

TESTIMONY OF THOMAS A. BALMER IN SUPPORT SB 807

Chair Knopf, Vice-Chairs Wallan and Andersen, and members of the Committee:

I submit this testimony urging you to vote in favor of SB 807. I am a retired Senior Judge speaking only for myself, but my views are informed by serving as a justice on the Oregon Supreme Court for over 20 years, including six years as Chief Justice, where I was responsible for the administration of the Oregon Judicial Department.

Oregon is one of a minority of states that allows a lawyer to disqualify a judge from deciding a particular case simply by filing an affidavit stating that the lawyer “believes” that the judge will be not be “fair and impartial.” ORS 14.250. The lawyer need not set out any specific facts or reasons for the lawyer’s subjective belief, nor does a different judge have to decide whether the lawyer’s “belief” is reasonable or has any factual foundation at all. Rather, the local presiding judge must then “forthwith transfer the cause to another judge.”

Of course, judges who have a personal interest in the outcome of a particular case or whose fairness or impartiality as to a specific party or witness can reasonably be questioned should not sit on such a case. And we have an enforceable Code of Judicial Conduct, extensive appeal procedures, and other statutes to ensure that judges act fairly and impartially. But bumping a duly elected judge off a case based on the subjective belief of one lawyer undermines the constitutional process for selecting those who will serve as our judges.

The worst aspect of the current disqualification process, however – and the focus of SB 807 – is the *abuse* of the system that is sometimes referred to as “blanket disqualification.” That is the practice of some lawyers or groups of lawyers to *routinely* disqualify a duly elected trial judge from *all* (or almost all) criminal cases, effectively excluding them from handling any criminal or juvenile delinquency docket in their judicial district. As Chief Justice, I learned that this abuse can cause substantial administrative problems in our smaller courts. Around the state we have many circuit courts with six or fewer judges, and some with only one. You can imagine the challenges of resolving all of a circuit court’s cases when one of its judges cannot sit on any criminal or juvenile delinquency cases (two of our largest categories). In the smaller courts, we sometimes have to get a judge from a neighboring county to fill in on a substantial number of cases.

SB 807 is a narrowly tailored, common sense solution to the “blanket disqualification” problem. It does not propose to do away with Oregon’s disqualification practice. Rather, it provides that, when a motion or series of motions to disqualify would “effectively den[y] the judge assignment to a criminal or juvenile delinquency docket,” the judge may request a hearing before an independent judge, who is to determine whether a reasonable person would believe that the challenged judge lack impartiality. This is a process commonly seen in other states.

I urge members of the Committee to support SB 807. It would help ensure a fair and impartial judiciary that is consistent with our constitutional process for selecting judges and the effective administration of justice.

Sincerely,

/s/ Thomas A. Balmer

Thomas A. Balmer
Senior Judge (Oregon Supreme Court)
Chief Justice, 2012-18