

May 7, 2023

SB 807 – Blanket Disqualifications
HOUSE JUDICIARY COMMITTEE

Chair Kropf, Vice-Chairs Wallan and Andersen, Members of the Committee

My name is Dan Bunch. Recently, I retired after nearly 13 years on the bench in the 13th Judicial District, Klamath County. I continue to serve the OJD as a Judge *pro tem*.

I am a Virginian who moved to this great state some 23 years ago. I began my legal career in the US NAVY, serving 4 years as a military attorney (JAG), followed by 4 years in the US Air Force. Upon leaving active duty I served 24 busy years in the reserves. I retired 2 years ago as a Major General. My civilian experience also includes 2 years as a prosecutor, 4 years as county counsel of Klamath County, and 7 years in private practice to which I have recently returned. My 32 years as an attorney have taken me all over the legal landscape of our nation and inform my perspective on SB 807.

I wholeheartedly support SB 807A, as it addresses an abuse of ORS 14.250 and 14.260, which were intended to allow a party to file an affidavit to disqualify a judge when the party believes that a fair or impartial trial or hearing cannot be had before that judge. The spirit of the statutory scheme is, on occasion, abused by a District Attorney or Public Defender (rarely) when such affidavits are filed in every criminal case to which the judge is assigned, thereby removing the judge from the criminal docket. The fact that a prosecutor or defense attorney does not agree with a judge's ruling does not mean that the judge is unfair or impartial. Consequently, I find the pursuit of blanket disqualification to be disingenuous. It begins with the fact that an attorney simply does not believe a judge might be "pro" or "anti" law enforcement.

Blanket disqualification may be contrary to Oregon's constitution and is certainly contrary to basic notions of the rule of law. It is incomprehensible that a Judge, elected by citizens, can be excluded from the criminal docket by a sole District Attorney or Public Defender.

To be clear, there are isolated instances / cases in which a litigant should be able to disqualify a judge. While on the bench, I saw affidavits to disqualify me. Typically, the affiant had a legitimate concern that I may not be fair or impartial in that particular matter. Such efforts to disqualify a judge do not concern me.

The blanket disqualification of a judge concerns me greatly. Imagine if a sole citizen could, via such a cloaked approach, prevent you from legislating, or remove a Court of Appeals or Supreme Court Judge from having a voice in decisions.

During my final 3 years in the Air National Guard legal community , I was the ranking attorney (JAG). This assignment put me in contact with attorneys in all states and territories. Whenever I referenced the “blanket disqualification” process that exists in Oregon, I typically encountered disbelief, particularly when I explained that our judges are elected.

Blanket disqualification can be a bullying tactic to get a judge’s political attention or to ensure that other judges in the Circuit fall in line.

Judicial decision making must be independent of such pressure. Do you want a judge entertaining this thought? “If I do what I believe is legally correct under the facts of this case, I might get removed from the criminal docket?” It’s a predictable but disturbing consequence of blanket disqualification.

I am convinced that blanket disqualification was never the intent of the relevant statutes. It is an unforeseen, unfortunate, unintended result.

Thank you for your consideration.

s/ Dan Bunch

Dan Bunch