

May 10, 2004

Will term limits
 be swept away?



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Top Story

Lawmakers and voters have a classic love-hate relationship with term limits — voters love them; lawmakers hate them. Now several states are fighting back, pushing to change or end term limits altogether.

SNCJ Spotlight

Term limits reform movement wins two, loses one

Efforts to reform or abolish the term limits laws that swept the country in the 1990s are gaining momentum in several states (see the May 3 *Capitol Journal*). Over the past week, three states — COLORADO, LOUISIANA and WYOMING — saw major action on term-limit reform, with mixed results.

In COLORADO, where thirteen prominent lawmakers will be termed out this year — including both the House Speaker and Senate President — the House approved a measure last week allowing legislators to serve up to 12 years. Under the state’s 1990 term limits law — the first in the nation — elected officials can only serve for eight years in any one position. Lawmakers’ concerns over the impending loss of House Speaker Lola Spradley (R) and Senate President John Andrews (R), along with several prominent committee members, has given urgency to the move to alter the law.

Observers say the loss of so much experience and leadership will only give more power to bureaucrats and lobbyists. “We’ve gone from being just information providers to having way too much power to negotiate policy issues,” said veteran lobbyist and former legislator Bill Artist. “Just take a look at the folks you see leaving, and you’re taking a huge core out of the political and historical knowledge,” Artist added. “The result is that more and more, we’re seeing people not elected involved in policy decisions.”

House Speaker Spradley, however, said she actually didn’t think term limits was “a bad idea.” She just thinks elected officials should be given more time to learn and use the process.

Another controversial provision of the proposed term limits reform measure — HCR 1014 — which would have subjected the judiciary to term limits, was thrown out by the House. Although many House members said they are disturbed by “judicial activism” — judges legislating from the bench — they believe the problem can be better managed through the judicial review process, which would allow good judges to be retained. The amended bill will now go to the Senate. If approved, it will go before voters in November.

The term limits reform movement won a more decisive victory in WYOMING, where the state Supreme Court struck down the term limits law enacted by voter initiative in 1992. The justices ruled unanimously that it was unconstitutional to impose term limits through a ballot initiative, and that changes in the terms of elected officials could only be instituted through a constitutional amendment, which unlike ballot initiatives, must be approved by a two-thirds majority of each house before going to the voters.

The court added, however, that its ruling only applied to legislative offices because the lawsuit which had challenged the term limits law did not include the executive branch. Despite being left out of the party, statewide officeholders didn’t rush to the courthouse. When asked if she planned on challenging the

*State Recaps
available this
week on the
State Net Web site*

CO, CT, FL, GA, HI, IA,
ID, IN, KY, MD, ME, NE,
NM, SD, UT, VA, WA,
WV, WY

2003-04 State Session
Recaps showcase legislative
statistics for each state.



law, State Treasurer Cynthia Lummis, who will be termed out in two years, said, “Emphatically, no.” Auditor Max Maxfield said he was also not inclined to sue, but added that he hoped Secretary of State Joe Meyer did, “because then the lawsuit would be Meyer versus Meyer. He could be the first official to sue himself.” Gov. Dave Freudenthal (D), who is only in the first of his potential two four-year terms, took the political high ground, saying that while he personally supported term limits and was therefore disappointed by the Supreme Court’s decision, he did not contest the court’s interpretation of the Constitution. He also said those who still wanted term limits were free to seek them through a constitutional amendment and he welcomed the prospect of “a renewed debate.”

Term limits reform didn’t fare nearly as well in LOUISIANA, where the Senate rejected an effort to repeal them for Pelican State lawmakers . A constitutional amendment proposed by Sen. Charles Jones (D) — SB 114 — fell just one vote short of the number needed for passage, prompting Jones to remark that he might give the bill another try.

