

IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,

Plaintiff,

v.

DANIEL ALGEO,

Defendant.

J. W. P.,

Petitioner on Review,

v.

STATE OF OREGON and DANIEL
ALGEO,

Respondents on Review.

Yamhill County Circuit
Court No. CR100607

SC S060830

BRIEF ON THE MERITS OF
RESPONDENT ON REVIEW ON REVIEW, STATE OF OREGON

On Review From the Final Order of Yamhill County Circuit Court,
Honorable Ronald W. Stone, Judge
Order signed: October 29, 2012

Continued...

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**BRIEF ON THE MERITS OF
RESPONDENT ON REVIEW ON REVIEW, STATE OF OREGON**

INTRODUCTION

After defendant pleaded guilty to, and was convicted of, two counts of fourth-degree assault and one count of DUII, the trial court ordered him to pay restitution to two pedestrians that he hit with his truck. Rather than ordering him to pay restitution that equaled the full amount of the victims' economic damages as is required by ORS 137.106, however, the trial court ordered defendant to pay only 10% of the victims' damages. This reduced amount was appropriate, the court reasoned, because the victims were jaywalking when defendant hit them and—according to the court—they were 90% at fault for their injuries.

One of the victims, J.W.P., filed a claim alleging that the reduced restitution order violated her constitutional right to “receive prompt restitution.” The trial court denied the victim's claim, and this court allowed the victim's petition for review. On review, this court should hold that the trial court violated the victim's *constitutional* right to “receive prompt restitution” when it failed to comply with the restitution *statutes* that require a restitution judgment for the full amount of the victim's economic damages.

QUESTIONS PRESENTED AND PROPOSED RULES OF LAW

First Question Presented

ORS 137.106 requires a trial court to order a defendant to pay restitution in an amount that “equals the full amount of the victim’s damages” unless the victim consents to a lesser amount. Does a trial court violate ORS 137.106 when it employs civil-law comparative-fault principles to reduce an award of restitution to an amount that is less than the full amount of a crime victim’s economic damages?

First Proposed Rule of Law

Comparative-fault principles play no role in setting restitution amounts. A trial court violates ORS 137.106 when it employs comparative-fault principles to reduce the restitution a convicted defendant is required to pay to an amount that is less than the full amount of the victim’s economic damages.

Second Question Presented

Article I, section 42(1)(d), of the Oregon Constitution, provides crime victims with a right to “receive prompt restitution.” When a trial court employs comparative-fault principles to reduce a restitution judgment in contravention of ORS 137.106, does it violate a crime victim’s constitutional right to “receive prompt restitution”?

Second Proposed Rule of Law

The Article I, section 42(1)(d), right to “receive prompt restitution” is a procedural right of crime victims to quickly receive whatever amount of restitution payment that is required by current restitution statutes. Therefore, a trial court violates a crime victim’s right to “receive prompt restitution” when it orders a criminal defendant to pay less than the full amount of the victim’s economic damages as restitution in contravention of ORS 137.106.

SUMMARY OF ARGUMENT

Article I, section 42(1)(d), of the Oregon Constitution affords crime victims the right to “receive prompt restitution” from the convicted defendant who caused their injuries. That constitutional right is a procedural right of a crime victim to promptly receive the restitution that a criminal defendant is statutorily required to pay. Therefore, when a trial court’s restitution judgment fails to comply with applicable restitution statutes to the detriment of a crime victim, that judgment violates the victim’s constitutional right to receive prompt restitution.

One applicable restitution statute—ORS 137.106—requires a trial court to order a defendant to pay restitution in the full amount of a victim’s economic damages without regard to whether the victim could recover all of those damages in a civil proceeding. Here, the trial court violated that statute when it declared the victim to be 90% at fault for her injuries and when it employed

comparative-fault principles to reduce the restitution defendant owed accordingly. That violation of ORS 137.106 resulted in a detriment to the victim in this case; consequently, it violated her constitutional right to receive prompt restitution.

ARGUMENT

The issue in this victim’s rights appeal is whether the trial court violated the victim’s *constitutional* right to receive prompt restitution. Although the state and the victim in this case ultimately agree that the trial court’s restitution judgment in this case did violate the victim’s constitutional rights, the state proposes a different analytical path to reach that conclusion. The victim focuses her arguments almost exclusively on the trial court’s failure to comply with various restitution *statutes*—especially ORS 137.106—in explaining why she is entitled to relief. This brief, on the other hand, explains why the question before this court is whether the victim’s *constitutional* rights were violated. Ultimately, this court should conclude that the victim’s constitutional rights were violated *because* the trial court failed to comply with the restitution statutes. This brief explains the analysis behind that conclusion, first by setting forth the constitutional and statutory framework within which the victim’s rights claim in this case arises, and explaining why the procedural posture of this case is critical to understanding the issue before this court. Next, this brief analyzes the meaning of the “prompt restitution” provision of Article I, section

42, of the Oregon Constitution. Finally, this brief explains why the trial court's erroneous application of ORS 137.106 resulted in a violation of the crime victim's constitutional right to receive prompt restitution.

A. The proceedings in this case are authorized by ORS chapter 147, which provides a statutory mechanism for crime victims to enforce their constitutional rights.

The question presented by this case is whether the trial court violated the crime victim's constitutional right to receive prompt restitution. As explained below, that constitutional question ultimately depends on whether the trial court complied with the applicable restitution statutes when it ordered defendant to pay restitution that covered less than the full amount of the victim's economic damages.

1. ORS Chapter 147 provides a procedure for crime victims to enforce their constitutional rights found in Article I, sections 42 and 43, of the Oregon Constitution.

