



## CIRCUIT COURT OF THE STATE OF OREGON

FOR THE 2<sup>nd</sup> JUDICIAL DISTRICT  
LANE COUNTY COURTHOUSE  
125 E. 8TH AVENUE  
EUGENE, OREGON 97401-2926

**KARSTEN H. RASMUSSEN**  
PRESIDING JUDGE

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June 19, 2013

### *Members of the Senate Rules Committee*

Sen. Diane Rosenbaum, Chair  
Sen. Ted Ferrioli, Vice-Chair  
Sen. Lee Beyer  
Sen. Ginny Burdick  
Sen. Bruce Starr

Re: Letter in support of Senate Joint Resolution 34

Dear Chair Rosenbaum and Members of the Committee:

My apologies for being unable to attend this afternoon's hearing on Senate Joint Resolution 34 in person, but I have a 2:30 p.m. Presiding Judge's docket with 35 criminal defendants. With the number of ongoing trials in our courthouse, I was, regrettably, unable to find a judge available to call the docket on my behalf.

This letter is sent in support of Senate Joint Resolution 34. I write only on my own behalf, drawing on my own experiences as a volunteer instructor and a sitting judge, and not in any representative capacity for the Oregon Judicial Department. SJR 34 is a needed constitutional fix which will enable more sitting judges to support their communities as members of the Oregon National Guard and as teachers in local classrooms.

Currently, members of the Oregon judiciary operate under the constraints imposed by the Oregon Supreme Court's interpretation of our Constitution's separation of powers clause. The 1979 ruling in *In the Matter of Sawyer* prohibits sitting judges from being employed and compensated by the State Board of Higher Education as part-time professors in Oregon's public universities. The reasoning of the Court's decision in *Sawyer* may apply to judges working in other unelected, ministerial positions because the ruling focused heavily on the fact that a member of one branch of government was receiving pay for doing services for another branch. As a result, sitting judges cannot be employed as part-time professors, and may arguably be ineligible for service with the Oregon National Guard.

The *Sawyer* decision has a demonstrable impact on our state's sole public law school. I presently teach courses on Oregon Civil Practice and Procedure and Law and Development of the American West at the University of Oregon School of Law. I volunteer my time. My hope is that my students benefit from my 14 years of experience on the bench and 16 years as a litigator by

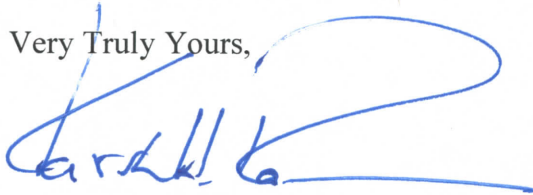
gaining practical skills and the perspective of a judge. I am the only sitting state court judge who regularly teaches courses at the University of Oregon. Neither the Willamette University Law School nor the Lewis and Clark Law School are limited by the *Sawyer* decision because they are both private institutions. Willamette presently lists three sitting judges amongst its adjuncts, in addition to three retired Oregon Supreme Court justices, and Lewis and Clark University listed six sitting state court judges as adjunct professors for the 2011-2012 academic year.

Additionally, some current state court judges serve with the Oregon National Guard in a variety of roles. This service to the State of Oregon may also be barred under *Sawyer*. Our communities are well served by the efforts of our National Guardsmen and National Guardswomen, and members of the bench should be able to help their communities without fear of being accused of a judicial ethics violation. Passage of SJR 34 would enable the voters to provide needed clarification to state court judges who wish to share their talents, wisdom, and experience.

I encourage you to pass this resolution so students attending our public universities may equally enjoy the benefit of learning from those of us on the bench, and to empower judges to continue to serve their communities as members of the Oregon National Guard. I have attached to this letter testimony from the former U of O School of Law Dean Margaret Paris in support of the 2010 version of this resolution.

Again, my sincere thanks for your consideration of the Joint Resolution and my apologies for being unable to attend your meeting in person today.

Very Truly Yours,



Karsten H. Rasmussen  
Presiding Judge  
Lane County Circuit Court

cc: Sen. Floyd Prozanski

KHR/jrr

In Support Of Senate Joint Resolution 48

Before the Senate Education and General Government Committee  
Senator Mark Hass, Chair

Testimony of

Margaret L. Paris  
Philip H. Knight Dean and Professor of Law  
University of Oregon School of Law

Wednesday, February 10, 2010, 3:30 PM, HR C

Honorable Chair, and committee members:

I speak on behalf of Senate Joint Resolution 48, which would permit Oregon judges to teach in Oregon institutions of higher education, such as the University of Oregon School of Law. Currently, as the state's only public law school, we are precluded from having Oregon judges teach our students, while the state's two private law schools may employ Oregon judges as adjunct instructors.

Judges provide an important resource to students, and if we were able to, we would employ them as adjunct instructors in such classes as State Constitutional Law. That course, by the way, is co-taught at Willamette law school by two Oregon judges. Similarly, students at Lewis & Clark law school are fortunate to have been instructed by Oregon judges.

Passage of Senate Joint Resolution 48 would permit law students at the University of Oregon to enjoy the wisdom and experience of Oregon judges just as do the students at private law schools in Oregon.

The current situation is a product of Article III, section 1 of the Oregon Constitution, which provides: "The powers of the Government shall be divided into three separate (sic) departments, the Legislative, the Executive, including the administrative, and the Judicial; and No person charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided."

Twenty years ago, the Oregon Supreme Court interpreted this constitutional provision to preclude Oregon judges from teaching in Oregon institutions of higher education. *In the Matter of Sawyer*, 286 Or. 369 (1979).

In that case, however, the Court noted that Article III, section 1 of the Oregon Constitution had been amended by the addition of Article XV, section 8 so as to specifically permit legislators to be employed by the State Board of Higher Education and school boards.

Senate Joint Resolution 48 seeks a more limited amendment, which would permit judges to be employed by the State Board of Higher Education and school boards solely for the purpose of teaching.