But even if the bill manages to pass the Legislature, it would still have to be approved by voters, who approved term limits in 1995 by a 3-to-1 margin. (DENVER POST, ROCKY MOUNTAIN NEWS, CASPER STAR-TRIBUNE, ASSOCIATED PRESS, BILLINGS GAZETTE, NEW ORLEANS TIMES PICAYUNE)

CA LOCKING DOWN ON LOBBYISTS? Observers of CALIFORNIA’s political process used to worry that veteran lawmakers were getting too cushy with special interests — a concern that helped spur the state’s 1990 term limits act. But some say now, thanks to that law, a virtually opposite state exists, with lobbyists attempting to strong-arm fledgling legislators. There have been reports

The Week in Session

States in Regular Session:
AL, CA, DE, IL, KS, LA, MA, MI, MN, MO, NC, NH, NY, OH, OK, PA, RI, SC, TN, US

States with Projected Special Session:
KY on TBA
OR on 6/1/2004

States in Special Session: TX “d”

States in Recess:
AR “b”, CA “d”, CA “e”

States in Budget Hearing: NJ

Currently Prefiling:
MT(Drafts for 2005)

States Adjourned:
CO, CT, FL, GA, HI, IA, ID, IN, KY, MD, ME, NE, NM, SD, UT, VA, WA, WV, WY

States in Special Session Adjourned:
CA “a”, CA “b”, CA “c”, CT “a”, CT “b”, DE “a”, LA “a”, MD “2003 session”, ME “b”, UT “c”, WA “a”, WA “b”, WA “c”, WI “d”, WI “e”, WV “a”

Projected Regular Session Adjournment:
AK, AZ, MS, VT, WI

Projected Special Session Adjournment:
GA “a”, VA “a”

Letters indicate special/extraordinary sessions
Source: State Net, 5/7/04

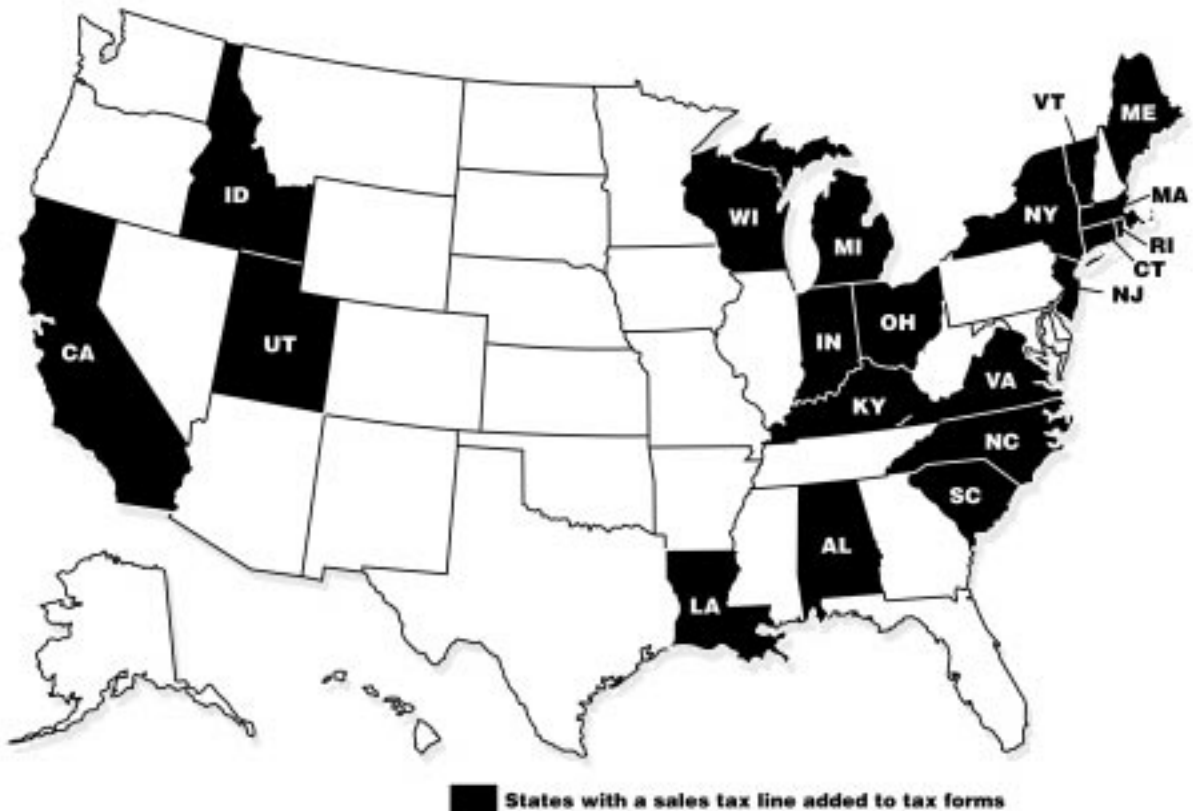
of lawmakers being grabbed and threatened with political harm by particularly aggressive lobbyists outside the Capitol's private elevators. And in a widely publicized episode last year, Richie Ross, a powerful political operative who represents the United Farm Workers of America, yelled at a couple of Assembly staffers whose bosses had voted against a key piece of legislation. Such behavior

