

**TESTIMONY OF JOHN DILORENZO, JR.
BEFORE THE SENATE COMMITTEE ON RULES
IN SUPPORT OF A-ENGROSSED HOUSE BILL 2887**

June 19, 2013

Good Afternoon, Madam Chair and Members of the Committee. For the record my name is John DiLorenzo. I am an attorney from Portland, but am testifying here today on my own behalf, not on behalf of any client, in support of House Bill 2887A.

Several months ago, Representative Garrett requested that I and others who have experience in the redistricting process come together and address a need which arises once each decade.

22 years ago, I had the pleasure to represent the plaintiffs in federal court in the 1991 congressional redistricting litigation which resulted in a judicially approved plan.

12 years ago I had the pleasure to represent Senators Atkinson, Beyer, and others in *Perrin v. Kitzhaber*, the 2001 congressional redistricting litigation. Current Federal Judge Michael Simon who, at the time, was a partner in the Perkins Coie firm, represented the plaintiff and Thane Tienson represented then State Senators Kate Brown and Dan Gardner. That litigation involved a hearing before a 3-judge federal panel and a two-week trial in Multnomah County Circuit

Court. Thereafter, certain aspects of the case were appealed to the Oregon Court of Appeals, ultimately finding their way to the Oregon Supreme Court.

Your historic agreement in 2011 deprived the lawyers of another good case. However, before you came to a resolution, there was still an attempt to be the first to the courthouse evidenced by a filing in the Yamhill County Circuit Court. That filing was made at the time because under the *Grove v. Emison* decision of the United States Supreme Court, the federal courts will abstain from hearing federal redistricting litigation unless it is apparent that the state processes are incapable of producing well-apportioned districts by the next scheduled election. Any Oregon circuit court has proper venue to hear such a case: thus, the race to the courthouse. In 2001, the democrats filed first in Multnomah County Circuit Court well before the legislative session had adjourned. Similarly, in 2011, the republicans filed first in the Yamhill County Circuit Court.

The “race to the courthouse” raised concerns which may well have had more to do with perception than reality. Representative Garrett, who co-chaired the House Redistricting Committee last session asked a number of us to work with him to remedy the situation. We ultimately fashioned a proposal which would (a) eliminate a race to the courthouse, (b) ensure geographic diversity with respect to the decision makers, (c) increase the public perception of fairness and (d) which

would eliminate the need for multiple filings and consolidation of cases which might span a variety of county circuit courts.

Judge Haselton of the Court of Appeals, Roy Pulvers, Bruce Miller of the Oregon Judicial Department, Dan Gilbert, representatives of the Secretary of State's office and I participated in the work group and designed a product which I believe well addresses those concerns.

House Bill 2778A creates a process for handling federal redistricting litigation but does not make any substantive changes to the criteria which apply to redistricting plans. Nor does the bill alter the causes of action which party must first allege in order to seek a reapportionment of a congressional district. Those causes of action are likely to remain the Federal Civil Rights Act and the Declaratory Judgments Act.

What the bill does is first create a centralized venue, that being Marion County Circuit Court, and a process for filing and adjudicating petitions which challenge a congressional reapportionment, or, the lack of a constitutional redistricting apportionment scheme.

If such a petition is filed, the Chief Justice of the Supreme Court appoints a special judicial panel. The panel consists of one circuit court judge, senior judge, or judge who is serving as a judge *pro tem* from each congressional district of the state. The Chief Justice also selects one of the appointed judges to preside over the

special panel to make all rulings on procedural and evidentiary matters before the panel. The panel may also request that the Chief Justice appoint a special master to receive evidence and to prepare recommended findings of fact.

If the legislature adopts a congressional reapportionment plan, the panel must affirm the plan if it complies with all applicable statutes and the United States and Oregon constitutions. If no legislatively adopted congressional reapportionment plan is enacted, the panel must consider all other plans submitted by petitioners and intervenors or can create its own reapportionment plan which must comply with all applicable statutes and the United States and Oregon constitutions.

The Oregon Supreme Court will hear all appeals brought by any participating party in that process. For a legislatively adopted congressional reapportionment plan, the Supreme Court must affirm the plan if the plan complies with all applicable statutes and the United States and Oregon constitutions. If it does not so comply, the Court may devise its own reapportionment plan. Should the 5 judge panel adopt a reapportionment plan, and if the plan is adopted unanimously, the Supreme Court must affirm the plan if the plan complies with all applicable statutes in the United States constitution. For a reapportionment plan that is created by the special judicial panel by less than a unanimous decision, the

Supreme Court may in its discretion examine the record and try the case anew based on the record.

HB 2887A also addresses other scenarios and provides the court direction in order to comply with deadlines which will be required by the Secretary of State in order to hold the next scheduled election under a new reapportionment plan.

Madam Chair I would like to thank Representative Garrett for having provided me the opportunity to serve on this work group and also the members of the work group who developed this consensus product. This bill received the unanimous endorsement of the House Rules Committee and passed the House by vote of 57-0.

I ask that you also give it your favorable consideration and recommend it to the floor of the Senate with a do-pass recommendation.

Thank you for your time. I am available to answer any questions you may have.