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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

WEST LINN-WILSONVILLE SCHOOL
DISTRICT 3JT, a political subdivision of the
State of Oregon,

Plaintiff,

v.

THE CITY OF WEST LINN, OREGON, a
municipal entity,

Defendant.

Case No. 22CV06982

**DEFENDANT’S MOTION FOR
RECONSIDERATION
RE: JURY VENIRE**

DEFENDANT’S MOTION TO STAY

Assigned Trial Judge: Hon. Susie L. Norby

***(EXPEDITED ORAL ARGUMENT
REQUESTED)***

UTCR 5.050 ORAL ARGUMENT REQUESTED

Pursuant to UTCR 5.05, defendant City of West Linn (“City” or “West Linn”) respectfully requests an expedited oral argument on its motions as trial in this matter is currently scheduled to begin August 12, 2024. Counsel estimates that 15 minutes will be required to hear the motions.

MOTION FOR RECONSIDERATION

On July 31, 2024, the Court issued its ruling on Plaintiff’s first Motion in Limine (“Motion No. 1”) to exclude all residents from the City from the jury venire for cause. The Court granted the City’s motion, although for reasons not advanced by the District, and which were not briefed by either party. The Court, instead, identified a “reputational issue.” Because the City did not have an opportunity to brief the merits of the District’s motion on the “reputational issue,” the City respectfully requests that the Court consider the City’s position set forth below in reconsideration of its ruling.

1 ORS 10.030(1) provides:

2 Except as otherwise specifically provided by statute, *the*
3 *opportunity for jury service may not be denied* or limited on the
4 basis of race, religion, sex, sexual orientation, gender identity,
5 national origin, age, *income*, occupation or any other factor that
6 discriminates against a cognizable group in this state.

7 (Emphasis added.) Here, the Court found in pertinent part:

8 [T]here are two municipalities in Clackamas County that are
9 reputationally predominant. Lake Oswego is one, and West Linn
10 is the other. *These two cities have the most affluent populations,*
11 *the highest property values,* and the most desirable municipal
12 amenities. Residing in one of these two cities is *a measure of*
13 *personal success*, something to brag about. *These characteristics*
14 *further distinguish West Linn’s residents from residents of less*
15 *prestigious municipalities.* The *elevated status* that people derive
16 from being part of the West Linn community typically becomes a
17 part of their identities, [and] as such would predictably skew their
18 discernment when evaluating accusations of misconduct by their
19 chosen City.

20 (Emphasis added.)

21 While the Court did not expressly indicate that the City’s residents’ “income” was the
22 basis for its ruling, by referring specifically to the City’s “affluent” residents, “highest property
23 values,” “personal success,” and contrasting them with those “less prestigious municipalities,”
24 the “income” level of the residents of the City is nonetheless inextricably connected as to *why*
25 the Court believed that the West Linn’s residents could not be impartial in this proceeding and
26 should be excluded from juror service. In effect, “income” is the foundational basis for the
27 Court’s decision. This is prohibited by ORS 10.030(1).

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1 In addition, the Court made its decision in a factual vacuum based upon the lack of any
2 briefing. For example, the Court’s opinion excludes lower and middle income Oregonians from
3 participation in our judicial process. For example, according to online census data¹ regarding
4 household income, the percentage of West Linn residents making less than \$10,000 per year is
5 4.3%, while the percentage for Clackamas County is 3.3%, Oregon is 4.4%, the Portland
6 Vancouver Metro Area is 3.7%. These are comparable numbers. For \$10,000-14,999, West
7 Linn residents is 1.8%, while the percentage for Clackamas County is 2.2%, Oregon is 3.5%, the
8 Portland Vancouver Metro Area is 2.8%. These are comparable numbers. For \$15,000-19,999,
9 West Linn residents is 2.2%, while the percentage for Clackamas County is 2.3%, Oregon is
10 3.3%, the Portland Vancouver Metro Area is 2.5%. These are comparable numbers. For
11 \$35,000-39,999, West Linn residents is 2.4%, while the percentage for Clackamas County is
12 2.5%, Oregon is 3.6%, the Portland Vancouver Metro Area is 3%. These are comparable
13 numbers. For \$40,000-44,999, West Linn residents is 2.8%, while the percentage for Clackamas
14 County is 2.8%, Oregon is 3.7%, the Portland Vancouver Metro Area is 3%. These are
15 comparable numbers. For \$45,000-44,999, West Linn residents is 2.8%, while the percentage
16 for Clackamas County is 3.2%, Oregon is 3.5%, the Portland Vancouver Metro Area is 3.1%.
17 These are comparable numbers. For \$45,000-44,999, West Linn residents is 2.8%, while the
18 percentage for Clackamas County is 3.2%, Oregon is 3.5%, the Portland Vancouver Metro Area
19 is 3.1%. These are comparable numbers. For \$60,000-74,999, West Linn residents is 5.5%,
20 while the percentage for Clackamas County is 8.7%, Oregon is 9.5%, the Portland Vancouver
21 Metro Area is 8.9%. These are comparable numbers. For \$75,000-99,999, West Linn residents
22 is 9.6%, while the percentage for Clackamas County is 12.9%, Oregon is 13.4%, the Portland
23 Vancouver Metro Area is 13.3%. These are comparable numbers. The Court’s unilateral
24 designation of all of these “regular” Oregonians as “affluent” residents with the “highest
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26 ¹ <https://censusreporter.org/> (as of 8/6/24).