Continues on page 5

Bird's eye view

States going after Internet sales tax

The Internet is not only a great way to avoid standing in long checkout lines, it has also become a way for many consumers to avoid paying state sales taxes on their purchases. But that is not how it is supposed to be. Forty-five states legally require citizens to pay sales taxes on items purchased either out-of-state or on the Internet, but most have relied on the honor system to collect their money. Now 20 of those have gone a step further by adding a line on their state income tax forms that requires consumers to fess up about their tax obligation. The chart below shows which states have added the line to their tax forms.



Source: National Conference of State Legislatures and the Federation of Tax Administrators

is at the root of two new bills that would impose controls on how lobbyists interact with lawmakers. Although the bills — AB 1784 and AB 1785 — do not directly address lobbyists’ personal behavior, they would prohibit lobbyists from attempting to influence lawmakers they’ve had a financial relationship with, such as lobbyists who also serve as political consultants. That restriction appears to be targeted directly at Ross, who, in addition to lobbying for the UFW, trial lawyers and Indian casino owners, has also served as a consultant to several Democratic lawmakers and other officials.

Some lawmakers blame term limits for the more confrontational attitude of some lobbyists, who don’t know how to handle the constant changeover. Assemblyman Joe Canciamilla (D) said he thinks “there is a bit of a game that goes on with new members to see how far they can be pushed, and some of the lobbyists push harder than others.” First-term Assemblywoman Lois Wolk (D), who authored one of the bills, said restrictions are needed to restore “civility.” But Parke Terry, with the Institute of Governmental Advocates — basically, the lobbyists’ lobbyists — says there are already tough restrictions on lobbying in the state and that the proposed legislation treads on lobbyists 1st Amendment rights. Senate President Pro Tem John Burton (D) was characteristically more blunt, saying the bills are “bull” and demeaning to lawmakers. “All [lawmakers] got to say is, ‘I ain’t talking to you,’ and that is the end of it,” he said. Burton said he’s considering steering the bills into the Senate Rules Committee which he controls, effectively killing them. (LOS ANGELES TIMES)

SINE DIE: In their public statements, **MAINE** Gov. John Baldacci (D) and lawmakers have focused on their major successes of the 2004 legislative session, such as the merger of two of the state’s largest social services departments, Human Services and Behavioral and Developmental Services, and the passage of a balanced budget. But lawmakers have been blasted by many observers for failing to act on two of the most critical issues facing the state: property tax relief and tax reform. Senate Democrats have taken most of the blame from critics, who accuse them of refusing to budge on unrealistic proposals (ASSOCIATED PRESS, PORTLAND PRESS HERALD) • **MARYLAND** lawmakers ended their 90-day session — one which some called the most rancorous they’d ever experienced — by rejecting Gov. Robert L. Ehrlich Jr.’s (R) proposal to expand gambling for the second year in a row and passing a measure that would make the state the first in the country to guarantee a “living wage” for state contractors, a bill which Ehrlich has promised to veto, contending that it would significantly



increase the cost of state projects. The governor did manage some successes, such as the passage of legislation that will charge homeowners for upgrading the state's sewage treatment facilities — dubbed the “flush tax” — and overall he was satisfied with his administration's accomplishments” (BALTIMORE SUN).

