

STATEMENT ON -6 AMENDMENT TO HB 4094

Thank you Mr. Chairman. My name is Charles Hinkle. I am a lawyer in private practice in Portland, and have represented *The Oregonian* and several other newspapers and other media for more than 40 years.

I thank the committee for the opportunity to testify by telephone and to explain why I think Section 1 of House Bill 4094 violates the Oregon Constitution and should be removed from the bill.

Article I, section 10, of the Oregon Constitution provides that “[n]o court shall be secret, but justice shall be administered, openly.” In 1980, the Oregon Supreme Court applied that provision to a statute that allowed trial judges to exclude the public from a juvenile court hearing, if the judge believed that “privacy would promote the goals of juvenile justice.”¹

The court held that the statute was unconstitutional. It didn’t disagree that protection of privacy could be a worthwhile policy goal, but it said that a constitutional requirement can’t be ignored just because you can think of good reasons for doing so. When the constitution says “no court shall be secret,” it doesn’t go on to say “except sometimes,” or “except when there’s a good reason to keep it secret.” As the court said in 1980, Article I, section 10, “does not recognize distinctions between various kinds of judicial proceedings; it applies to all.”²

The court has reinforced that holding several times since 1980. In two cases decided in 2012 and 2013, the court said three things that are particularly relevant here. First, “the public’s interest in the open administration of justice generally may not be subject to an open-ended ‘balancing’ against the secrecy interest of a particular witness in the case.”³ Second, the constitution requires the courts to operate “in a manner that permits public scrutiny of the court’s work in determining legal controversies.”⁴ Third, the constitution protects “the public’s right to see and hear a party’s efforts *** to introduce and use evidence *** and to see and hear the court’s decision.”⁵

¹ *State ex rel Oregonian Pub. Co. v. Deiz*, 289 Or 277, 284, 613 P2d 23 (1980.)

² *Id.* at 283.

³ *State v. MacBale*, 353 Or 789, 806, 305 P3d 107 (2013).

⁴ *Doe v. Corp. of Presiding Bishop*, 352 Or 77, 90, 280 P3d 377 (2012).

⁵ *Id.* at 100.

In a nutshell, what the Supreme Court has been saying is that when a court makes a decision regarding the rights and responsibilities of the people who come before it, it may not make that decision based on secret evidence, and it may not keep the decision itself a secret.

Section 1 of House Bill 4094 violates that principle. When an Oregon court is asked to approve a settlement involving a personal injury claim brought on behalf of an incapacitated person, a minor, or a decedent, and evidence is presented to support that request, the court's decision and the evidence on which it is based must be open to the public. That's what the constitution means when it says that "no court shall be secret, but justice shall be administered, openly."

I urge the committee to approve the Dash Six amendment and remove Section 1 from the bill. Thank you.

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