1 property values” who have all achieved great “personal success” has denied these regular
2 Oregonians of the opportunity to perform jury service, and is a violation of ORS 10.030(1). The
3 opinion tells these Oregonians that “you are not a peer.” West Linn is a highly economic
4 diverse municipality. Treating all West Linn citizens as if they are in the upper 1% based upon
5 “reputation,” when census data shows a much more diverse economic population, is incorrect
6 when actual data is consulted. These regular Oregonians deserve to be given the opportunity to
7 participate in our legal process. They are peers and deserve to be included in the jury pool.

8 In addition, the Court’s opinion that the City of West Linn has the most desirable
9 municipal amenities is subject to evidence to the contrary. As just a single example, the City
10 does not even have a recreation center. The City has many unfunded capital improvements.²
11 The City of West Linn has just as many economic woes as other typical Oregon municipalities.

12 With the above contrary facts set forth, the wise words of the Court of Appeals become
13 relevant to this issue:

14 While it is often said that the determination of the existence of actual
15 bias is one of fact for the discretion of the trial judge, see, e.g., *State v.*
16 *Dixon*, 5 Or.App. 113, 124, 481 P.2d 629, rev. den. (1971), cert. den.,
17 404 U.S. 1024, 92 S.Ct. 690, 30 L.Ed.2d 674 (1972), the exercise of
18 discretion must be according to legal principles. The statute speaks in
19 the negative, purportedly requiring acceptance of the juror unless the
20 court is satisfied that the juror “cannot” be impartial. A literal
21 application of the statute would reject a juror who was certainly partial
22 but allow a juror who was only probably impartial. The statute is not so
23 absolute rather the test is one of probabilities. As the Supreme Court said
24 in *Mount v. Welsh et al.*, 118 Or. 568, 578, 247 P. 815, 819 (1926):
25 “Again: The test of a juror's disqualification is the probability of interest,
26 prejudice or bias, as determined by the court's application of his judicial
knowledge to the facts of the particular case * * * .”
The probability which will require excuse of a juror for actual bias is
that his knowledge or attitude will affect the process by which he finds
the facts. As the Supreme Court said in *State v. Humphrey*, 63 Or. 540,
548, 128 P. 824, 827 (1912): “ * * * It is only when it is such a fixed
attitude of mind that it would control his actions in some appreciable
degree when he assumes the new relation of a trier of the fact involved

²

https://westlinnoregon.gov/sites/default/files/fileattachments/finance/page/7208/2024_2029_6_year_cip_-_final.pdf (as of 8/6/24).

1 in litigation that such a mental state will disqualify him. * * *

2 *Lane Cnty. v. Walker*, 30 Or App 715, 721 (1977) (Emphasis added.). Any City resident called
3 to serve as a potential juror is entitled to show that they are not of such fixed mind as to be
4 categorically excluded. The City also requests the Court consider the wise words offered by the
5 Oregon Supreme Court:

6 The rule laid down by this distinguished jurist in a trial which at the time
7 attracted universal attention has become substantially the settled law of
8 this country, and it is now generally considered that, if the juror's opinion
9 will “readily yield” to the evidence presented in the case, he is not
10 incompetent to sit upon the trial of the issue. As to when the opinion is of
11 such a character that it will not “readily yield” to the evidence produced,
12 the law in this country is in such a state of confusion that no success can
13 be hoped for in reconciling conflicting opinions or arraying the decisions
14 in logical order. Expressed in the varying terms of judicial utterances, the
opinion or impression concerning the merits of the cause on trial which
disqualifies a person called as a juror must be a “fixed,” “absolute,”
“positive,” “definite,” “decided,” “substantial,” “deliberate,”
“unconditional” opinion. The rule is almost universally laid down by these
words, or words of similar import. A “conditional,” “hypothetical,”
“contingent,” “intermediate,” “floating,” “indefinite,” “uncertain” opinion
will not do.