— *Compiled by KOREY CLARK*

Budget & taxes

VIRGINIA START OF NATIONAL MOOD SWING ON TAXES?
After thwarting huge tax hikes in ALABAMA and OREGON over the past year, anti-tax advocates felt they'd sent a clear message to politicians throughout the country that raising taxes was not an option for dealing with budget deficits. But VIRGINIA lawmakers evidently missed that communique, passing a weighty \$1.36 billion tax increase last week which has anti-tax groups fearing a ripple effect. Particularly alarming for the anti-tax groups is that it was not only the first major tax increase in the Old Dominion in almost two decades, but that it was also approved by a Republican-controlled legislature in a conservative Southern state. What's more, those lawmakers actually agreed to raise taxes higher than the \$1 billion that had been proposed by that state's Democratic Gov. Mark Warner. Paul Prosoki of the anti-tax group Americans for Tax Reform, says anti-tax advocates are now closely watching two other states: KANSAS, where moderate rural Republicans may team up with Democratic Gov. Kathleen Sebelius to increase taxes for school funding, and TEXAS, where Republican House Speaker Tom Craddick has proposed a \$1 billion tax hike as part of an effort to overhaul that state's education funding system. Not all anti-tax groups, however, believe Virginia's action is a harbinger of tax hikes to come. The Washington, D.C.-based group Citizens for a Sound Economy, for instance, is planning an aggressive campaign to educate Virginia voters about how lawmakers voted on the tax issue, focusing particularly on those who campaigned on a no-tax pledge. Others point out that Virginia's tax plan didn't come easy; legislators were battling it out at the Capitol nearly two months past their scheduled adjournment. In fact, the plan is still not yet a done deal, with final budget negotiations having broken down once again last week. (STATE-LINE.ORG, WASHINGTON POST, RICHMOND TIMES-DISPATCH)



HOUSE REBUFFS PERRY: For weeks, TEXAS Gov. Rick Perry (R) has been seeking consensus from lawmakers on a plan to overhaul the state’s faulty school finance system. He finally got it last Tuesday, when the House voted 126-0 to reject his plan. The move came in response to negative comments the governor made concerning a plan proposed by the House the day before it was scheduled for debate in the chamber. Perry referred to the House proposal, which calls for a 1.25 percent payroll tax on businesses, as “an economic U-turn” and a “job killer.” And after stopping just short of threatening to veto the House plan, he again pitched his own plan, which would instead impose “sin taxes” on cigarettes, adult entertainment and legalized video gaming. Rep. Jim Keffer (R), who authored the House plan and who called for the sudden vote on Perry’s proposal, had some words of advice for the governor: “If you’re going to ride point, look behind every once in a while and make sure the herd’s behind you.” The following day the House continued its mayhem, stripping its plan of key provisions and then sending the watered-down version on to the Senate, where it will likely see further alteration. (DALLAS MORNING NEWS, SAN ANTONIO EXPRESS-NEWS)

BUDGETS IN BRIEF: Last week, NEW JERSEY Gov. James E. McGreevey announced his plans to increase the income tax on the state’s wealthiest residents and hold a constitutional convention to overhaul the state’s property tax system, two ideas he’s repeatedly shunned in the past. The reason for the sudden change of heart, according to members of McGreevey’s own staff, is the governor’s lackluster approval ratings — below 40% — with only 18 months until the gubernatorial election (NEW YORK TIMES, STAR-LEDGER [NEWARK]). • **GEORGIA** convened its special session last week to address a single budget issue. Gov. Sonny Perdue (R) called lawmakers back because the \$16.4 billion budget they passed on the final day of the session did not include an increase in court fees and fines to fund the state’s new legal defense system for the poor. The session is expected to cost taxpayers \$45,000 per day (ATLANTA JOURNAL-CONSTITUTION).

— *Compiled by KOREY CLARK*

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Governors

DEATH AND MARRIAGE IN MASSACHUSETTS: The battle of wills between MASSACHUSETTS Gov. Mitt Romney (R) and the Bay State Legislature continued last week as both sides dug in their heels over two of their favorite points of contention — gay marriage and capital punishment. Romney drew first blood when he endorsed the findings of a special commission he appointed last year to devise a new system for carrying out the death penalty that would ensure the validity of guilty verdicts and prevent innocent people from being wrongly convicted. The commission’s report suggested the adoption of 10 specific steps, many of which are unprecedented in U.S. history. These include raising the legal standard of guilt from “beyond a reasonable doubt” to one of “no doubt about the defendant’s guilt” and giving the defendant in a capital case the option of facing two separate juries — one for the trial and, if convicted, one for sentencing. But Legislative Democrats immediately voiced strong doubts about the report, saying the governor could not convince them the steps would eliminate human error. House Speaker Thomas M. Finnerman said it was also not likely to change the results of the most recent House vote on bringing back the death penalty, an emphatic 90-64 defeat in 2002.

