

The “Home Rule” Amendment

A. A Quick Lesson in Constitutional Law

1. The federal *Constitution* is a grant of power.

Congress can pre-empt any and all Oregon law for virtually any reason. The federal charter gives Congress that power.

2. The Oregon *Constitution* is a limitation on power.

The Oregon legislature can't willy-nilly pre-empt city ordinances. The state charter won't allow it.

B. Oregon's 1906 “Home Rule” Amendment

“(E)very city (is) hereby granted power to enact (a) municipal charter, *subject to the Constitution and criminal laws of the State * * *.*”

Read literally, this gives each Oregon city the right to define what forms a contract or what products can be sold in local stores.

However – noted Oregon's Supreme Court in 1909¹ – the federal *Constitution* prohibits the unilateral creation of states within states.

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¹ *Straw v. Harris*, 54 Or 424, 436 (1909).

The 1909 Oregon Court included at least one person who helped write Oregon's “Home Rule” Amendment.

Combined, the Oregon and federal *Constitutions* mandate that:

1. Local governments with “Home Rule” charters have *exclusive* control over local matters; but,
2. Even local governments with such charters must obey laws essential to Oregon’s definition as a state.

C. W. S. U’Ren - Effective Political Firebrand

In the early 1900s, W.S. U’Ren held such sway in Oregon politics that his mere association with an initiative guaranteed the proposal serious consideration, if not success.²

From a 1906 editorial in *The Oregonian*:

“* * * In Oregon, the state government is divided into four departments -- the executive, judicial, legislative and Mr. U’Ren.

“(A)nd, it is still an open question which exerts the most power. * * *.”³ (paragraphs mine).

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² See, generally:

Neuberger, *William Simon U’Ren and the “Oregon System,”* in, *They Never Go Back to Pocatello: The Selected Writings of (Sen) Richard Neuberger* (1988); Steffens, *W.S. U’Ren, The Lawgiver,* in, *Upbuilders* (1909); *The Letters of Lincoln Steffens,* at 312 (1938); Woodward, *W.S. U’Ren and the Single Tax in Oregon,* in, 61 *Or.Hist. Quart.* (1960); Pease, *The Initiative and Referendum – Oregon’s “Big Stick,”* in, *The Pacific Monthly* (May, 1907).

³ *The Oregonian,* July 17, 1906, at 8.

- * As a leader in a New Jersey-based coalition of direct democracy leagues from across the country,⁴ U'Ren developed a reputation and influence that transcended Oregon.
- * State after state took U'Ren's counsel as to copying Oregon's laws for direct democracy,⁵ chief among them the system for direct election of U.S. Senators.⁶
- * In 1915, the *Oregon Voter* speculated that U'Ren "is possibly known more widely throughout the world than any other citizen of Oregon."
- * While some playfully referred to the slender – almost frail – lawyer as "Father U'Ren, of the Referendum,"⁷ his real goal was adoption of the Single Tax, a communistic tax scheme that sought to derail the local "Gravy Train."

D. The Empire Strikes Back

The 1913 legislature added 2 more members to Oregon's Supreme Court, and, attached an emergency clause so U'Ren and his fellows couldn't refer the law to the people.

This even though the Court had grown from 3 to 5 in 1909, and a free-standing justice temple was then being built with a suite of offices obviously designed for 5 judges.

⁴ Vol. V, No. 1, *Direct Legislation Record*, at 1 (March, 1898).

⁵ Lincoln Steffens, *W.S. U'Ren, The Lawgiver*, in, *Upbuilders*, 285, 285-87 (1909).

⁶ Haynes, *The Senate of the United States: Its History and Practice*, 96, 108 (1938).

⁷ Pease, *The Initiative and Referendum--Oregon's Big Stick*, in, *17 Pacific Monthly* 562, 565 (1907).

What a bald power play!

Simply pack the Oregon's Supreme Court with a majority that could be trusted to ignore the state *Constitution*, cut U'Ren off at the knees, and, end all this populist nonsense.

E. So-Long "Home Rule" – 1921

The 1919 Legislature established a 3-member commission with the power to veto any taxes approved within counties with more than 100,000 residents – Multnomah County being the only county that did, or would any time soon, meet that criteria.

Think about that!

Not only were three (3) people given authority to veto taxes approved at the polls by thousands, but, the 1919 legislature avoided the "Home Rule" clause by attaching population criteria that only one county satisfied.

In a 1921 case, *Tichner v. Portland*,⁸ the Oregon Supreme Court upheld creation of the 3-member board, known in statute as the Tax Supervising and Conservation Commission.

F. Welcome Back "Home Rule" – 1936

In *City of Portland v. Welch*,⁹ Oregon's High Court expressly overturned *Tichner*, and repeated the two important "Home Rule" notions:

1. The upper limit of a local government's *exclusive* control over local civil law is found – in the main – in the federal ban against states being created within a state; and,

⁸ *Tichner v. Portland*, 101 Or 294, 298 (1921).

⁹ *City of Portland v. Welch*, 154 Or 286 (1936).

2. The legislature may not do indirectly what it may not do directly. That is, the legislature can't use population criteria to avoid the "Home Rule" Amendment.

G. *So-Long "Home Rule" – Take II – 1978*

Later courts completely missed the importance of *City of Portland* and, finally, resurrected *Tichner* the 1921 "mistake" detailed on the previous page.¹⁰

For its part, the legislature:

1. Never stopped playing the population games; and,
2. Simply pre-empts local law whenever it wants.¹¹

¹⁰ *City of La Grande v. P. E.R.B.*, 281 Or 137 (1978).

¹¹ *See, e.g.*, ORS 634.055.