OREGON

CIVIL RIGHTS

NEWSLETTER

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Your Vote Is Your Voice—And Every Voice Matters

Voting is a basic, beloved, and essential tenet of democracy; it represents our country's greatest collective strength. Election Day is the day we speak as a people with one voice—*e pluribus unum* (from the many, one). It is written right there on the back of a penny. And yet, today, the fundamental right itself, the very act of voting, has become a political tool for reapportioning power.

Today, more states are moving to obstruct voting rights than are increasing access to the ballot. The federal government and many states are moving toward more restrictive voter-registration laws and policies. Like so many reactionary policies proposed in the name of security, one need not scratch that veneer very hard to reveal the fear, racism, and political ambition concealed within.

In the absence of a legitimate rationale for curtailing voting rights, conservative governors and legislatures are implementing state laws that tamper with the voter-registration process.

They should be ashamed of themselves. This sinister, but frankly evil-genius, approach has proved quite successful in sneakily institutionalizing discrimination against people of color, people with lower incomes, and young people.

What are they afraid of? It is as if they want to rewrite history to make ours a government of some of the people, by some of the people, and for some of the people.

Governor Kate Brown

The Voting Rights Act

In some ways, we were more progressive fifty years ago than we are now. In 1965 President Lyndon Johnson signed the Voting Rights Act[1] to curb discrimination in voting. The Act was almost instantly successful and decreased the gap between white and black registration rates from nearly thirty percentage points in the early sixties to just eight by the seventies.[2] Turnout among black voters followed suit and increased significantly.[3] Additionally, the protections provided for in this important Act have been the basis for subsequent action to remove barriers to voting for Hispanics and other language minority groups.[4]

Disturbingly, in the 2013 case of *Shelby County v. Holder*,[5] the United States Supreme Court struck down essential pieces of this legislation. A 5–4 majority cited improvement in black voter registration rates and the lack of direct discriminatory measures like poll taxes to conclude that the law was no longer necessary.

As Justice Ginsburg aptly pointed out in her dissent, throwing out this law because it worked "is like throwing away your umbrella in a rainstorm because you are not getting wet."[6] As we see every day in the news, in our

communities, and in our own experiences, discrimination is alive and well in this country.

Following this Supreme Court decision, conservative leaders moved quickly to implement restrictive voting laws. Within two hours of the *Shelby* decision, the Texas attorney general—the attorney general of a state previously covered by provisions of the Voting Rights Act—announced that a restrictive voter-identification law would be implemented immediately.[7]

States such as North Carolina, Alabama, Mississippi, Virginia, and Florida quickly followed suit, implementing an array of extreme voting restrictions.[8] Restrictions including ending same-day voter registration, strict photo identification requirements,

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✦ In This Issue

Recent Decisions

Richard F. Liebman
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Ninth Circuit Court of Appeals

***Arizona ex rel. Horne v. Geo Group, Inc.*, 816 F.3d 1189 (9th Cir. 2016)**

The court permitted individual employees to join an EEOC class action after the EEOC had sent notice of class litigation and without attempting conciliation for each of the new employees individually during the course of the reasonable-cause-determination investigation. The court held that the employees were accounted for by the EEOC when it referred generally to the "class" of female employees and attempted conciliation on that basis.

***Coomes v. Edmonds Sch. Dist. No. 15*, 816 F.3d 1255 (9th Cir. 2016)**

A schoolteacher alleged that her employer constructively discharged her in retaliation for comments made to supervisors and students' parents criticizing the school's special-education program. The Ninth Circuit affirmed summary judgment, in relevant part, holding that the teacher's comments were made in her role as an employee, and not as a member of the public; thus her statements were not entitled to First Amendment protection.

***Mendoza v. The Roman Catholic Archbishop of L.A.*, No. 14-55651, 2016 WL 3165856 (9th Cir. 2016)**

When the plaintiff took a ten-month leave, her supervisor took over her bookkeeping duties and decided that they only needed a part-time employee to do her job when she returned. The plaintiff declined the part-time job and brought an action on the failure to reinstate her, claiming disability discrimination. The plaintiff, however, could not show that the church's legitimate nondiscriminatory reason for not returning her to work was a "cover" for discrimination and could not show that a full-time job was otherwise available or that the church was motivated by her disability in reducing her work to a part-time position.

