregon Marijuana Initiative has been denied a place on the ballot twice although each time more than enough signatures had been gathered on petitions. In July OMI petitioners will canvas the state a year in advance of the petition deadline for the 1986 election. John Sajo, director of OMI, gives some reasons in the following article why the measure was kept off the ballot in 1982 and 1984.

Backers of the 1984 Oregon Marijuana Initiative were certain that they had collected enough signatures to qualify their proposal for the November election when they turned in eighty-five thousand signatures last July.

They were wrong. Despite collecting twenty-two thousand signatures over the 62,521 required by law, the measure was not placed on the ballot.

The Oregon Marijuana Initiative staff did some checking and found out that elections officials had made many errors in estimating the number of valid signatures. OMI lawyers filed suit in the Oregon Supreme Court to have the initiative placed on the ballot. The court ruled in favor of the marijuana reform activists, ordering that government errors be corrected. But even with that apparent success, the marijuana initiative still was not put on the ballot. The complex series of events which scuttled the initiative reveals a great deal about the frustrations of marijuana law reform, and about politics in general.

OMI '84 would have been the first statewide vote on the marijuana issue. If a majority had voted for proposal, personal, private use of marijuana would have been legal in Oregon. The measure would have allowed adults to grow marijuana for their own private consumption. Sale, distribution, or use in public would have remained illegal.

The initiative process was enacted to allow voters to govern themselves. Oregon law allows citizens to propose laws by collecting enough signatures of registered voters. The process provides citizens with an alternative to the Legislature. When the lawmakers are unable to act on an issue of sufficient public interest the people can raise the issue themselves. Twenty-two other states also provide for some form of initiative or referendum.

Marijuana is just the type of issue where use of the initiative process is important. Marijuana is obviously controversial. Millions of Americans smoke marijuana every day, and it is Oregon's leading cash crop, according to the University of Oregon Business School. Yet in 1983, six thousand Oregonians were arrested for marijuana.

In 1982, sixty thousand Oregonians signed a marijuana initiative similar to the 1984 version. A total of 54,669 valid signatures were needed. Secretary of State Norma Paulus ruled that too many of the signers were improperly registered and denied the first OMI a place on the ballot.

"Valid" is the key word. Valid means that the person is properly registered to vote. Actually it means verified, or in other words, valid according to the county clerks and the secretary of state.

For a proposal to actually come before a vote of the people, the secretary of state must certify the measure for a biennial general election ballot. Signatures must be turned in for verification by the deadline — four months prior to the election. The secretary of state determines if sufficient signatures have been turned in on the petitions. According to Oregon law, signatures must be verified within fourteen days of the turn-in deadline. To save time, only a random sample of the signatures is actually checked. These signatures are sent to county clerks who hire workers to compare the signatures with each voter's registration card. If no card is found in the county's office, the signature is not verified and does not count toward the total needed to qualify for the ballot.

Backers of the 1984 Oregon Marijuana Initiative turned in eighty-five thousand and three signatures last July 6. Two weeks later, chief petitioner Greg Mihalik received a phone call informing him that the secretary of state had determined that there were not enough valid signatures to qualify the measure for the ballot. That same afternoon Mihalik and I went to Salem and met with Ray Phelps, director of Elections, and his assistant, Larry Bevins. Even though he had supposedly directed a rigorous legal proceeding to determine the petitions' sufficiency, Phelps was unable to (or refused

Mark Wilson



to) provide us with the calculations used to determine the number of valid signatures. He claimed that twenty-eight percent of the signatures were invalid, the highest rate ever in Oregon history. Thus, according to Phelps, only 59,502 of the signatures were valid. It was the first of four estimates given for the OMI petition and later turned out to be one of many errors. When I asked him to do an additional sample, Phelps responded that the fourteen day time limit had elapsed.

OMI researchers went to the secretary of state's office in Salem and to most of the thirty-six county clerks' offices. These investigators began finding errors in virtually every step of the verification process, and all of the errors seemed to work in the direction of keeping OMI off the ballot. Blank and crossed out lines had been included in the sample. The written rules for the verification process were not followed. Errors were made in the mathematical calculations. And most significantly, hundreds of properly registered voters were declared unregistered. There were more than enough errors to change the results of the verification process. Throughout OMI's attempts to have the proposal placed on the ballot, Secretary of State Paulus and elections division officials maintained that they had no authority to correct their own mistakes once the fourteen day time limit for verifying signatures had passed.

