

OPINION

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BEHIND THE NEWS

'These cases will truly clog up our court system'

Oregon Attorney General Ellen Rosenblum supported a resolution in the state Legislature that would have asked voters in November 2020 whether to change the state constitution and require unanimous jury verdicts in criminal trials.

Oregon is the only state where a criminal defendant can still be convicted of a felony, except for murder, by 10 of 12 jurors.



DERRICK DePLEDGE

The resolution was approved by the state House 56-0 in June, but the Senate failed to act in the scramble at the end of session after a Republican walkout over cap and trade.

While lawmakers may try again next year, the focus has turned to

the U.S. Supreme Court, which will soon weigh nonunanimous jury verdicts in *Ramos v. Louisiana*, the case of a man convicted of second-degree murder by a 10-2 verdict in New Orleans in 2016 and sentenced to life in prison.

Rosenblum disappointed many civil liberties advocates when Oregon filed a brief urging the Supreme Court not find nonunanimous jury verdicts unconstitutional.

The attorney general acknowledged that the law, on the books in Oregon since voters backed a state constitutional amendment in 1934, has an origin linked to racism and anti-Semitism. But she warned about the potential impact of invalidating hundreds if not thousands of criminal convictions.

"If they change it now, that doesn't mean we go back and completely undo the entire 80 years that we have had in this state," she said. "There is not a reason to do that, in my opinion, that outweighs the chaos that would ensue from having to retry."

"And, frankly, we can't retry them. So having to go back and take another look at all of these cases will truly clog up our court system."

Rosenblum, a former federal prosecutor and state trial and appellate judge, is the first woman to serve as attorney general in Oregon. She was elected in 2012, reelected in 2016 and is running for a third four-year term next year.

The attorney general, who stopped in Astoria this month, discussed in an interview nonunanimous jury verdicts, the controversy around a new death penalty bill, the resignation of the public records advo-



Hailey Hoffman/The Astorian

State Attorney General Ellen Rosenblum discusses criminal justice issues.

cate and the state's legal challenges to the Trump administration.

Q: In August, the solicitor general told prosecutors the new definition of aggravated murder in the death penalty bill applies to pending cases. Why didn't the Department of Justice flag this issue when the bill was before the Legislature, since lawmakers were insisting it would only apply going forward?

A: That isn't something that we normally would do. That wouldn't be our role.

Our role is to flag it when we're handling these cases on a case-by-case basis, and that's what happened here. That memo was a memo to a small group of prosecutors who had cases that were coming up that were similarly situated.

And so the solicitor was not sending a memo to the Legislature, or to the media. It, of course, was released to the media, which is fine. But it, I think, was kind of misunderstood that that is not typically what we would do.

We were giving advice to our client, right? And that is what our job is.

Q: Oregon is the only state that still allows nonunanimous jury verdicts in criminal trials except for murder. The U.S. Supreme Court is going to review the issue. You have argued that Oregon courts could be overwhelmed by retrials if the Supreme Court rules nonunanimous verdicts are unconstitutional. But if the verdicts are unconstitutional, why shouldn't there be retrials?

A: There's a certain, I think, impor-

tance to reliance and to finality, for victims, as well as for the system. And for defendants, frankly, and for their families, to have finality when a case is concluded.

And we have had thousands of cases concluded with nonunanimous jury verdicts. As a judge, I presided over hundreds, if not thousands, of cases over the course of time. And I will tell you that I — and this is just one person speaking, and you can take it for what it's worth — but I never felt that there was a jury verdict in my courtroom that was not fair, that was based on discrimination, or anything to that effect.

And there were many unanimous verdicts, and there were many nonunanimous verdicts.

So where are we today? There was to be a law change that did not come about, for reasons that are maybe a little bit complicated. But the bottom line is the Senate didn't take a vote, OK? The House did. The House voted unanimously to change our law, to change our state constitution.

Q: To put it on the ballot.

A: Exactly. They had to refer it to the people because it's in the constitution.

That law was specifically forward-looking. Nobody was taking the position that it should be retroactive. No one ...