US District Court for the District of Oregon

***Hermida v. JP Morgan Chase Bank, N.A.*, No. 3:15-cv-00810-HZ, 2015 WL 6739129, 2015 U.S. Dist. Lexis 148734 (D. Or. Nov. 3, 2015)**

The court held that an employer may compel arbitration pursuant to an employment agreement in a suit by an employee alleging he was terminated for complaining about illegal activity. The court began by analyzing the strong preference for enforcing arbitration agreements memorialized in the Federal Arbitration Act (FAA). The FAA provides that arbitration clauses "shall be valid, irrevocable, and enforceable" unless contrary to law or public policy. The court was unpersuaded by the plaintiff's argument that the agreement was substantively unconscionable because it favored the employer and upheld the arbitration agreement. The court held that the contract allowed the arbitrator sufficient authority to modify discovery limitations and other procedural terms to provide the employees an opportunity to vindicate their rights. The court also noted that the agreement was broadly applicable to claims the employee and the employer may each raise, and thus sufficiently balanced and not unconscionable under Oregon state law.

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The purpose of this publication is to provide information on current developments in civil rights and constitutional law. Readers are advised to verify sources and authorities.

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Supreme Court Update

***Birchfield v. North Dakota*, No. 14-1468 (June 23, 2016)**

The Court held 7–1 that the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving but not warrantless blood tests. The Court reached this holding by reasoning that a breath test is a permissible search incident to arrest because breath tests do not implicate serious privacy concerns. Blood tests, however, implicate privacy concerns because they "require piercing the skin" and produce a sample that can be retained and used to obtain information other than the suspect's blood alcohol level at the time of the test. The Court also determined that states have an interest in preserving road safety and preventing drunk drivers by making it a crime to refuse a breath test, but the same rationale does not apply to refusal to submit to a blood test because it is significantly more intrusive.

***Caetano v. Massachusetts*, No. 14-10078 (March 21, 2016)**

The US Supreme Court unanimously vacated the judgment of the Supreme Judicial Court of Massachusetts that had upheld the petitioner's conviction for being in possession of a stun gun in violation of state law, reasoning that the Second Amendment did not extend to stun guns because they were not in use at the time of the Second Amendment's enactment. The Court held the state court erroneously upheld the state law banning stun guns, explaining, "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding."

***CRST Van Expedited, Inc. v. EEOC*, No. 14-1375 (May 19, 2016)**

In a unanimous decision, the Court held that Title VII of the Civil Rights Act of 1964 provides for the court to award attorney fees to the prevailing party, even if the party did not receive a favorable ruling on the merits of the claim. An employee of the petitioner-employer filed a sexual harassment claim with the EEOC, and the EEOC filed suit under Title VII. The employer prevailed on a number of claims on procedural grounds and the Court held that it was entitled to attorney fees as a prevailing party because Congress established, under Title VII's fee-shifting provision, that a defendant can recover when a claim is frivolous, unreasonable, or without foundation, regardless of whether the claim was disposed of on the merits.

Kirsten Rush
Busse & Hunt

***Fisher v. Univ. of Tex. at Austin*, No. 14-981 (June 23, 2016)**

The Court upheld the university's affirmative-action program in a 4–3 decision. The Court affirmed the decision of the Fifth Circuit finding that the affirmative-action program was lawful under the Equal Protection Clause. The Court reiterated the standard set forth in Fisher I that there are three controlling principles to be analyzed in such a case: (1) strict scrutiny of affirmative-action admissions processes; (2) some judicial deference to reasoned explanations of the decision by the school to pursue student-body diversity; and (3) when determining whether the use of race is narrowly tailored, the school bears the burden of showing that race-neutral alternatives do not suffice.

***Foster v. Chatman*, No. 14-8349 (May 23, 2016)**

The Court reversed the Georgia Supreme Court in this 7–1 decision. The petitioner was convicted and sentenced to death. Following jury selection the petitioner made a *Batson* challenge that the prosecution had engaged in race discrimination by using peremptory strikes to remove all four black jurors from the jury pool. The Court first held that it had jurisdiction over the matter because the state court's ruling depended on a federal constitutional ruling that was not independent of federal law. The Court held that the prosecution's decision to strike the black jurors exhibited purposeful discrimination, particularly because reasons given for striking black jurors applied equally to white jurors who were not stricken from the jury pool.

