

SUPREME COURT

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On August 18, 2011, the Supreme Court:

1. Allowed petitions for review in¹:

Bryn Hazell v. Kate Brown (S059245) (S059246) (A137397) (appeal from Marion County Circuit Court; opinion reported at 238 Or App 487, 242 P3d 743 (2010)).

Plaintiffs Joan Horton and Ken Lewis, and plaintiffs Bryn Hazell, Francis Nelson, Tom Civiletti, David Delk, and Gary Duell, who separately petitioned for review, have been granted review of a Court of Appeals decision that affirmed a trial court decision granting summary judgment to defendants on plaintiffs' action seeking declaratory and injunctive relief to implement and enforce Measure 47 (2006).

On review, the issues are:

Issues in S059245:

(1) Under the Oregon Constitution, may the operation of a statute be postponed until "some future, contingent event," which is conceptually possible, but is not anticipated?

(2) Under the Oregon Constitution, may the operation of a statute be postponed until a "finding" made by an unspecified judicial officer in future potential litigation at an unknown time and involving litigants who may not refer to (or necessarily know of) the existence of the dormant statute?

¹ These summaries of cases are prepared for the benefit of members of the media to assist them in reporting the court's activities to the public. Parties and practitioners should not rely on the summaries, or the statement of issues to be decided in the summaries, as indicating the questions that the Supreme Court will consider. Regarding the questions that the Supreme Court may consider, see Oregon Rule of Appellate Procedure 9.20.

Issues in S059246:

(3) Does Section (9)(f) of Measure 47 (2006) suspend the entire measure?

(4) Does Section (9)(f)'s reference to "limitations on political campaign contributions or expenditures" refer to those limitations contained in Measure 47 itself or to some other, unknown future limitations that might come to the attention of the courts?

(5) Does Section (9)(f) excuse defendants from implementing and enforcing any of Measure 47?

(6) Does Measure 47 contain 12 severable and independently enforceable provisions, apart from its numeric limitations on political campaign contributions?

(7) Which of Measure 47's limitations, if any, are invalid, considering the decision of the Oregon Supreme Court in *Vannatta v. Keisling*, 324 Or 514, 931 P2d 770 (1997) (*Vannatta I*), as that decision recently has been modified?

(8) Should some aspects of *Vannatta I* be reconsidered?

State of Oregon v. Eugene Chimezie Ofodrinwa (S059446) (A139764) (appeal from Washington County Circuit Court; opinion reported at 241 Or App 214, 250 P3d 405 (2011)).

Defendant Eugene Chimezie Ofodrinwa has been granted review of a Court of Appeals decision that affirmed his conviction for sexual abuse in the second degree.

On review, the issues are:

(1) Does ORS 163.425, which defines the crime of sexual abuse in the second degree, require proof of actual lack of consent, or is proof of an incapacity to consent sufficient under the statute because the victim was under the age of 18?

(2) With respect to the admission of a defendant's confession into evidence, which must be corroborated with "some other proof" (ORS 136.425) that "tends to establish" that the charged crime actually occurred (*State v. Chatelain*, 347 Or 278, 220 P3d 4 (2009)), does "tends to establish" mean that any inference, regardless of likelihood, can constitute "some other proof" that the charged crime has been committed?

(3) Does evidence that a 21-year-old man was in an ongoing relationship with a 16-year-old minor that was physically demonstrative, and evidence that the man had a condom in his pocket, tend to establish that the 16-year-old minor had been subjected to sexual intercourse?

State of Oregon v. Samuel Allen Wilson (S059461) (A138740) (appeal from Washington County Circuit Court; opinion reported at 240 Or App 708, 247 P3d 1262 (2011)).

Defendant Samuel Allen Wilson has been granted review of a Court of Appeals decision that affirmed his convictions for manslaughter I, assault II, driving under the influence of intoxicants, and driving while suspended.

On review, the issue is whether a trial court abuses its discretion under Article I, section 9, of the Oregon Constitution, if it does not allow an individual to waive his right to a jury trial, based upon a position taken by the state with respect to the matter.

Mike Morgan v. Sisters School District #6 (S059465) (A142252) (appeal from Deschutes County Circuit Court; opinion reported at 241 Or App 483, 251 P3d 207 (2011)).

Plaintiff Mike Morgan has been granted review of a Court of Appeals decision affirming a trial court decision that plaintiff lacked standing to bring an action against defendant Sisters School District #6 (school district), based on plaintiff's contention that the school district had unlawfully authorized the financing of various capital improvements by a means that did not require voter approval.

On review, the issue is whether a person has standing to bring a declaratory judgment action against a public school district, under a voter/taxpayer standing theory, where the school district issues financial obligations that purport to be "certificates of participation," but instead are alleged to be bonds backed by the full faith and credit of the district, which would require approval by the voters who live within the jurisdictional boundaries of the district, pursuant to ORS 328.205 *et seq.*

SAIF Corporation v. Crystal L. DeLeon (S059509) (A142932) (appeal from Workers' Compensation Board; opinion reported at 241 Or App 614, 251 P3d 794 (2011)).

Claimant, Crystal L. DeLeon, has been granted judicial review of a Court of Appeals decision that reversed an award of attorney fees by the Workers' Compensation Board.

On review, the issue is whether an ALJ, board, or court may, pursuant to ORS 656.382(2), award a carrier-paid fee for the services of the claimant's counsel in the current and prior forums, in circumstances where the employer or insurer sought review or appeal of an award of compensation, and the ALJ, board, or court found that the compensation awarded to the claimant should not be disallowed or reduced.

State of Oregon v. James Anthony Harrell (S059513) (A138184) (appeal from Yamhill County Circuit Court; opinion reported at 241 Or App 139, 250 P3d 1 (2011)).