15 *Kumli v. S. Pac. Co.*, 21 Or 505, 507–08 (1892) (Emphasis added.). Depriving an entire
16 community of the right to jury service, and by extension, the right of the parties to have a jury of
17 their peers, is extraordinary. The City believes it is unwarranted. As the Supreme Court held
18 previously, “[t]he financial interest of a juror arising solely from status as a taxpayer or resident
19 alone normally is too remote and minute to affect his innate sense of justice and fairness to all
20 parties concerned.” *Sanders*, 294 Or. 195 at 200 (Emphasis added.). Here, there is no evidence
21 in the record supporting a conclusion to the contrary that amounts to an impermissible per se
22 exclusion of all West Linn residents based on their income and resident status.

23 Here, the reason advanced by the Court for excluding all City residents is, at best,
24 hypothetical, unsupported by the record, and contingent upon social status as determined by
25 income. That is legally insufficient to exclude all City residents. Every City resident has a right
26 to demonstrate that they are not even in that social status, or even if they are, that they are open

1 to reviewing the evidence in an impartial manner. The Court’s unilateral exclusion deprives the
2 City residents of this opportunity.

3 Based on the foregoing, the City request that the Court reconsider its ruling and allow
4 City residents to be included in the jury venire.

5 **MOTION TO STAY**

6 The City, if the motion for reconsideration is not granted, plans to file a petition for
7 mandamus with the Oregon Supreme Court and request a stay. The City, by this motion, gives
8 this Court the opportunity to reconsider this action before such is done. If the Court denies
9 reconsideration, the City respectfully requests that the Court stay this matter until the mandamus
10 process is complete. ORS 34.130(5) provides that the Court may in its discretion grant a stay for
11 a mandamus proceeding. This will avoid the risk of incurring the substantial expenses for the
12 Court and both parties of proceeding with a two week jury trial where the legality of the
13 composition of the jury pool is in question. It makes sense to not go forward until this
14 foundational issue is resolved. For the foregoing reasons, the City, if the motion to reconsider is
15 not granted or is denied, respectfully moves to stay this matter until the jury pool issue is
16 resolved.

17 DATED this 6th day of August, 2024.

18 JORDAN RAMIS PC
19 Attorneys for Defendant the City of West Linn

20
21 By: s/ David H. Bowser
22 Christopher K. Dolan, OSB #922821
23 chris.dolan@jordanramis.com
24 David H. Bowser, OSB #012098
25 david.bowser@jordanramis.com

26 Trial Attorney: David H. Bowser, OSB #012098

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the date shown below, I served a true and correct copy of the
3 foregoing DEFENDANT’S MOTION FOR RECONSIDERATION RE: JURY VENIRE on:

4 Jacob A. Zahniser, OSB #085210
5 Erica A. Clausen, OSB #170902
6 Ian M. Christy, OSB #160116
7 Miller Nash LLP
8 1140 SW Washington St, Ste 700
9 Portland OR 97205
10 Phone 503 205-2352
jacob.zahniser@millernash.com
erica.clausen@millernash.com
ian.christy@millernash.com
cc: rayna.keller@millernash.com
cc: alison.donin@millernash.com
cc: brandon.rueda@millernash.com

11 *Of Attorneys for Plaintiff West Linn-Wilsonville*
12 *School District 3JT*

13 ***EMAIL SERVICE AGREEMENT**

- 14 by first class mail, postage prepaid.
15 by overnight mail.
16 by hand delivery.
17 by facsimile transmission.
18 by facsimile transmission and first class mail, postage prepaid.
19 by electronic transmission.
20 by electronic transmission and first class mail, postage prepaid.

21 DATED: August 6, 2024.

22 *s/ David H. Bowser*

23 _____
24 Christopher K. Dolan, OSB #922821
chris.dolan@jordanramis.com
25 David H. Bowser, OSB #012098
david.bowser@jordanramis.com
26 Attorneys for Defendant the City of West
Linn