Romney also drew a strong reaction from Senate Democrats for his continued opposition to impending legal gay marriages. Senators Jarrett T. Barrios and Stanley C. Rosenberg launched a campaign to repeal a 91-year-old law the governor is attempting to use to block out-of-state gay couples from marrying in Massachusetts. The 1913 law, which was intended to stop interracial couples from coming from other states to marry, bars the nuptials if the union would be illegal in the couple’s home state. The senators’ move to eliminate the residency requirement was filed as an amendment to the state budget, ensuring it will quickly make it to the Senate floor for debate. Romney countered by saying he is required to enforce the laws as they are on the books, but will respect lawmakers’ decision if the law is repealed. (BOSTON GLOBE, NEW YORK TIMES)

CO JUST SAYS NO TO PORK: COLORADO Gov. Bill Owens (R) failed last week to get the House to go along with a bill that would have sold off the balance of the state’s national tobacco settlement payout as a way to stave off an anticipated \$250 million budget shortfall next year. The house rejected SB 203, which would have garnered the state somewhere in the neighborhood of \$900

at odds with the church over his support for abortion rights, domestic partnership for gay couples and human stem cell research. Those stances have in recent weeks inspired bishops from Camden and Trenton to declare that the governor, a former altar boy, is not a devout Catholic. Bishop Joseph Galante of Camden also said he would not perform communion for McGreevey because the governor, who is divorced, did not receive an annulment before remarrying. Frank Kissling of the Washington-based group Catholics for Free Choice called the proclamations an attempt to keep the abortion issue on voters' minds this election year, noting that President George W. Bush is adamantly opposed to abortion. Presumptive Democratic challenger John Kerry, who is also Catholic, is pro-choice. McGreevey said he will comply with the church's wishes, but voiced strong disagreement with the bishops' efforts, saying that "In America, we have a longstanding policy of separation between church and state." (NEW YORK TIMES)

GOVERNORS IN BRIEF: The 8-week-old son of **MARYLAND** Gov. Robert L. Ehrlich Jr. (R) and his wife Kendel underwent emergency surgery to clear a blockage between his stomach and small intestine that was causing him to regurgitate food. He is expected to make a full recovery (BALTIMORE SUN). • The **LOUISIANA** Senate unanimously agreed to let Gov. Kathleen Blanco (D) hire a coordinator of faith-based programs, but they maintained the right to approve her choice. The new position will be part of the governor's office (NEW ORLEANS TIMES-PICAYUNE). • **MINNESOTA** Gov. Tim Pawlenty's (R) proposal to build new stadiums for the Twins, Vikings and University of Minnesota football team successfully made it out of the House Tax Committee. It moves to the House Ways and Means Committee (MINNESOTA PUBLIC RADIO). • Former White House budget director Mitch Daniels handily won the Republican nomination for governor of **INDIANA**. Daniels will face incumbent Democrat Joe Kernan in November (WASHINGTON POST).

— *Compiled by RICH EHISEN*

Hot Issues

B **BUSINESS:** The **CONNECTICUT** Senate approves legislation that says a judge must review every medical malpractice lawsuit and oversee mandatory pre-trial mediation before a case can go to court. The bill moves to Gov. John G. Rowland (R), who says he will likely veto the measure because it does not contain a cap on damage awards (HARTFORD COURANT). • The **MISSOURI** Senate votes 33-1 in favor of a bill that would allow Show Me State insurance regulators to reject increases in medical malpractice insurance premiums they deem to be excessive. It heads now to the House (KANSAS CITY STAR). • A **DELAWARE** House committee approves SB 173, legislation that says people who report illegal activity by their employer cannot be fired, threatened or discriminated against for their actions. It moves to the full House (NEWS JOURNAL [NEWCASTLE-WILMINGTON]). • The **LOUISIANA** Senate approves a measure that would prohibit insurance companies from using a person's credit rating to determine whether that person should be issued a policy. It moves to the House (ADVOCATE [BATON ROUGE]).

CRIME & PUNISHMENT: The **RHODE ISLAND** House passes a bill that would send people who cause serious bodily harm because of criminal negligence to jail for up to 10 years. A similar bill also passes in the Senate, so the two chambers will now work on the legislation together (PROVIDENCE JOURNAL). • The **FLORIDA** Legislature sends a bill to Gov. Jeb Bush (R) that would make it a third-degree felony to operate a radio station without an FCC license. South Florida is believed to have more pirate radio stations than any other region of the country (PALM BEACH POST). • **IOWA** Gov. Tom Vilsack (D) signs HF 2259, legislation that limits the sale of over-the-counter medications containing pseudoephedrine, a key ingredient in making cold tablets. Pseudoephedrine is commonly used in making methamphetamine (SIOUX CITY JOURNAL). • The **CONNECTICUT** Supreme Court rules that human immunodeficiency virus — HIV — is an occupational risk for prison guards who serve on the facility's emergency response units. The court rejects a similar designation for regular line officers who routinely break up fights and risk exposure through contact with HIV-infected inmates (HARTFORD COURANT). • A **LOUISIANA** House committee unanimously approves HB 640, legislation that would make it illegal to display sexually explicit videos in automobiles if the display is visible to people outside the car. It moves to the Senate (NEW ORLEANS TIMES-PICAYUNE).



