

Written Testimony of Senior Judge Henry Kantor in Support of Senate Bill 807

To Chair Prozanski, Vice-Chair Thatcher and Members of the Senate Judiciary Committee:

My name is Henry Kantor. I am an Oregon Senior Judge. For over 22 years, I served as a Circuit Court Judge for Multnomah County. I presided over thousands of criminal cases as well as whatever other kind of case was assigned to my department. After my retirement, I continue to work as a senior judge on cases, mostly criminal cases, in counties across Oregon. I feel privileged to have been allowed to serve Oregonians in our systems of justice.

I am here today to support SB 807. The bill is designed to respond to the practice of district attorneys who seek to disqualify elected judges from presiding over all or most of a court's criminal docket, what we call "blanket disqualification" to differentiate from disqualification of a judge in a particular case. The bill regulates the practice of blanket disqualification and, we hope, will discourage it.

Over my career in Multnomah County, the local district attorney regularly blanket-disqualified certain elected judges from the court's incredibly busy criminal docket. These judges most often were women or former criminal defense lawyers. Other judges like me had to pick up the slack. I am happy to tell you that the current district attorney in Multnomah County has abandoned that practice as a matter of policy and that our current Attorney General does not blanket-disqualify judges, also as a matter of policy.

Sparked by personal experience and powerful passions for public justice and good government, my colleague Jennifer Williams has worked to bring this matter to you for your consideration. She surveyed the laws of our country and helped draft a bill which takes the best of existing Oregon law and that of other jurisdictions to come up with a fair and balanced plan to make district attorneys, who are elected by the very same people who elect the judges, think twice before utilizing existing procedures to disqualify judges from the criminal docket. She and I have checked in with most interested parties, although few have decided to take a position on this bill so far.

It is important to make clear that this bill does NOT change any part of existing law which governs any party's right to disqualify any judge in any particular case. It does not change the way parties and lawyers in civil and family cases might disqualify a judge who they believe could be not fair in a particular case. It does not change the way a district attorney or criminal defense lawyer might disqualify a judge who they believe could not be fair in a particular case. It does not change the way any party might disqualify an appointed judge who has not yet been elected or someone serving as a pro-tem judge.

This bill is a narrow approach to a discrete problem. It establishes a process which comes into play *only* when a district attorney or public defender acts in a way to prevent an elected judge from working on every court's busiest docket – the criminal docket – to avoid interference with

the orderly administration of justice. It provides a more meaningful opportunity for the judge whose fairness is challenged to respond and have a disinterested judge resolve the dispute without the need for a hearing. It is simple and efficient.

To be sure, district attorneys are incredibly important to our system of justice. The vast majority are principled and dedicated. Although I tried to write a summary of why their role is invaluable, I found the best explanation on the Oregon District Attorneys Association's website:

"Each county in the state of Oregon has an elected district attorney who is charged with seeking the truth and pursuing justice under the law on criminal matters that occur in his or her jurisdiction.

"Prosecutors, by law, wear many hats. They are administrators of justice, seekers of truth, advocates for the people, officers of the court and protectors of the rights of all people under Oregon law, the Oregon Constitution and the United States Constitution.

"The primary goal of a prosecutor is to seek the truth and pursue justice for victims, the state of Oregon, suspects and for defendants. Prosecutors work with law enforcement agencies to investigate and hold people accountable for violating Oregon law. The job of a prosecutor is not to simply to charge and convict. There are many laws, ethical rules and guidelines through which prosecutors are held accountable to the people."¹

This explanation contrasts with the duties of Oregon criminal defense lawyers as taken from the Office of Public Defense Services' Best Practices:

'Public defense providers should formally recognize a paramount purpose to ensure zealous, high quality representation for each client.'²

For these reasons, it is right and just that district attorneys as integral participants in our criminal justice system be accountable for seeking to remove an elected judge from a court's criminal docket. Although they are not known to have utilized the blanket disqualification process as often, including public defenders in this bill is our way of showing fairness.

We have heard from some that rewriting this bill could improve it. We welcome friendly amendments which preserve the essence of the bill's dual purposes: to discourage the practice of blanket-disqualifying elected judges from criminal cases and to make it possible for challenged judges to fairly respond.

Respectfully submitted by: Senior Judge Henry Kantor judgekantor@gmail.com

¹ <https://www.oregonda.org/your-das-what-we-do-1> (last visited on Feb. 24, 2023) (emphasis added).

² <https://www.oregon.gov/opds/provider/StandardsBP/BestPractices.pdf> (last visited on Feb. 24, 2023).