



CIRCUIT COURT OF OREGON

FIFTH JUDICIAL DISTRICT
CLACKAMAS COUNTY COURTHOUSE
807 MAIN STREET, ROOM 301
OREGON CITY, OREGON 97045

Susie L. Norby
Circuit Court Judge

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RE: West Linn – Wilsonville School District 3JT v. City of West Linn, Oregon
Clackamas County Circuit Court Case No. 22CV06982

Greetings:

The City filed a Motion for Reconsideration of this court's ruling to exclude West Linn residents from the jury venire. This letter explains the reconsideration given and reiterates the ruling that was made.

West Linn's strenuous defense of inclusion of West Linn residents in the jury venire underscores the basis of the ruling. West Linn argues that the ruling is a statement to West Linn residents that "you are not a peer." To the contrary, the ruling is a recognition that West Linn residents are peers to such a degree that it leaves them little room for objectivity. The City incorrectly identifies the core of the court's decision as the affluence of individual West Linn residents. That interpretation is superficial, and inaccurate. The court specifically found that: "Residing in [West Linn] is a measure of personal success, something to brag about. ... The elevated status that people derive from being part of the West Linn community typically becomes a part of their identities, and as such would predictably skew their discernment when evaluating accusations of misconduct by their chosen City." The issue is that residents identify



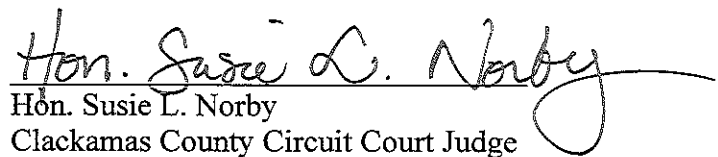
with this particular city to a heightened degree, not because of their incomes, but because the city's many fine attributes¹ inspire a level of loyalty in residents that becomes part of their identity, more so than most cities and geographical areas, creating a high probability of bias, which need not be admitted in voir dire in order to exist.

This court frequently hears attorneys use an example to explore bias with potential jurors in voir dire. They remark that if a juror is a loyal fan of a team like the Dallas Cowboys, then they "probably wouldn't be right for a jury in a case against their team." They follow that up with questions about whether the juror thinks they have a bias for one party or another. This is the specific issue that propelled the court's ruling. Based on 30+ years of personal experience in Clackamas County, and having lived in West Linn and elsewhere, my experience and common sense inform my knowledge of the attraction that people have to this particular city, and the pride that residents take in it. It is not their mere address that gave rise to the exclusion. It is the unique connection that arises in West Linn residents, that is unmatched in most other cities and geographical areas.

Even if the exclusion was connected to individual jurors' affluence, which it emphatically is not, affluence is not a protected class under the law. The City's argument that affluence creates a class that must be protected from discrimination under ORS 10.030(1) is antithetical to the concept of, and need for, true protected classes of people.

The City indicates that it believes it has standing to defend the rights of various unknown potential jurors to serve in the venire. The City further presumes that individual West Linn residents are keen for "the opportunity" to serve on this particular jury. The court doubts the probability of the former but concedes the likelihood of the latter. It is that very enthusiasm that underlies the court's decision to exclude them, in the interest of promoting fairness throughout this trial. But it is difficult to ascertain a legal path to vest a party with standing to defend the perceived desire for unknown potential jurors to perform their service.

This court has considered the arguments made in the City's Motion to Reconsider, to the extent described in this Letter Opinion. The City's request to reinstate West Linn residents as part of the jury venire is denied. Residents of the City of West Linn remain excluded from the jury venire, based on the probability of bias in favor of the City, as explained in the court's earlier opinion. The City's request to "stay this matter until the jury pool issue is resolved" by mandamus is denied. The trial will begin as scheduled, in less than a week.


Hon. Susie L. Norby
Clackamas County Circuit Court Judge

¹ There are more fine attributes than the court listed in the original Letter Opinion. West Linn is a city of beauty, located on the river, with beautiful old growth trees and enviable landscapes throughout. It has quaint shops, rolling hills, excellent schools, minimal crime and friendly neighborhoods. It is agreed that not everyone who lives in West Linn is personally affluent, but it is safe to say that everyone who lives in West Linn is proud to live there.