***Friedrichs v. California Teachers' Association*, No. 14-915 (March 29, 2016)**

The Court affirmed the judgment of the Ninth Circuit by virtue of an equally divided panel that the respondent collective bargaining association did not violate the First Amendment rights of the petitioners. The union was permitted to have an agency shop arrangement where petitioners were required to either join the union or pay the equivalent of dues as an annual service fee. The petitioners argued that the policy violated the First Amendment because it required petitioners to support the union's agenda or affirmatively opt out. The district court and Ninth Circuit ruled in favor of the union, which the Court affirmed by default.

***Green v. Brennan*, No. 14-613 (May 23, 2016)**

In a 7–1 decision, the Court held that in constructive-discharge claims alleging discrimination in violation of Title VII, because the discriminatory matter is the employee's resignation, the forty-five-day time limit (applicable to federal employees) for contacting the EEOC begins to run only after an employee resigns. The Court reasoned that until an employee resigns, he or she does not have a "complete and present" cause of action for constructive discharge. From a practical perspective, the Court further explained that it would

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do little to further Title VII's remedial scheme if an employee was required to file a complaint before the resignation occurs. Additionally, the Court held that the constructive-discharge claim accrues—and the limitations begins period begins to run—when an employee gives notice of his or her resignation, not the effective date of the resignation.

***Heffernan v. City of Paterson*, No. 14-1280 (April 26, 2016)**

The Court held 6–2 that where an employer demotes an employee for engaging in protected political activity, the employee can challenge the adverse employment action under the First Amendment and 42 U.S.C. § 1983 even if the employer made a mistake of fact regarding the employee's behavior. The Court explained that the employer's motive and the facts as the employer reasonably understood them matter in determining whether the employer violated the First Amendment. Further, the Court noted that the chilling effect on protected speech is the same regardless of whether the employer made a factual mistake about the conduct of employees.

***Hurst v. Florida*, No. 14-7505 (Jan. 12, 2016)**

In an 8–1 decision, the Court held that Florida's capital-sentencing procedure violates the Sixth Amendment. The petitioner was convicted of murder and the jury recommended that the death penalty be imposed. Under Florida law, in death penalty cases, the jury acts in an advisory capacity and the judge is required to independently find whether aggravating circumstances exist to justify imposition of the death penalty. The Court explained that allowing the jury to only give an advisory recommendation of a death sentence does not meet the standard set by *Apprendi v. New Jersey* that any fact "that expose[s] the defendant to a greater punishment than that authorized by the jury's guilty verdict" is an element that must be submitted to a jury. Under this standard, the Court held that Florida's statute requiring a judge to make the critical findings necessary to impose the death penalty, instead of the jury, is in violation of the Sixth Amendment.

James v. City of Boise, No. 15-493 (Jan. 25, 2016)

The Court unanimously reversed the Idaho Supreme Court's decision to award attorney fees to a prevailing defendant in a civil rights lawsuit filed under 42 U.S.C. § 1983 without first determining whether the plaintiff's claim was frivolous, unreasonable, or without foundation. The Idaho court's decision rested on the premise that it was not bound by the US Supreme Court's interpretation of the attorney-fee statute, 42 U.S.C. § 1988, and instead decided the issue based on the court's own interpretation of the federal law. In reversing the erroneous decision, the Court held that the Idaho court, like any other state or federal court, is bound by and must follow the Court's interpretation of federal law.

***Kansas v. Carr*, No. 14-449 (Jan. 20, 2016)**

In this 8–1 decision, the Court overturned the decision of the Kansas Supreme Court that had vacated the death sentences of three defendants. The Kansas court held that the sentences violated the Eighth Amendment because the sentencing instructions failed "to affirmatively inform the jury that mitigating circumstances need only be proven to the satisfaction of the individual juror in that juror's sentencing decision and not beyond a reasonable doubt." The Court held that the Eighth Amendment does not require courts in a capital-sentencing proceeding to instruct a jury that mitigating circumstances need not be proved beyond a reasonable doubt. The Court also held that the Constitution does not require that joint-sentencing proceedings be severed because limiting instructions that the jury should engage in separate consideration as to each defendant sufficed to cure any risk of prejudice.

