

## TESTIMONY OF BRAD HOLBROOK

(Yamhill County, Oregon)

Committee: House Committee on Rules

Legislation: HJR 10

Date/Time: May 6, 2019 at 3:00 p.m.

Place: Room HR C

RE: Public Hearing and Possible Work Session/Argument in support of HJR 10 (2019)

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Dear Chair Representative Mr. Holvey and Members of this House Committee on Rules:

My name is Brad Holbrook, and I am from Yamhill County, the great state of Oregon.

It is my pleasure to provide testimony in support of House Joint Resolution 10 (2019) (HJR 10),

which proposes an amendment to Oregon's Constitution to allow juries to impose verdicts in

criminal cases only by unanimous agreement. In my opinion, this has been a long time coming.

First, it is my sincere belief that a non-unanimous jury verdict in any criminal case violates the

United States Constitution. In fact, the United States Supreme Court has confirmed that a less

than unanimous jury verdict violates the Sixth Amendment to the United States Constitution;

however, as this committee may be well apprised, it was determined in a plurality decision in

1972 that such a violation does not extend through the Fourteenth Amendment Due Process

Clause to the States. While that decision has often been attacked in subsequent decisions,

indirectly, the rule has allowed two states--Louisiana and Oregon to incarcerate people with a

less than unanimous jury verdict. James Madison, long regarded as the Father of the United

States Constitution clearly envisioned that criminal jury trials would require a unanimous verdict

in order to convict an accused.

Second, the actual language, in my opinion, was not added into the original constitution because

it was universally accepted at the time (a given) that jury verdicts would be unanimous. Given

the injustice dispensed on Colonial America by King George at the time, the rule was intended to

protect people from being railroaded and then subsequently incarcerated without a fair determination of guilt.

Around the formation and enactment of the United States Constitution, Sir William Blackstone said this about the right to a unanimous jury verdict:

[T]he trial by jury ever has been, and I trust ever will be, looked upon as the glory of the English law.... [I]t is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the *unanimous consent of twelve of his neighbours and equals*. A constitution, that I may venture to affirm has, under providence, secured the just liberties of this nation for a long succession of ages. (Emphasis added)

Please strongly consider the fact that since 1972, **NO** other state has changed its law to allow for a non-unanimous jury verdict despite the Supreme Court ruling giving states the green light to do so. The unanimity requirement was clearly understood to be a central, "indispensable" requirement of the right to trial by jury. I believe most Oregonians, if explained this issue, would overwhelmingly decide that every person who is accused of a crime should receive the same justice as every other state and the federal system. Anyone advocating differently must be working in a profession that is substantially benefiting from depriving accused citizens of their true right to a jury trial. Since the right to a unanimous jury verdict is granted prior to conviction, it is being provided to someone who is presumed to be innocent. This issue is not about "pro-crime", "tough on crime", "easy on crime" etc., it is about protecting the innocent and ensuring the integrity of our criminal justice system. The 13<sup>th</sup> Amendment to the United States Constitution forbids Slavery and/or imprisonment of a person without Due Process of Law, and convicting an accused of a crime and locking them up by less than a unanimous jury verdict

violates the spirit and essence of Due Process.

Last, I come before this committee not to provide a history lesson and/or legal argument of why the law needs to be changed, but to provide my story as an example of why the law is wrong.

10-2, 11-1 jury verdicts are not true justice and have negatively and adversely impacted our justice system while causing extreme harm to many families in this state.

In 1999, I was an attorney in good standing in the state of California in a successful law practice when I came to Oregon for a four day trip to say my last “Good-bye” to my dying niece.

It was a very sad and horrific time. On the last day of that trip, I was falsely accused by a ten year old girl of an inappropriate touching. Despite no evidence against me other than the

allegation, the state pressed on with the case. The initial indictment charged me with two

Measure 11 felony counts. In 2001, I went before a jury, which ended with a 9-3 verdict in

my favor on the first count and 7-5 verdict in favor of the state on the second count. After trial

one, the state went back to a newly impaneled grand jury and received two additional counts

based on the exact same factual theory. In short, rather than replacing the first (original

indictment), the state was able to consolidate the indictments, leaving me to now face four

Measure 11 felonies for the exact same allegation that formed the basis for trial one. They simply

doubled the charges. I faced a prison sentence of 300 months. As an innocent defendant, I had no

choice but to place my fate into the criminal jury system. The state, however, was offering me a

plea bargain which included a misdemeanor charge and no jail time.

