February 1, 2022

Oregon State Legislature
Salem, OR
Re: Senate Bill 1511

Dear Chair Prozanski and Members of the Committee:

On February 2nd and 3rd, the Senate Judiciary Committee is scheduled to hear SB 1511.

On its face it appears to related to the retroactive application for relief from conviction only for people who were found "guilty but insane." That is clearly a misprint and the submitted testimony (on the letterhead of the state's most moneyed law firm) addresses what is clearly a wholesale allowance of ANYONE who claims to have been convicted by a non-unanimous jury, to be able to apply for Post-Conviction Relief (PCR), and then the standard proof is limited to "preponderance" (or 51% likely), the lowest possible standard in the law.

SECTION 1. (1) Notwithstanding ORS 138.510 (3) and (4), at any time within one year after the effective date of this 2022 Act, a person may file a petition for post-conviction relief

under ORS 138.510 to 138.680 claiming, as grounds for relief, that the person was convicted

of, or found guilty except for insanity for, a criminal offense as the result of a nonunanimous

jury verdict

I have practiced law in Oregon for 40 years, both as a criminal defense attorney, but much longer as a prosecutor, in Lane, Lincoln, Deschutes and the last 25 years, Clatsop County. I have tried hundreds of jury trials to verdict and I'd estimate at least 80% of those involved "non unanimous" jury verdicts, that were both then, and now, (according to the United States Supreme Court) perfectly valid.

Since jurors, for the last 90 YEARS, have been told they can reach a verdict in a felony when at least 10 of their number agree, that is what juries have done; deliberate diligently until they reach 10. Oregon was the only state that allowed NOT GUILTY verdicts based. There is absolutely NO evidence that Oregon's system was racially prejudiced ort produced more guilty verdicts than other states.

In my 40 years of practice in four counties (and at least 6 more counties as a special prosecutor) I have never seen a jury render a verdict on a Black defendant. I am sure that speaks to the general lack of racial diversity outside the Metro area of Portland, the only place in Oregon I have not practiced. But the idea that non-unanimous juries are a vehicle of racial discrimination is simply ludicrous. Yet the claim, utterly specious, is that Oregon was a racist haven in 1934. Apparently, these people know little of Oregon history. From 1931 to 1935 the Governor was Julius Meier, the state's only independent Governor, and like me, a person with a Jewish heritage.

In claims that Oregon was such a vile place, the supporters, I daresay drafters, of this bill, have cited the racist claims of the OREGONIAN newspaper in the 1930s. They fail to mention the OREGONIAN loathed Governor Meier, or that voters overwhelmingly passed the measure allowing both non-unanimous juries and restricted the use of jury waivers to the defense only, unlike most states.

Just as my father and his family fled the Nazis in Germany in 1935, so did many prominent Oregonians, most notably the late Gert Boyle (who traveled on the same ship as my father). They came here because America, and Oregon represented freedom and liberty. We have not always lived up to its promise, but to claim Oregon was a KKK cesspool in 1934 is historically inaccurate and insulting.

I have read the submitted statements of men I assume, based on their own reports, were convicted and guilty of very serious crimes, now seeking immediate relief, claiming they were innocent and victims of racial discrimination. Their claims of wrongful conviction were extensively reviewed by layers of Oregon courts and rejected. I would urge you to get the perspective of the victims and prosecutors before taking the unvarnished, unsworn claims of men convicted of the vilest crimes.

I also read a letter submitted by an attorney at Tonkon Thorp named Daniel Newman. Mr. Newman has been a lawyer in Oregon less than two years and I will venture a guess that he has never tried a criminal case, either as a prosecutor or defense attorney. In his long letter he repeatedly points to dicta in the RAMOS case decided by the US Supreme Court in 2020. He left out one very important point. The same justices who voted to overturn the RAMOS conviction, also voted AGAINST retroactive application of the rule, precisely as Mr. Newman now argues. In court, we'd call that misleading the judge, but he's a new lawyer, and unlikely unaware of how inappropriate that is.

To even consider SB 1511, given the sweeping magnitude of chaos and expenses in likely hundreds of millions of dollars to indigent defense, the courts, and local DAs' offices, is unconscionable. If something this vast were to be given serious consideration, at a minimum it should wait for a full legislative session.

Better, the legislature, in cooperation with the Oregon Criminal Defense Layers Association, the Oregon Bar, the Oregon DA's Association and other interested parties, should form a study group to consider the ramifications and details of action utterly unprecedented in both Oregon and the United States.

In written testimony another lawyer with only 4 years' experience, Larry Ellisor, lists out the EXISTING PCR claims around Oregon and numbers them at about 250. I have no reason to think that count is wrong, but now multiply that by 40 years of cases (just the time I have been practicing) and you have about 10,000 cases

If the legislature were to pass this law, as proposed, you would betray the trust thousands of victims have placed in the State of Oregon, in the law, to protect them and all citizens.

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