OMI responded by filing a little-used type of legal action, a Writ of Mandamus, which in this case was essentially asking the court to compel elected officials to do their job. The Oregon Supreme Court agreed to hear the case.

Alan Silber, a New York attorney, and Mike Rose, a Portland attorney, argued for OMI that if elections officials' errors were corrected the initiative must be placed on the ballot. Silber charged that in checking the signatures, Paulus and the county clerks made dozens of errors, including:

- Failing to verify signatures signed on the wrong county sheet by mistake. Officials automatically counted these invalid rather than

send them to the proper county for verification.

- Declaring illegible signatures invalid even if the name was also clearly printed.

- Disqualifying signers simply because their addresses varied between the petition and the county voter registration cards.

- Disqualifying fifty-three registered voters' signatures for no reason at all.

"In close cases election laws should be interpreted in favor of the citizen's right to propose laws," argued Silber. "If a measure is placed on the ballot and wins, that is good evidence that the measure had enough support to be on the ballot. If the measure loses then the cost is slight and no harm is done. However, if a measure such as the Oregon Marijuana Initiative, which demonstrates enough support, is denied a place on the ballot, then a great harm is done. Eighty-five thousand citizens have been denied their constitutional right to initiate laws and all the voters lose the option to consider a controversial issue."

On August 29, the Supreme Court ruled in favor of the Oregon Marijuana Initiative. The court ordered Norma Paulus to correct errors, reverify the sample of signatures, and if OMI had sufficient signatures, then place the initiative on the ballot.

At this point many thought OMI had won. Paulus announced that she had to put the measure on the ballot. Newspaper headlines around the state declared, "High Court Reverses Paulus On Marijuana Vote." But the next day, under advice of Attorney General Dave Frohnmeyer, Paulus asked the court for clarification. The court reiterated that it had merely ordered a reverification. Meetings followed between OMI and elections officials. At these meetings OMI volunteers outlined the mistakes which they had documented, including copies of voter registration cards for fifty-three people that county clerks had wrongly declared unregistered. Strangely, elections officials refused to include these in their reverification. OMI asked the Supreme Court to order the fifty-three to be included. The court refused, without comment. This was one of the most perplexing occurrences of the campaign. The culmination of thousands of people's efforts hinged on these fifty-three signatures being properly counted, but the Supreme Court was silent on the subject.

After delays which took officials longer to reverify two hundred signatures than it had taken them to verify fifty thousand signatures on all ten petitions a few weeks earlier, Paulus announced that OMI failed to qualify. One hundred and twenty-one of the 205 signatures that were reverified were indeed good, which raised the statistical estimate to 61,658. This estimate (the fourth) fell within the area where the statistical sampling process does not yield a definitive result. Usually fairminded Oregon is the only state with the initiative process that allows a petition to be denied a ballot slot based on an inconclusive sampling technique. The practice is about the same as determining the result of an election by taking a poll. Other states only allow statistical sampling to be used to qualify measures but require all signatures to be verified if the result looks close.

Of course the new sampling estimate did not include the fifty-three validly-registered voters disqualified for no reason at all. Each one of those fifty-three signatures actually would raise the estimate by seventeen signatures since they were part of the random sample. Thus an accurate estimate, including the fifty-three, would be 62,559, greater than the 62,521 required by the Oregon Constitution.

However Paulus avoided any discussion of the fifty-three and instead raised a smoke-screen of charges that OMI may have forged some of the signatures. Within forty-eight hours OMI discovered during an internal investigation that one of its paid petition circulators had turned in two hundred bogus signatures and a canceled check used to pay for the signatures. OMI had been the victim of fraud, not the cause of it. The obviously fake signatures hurt the attempt to qualify for the ballot. Possible forged signatures are one of the drawbacks of paid circulators. The way to prevent this is to prosecute the forgers. Instead, Paulus took a cheap shot. She must have known that a TV news story exclaiming, "The state police is investigating signatures of the Oregon Marijuana Initiative" would have a chilling effect on people wanting to sign a marijuana initiative in the future. The real issue is how many valid signatures there are, not how many fake ones.

Lost in the smoke were many serious issues. William Conde, a Eugene businessman who had supported the initiative, had been conducting his own investigation. He had found all sorts of errors, discrepancies and other mysteries. He believed there could be a conspiracy to keep OMI off the ballot. Ray Phelps sent a let-

CONTINUED ON PAGE EIGHTEEN



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