

O EAST OREGONIAN PINION

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OUR VIEW

Fixing a flaw in state's jury system

Albany Democrat-Herald

Louisiana voters last week decided to do away with that state's oddball rule that allowed nonunanimous juries to decide criminal felony cases. That leaves just one state in which a jury can convict a defendant of a felony on a 10-2 vote. Can you guess what that state is?

That's right. But there's an excellent chance that Oregon voters will get a chance in 2020 to erase this stain on the state's constitution — and legislators are kicking around a fix in the 2019 session that could cover the gap until that election.

Until last Tuesday night, Oregon and Louisiana were the only two states to allow a nonunanimous jury to decide a felony case, although Oregon does require unanimous juries in murder or aggravated murder cases. In Tuesday's election, though, 65 percent of Louisiana voters approved a constitutional amendment to do away with nonunanimous convictions; the amendment goes into effect on Jan. 1. The measure drew support from political players of every stripe, from the state's Republican Party to the Southern Poverty Law Center.

In Louisiana, the nonunanimous jury rule dates back to 1898; scholars have argued that the measure was intended to limit the influence of African-American jurors.

Oregon's nonunanimous jury practice also was born out of prejudice — but in this case, it was anti-immigrant fervor that paved the way.

The state amended its constitution in 1934 to allow juries to decide most felony cases on 10-2 votes. Legal scholars (most notably, Aliza Kaplan of Lewis & Clark Law School, who wrote an influential piece on this topic) point to a sensational Columbia County murder case that paved the way for the ill-considered amendment.

That 1933 case involved a Jewish suspect, Jake Silverman, on trial for murder. One juror held out against conviction, and the jury eventually reached a compromise guilty verdict on a lesser charge of manslaughter. A judge sentenced Silverman to three years in prison.

The backlash was considerable. *The Morning Oregonian*, for example, railed against the verdict on its editorial pages, in language that was — well, not even borderline racist, but you can be the judge. Consider this excerpt from a November 1933 editorial: "This newspaper's opinion is that the increased urbanization of American life ... and the vast immigration into America from southern and eastern Europe, of people untrained in the jury system, have combined to make the



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jury of twelve increasingly unwieldy and unsatisfactory." The newspaper previously had editorialized against so-called "mixed-blood" jurors. (To be fair, *The Oregonian* recently recanted its 1933 editorial position on this matter.)

The Legislature, responding to the outcry, voted to place a constitutional amendment on the May 1934 ballot to allow nonunanimous juries. The measure drew no organized opposition and was approved by 58 percent of voters.

Since then, a number of attempts have been made to amend the constitution on this point — including a recent effort by the Oregon District Attorneys Association — but none has managed to gain much traction. (The effort by the District Attorneys Association seemed to

lose steam after a premature rollout of a website leaked critical details, but many Oregon prosecutors support eliminating nonunanimous verdicts.)

Since the effort requires amending the constitution, it would require a vote. Last week, Democratic House Majority Leader Jennifer Williamson said she'll sponsor two bills on the matter in the 2019 Legislature: One would refer the question to voters in the 2020 general election. The other, she said, would be a statutory fix that would seek to ensure we don't have to wait until after the 2020 election to do away with nonunanimous juries.

Oregonians love to brag about the state's independence, how we love to stand apart. But here's a case where we need to fall into step with the rest of the



OTHER VIEWS

Purpling of Texas is slow

Dallas Morning News

The question is on more than a few minds now. Did Beto O'Rourke prove the once-unthinkable — that the near future of Texas is as a purple state?

Those who hold out hope that, in fact, O'Rourke showed it is possible to repaint this red state will point to several factors. The congressman went from little-known El Paso figure to a national sensation overnight and raised \$70 million in the process. He forced Sen. Ted Cruz, a national figure on the right with a dedicated core of supporters, to run hard to win. And he appeared to be in a very competitive position in a series of polls over the course of the campaign.

Political prognosticators might also point to other factors. Texas is a rapidly changing state attracting a wide swath of new voters. And just as rapid growth helped fuel a Republican takeover of Texas, such growth can change the political trajectory of a state. Colorado and Virginia are examples of states that are competitive today in part because, over time, the influx of residents can flip voting patterns. In Texas, this appears to take on added significance because of the growing number of Hispanic residents. It is presumed that in the coming years, they will break in favor of Democrats.

All of these things are true, but color us skeptical that they add up to a purple future for the state of Texas in the near term. Consider that Republicans who war with other Republicans tend to underperform. And Cruz spent the first few years of his term mixing it up with members of his own party in Washington, then made a name for himself challenging

his party on its principles as he ran for president. And, although anecdotal, we have met a lot of staunch Republicans who didn't vote for Cruz because they just don't like him.