SOCIAL POLICY: The **KANSAS** House rejects a proposed state constitutional amendment that would define marriage as only between a man and a woman. The Senate adopted the measure last week, but the House vote prevents the issue from going before voters in November (USA TODAY). • **OKLAHOMA** Gov. Brad Henry (D) signs HB 1821, a bill that bans recognition of adoptions made by same-sex couples from outside the Sooner State (OKLAHOMAN [OKLAHOMA CITY]). • The **LOUISIANA** Senate unanimously endorses SB 633, which would allow state judges to send “deadbeat parents” to jail for as much as two years for failing to pay child support. The measure now heads to the House ((NEW ORLEANS TIMES-PICAYUNE).



POTPOURRI: Committees in the **CALIFORNIA** Senate and Assembly approve legislation to restrict the ability of homeowners associations from foreclosing on a residence because the owner is behind on association assessments. Both SB 1682 and AB 2598 would require associations to get a court order prior to beginning any foreclosure proceedings (SAN DIEGO UNION TRIBUNE). • The **MISSISSIPPI** House rejects a proposal to install toll roads in the Magnolia State (CLARION-LEDGER [JACKSON]). • A **LOUISIANA** House committee narrowly approves HB 803, which would make it illegal to clone human beings. The bill would allow the cloning of animals and non-human embryonic cells. It moves to the House floor (NEW ORLEANS TIMES-PICAYUNE).

— *Compiled by RICH EHISEN*

Once around the statehouse lightly

IF AT FIRST you don’t succeed, just change the name. At least that’s what lawmakers in NORTH CAROLINA are trying to do after voters twice rejected a tax plan. The plan — called tax-increment financing — allows municipal borrowing to fund everything from airports and sewer systems, reports the *News & Observer*, but without a vote of the people. After a constitu-

tional amendment to authorize tax-increment financing was blown away by voters in 2002, legislators ginned up a third attempt, but this time without the fatal word “tax” in the title. The proposal, due before voters this November, now is known as “self-financing bonds.”

YA’ CAN’T LEGISLATE EVERYTHING, although the ILLINOIS General Assembly certainly is having a go at it. According to State Net, the House recently adopted HR 715, which officially attempts to end the Curse of the Chicago Cubs and proclaims that “next year has finally arrived.” The Cubs last won a World Series in 1908 and have been haunted ever since by bizarre events — the most recent during the 2003 National League playoffs when a fan interfered with a catch, leading to a disastrous outcome against the eventual World Champion Florida Marlins. Long-suffering Cubs’ fans remain skeptical, and lawmakers should beware. The 2004 season ends *before* Election Day.

OUTHOUSE GANG. No, it’s not a group of plumbing-challenged backwoodsmen. Instead, it’s a cadre of LOUISIANA legislators who, *The Times-Picayune* reports, consider themselves on the outs with the administration of Gov. Kathleen Blanco. Members of the group wear three-inch gold medallions that can be seen all across the House chamber.

GIMME. Officials in OREGON are bracing for an onslaught from a UTAH resident who has made a career of harassing public officials. According to *The OREGONIAN*, the Utahan — Barbara Schwarz of Salt Lake City — is considered the nation’s foremost practitioner of the open-records law and has made so many requests to the federal government for various public records that federal officials are ignoring future demands until she pays for past searches. For whatever reason, Schwarz now has her sights set on Oregon and opened her campaign with requests for “any records” about L. Ron Hubbard and Dwight Eisenhower. Beaver State officials say they don’t have any such records, but Schwarz is persisting.

WHICH OATH? That is the dilemma that faces Kenneth Witt, a KENTUCKY official who last year took a leave of absence from his job as a county judge-executive to honor his commitment to the U.S. Army Reserve. But according to *The Louisville Courier-Journal*, Witt’s decision generated anger among his constituents and at least one hint of an effort to recall him from his elective post. Witt says he was shocked that his constituents thought his oath to serve Leslie



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