***Luis v. United States*, No. 14-419 (March 30, 2016)**

In a 5–3 decision, the Court vacated and remanded a pretrial injunction prohibiting the criminal defendant from accessing personal assets untainted by the charged crimes to retain counsel. By preventing the defendant access to her assets, she was unable to retain an attorney of her choosing. The Court held that freezing the criminal defendant's personal assets unrelated to the charged offenses violated the Sixth Amendment because a defendant's right to qualified counsel whom he or she chooses and can afford to hire is a fundamental right, which outweighs the government's interest in preserving the availability of a criminal defendant's funds for restitution and penalties.

***United States v. Bryant*, No. 15-420 (June 13, 2016)**

The Court held unanimously that the use of tribal-court convictions as predicate offenses in a subsequent prosecution for domestic violence does not violate the Constitution, although the criminal defendant did not have the right to counsel in the prior offenses. Congress enacted a statute in Indian country making it a felony for a person convicted of domestic violence with at least two prior convictions for domestic violence in any state, federal, or tribal court. The Indian Civil Rights Act of 1968 (ICRA) only provides indigent defendants with the right to appointed counsel for crimes with sentences exceeding one year. The Court previously held that a conviction obtained in state or federal court in violation of the defendant's Sixth Amendment right to counsel cannot be used in a subsequent proceeding to support guilt or enhance punishment for another offense. Nonetheless, the Court held that because the criminal defendant's prior tribal-court convictions com-

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plied with the ICRA, they were valid when entered and the use of the prior convictions as predicate offenses for a conviction under the felony statute did not violate the Constitution.

***Utah v. Strieff*,**
No. 14-1373 (June 20, 2016)

In a 5–3 decision, the Court held that evidence seized during a stop that was in violation of the Fourth Amendment was admissible where the officer acted in good faith and discovered a valid, pre-existing, untainted warrant. The state conceded that the officer lacked reasonable suspicion for the stop, but because the officer learned that the defendant had an arrest warrant for a traffic violation and the officer was not engaging in misconduct, the discovery of the warrant attenuated the connection between the stop and the evidence.

***Wearry v. Cain*,**
No. 14-10008 (March 7, 2016)

In a per curium opinion, from which Justices Alito and Thomas dissented, the Court reversed the decision of a Louisiana post-conviction court that the prosecution's failure to disclose material evidence did not violate the petitioner's due process rights. The Court held that the failure of the prosecution to disclose police reports and medical records casting doubt on the credibility of a key witness violated the petitioner's due process rights under *Brady v. Maryland* because the new evidence "was sufficient to 'undermine the confidence' in the verdict."

***Whole Woman's Health v. Hellerstedt*, No. 15-274 (June 27, 2016)**

The Court reversed the Fifth Circuit 5–3, holding that a Texas law placing restrictions on abortion constitutes an undue burden on abortion access and violates the Constitution. The Texas law placed two requirements on abortion clinics: that all doctors who perform abortions have admitting privileges at a hospital within thirty miles and that clinics meet statutory standards for ambulatory surgical centers. The Court held that these restrictions "vastly increased the obstacles confronting women seeking abortions without providing any benefit to women's health capable of withstanding any meaningful scrutiny." In reaching its decision, the Court noted that other procedures such as childbirth and colonoscopies had a higher risk of death than abortion, but the state did not place similar restrictions on those procedures.

***Zubik v. Burwell*,**
No. 15-833 (May 16, 2016)

After requesting supplemental briefing from the parties, the Court held in a per curiam opinion that because both the government and the organizations challenging the Affordable Care Act's birth-control mandate confirmed that contraceptive coverage could be provided by the challengers' insurance companies, without any notice required from the challengers, the decisions of the courts of appeals were vacated and remanded. On remand, the Court instructed that the parties should be given the opportunity to arrive at an approach that accommodates the challengers' religious exercise while ensuring that women covered by the challengers' health plans receive full and equal coverage, including coverage for contraception. ✦

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Have you recently done some research or written a memo that you could easily transform into an article for this newsletter?

Do you need an incentive to brush up on a recent development in the law?

If you or someone in your office would like to write an article for this newsletter, please contact our editor, Megan Lemire, at megan@lhpclaw.com or 971.717.6577.

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and purging voter rolls have been seen across the country. Thankfully, some of these measures are subject to legal challenges.

Regardless, these efforts to restrict access to voting demonstrate the blatant discrimination and potentially disastrous policies we are up against. If conservatives cannot win on the strength of their ideas, they should not be allowed to win by weakening voter access.