I proceeded to a second jury trial. The state elected to dismiss one of the counts against me and in doing so told the court, essentially, “they could find no evidence to support that one.”

However, the judge refused to dismiss the count until after the verdict (presumably so I could still face another trial if I got acquitted on the three counts I faced). After the evidence was submitted to the jury, they quickly determined that I was “Not Guilty” of two of the counts against me, but voted 11-1 on the remaining count. This count, coincidentally, was the exact same count that was 9-3 in my favor at the first trial. The jury member who voted “Not Guilty” believed that I did not commit the crime. In fact, she worked in a facility that housed abused children, so she was surprised my attorney did not strike her, and then she was even more surprised that she was the only one who voted “Not Guilty”. And, she was the only person who made the right decision.

Once the vote was 11-1, there’s a conviction. That’s it. There should be no conviction until every juror agrees that the case was proven to the legal standard. The jury should be able to hear the argument(s) of the sole opposing jury member and a jury deliberation should occur. If that jury member is still fully convinced of a person’s innocence after fellow jury members argue their position(s), then their vote should not be simply discarded and ignored. This makes little sense, unless our criminal justice system is simply about rubber-stamping convictions.

As a result of being convicted by a jury verdict of 11-1, I spent 75 months in prison in the custody of the Department of Corrections, and 45 months on Post-Prison Supervision. I lost not only my liberty and freedom, but almost all that I had acquired in my lifetime, including, my reputation, along with all that you could imagine someone would lose with the charge I was convicted of.

Ironically, after I was released from prison, I went to live with a former jury member and

his wife for two years. This jury member, who was quoted as saying that “there was no evidence” against me, and his wife, were both very strong advocates in support of my plight. Unanimous jury verdicts are important in ensuring that prosecutors reflect on the strength of their case before filing charges that will ultimately destroy a person’s life. To me, it is inherent that reasonable doubt exists when 1 or 2 jury members believe an accused is “Not Guilty” after hearing all the evidence. Their decision should not be discarded. This discarding of a juror’s vote deprives the accused of the right to a jury trial of all members of the panel.

Oregon’s non-unanimous jury rule played a huge role in my wrongful conviction. Last year, the [Oregon Court of Appeals](#) overturned my first-degree sexual abuse conviction and I became the 17<sup>th</sup> person to be nationally recognized as an exoneree from the state of Oregon.

Prior to my conviction, there was another individual prosecuted from Yamhill County by the same prosecutor in my case. She was convicted of sexually abusing her own children, something she adamantly denied. However, she was convicted and sentenced to 108 years in prison.

Fortunately, after three years, she was released after her children passed polygraph exams administered by the Oregon State Police. The District Attorney of Yamhill County publically declared her to be “factually innocent”. The unanimous jury verdict rule would cause a prosecutor to hesitate prior to charging someone who is factually innocent.

As a law clerk in prison, I encountered many cases where a person was convicted of a 10-2 or 11-1 jury verdict. It was clear to see that the factual basis for some of these cases was lacking that “beyond a reasonable doubt” threshold and that some of these prisoners were likely not guilty of the crime and/or the crimes were overly exaggerated to fit in the Measure 11 scheme

with the intent of providing the prosecutor with leverage to obtain a plea deal. I have also talked to people who would have otherwise went to trial, rather than accept a plea deal, because they realized that conviction in Oregon is much easier for the state to obtain. Once again, these are people that are supposed to be presumed innocent.

Often times when I was walking around the prison track, I thought to myself that no one should be walking around this track if one jury member, after hearing all the evidence against him/her, still felt that the case was not proven beyond a reasonable doubt. The public should have little trust in the validity of that verdict. Even further, there are often times that a person is exonerated and proven innocence and someone in the system still tries to shine doubt on the person's innocence. Those who still argue that a person might still be guilty, even after they have been exonerated, have no place in our justice system.

A person in this country is presumed to be innocent until they have been found guilty beyond a reasonable doubt in a trial afforded them and administered with the Due Process rights granted under the Constitution, including the right to a fair, impartial jury of their peers. It has always been understood to include the right to an unanimous jury verdict.

In my opinion, anyone that has been convicted by less than an unanimous jury verdict in this state should still be presumed innocent. Thank you, I urge you to pass House Joint resolution 10 and end non-unanimous juries in Oregon.