

Good afternoon.

My name is Juan Chavez. I am an attorney, and the director of the Oregon Justice Resource Center's Civil Rights Project. At OJRC, we believe that the true aim of justice runs through the liberation of marginalized people. Specifically, the OJRC works to promote civil rights and improve legal representation for communities that have often been underserved in the past: people living in poverty and people of color among them. We have many disempowered communities in the United States. Whether they live in poverty, are mentally ill, are an immigrant, are LGBT+, are disabled, or belong to an ethnic or national minority, they share the same disproportionate representation in our State's prisons. When their rights are violated, they have little recourse. In some part, this is understandable. Many in prison have done wrong and sympathy doesn't come easy. But for the vast majority, they are victims of a design that dehumanizes them.

The scholar and activist Dr. Angela Davis wrote that "prisons do not disappear problems, they disappear people." And now that our Oregon prisoners have been disappeared from their communities, this proposed rule change will disappear their voices. Changing the grievance period to 14 days will harm prisoner rehabilitation, and ensure that problems within the prison go unaddressed. The changes to the Tort Claim Notice/grievance limitation also provide little clarity to an inmate filing either a grievance or a Tort Claim Notice, as it is unclear from the rule whether a preclusion will apply or not.

We know why grievance policies have grown more and more onerous in the time since the Prison Litigation Reform Act of 1996. The numbers speak for themselves. The most comprehensive study of the PLRA's effects show that it slashed the rate of prisoner lawsuits in Oregon in half, from the already low 15.8% to 7.8%. And how many of these cases are successfully litigated? By national statistics from 2012, only 5%. Most of these cases are dismissed within the first 134 days, about 130 days earlier than other civil rights cases. These are not cases lost on the merits, but by procedural technicality.

Creating a complicated, onerous grievance system does not benefit society at large and it does not make for a safer and healthier prison environment for staff and those incarcerated. In fact evidence affirms that with fairer and more transparent processes, incarcerated individuals have better pro social outcomes.

We hear time and again about the ineffectiveness of filing grievances. It's often that, at best, the staff doesn't take them seriously, and, at worst, that they will face retaliation for filing one. Generally, the impression is that ODOC staff are advised to treat each grievance as a pretext for a lawsuit. How, in fact, does curtailing the slim possibility of lawsuits help the community? What message does this send to incarcerated people? This only reinforces the perception that so many justice impacted individuals have, believing that the world is arbitrary, callous, and designed to only protect the people holding the keys. Stamping out their voices only creates a debt that the public pays when they return to our communities.

You may be thinking that you're weighed down by frivolous grievances that hinder your ability to run your prison. But, making the grievance system more difficult to access is not a solution to this problem. If you, as an incarcerated person, are harmed and your only shot at possibly being heard and gaining some sense of justice is the grievance system, you will avail yourself to that system, even if it means nothing to the person you're grieving to or will result in retaliation. . It doesn't mean that they'll file a lawsuit. Again, for the volume of grievances ODOC receives, only a fraction of them turn into lawsuits. And only a fraction of a fraction of those succeed.

Let me conclude with a case that haunts me:

I had a client whose kidney stone issues went untreated for nine months. She kyted and kyted for help, but when none came, when she was never believed, she gave up. Eventually, the kidney stone turned into a kidney infection, which wrecked her kidney. She suffered for another two months before a decision was made to remove her kidney. She survived this ordeal, blessedly, but she is now expected to live a shorter life, a more strained life, one she didn't need to live had she been listened to. After returning to her prison from the hospital, somewhere in her delirium and fatigue she remembered that she heard about a grievance procedure. She was in pain, suffering from insomnia, struggling to put her thoughts in order. She filed a grievance, but, because she lost time to the hospital and to her delirium, she didn't get it submitted within 30 days. She wrote about her ordeal, about how she just got back from the hospital, but her grievance was still denied for being untimely. She asked what she could do about that, and was told she could file a tort claim notice, which she did. As you know, this further complicated her ability to grieve.

She eventually sued, and the State attempted to dismiss the case, saying that she didn't grieve in time. It took a federal magistrate judge to ultimately rule in her favor. In her ruling, the judge wrote, "To expect [Plaintiff]—who had recently lost a kidney and was not cleared to return to work—to go to the prison library to find a rule that contradicted other information she had repeatedly been provided was unreasonable and renders this administrative remedy essentially unavailable."

You may hear this and think that any deficiencies with this proposed rule could and would eventually be cured by the Courts. That the "system will work" and justice will prevail. My client only prevailed after hours and hours of resources were poured into her case, from the State's attorneys, from me, from the Court, and, most importantly, from her. She eventually received a six figure settlement. She deserved every cent, but she and I know that she deserved to keep her kidney more than anything. And she deserved to be heard. There is without any doubt or question that there are many other people who didn't make it as far as she did. Good cases lost, and learning opportunities for ODOC lost, because of a procedural roadblock.

This proposed rule change shortens your window of liability from 30 days to 14. This proposed rule change does not result in a safer or healthier community, and will assuredly create more harms, as it did for my client who lost her kidney. Indeed, her route to finding justice and being heard would have been all the harder if she had to contend with your proposed rule.

We will be providing additional written comments to ODOC. ODOC is in the midst of engaging in a paradigm shift based off its experiences in Norway. We have come to recognize and appreciate that by creating more transparent and fairer processes, we can create a safer community. Importantly, by implementing policies that are motivated by the values of dignity and respect, we conclusively know that we can develop a healthier environment for all involved in corrections - individuals who are housed in your facilities and those that are tasked with administering them. The proposed rule changes run counter to the articulated values that ODOC has begun to prioritize.

National thought leader and advocate Bryan Stevenson said ***“I’ve come to believe that the true measure of our commitment to justice, the character of our society, our commitment to the rule of law, fairness, and equality cannot be measured by how we treat the rich, the powerful, the privileged, and the respected among us. The true measure of our character is how we treat the poor, the disfavored, the accused, the incarcerated, and the condemned.”***

The proposed rule change makes it more difficult for individuals in ODOC custody to assert their rights and have their voices heard. On behalf of my office, my clients, and Oregonians, we implore you to not adopt this rule change.