

Testimony of Joshua Marquis, Astoria, Oregon
before the House Judiciary Committee
on HJR 1 and HB 2201 on January 26, 2021

Chair Bynum, members of the House Judiciary Committee, my name is Joshua Marquis and until January 1 of 2019 I served 25 years as the elected District Attorney of Clatsop County, on Oregon's northwest coast. Before being appointed, then elected six times,.

I appear before you -virtually -today to address two, related pieces of legislation, HJR 1 and HB 2210.

The first - HJR 1 is mostly uncontroversial and straight forward. While I could spend 15 minutes distinguishing the unique history of Oregon voters' decision to create non unanimous jury verdicts in 1934 from laws made with distinctly racist intent in Louisiana in 1880, more than a half century earlier, but the US Supreme Court's decision in the Ramos vs. Louisiana decision in the US Supreme Court last year makes those differences irrelevant..

I do not understand why HJR 1 needs to be referred to the people when it could easily be passed by super majorities of the House and Senate. There are some who want to carve out special right for criminal defendants to enjoy non-unanimous verdicts – an issue not directly addressed by the Court.

I urge you to pass HJR 1 without referral to voters. I would note that this body did not hesitate to make much more dramatic changes to the juvenile portions of Measure 11 last session, without referral.

But I come to you today primarily to object in the strongest possible terms to Section 2 of HB 2210. If this became law quite literally thousands of men (and a few women) convicted of rape, manslaughter, kidnapping, and the worst forms of child abuse would be able to have their records vanished, as if they never happened.

There exist first two levels of direct state appeals, then potentially three more of federal appellate courts, not to mention what is called Post Conviction Relief, which allows person convicted of even the most brutal crimes to sue if they claim they were denied some fundamental right during the trials or appeals. There is no history in Oregon of people wrongfully convicted because 10 or 11 jurors voted guilty, and in fact it was easier to be acquitted in Oregon than in 48 other states.

Even more significant is the fact that this term of the United States Supreme Court is right now considering its decision on this exact subject – whether RAMOS should be deemed retroactive. In a case argued in early December of 2020 the high court heard arguments in Edwards v. Vannoy. Another case out of Louisiana, this case directly addresses whether RAMOS should be extended. I would hope Oregon would follow the lead of the nation's highest court and not try to carve out an "Oregon only" exception under the guise of "independent state grounds." We will know the decision in EDWARDS by June.

Some of you may have sat as jurors, and one need not be a psychologist to know that if a group of 12 is told that once 10 of them agree that a particular standard has either been met (a guilty verdict) or failed to be met (a not guilty verdict) that group is not going spend further time trying to convince one or two outliers – either way.

I know that a coalition of defense attorney along with a representative of Multnomah County DA Mike Schmidt has written the author of 2210, Rep. Wilde, and asked him to withdraw the bill at this time.

My concerns are much more profound, but we I think we all agree this bill is not ready for prime time, or in my view, for any time..