TIMMONS LAW PC

February 23, 2023

Dear Chair Prozanski and the Senate Judiciary Committee:

I am writing in support of Senate Bill 807, A Bill for an Act Relating to Disqualification of Judges; Amending ORS 14.260.

I offer a unique perspective on the suitability of SB 807, as I have been a prosecutor, a long-serving trial court and senior judge, and a public defender. From 1987 to 1993, I was the elected District Attorney of Morrow County, Oregon. Then, from 1993 to 2010, I was a district and circuit court judge in Oregon's Sixth Judicial District (Umatilla and Morrow Counties), including four years as Presiding Judge of the Sixth Judicial District. From 2011 to 2014, I served as a "Plan B" Senior Judge, for the State of Oregon. During my time as a circuit court judge, I served a one-year term as President of the Oregon Circuit Judge's Association; and as a senior judge, I served a one-year term as President of the Oregon Senior Judge's Association. Currently, I am an attorney in private practice in The Dalles, Oregon. Since 2016, my practice has been focused primarily on representing indigent, court-appointed clients in criminal and juvenile cases in the Oregon State Court system.

I am a current member, and past Chair (in 2021), of the Oregon Judicial Fitness and Disability Commission ("the Commission"). **My testimony given here, in support of Senate Bill 807, reflects only my personal views on the subject, and should not be seen as reflecting, in any way, the views of the Commission, or it's individual members.**

I support the proposed amendments to ORS 14.260, set forth in Senate Bill 807, for the following reasons:

1. I have spent almost my entire legal career in the smaller, rural counties of eastern Oregon, where there are a number of one-judge or two-judge districts. As a District Attorney, I never exercised a blanket disqualification on an individual judge, as I knew the havoc that would create within the district when only one (or no) other local judge had to hear all of the criminal cases. Recently, I am aware of blanket disqualifications of judges becoming more common in these smaller districts. These have occurred, for example, in the Tenth (Union-Wallowa Counties) and Sixth (Umatilla-Morrow Counties) Judicial Districts. Therefore, it is becoming a more common practice,

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drastically affecting the caseloads of those districts. There is no objective standard of proof that these prosecutor's office are required to meet in order to disqualify the first two individual judges. All they have to say, to accomplish these disqualifications, is that an individual judge cannot be fair to the State, which is a totally subjective standard.
The effect of this practice is to give a party, usually the prosecutor, disproportionate power within the system. Without any independent oversight of the disqualification statute, the judiciary's only recourse is to, in essence, "supplicate itself to the prosecutor's will." Within the justice system, prosecutors are supposed to be advocates for the State's interest. It is the judiciary whose purpose is to be objective and independent of that will and to ensure that justice is done. That independence is compromised when representatives of the judiciary must "bow to" the subjective will of the prosecutor, or be threatened with blanket disqualification of individual judges.

2. The current statute presents a separation of powers issue of significance, when a district attorney's office blanket disqualifies a judge. The ability to effectively sideline a duly-elected circuit court judge from hearing an entire class of cases, such as criminal or juvenile cases, has the effect of the executive branch of government cancelling, without good cause, the participation of a person in the judicial branch, in a whole class of judicial proceedings.

3. Oregon has chosen to elect its judges, including its trial court judges. Blanket disqualification without cause, whether done by a district attorney, a firm, or a defense organization, has the effect of cancelling the decision of the electorate to have the judge in question hear the community's cases. A large majority of the cases heard in Oregon's trial courts are criminal and juvenile cases. This drastic impact on the choice of the electors should not be allowed, absent good cause.

   When I became a district court judge, in 1993, it was following a hotly contested race that lasted almost a year. It began early in the year with four people, plus the recently appointed judge, running in the primary. Because no candidate accrued over 50% of the vote in the Primary, the appointed judge and I, who were the two top vote getters, had to also run off in the November General Election. All candidates campaigned extensively in Umatilla and Morrow Counties, with multiple appearances at various parades, fairs, campaign debates and candidate forums, as well as extensive newspaper, radio

and television advertising. By the time of the 1992 General Election, citizens in those two counties had ample opportunity to be informed about their two choices for judge. If, after that year-long campaign, a district attorney, firm, or public defense office had decided to "blanket disqualify" me from hearing all criminal and juvenile cases in that two-county judicial district, the will of the people would have been nullified, without justification. This makes a mockery of our democratic process, and should not be allowed. If the attorneys wish to remove an elected judge from doing his or her work, they should have to do it the democratic way – vote the judge out of office. One law office should not be allowed to quietly bypass that democratic process to achieve the same result.

4. Furthermore, it is simply not fair to the judge being blanket disqualified, due to the fact that, under the limits of the Oregon Judicial Conduct Code, judges are reluctant to respond publicly, due to the fact that they may fear violating the judicial conduct code, if they do so. Because the party moving for blanket disqualification does not have to set forth specific reasons in the affidavit or declaration filed with the court, the affected judge cannot effectively respond. In my opinion, this is patently unfair. A moving party can, by filing the blanket motion to disqualify, somehow identify a certain judge as being "unfair to the State" or "soft on crime". Then, because of the limitations of the Judicial Conduct Code, all that judge can do is "sit there and take it", without having the ability to present his or her case, either to the public, or to another neutral and detached judge or magistrate. The proposed amendments to ORS 14.260, set forth in Senate Bill 807, would remedy that unfair situation.

5. Finally, this undue influence by district attorneys affects the independence of the trial judiciary. Just the threat that, if you don't rule in a certain way, or rule against the State too often, or possibly make an unpopular ruling in one individual case, you may get "blanket disqualified", for the rest of your career, is enough to influence a judge's decision making process. Judges may make hundreds of individual decisions each year. Sometimes, it becomes necessary to tell the State: "You just don't have the evidence, you haven't met your burden of proof", even if the prosecutor does not like that decision, and, more importantly, justice requires that you make that particular decision. A newly-elected judge, in a small district, may feel the need to change long-standing practices, in the interest of justice, even if it is not the "popular" thing to do in the eyes of the State. Blanket disqualifications can be traumatic; the judge's

decision-making process is questioned; stories are generated in the local media, in which the prosecutor is free to spread his or her opinion as to the judge's fitness. Judicial ethics prevent the judge from effectively responding, publicly or in court. No judge wants this to occur. It is hard to see how this threat would not influence a judge's decision making.

In the interest of an maintaining an independent trial judiciary, I believe the proposed legislation contained in Senate Bill 807 should be adopted.

Jeffrey Wallace

Jeffrey M. Wallace
Circuit Court Judge (Ret.)