Why Voter Registration Matters

As a faithful voter, and as one who has held elective office for nearly twenty-five years, I certainly know the power of the ballot box. In fact, I won my first election to the Oregon House of Representatives by seven votes. So I never underestimate the power of a single vote.

Democracy is like a muscle—the more it is used, the stronger it gets. More voices are heard when more votes are cast. I dare to dream that one day, the American electorate will comprise every single eligible voter in the country. I am proud to say that this dream has begun to take root in Oregon.

In my swift and unexpected transition from secretary of state to governor in February 2015, there was a fateful coincidence I never could have predicted. Among the first bills to reach my desk for signature was the landmark legislation I had introduced just a few months earlier as secretary of state: automatic voter registration, now known as Oregon Motor Voter.[9]

While most of the country is making voting access more difficult, Oregon is embracing innovative and progressive reform. We shifted our thinking to focus on what really matters in voting, which is quite simply to make sure that all eligible voters receive a ballot.

Voting and registering to vote have become so closely linked in the American psyche that we are accustomed to thinking of registration as a required hurdle we must clear. Registration has become as essential to voting as the act of voting itself. Thus, interfering with a person's ability to register has become the way to erect barriers to the ballot box.

While most of the country is making voting access more difficult, Oregon is embracing innovative and progressive reform.

This begs the question, at what point did we become so wedded to a system requiring eligible electors to affirmatively opt in? What if, instead, we operate on the assumption that anyone eligible to vote is a voter, and therefore should receive a ballot?

In Oregon, we are shifting the paradigm, placing the responsibility to act on those who do not want to participate, rather than those who do. What is now known as Oregon Motor Voter builds upon existing federal and state laws.

In particular, Oregon Motor Voter builds on the federal legislation passed in 1993 known as the National Voter Registration Act,[10] which mandates that people be able to register to vote at their local department of motor vehicles (DMV). And it also stands on the strong foundation of Oregon's vote-by-mail system.

Voting by Mail

More than thirty years ago, a county clerk from a small county in Oregon had a vision. His name was Del Reilly, and he imagined a day when the state would put a ballot in the hands of every eligible Oregonian. With his vision and leadership, Oregon became the first state in the nation to conduct all of its elections by mail.

Vote by mail certainly began the implementation of Del Reilly's vision by eliminating polling places and instead mailing ballots to every registered voter. The fact remains, however, that only three out of every four eligible Oregon voters are actually registered to vote. We also needed a creative solution to the difficult problem of voter registration in a state where the Oregon Constitution prohibits same-day voter registration.

The solution came from stepping back and looking at the system as a whole: Could we use the citizenship data the DMV is now required to collect to change how we register voters? Could the state take on the responsibility to register people to vote and to keep the voter rolls clean, accurate, and secure?

Could we put a ballot in the hands of every eligible Oregonian? As it turns out, we can, and we will.

In this way, our humble county clerk's audacious vision went from a roller skate to a rocket ship, and Oregon Motor Voter was launched.

How Oregon Motor Voter Works

The system is quite simple. Eligible Oregonians will be automatically registered to vote when they apply for or renew a driver's license or personal-identification card.

The DMV is already required by law to collect data relevant to voter registration, including name, age, residence, and citizenship data, and, importantly for voting by mail, an electronic signature.

This data is seamlessly and securely transferred to the secretary of state's office. Each potential voter receives a notice providing him or her with information and the option to decline voter registration.

After Oregon Motor Voter, I continue to imagine the future of voting in Oregon. Perhaps one day, community organizations such as the League of Women Voters will be able to abandon their voter-registration drives entirely. Instead, they will be able to

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spend their time and energy where it really matters—on voter engagement and education.

In Oregon, voter registration now truly serves its one acceptable purpose, which is to identify eligible voters and give them a ballot—period.

Registration in and of itself is not a privilege. It should not require effort for effort's sake. It should not be an obstacle course. It should be indifferent to race, gender, and wealth. Registration is simply paperwork. The right to vote is fundamental; it is sacred.

The United States has sent men and women overseas to fight to protect democracy in emerging nations; American sons and daughters have risked their lives so citizens in those nations could have the right to vote.

And yet, right here at home, in several states, those very rights are increasingly at risk.

Your vote is your voice. And in Oregon—as it should be everywhere—every voice matters. ✦

Governor Kate Brown is currently serving as Oregon's thirty-eighth governor.

Endnotes

1. Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 52 U.S.C. §§ 10101, 10301–10314, 10501–10508, 10701–10702 (2012)).

