

May7, 2023

To: Chair Kropf and Members of the Oregon House Judiciary Committee

From: Mary Mertens James, Senior Circuit Court Judge, Marion County

RE: **Support for SB 807**

I am a Senior Circuit Court Judge, writing to you on my own behalf, and not as a representative of OJD or Marion County Circuit Court. I retired effective December 1, 2020 after 17 years of service in Marion County, Oregon, and currently serve as a senior judge in Oregon.

I fully support SB 807. Unlike many states, Oregon has chosen to provide for the election of judges. Trial court judges are elected by the voters in the judicial districts they serve. Those voters, including attorneys in public office and in private practice, can either support or oppose the re-election of a sitting judge using the democratic process to either continue or end the service of that judge. Opposition, to be effective, would need to come in the form of offering voters reasons why the judge should not continue to serve.

SB 807 goes a long way to preventing an end run around this constitutionally established democratic process. Without the protection of SB 807, a district attorney, or groups of unelected private practitioners, can effectively remove a sitting judge from office without offering any reason to either the judge or those voters who chose the judge in an open election. This is especially true in smaller judicial districts, where a blanket disqualification effectively prevents the judge from hearing cases she/he/they were elected to decide. It is voter nullification under the guise of fairness. Oregon has always upheld voter empowerment as a fundamental guard against government oppression. We have a vigorous initiative and referendum process, and one of the best voter registration and election systems in the country.

In my personal experience, it was frustrating to be the subject of an affidavit by a lawyer, who had never appeared before me; never met their own client—a litigant who also had no prior contact with me—file an affidavit that the client “reasonably believes” the judge cannot be fair. There is no avenue to inquire about the basis for such a declaration presently.

SB 807 would prevent blanket disqualifications by providing a procedure to require the litigant to establish—if challenged—that a reasonable person would perceive the judge as biased. This will prevent the DA's office, the public defender or defense consortiums from disqualifying a particular judge for any or no reason whatsoever without stating any grounds.

SB 807 provides a reasonable, commonsense check on lawyers' use of ORS 14.260. In the extreme situation when a district attorney or group of public defenders wants to remove a judge from all criminal cases, the lawyer must – if requested by the subject judge - establish that a reasonable person would perceive the judge as biased. This is the standard in the judicial oath of office and in every criminal case in 36 states. If a lack of impartiality cannot be shown, the judge in question can continue to serve the voters that placed the judge in office. That is the proper outcome.

I hope that you will support SB 807 and protect the right of Oregonians to choose their judges.