

Chair and members of the Committee:

My name is Joshua Marquis. I live in Astoria where until 2 years ago I served for a quarter century as the elected District Attorney. I have practiced law in Oregon for 40 years and have tried hundreds of jury trials, both as a defense attorney, but more often as a prosecutor. In 2001 I was President of the Oregon DA's Association.

I appear today in strong opposition to one part of SB 193, that portion that seeks to radically depart from the rest of the United States by "Provides that jury in criminal action may render verdict of guilty only by unanimous agreement, and verdict of not guilty only by concurrence of at least 10 of 12 jurors." In 2020 a US Supreme Court decision involving Louisiana's similar, but with a totally different origin story's law that also permitted non-unanimous verdicts in most felonies. Oregon's history with non-unanimous juries bears no relation to Louisiana. That state passed the law in 1880 as part of the efforts to defeat Reconstruction and specifically to disenfranchise Black people. Oregon passed the rule in 1934, by popular vote. Race played NO ROLE in Oregon's change, which came during the tenure of Oregon first Jewish Governor, Julius Meier. You may hear claims that the change was anti-Semitic, and that is nonsense. I say that as a first-generation American, my father's family having escaped the German Nazi government in 1935.

To bring us back to the 21st Century, the committee should know that Oregon used a non-unanimous jury system for 80 years, without complaint or efforts to change it. It did NOT result in more convictions, just fewer hung juries, because it was just as easy to be acquitted with 10 jurors, as to be convicted, since either vote required 10 of 12 jurors.

The one significant exception is Murder, which always required a unanimous vote for guilty, but allowed 10-2 for not guilty.

My strong objection to this one part of SB 193 is to the part that ignores the mass of the US Supreme Court decision requiring unanimous juries, and would make Oregon a total outlier by allowing ACQUITTALS on a standard that only benefited accused child molester, robbers, and other felons. There is also no question, as evidence by the introduction of HB 2210 by Rep. Wilde, that there are already attempts to make this change RETROACTIVE. Many people wonder how this could be, particularly because the US Supreme Court held, just two weeks ago in a 6 to 3 ruling that their decision about non-unanimous juries was NOT retroactive. This bill is laying the path for tens of thousands of long standing convictions, particularly for sex crimes, to be retroactively appealed and reversed. This is because Oregon established a novel legal concept 40 years ago called "independent state grounds," which can allow the Oregon Supreme Court to decide that a decision by the US Supreme Court does NOT apply in Oregon, on the basis that Oregon 's IDENTICALLY worded state constitutional law can grant more right to defendants, but not less.

Doubtless supporters of SB 193 will claim there is no attempt to be retroactive, but I urge you to look to these same advocates who claimed SB 1013, the functional abolition of capital punishment in Oregon, without actually letting voters decide the issue. Despite assurances from the leadership, the chairs of Judiciary, and the Attorney General that the law would NOT be retroactive, after the bill was passed the AG's office changed its mind, as did the bill's supporters, and it was made retroactive.

Let me be clear what this would mean. Almost every single child sex abuse conviction before 2020 was non-unanimous, because these are hard cases and at the time the law allowed non-unanimous verdicts. As a result, there were very few unanimous verdicts in those kinds of cases.

Why should Oregon have one standard for the people, the victims, and another for criminals.

Please delete this portion of SB 193.