All of that adds up to the fact that Cruz had work to do to win a second term. But there is more evidence to suggest this year's results are peculiar to the circumstances. We'll start with President Donald Trump's leadership style. To the extent that this election cycle was a referendum on the president, the results broke against Republicans generally. That is especially true in our suburbs. One reason Pete Sessions won't be returning to Congress is that he was a Republican running in the suburbs this year.

Despite all of this, however, Democrats still failed to win a statewide race. They weren't able to defeat Lt. Gov. Dan Patrick, who became synonymous with divisive politics. The party of Beto also failed to unseat Ken Paxton, the state's attorney general who is under indictment. In the end, O'Rourke outperformed Luce Valdez, who ran a lackluster campaign for governor, by just five points in a year that was supposed to be a wave election against the president's party.

To us, what all of this shows is that there is a hunger among voters for candidates who offer a mix of optimism and who work against those who would divide us. Republicans are just as capable of offering that message. Indeed, it is the message that enabled George W. Bush to turn the state red in 1994. It's the message Ronald Reagan used to endear himself to a generation on the right. And, we suspect, it is a message candidates will rediscover as they consider what it will take to remain competitive in the years ahead.

OTHER VIEWS

GOP leaders regretting Clinton impeachment

If Democrats are trying to reassure anyone that they won't impeach President Trump, they're aren't doing a very good job of it.

Just days after her party won control of the House, Rep. Nancy Pelosi made clear that Democrats might impeach the president even if Trump-Russia special counsel Robert Mueller does not find evidence to warrant charges against him.

"Recognize one point," Pelosi told the *Atlantic*. "What (Trump-Russia special counsel Robert) Mueller might not think is indictable could be impeachable."

"We're waiting to see what the special counsel finds," Rep. Jerrold Nadler, who will run the House Judiciary Committee, told CNN. "And we will then have to make judgments. I certainly hope that we will not find the necessity for an impeachment. But you can't rule that out."

Before Pelosi and her fellow Democrats turn down the road to impeachment, they might do well to listen to the last speaker of the House who tried to remove a president. Newt Gingrich famously led the Republican impeachment of Bill Clinton in 1998 and 1999. Today, he has regrets.

In a recent interview at the Washington Examiner's Sea Island Political Summit, I asked Gingrich about Senate Majority Leader Mitch McConnell's recent statement that the Republican campaign against Bill Clinton backfired on the GOP. "The business of presidential harassment, which we were deeply engaged in in the late 1990s, improved the president's approval rating, and tanked ours," McConnell said.

"I think McConnell is largely right," Gingrich told me. "I think we mishandled the (Clinton) investigation ... and I think that we should have been calmer and slower and allowed the country to talk to itself before we reached judgment."

Gingrich pointed to another House leader, Democrat Tip O'Neill, who handled House action against Richard Nixon during Watergate. "O'Neill was better than I was at managing that process," Gingrich said.

Gingrich's words — and McConnell's, too — are extraordinary admissions of mistakes. Together, they serve as a warning to Democrats to be cautious when it comes to impeaching Trump.

On the other hand, some might see Gingrich and McConnell as simply trying to scare Democrats away from pursuing

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a Republican president. In any event, though, they point out that impeachment can put a party in a very dangerous position.

Of course the Trump and Clinton cases are different. Yes, Trump's job approval is nearly the same as Clinton's was at this point in his presidency, according to Gallup. But Trump has been the target of relentlessly negative media commentary, while during

the Clinton scandals much less of the commentary targeted the president, and a good portion instead targeted Republican investigators.

Today, there is one group that really wants impeachment, and that is Democratic voters. According to an NBC News exit poll, 78 percent of Democrats who voted in the midterms say Congress should impeach the president, versus just 17 percent of Democrats who oppose the move.

Outside of Democrats, 57 percent of independents are against impeachment, versus 34 percent who support it. And 94 percent of Republicans oppose it, versus 5 percent who support it.

House Democrats will investigate Trump on a whole range of topics. But any impeachment would likely be based on the Russia affair. As Nadler suggested, Democrats will wait to take action until after special counsel Mueller reports his findings. But as Pelosi noted, Democrats reserve the right to impeach Trump even if Mueller does not uncover evidence of serious wrongdoing.

What is extraordinary, given some Democrats' appetite for impeachment, is how little a role the Russia investigation played in the midterms that brought Democrats to power in the House. Democratic candidates did not campaign on an elect-me-and-I'll-impeach-the-president platform. Indeed, in many races the issue never came up at all. Democratic strategists warned candidates against using the I-word, suggesting they instead pledge to serve as a "check and balance" on the president and hold him "accountable."

Now, however, with the elections safely over, impeachment talk is back. Democratic leaders know that nearly eight out of 10 of their voters want them to impeach Trump. Political leaders do not usually ignore the wishes of eight out of 10 of their supporters.

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