I was supportive. The DA's were supportive. There was no question about that. And I think, in part, because it just didn't even occur to us what could happen, now it does because we have the U.S. Supreme Court having granted certiorari in the *Ramos* case.

We have an opportunity in this state to fix this law going forward. And that is, in my view, the right thing to do.

Q: You have worked to reform Oregon's public records law to help make government more transparent. What do you make of Ginger McCall's resignation as the state's first public records advocate?

A: I'm saddened by it. I don't know Ginger well, but I've gotten to know her a little bit. And she is, absolutely, not only a lovely person, but I was really pleased to have somebody selected for that role of her caliber.

Q: Do you think the Public Records Advisory Council — and not the governor — should be the one to hire the public records advocate?

A: I think that'd be great. I think that would help a lot.

Q: Why would that be?

A: Because it's not political. Or it's less political. Or at least it's less the appearance of politics. And as you can see what happened here, my sense is that that might really help for both appearances and for a smoother advocacy program.

And I think we should call it what it is, which is an ombuds program. It should be an ombuds — I don't like ombudsman — but an ombuds, as opposed to maybe the advocate role maybe was a little bit unclear what was intended by that.

Q: Oregon is among several states to challenge the Trump administration on issues such as immigrant detention, abortion rights and fuel economy standards. While these are important policy questions, do you worry — since the states are mostly controlled by Democrats — that people will view the disputes as more about politics than the law?

A: I don't really worry about that. Anytime a case is filed, there's that potential for it having kind of a policy and a legal aspect to it.

What I do, to make sure, to kind of check in each time there is a potential for bringing a case here on behalf of Oregonians, is I look at how Oregonians are harmed. I look at how people are harmed, especially vulnerable groups, and I look at how our state is harmed, the environment in particular ...

Call that political? I don't. But if people do, I try to explain what it is that I'm doing on each and every case, and that is evaluating the harm to Oregonians. And I'm comfortable with that.

Derrick DePledge is the editor of The Astorian.

LETTERS TO THE EDITOR

Appreciation

I write today to express my appreciation for Rep. Tiffany Mitchell and the job she is doing, on behalf of all of us, in the state House in Salem.

Rep. Mitchell garnered overwhelming grassroots support throughout District 32 (winning every county) by knocking on an enormous number of doors, and listening to and learning from citizens, industry groups and businesses both on the coast and inland.

Mitchell has remained true to her promises to lift up public education and the environment, as well as to fight for affordable and accessible health care and housing.

And, in this challenging budgetary time — when many of her colleagues seemed to feel it is unnecessary to remain at their desks and do their job — Tiffany has also been an available and accountable legislator and made a concerted effort to regularly post, and frequently present relevant legislative information, for the purpose of improving transparency.

Unquestionably, Rep. Mitchell has made some tough decisions, agreed to some thorny (but worthy) compromises and cast some difficult ballots. However, Tiffany has put the quality of Oregon lives, as well as viability of Oregon services, before partisan politics and/or manipulative interest groups.

This is the job we hired her to do: To stand on principle, compromise when possible, and look after the greater good; not only for our coastal corner of the world, but for the entire state of Oregon, as well.

REV. BILL VAN NOSTRAN
Precinct No. 34 Committee member
Astoria

Top-notch care

When I moved to Astoria in 2006, Columbia Memorial Hospital was on its heels. Today I had surgery there, and I will have surgery there again in about three weeks.

I am also being regularly treated for pancreatic cancer at the CMH/OHSU Knight Cancer Collaborative. Astorians no longer need to travel two hours each way to Portland to receive top-notch medical care. We

can get it here, in town, at CMH.

That is due in large measure to the hospital's ability to recruit, train and retain exceptionally capable medical personnel, including its wonderful team of nurses. What I observed today, and what I observe every day that I receive care at CMH, is the fantastic teamwork among all levels of staff.

They care about each other, and about patients. One cannot get this type of care from temporary agency staff. We in the community need to do everything we can to bring the two sides together so that this current labor dispute goes away.

I confess to not knowing what the particular issues are that are keeping the nurses and the administration from settling their differences. I am certain that they are important.