Defendant James Anthony Harrell has been granted review of a Court of Appeals decision affirming a trial court decision that denied defendant's request to waive a jury trial at the close of the case, but before the jury had returned a verdict.

On review, the issues are:

(1) Does the trial court have the authority to allow a defendant to waive jury after the jury has been sent to deliberate, but before the jury has rendered its verdict?

(2) Does the trial court's act of allegedly conditioning the waiver of jury on the prosecutor's agreement violate Article I, section 11, of the Oregon Constitution?

2. Allowed the petition for review in *State of Oregon v. Matthew Robert Jimenez* (S059528) (A142714), vacated the decision of the Court of Appeals, and remanded to the Court of Appeals for reconsideration in light of *State of Oregon v. Corey Dennis Marshall* (S058549) (A135603) (opinion reported at 234 Or App 153, 227 P3d 786 (2010), *aff'd* in part and *rev'd* in part, 350 Or 208, 253 P3d 1017 (2011)).

3. Allowed the petition for review in *Matthew Dwight Thompson v. Brian Belleque* (S059549) (A140461), vacated the Court of Appeals order on reconsideration authorizing extended brief and excerpt of the record, and remanded to the Court of Appeals to enter an order granting petitioner's motion to file a 207-page opening brief.

4. Denied petitions for review in:

Gerald L. Curry v. Clackamas County (S059256) (A139251)
Kaiser Permanente v. Pamela Bonfiglio (S059309) (A141902)
State of Oregon v. Alina N. Reed (S059311) (A142284)
Kelley Gene Gettling v. Brian Belleque (S059324) (A143315)
Eric Halperin v. Ray Pitts (S059330) (A139639)
Kubie Ali Wuholo v. Brian Belleque (S059346) (A142208) (A144231)
State of Oregon v. Louis Alfredo Ros-Planas (S059371) (A139822)
State of Oregon v. Noel Reyes-Mauro (S059385) (A140938)
Susan Courtnie Crafts and Robert Richard Crafts (S059393) (A143330)
Edward J. Cavin v. Patricia E. Chilson (S059401) (A139638)
Adrian Lynn Nickelson v. Don Mills (S059410) (A142895)
State of Oregon v. Jerry Clifton Wilson, Jr. (S059416) (A143908)
Oregon State Bar v. Jeffrey G. Sharp (S059417) (A145126)

C. Thomas Davis v. Jeffrey E. Boly (S059419) (A135508) (A140872)
State of Oregon v. David Victor Handler (S059456) (A142426)
State of Oregon v. Silvestre Cervantes-Avila (S059460) (A142481)
William Donald Harvey v. Don Mills (S059469) (A145504)
Friends of Yamhill County v. City of Newberg (S059472) (A146619)
State of Oregon v. Enoch Rodriguez Robledo (S059479) (A136954)
Daniel Valdez-Rios v. Rick Coursey (S059486) (A139974)
Mark Forest Templeton v. Board of Parole and Post-Prison Supervision (S059494)
(A145941)
State of Oregon v. Ronald Lee Gray, Jr. (S059496) (A140711)
State of Oregon v. Randy Lee Maidens (S059500) (A142574)
Portland School District No. 1J v. Great American Insurance Company (S059504)
(A137057)
State of Oregon v. Daniel Raymond Jordan (S059508) (A140602)
Tammy L. Matson v. Oregon Arena Corporation (S059510) (A139601)
William F. Frisch v. Gary Kilmer (S059514) (A142889)
Marjan Sassanfar Amesbury and David John Amesbury (S059527) (A144529)
State of Oregon v. Jeremy Eugene Childs (S059536) (A141225)
Department of Human Services v. M. M. (S059538) (A146794)
State of Oregon v. Girley Logdon Crum (S059539) (A139807)
Phillip Dean Morsman v. Environmental Quality Commission (S059545)
(A143336)
Art Bullock v. City of Ashland (S059547) (A131252) (A133660)
Joylynn Mae Clawson v. Nancy Howton (S059552) (A143959)
State of Oregon v. Christopher Fomby (S059557) (A144821)
Richard Willie Callahan v. Mark Nooth (S059562) (A142971)
State of Oregon v. Lorenzo Morales-Sanchez (S059564) (A142342)
Omar Rodriguez v. Brian Belleque (S059568) (A144304)
Rex Lee Larsen v. Board of Parole and Post-Prison Supervision (S059570)
(A143467)
State of Oregon v. Corey Dee Combs (S059573) (A144872)
State of Oregon v. Karl Wade Roberts (S059574) (A138580)
State of Oregon v. Ezekiel Minner (S059583) (A143953)
Robert S. Lackmann v. Mark Nooth (S059586) (A146292)
State of Oregon v. Bryan Erwin Fallis (S059594) (A141776)
Department of Human Services v. J. M. B. (S059615) (A147175)

5. Denied petitions for reconsideration in:

Robert A. Corry v. Gary Kilmer (S059278) (A142421)
State of Oregon v. Andre Ramon Jacob (S059196) (A141488)
Fox Capital Corp v. Christos Mandalides (S059243) (A145618)
Sui L. Ostrin v. Victorio C. Rivera (S059471)
Elizabeth Johnson v. Kyle J. Sampson (S059379) (A145806)

6. Denied the petition for writ of mandamus in:

Brandon G. Ellis v. Les Schwab Tire Centers of Portland, Inc. (S059603)

7. Accepted the resignation of attorney Anthony Robert Lopez (Bar No. 085345) during the pendency of disciplinary proceedings.

8. Reinstated attorney Fred M. Granum (Bar No. 832145) to the active practice of law.