2. Niraj Chokshi, Wash. Post, "Where black voters stand 50 years after the Voting Rights Act was passed" (Mar. 3, 2015), https://www.washingtonpost.com/blogs/govbeat/wp/2015/03/03/where-black-voters-stand-50-years-after-the-voting-rights-act-was-passed/.

3. *Id*.

4. Suzanne Gamboa, NBC News, "For Latinos, 1965 Voting Rights Act Impact Came a Decade Later" (Aug. 6, 2015), http://www.nbcnews.com/news/latino/latinos-1965-voting-rights-act-impact-came-decade-later-n404936.

5. 133 S. Ct. 2612 (2013).

6. *Shelby Cnty.*, 133 S. Ct. at 2650 (2013).

7. Tomas Lopez, Brennan Center for Justice, "'Shelby County': One Year Later" (June 24, 2014), http://www.brennancenter.org/analysis/shelby-county-one-year-later.

8. *Id*.

9. 2015 Or. Laws Ch. 8.

10. 42 U.S.C. §§ 1973gg–1973gg10 (2012).

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RECENT DECISIONS
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***Miller v. UPS, Inc.*, No. 3:14-cv-872-PK, 2016 U.S. Dist. LEXIS 30895, 2016 WL 910182 (D. Or. Jan. 22, 2016)**

In denying summary judgment for the employer, the court distinguished essential job duties, which cannot be reasonably accommodated from job "qualification standards," which can be accommodated. The employee sued UPS for taking more than a year to accommodate his deep vein thrombosis and blood clot issues that prevented him from standing and walking for long periods of time. In its analysis, the court clarified that job qualification standards are an employer's core requirements for a job, but noted that those standards are not necessarily the same as essential job duties and, as such, may need to be accommodated under the ADA when the employer can reasonably do so. UPS claimed that standing and walking were essential job duties, but the court disagreed, noting that an employee could complete those duties through other means, such as using a motorized wheelchair or taking frequent breaks to rest.

***Tornabene v. NW. Permanente, P.C.*, No. 3:14-cv-01564-SI, 2015 WL 9484483, 2015 U.S. Dist. LEXIS 172358 (D. Or. Dec. 28, 2015)**

A female cardiac-surgery technician terminated by her employer avoided summary judgment on gender discrimination claims, in part, by identifying a male comparator who was not terminated despite having a similar job and similar performance issues. The court found that the plaintiff established a prima facie case through her protected status and reported remarks suggesting that her supervisor did not like "strong women." The employer presented the plaintiff's subpar performance reviews as evidence that it had a legitimate nondiscriminatory reason for terminating her. The plaintiff challenged that explanation as pretextual by identifying a similarly situated employee that consistently received poor performance reviews, but had not been terminated.

Oregon Court of Appeals

***La Manna v. City of Cornelius*, 276 Or. App. 149 (2016)**

The court held that the job applicant, who is gay, may pursue age and sexual-orientation discrimination claims against a police department after his longtime friend, the chief of police, asked him to withdraw his application under the alleged false pretext to avoid the appearance of favoritism. During his interview, comments were made that at fifty years old, the applicant was "getting too old for foot chases." After passing several tests and an interview, the applicant withdrew his candidacy at the request of the police chief who told him that based on their friendship, it would look like favoritism if he was hired. Later the applicant learned the department had a policy that required officers be hired on the basis of merit, without reference to personal friendships. In addition, the chief had previously hired four friends, all of whom were heterosexual. The court held that there were sufficient issues of material fact for the jury presented in the applicant's evidence of unlawful age and sexual-orientation discrimination, including the interview comments and comparator officers that had been hired. The court also remanded the applicant's First Amendment freedom-of-association claim based on his allegation that he had been discriminated against for having a friendship with the chief.

***Multnomah Cnty. Sheriff's Office v. Edwards*, 277 Or. App. 540 (2016)**

The court held that public employers must grant a hiring preference to disabled veterans in a deliberate and

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systematic manner. A veteran claimed that the sheriff's department unlawfully denied him preference in consideration for a promotion. ORS 480.230 requires that public employers devise and apply a plan for giving disabled veterans preference at every stage of the hiring and promotion process. The court held for the employee, affirming an earlier BOLI decision that stated that when an employer does not use a numbered scoring system, it must select some other "coherent and stable" method of applying the preference. ✦

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