



# CIRCUIT COURT OF OREGON

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

ENTERED

JUL 31 2024

By: RW

(503) 650-8902  
FAX (503) 650-8909

\_Verified Correct Copy of Original 8/1/2024

Susie L. Norby  
Circuit Court Judge

July 31, 2024

Erica A. Clausen  
Ian Christy  
Miller Nash LLP  
US Bancorp Tower  
111 SW Fifth Ave., Ste. 3400  
Portland, OR 97204  
[erica.clausen@millernash.com](mailto:erica.clausen@millernash.com)  
[ian.christy@millernash.com](mailto:ian.christy@millernash.com)  
Attorneys for Plaintiff West Linn-Wilsonville School District

Christopher Dolan  
David H. Bowser  
Jordan Ramis PC  
Attorneys at Law  
1211 SW Fifth Avenue, 27th Floor  
Portland, Oregon 97204  
[chris.dolan@jordanramis.com](mailto:chris.dolan@jordanramis.com)  
[david.bowser@jordanramis.com](mailto:david.bowser@jordanramis.com)  
Attorneys for Defendant City of West Linn, Oregon

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

Greetings:

The District's first Motion in Limine asks to exclude all residents of the city of West Linn from the jury venire for cause, because of their personal and pecuniary interest in favor of the defendant City, their hometown. The City objects to a categorical exclusion based on jurors' primary residency.

There is no per se "disqualification rule" that automatically applies to exclude resident taxpayers of government entities from serving as jurors when that entity is a litigant. State ex. rel. Douglas County v. Sanders, 294 OR 195 (1982). But, there was a time, prior to the Sanders case, when the risks perceived to be inherent in that categorical status routinely supported venue changes for cases in which the government was a party.

ORCP 57D(1)(f) creates cause for exclusion for any West Linn resident with an "interest... in the outcome of th[is] action, or the principal question involved. . ." The School District argues that West Linn home-towners will benefit "financially and personally" if the City

22CV06982  
OPLE  
Opinion - Letter  
18269068



prevails. The District's analysis of West Linn residents' financial stake in the outcome of this case follows the reasoning in the Sanders court's opinion, which turned on the degree of "pecuniary interest," if any. But the Sanders court did not limit the form of bias that may constitute a categorical reason to exclude residents in a lawsuit against their own hometown.

In the current case, the court is not persuaded that there is a blanket pecuniary interest in all West Linn residents that hinges on the outcome of the isolated land sale agreement at issue. Instead, what concerns the court is the reputational issue, rooted in the District's allegations of bad faith on the part of the City.

In Crawford v. U.S., 212 US 183, 196 (1909), the US Supreme Court opined:

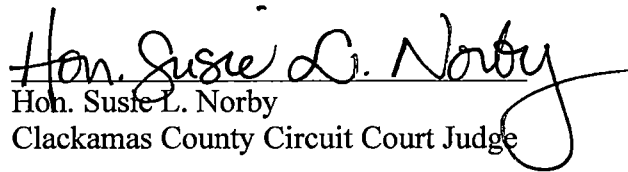
Modern methods of doing business and modern complications resulting therefrom have not wrought any change in human nature itself, and therefore have not lessened or altered the general tendency among men, recognized by the common law, to look somewhat more favorably, though perhaps frequently unconsciously, upon the side of the person or corporation that employs them, rather than upon the other side. Bias or prejudice is such an elusive condition of the mind that it is most difficult, if not impossible, to always recognize its existence, and it might exist in the mind of one (on account of his relations with one of the parties) who was quite positive that he had no bias, and said that he was perfectly able to decide the question wholly uninfluenced by anything but the evidence. The law therefore most wisely says that, with regard to some of the relations which may exist between the juror and one of the parties, bias is implied, and evidence of its actual existence need not be given.

Although this excerpt refers to the likely bias of a juror who is an *employee* of a government entity, the logic extends beyond that example. The current lawsuit includes a Claim for "Breach of Good Faith and Fair Dealing" by the City of West Linn. Based on the information supplied to the court in advance of the trial, a core question is whether the City's leaders and representatives behaved dishonestly and immorally to derive pecuniary gain. This distinguishes the risks inherent in the empanelling of jurors who reside in the City, because one core claim does not present an ordinary abstract legal issue. It presents a more inflammatory challenge to the City's reputation. People who choose a city as their hometown, particularly this City, take pride in it and can reasonably be expected to instinctively defend its good name from any who impugn it.

In this court's experience, there are two municipalities in Clackamas County that are reputationally predominant. Lake Oswego is one, and West Linn is the other. These two cities have the most affluent populations, the highest property values, and the most desirable municipal amenities. Residing in one of these two cities is a measure of personal success, something to brag about. These characteristics further distinguish West Linn's residents from residents of less prestigious municipalities. 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 City argued that all issues of implicit bias among potential jury members can and should be individually explored during voir dire, including with members of the venire who are West Linn residents. However, this court agrees with the Supreme Court's analysis in the Crawford case regarding the well-meaning assurance of some potential jurors that they have no bias, specifically: ". . . with regard to some of the relations which may exist between the juror and one of the parties, bias is implied, and evidence of its actual existence need not be given." During voir dire, unless a juror admits to bias, it is difficult to ascertain whether bias exists. Yet members of a venire have little information about what to expect when they make their own predictions about their prospective neutrality. Therefore, this court's obligation to ensure the impartiality of the jury in this case is best served by granting the District's first Motion in Limine.

The District's first Motion in Limine is granted. Residents of the City of West Linn shall be excluded from the jury venire.

  
Hon. Susie L. Norby  
Clackamas County Circuit Court Judge