

Testimony of Vanessa Nordyke before the House Rules Committee
In support of HJR 10
On behalf of the Oregon State Bar
May 6, 2019

Chair Holvey, members of the committee:

My name is Vanessa Nordyke, I'm the Past President of the Oregon State Bar. Last year the Oregon State Bar's Board of Governors adopted a resolution calling for the end of the practice of convicting defendants by less than a unanimous vote. Since then, voters in Louisiana approved a constitutional amendment eliminating this practice in their state, making Oregon the only state in the nation that still allows defendants to be convicted by a non-unanimous jury. I am here today to reiterate the Bar's position that this practice should be ended in Oregon as well.

The right of a defendant to have their guilt or innocence decided by a neutral fact finder through an impartial process is the very core principle of the American criminal justice system. However, far too often in our shared history, we have fallen short of abiding by that principle.

Oregon's historic use of non-unanimous juries in most felony cases is just one example of this failing, and it is one that it is finally time to correct.

Oregon's use of non-unanimous juries in felony cases has been controversial for a very long time. It was adopted in the wake of a single case in the 1930s, in which a Jewish defendant, Jacob Silverman, was accused of complicity in the murder of two people. Silverman was ultimately convicted of manslaughter, after one juror remained unconvinced the state had proved murder. In the weeks that followed his trial, a media-fueled narrative formed that immigrant and non-white jurors were unfit, with the *Morning Oregonian* stating that "Americans have learned...that many peoples of the world are unfit for democratic institutions, lacking the traditions of the English-speaking peoples." Other editorials commented that "the increased immigration into America from southern and eastern Europe, of peoples untrained in the jury system, have combined to make the jury of twelve increasingly unwieldy and unsatisfactory."

Shortly thereafter the Oregon Constitution was amended to permit 10-2 verdicts; fundamentally altering jury deliberations. As a consequence of this change, countless defendants have been judged by juries that have not always represented the diversity of our community. Perhaps partly as a consequence, Oregon now incarcerates African Americans at a rate almost 50% higher than the national average, and nearly double that of Washington State.

Allowing one or two jurors with sincere doubts about the guilt of a defendant to acquit is not just a mundane procedural safeguard. Non-unanimous verdicts encourage juries to reach decisions more quickly and without necessarily considering all viewpoints. By requiring that jurors reach unanimity in a verdict we encourage a fuller discussion of each case and ensure that all views are thoughtfully

considered. This careful consideration is key to ensuring that the innocent are not wrongly punished, and that victims can find the real justice they seek.

Thank you for your time. I would be happy to answer any questions you might have.

A handwritten signature in blue ink, appearing to read 'VAN', with a long horizontal flourish extending to the right.

Vanessa Nordyke
Past President, Oregon State Bar