But nothing can be more important than resolving them in a way that maintains the progress that CMH has made, and establishes a sound basis for more improvements in the future.

Many rural communities have lost their hospitals. We must not lose ours. CMH and its staff are crucial members of our community.

BARRY PLOTKIN
Astoria

Catastrophic

I have a question for the #TimberUnity folks: Are the lives of your grandchildren important to you?

Clearly, the cost of waiting until later to address climate change will be catastrophic. Yet you would have us do nothing.

#TimberUnity's biggest complaint about HB 2020's attempt to address climate change is the fear of losing their jobs. Which is ironic, because HB 2020 recognized that climate change will negatively impact Oregon's economy, including jobs in timber and related industries.

HB 2020 included timelines and monetary allowances to help climate-impacting industries make the changes needed to address the crisis. It also had provisions to create jobs to mitigate potential losses.

While you cling to forestry for fiber production, understand that hemp is a big-

ger threat to timber jobs than any legislation could ever be. Paper and fiber board producers are already researching ways to convert.

The future of fiber is hemp because of exponentially faster turn cycles, superior end-product quality and overall cost savings. Hemp's many environmental advantages are just a happy side benefit.

Hemp is coming for your jobs, not Rep. Tiffany Mitchell, not Gov. Kate Brown and not the environmentalists. It's just the reality of capitalism, and its demand for profits, that will take your jobs. And rest assured, climate change is threatening your jobs too.

So adapt. Change. Start thinking about and working to find ways to meet the challenges of the future, instead of clinging to the past. And hopefully all of our grandchildren, including yours, will survive the coming crisis.

BILL GRAFFIUS
Gearhart

No one's puppet

With all due respect for Bill Kerr, I was surprised that a union man so adamantly opposes Rep. Tiffany Mitchell ("Mitchell recall will backfire," *The Astorian*, Sept. 21). Mitchell's campaign was supported by unions. She supports local nurses organized by the Oregon Nurses Association, and has said she believes that unions are a "vital part of our social fabric."

That's not a position held by Republicans in general, and definitely not by the union-hating Koch brothers, who own the controlling share of the Georgia-Pacific Wauna Mill.

Regarding Kerr's comment that Mitchell is a "puppet of Portland," anyone who has attended her town halls, or spoken to her at length, as I have, knows she's no one's puppet. The notion that she isn't standing up for the community that she represents doesn't connect the dots.

Mitchell ran as a candidate in both the Democratic and Working Families parties. She won office on a strong labor and environmental platform against candidates heavily supported by the timber industry.

Like the overwhelming majority of Oregonians, those who voted for her in District 32 want action on climate change, including some form of cap and trade. That majority is the community that she "swore to serve," not the obstructionist #TimberUnity organization supported by Kerr.

Kerr says that cap and trade is a "radical" solution, but like #TimberUnity, he offers no alternative that will help mitigate the climate crisis. Simply playing the "Mitchell is a puppet of Portland" and "her ideas are radical" cards doesn't cut it anymore.

ROGER DORBAND
Astoria

Alligators?

Alligators in Ecola Creek? Did someone release pet alligators into Cannon Beach's Ecola Creek? Are they multiplying and eating the native ducks, gulls and an occasional elk? Must they eat our pet dogs or (gasp) one of our children before the City Council requires their removal and restores the natural ecosystem?

Just kidding. There are no alligators in Ecola Creek ... that I know of. I'm sure if there were, the Cannon Beach City Council would quickly require the elimination of such an abhorrent nonnative invasive species.

Then why doesn't the City Council require removal of the nonnative invasive European beach grass from the Cannon Beach foredune, and replace it with the previously-existing native American beach grass? ("City mulls dune management," *Cannon Beach Gazette*, Aug. 28)

The Cannon Beach City Council should be consistent in how it deals with nonnative invasive species in its ecosystem. If the City Council would eliminate nonnative invasive alligators from Ecola Creek, it should restore and preserve the foredune in its natural state by requiring removal, and prohibiting reintroduction, of the nonnative invasive European beach grass from the foredune, and replanting with native American beach grass.

DAVID DORNBUSCH
Oakland, California