Article I, sections 42 and 43, of the Oregon Constitution provide crime victims with a collection of specifically enumerated rights in criminal prosecutions and juvenile delinquency proceedings. Those constitutional provisions provide that every victim has a "remedy by due course of law for violation of a right established in this section," Art I, § 42(3)(a); Art I, § 43(5)(a), that a victim "may assert a claim for a right established in this section," Art I, § 42(3)(b); Art I, § 43(5)(b), and that the legislature "may

provide by law for further effectuation” of the constitutional rights and remedies established in those sections, Art I, § 42(3)(c); Art I, § 43(5)(c).

Pursuant to those constitutional provisions, the legislature enacted ORS 147.500 to 147.550—a statutory mechanism to effectuate the rights afforded crime victims by Article I, sections 42 and 43. *See* ORS 147.504(1) (“ORS 147.500 to 147.550 effectuate the provisions of sections 42 and 43, Article I of the Oregon Constitution[.]”). Under those statutes, a victim who alleges a violation of a constitutional right granted by Article I, sections 42 or 43, shall make a “claim” of a rights violation within 30 days of when she knew, or reasonably should have known, of the rights violation. ORS 147.515. In most circumstances, the court will then issue an order to “show cause why the victim should not be granted relief.” ORS 147.517(2). Thereafter, the court will hold a hearing on the victim’s claim. ORS 147.530. At the conclusion of the hearing, the court will make factual findings and issue an order granting or denying the relief requested. ORS 147.530(2), (4), and (5). *See also State v. Barrett*, 350 Or 390, 394-95, 255 P3d 472 (2011) (discussing statutory “procedures by which victims may seek to have violations of their constitutional rights vindicated”).

A party not satisfied with the court's order granting or denying relief, may appeal pursuant to ORS 147.535, 147.537, and 147.539.¹ This court has original and exclusive jurisdiction over such an appeal. ORS 147.535(2). However, absent a stay of the criminal proceedings, "the trial court retains jurisdiction over all other matters in the criminal proceeding."

ORS 147.535(3). If the victim's appeal arises from a criminal proceeding in which the defendant is charged with a "felony or a person Class A misdemeanor," and the order arises from a claim of a rights violation that occurred prior to the pronouncement of the sentence, the appeal is initiated by filing a notice of interlocutory appeal and this court is required to allow review. ORS 147.535(4)(a); ORS 147.537(1); *Barrett*, 350 Or at 397 n 4. Otherwise, the appeal is initiated by filing a petition for review, and this court retains discretion to grant or deny review. ORS 147.535(4)(b); ORS 147.539(1).

2. Because the appeal in this case arises under ORS chapter 147, the issue before this court is whether the victim's *constitutional* "right to receive prompt restitution" was violated.

This appeal follows a trial court's order denying the victim's claim that the court violated her constitutional right to receive prompt restitution when it issued the restitution judgment in the underlying criminal case. (ER 2, Claim

¹ ORS chapter 147 does not contain a mechanism for a criminal defendant to appeal an order from the circuit court on a victim's rights issue. Instead, he may appeal those decisions "in the manner provided for appeals in ORS chapter 138." ORS 147.535(1)(b).

Form; ER 70, Order Denying Claim). That restitution judgment declared the victim's jaywalking to be the cause of 90% of her damages that occurred after defendant struck the victim with his vehicle while driving drunk, and it reduced the restitution judgment against defendant accordingly.² (ER 48).

Because this case arises from a chapter 147 victim's rights proceeding, and because that procedure gives victims a mechanism for enforcing only their Article I, sections 42 and 43, rights, the issue in this case reduces to whether the trial court's restitution order violated one of those constitutional rights. In this case, the claim asserted by the victim was that the trial court's restitution order (requiring defendant to pay only 10% of the victim's economic damages) violated the victim's Article I, section 42(1)(d), right "to receive prompt restitution from the convicted criminal who caused [her] loss or injury." (ER 2).

3. This court cannot employ the "first things first" doctrine to avoid addressing the constitutional interpretation issue in this case.

Generally, where both constitutional and statutory issues are presented, this court will decide cases on subconstitutional grounds, if those grounds will

² In addition to the restitution judgment, the trial court also issued a letter opinion explaining its rationale for applying comparative-fault principles to limit the amount of restitution defendant would be required to pay to 10% of the victim's economic damages. (ER 45-47). The trial court ultimately adopted that opinion letter as its rationale for denying the victim's constitutional rights violation claim. (ER 70).

provide a complete answer to the legal questions presented. *Rico-Villalobos v. Giusto*, 339 Or 197, 205, 118 P3d 246 (2005); *Li v. State of Oregon*, 338 Or 376, 391, 110 P3d 91 (2005). The victim in this case invites this court to do just that, and focuses her arguments almost exclusively on whether the trial court violated ORS 137.106 when it employed comparative-fault principles in reducing the restitution award in this case. (See Pet Br 8 n 4, *citing Barrett*, 350 Or at 398, for the proposition that “if statutory sources of law provide a complete answer to the legal question that a case presents, [it] ordinarily decide[s] the case on that basis, rather than turning to constitutional provisions”). The victim does not explain how this statutory violation resulted in a violation of her constitutional right to receive prompt restitution. Although the state agrees with the victim’s construction of the restitution statute (and her ultimate conclusion that the trial court violated that statute with its restitution order),³ the question before this court is whether the trial court’s restitution order violated the victim’s *constitutional* right to “receive prompt restitution.” Because that question—whether a constitutional right was violated—is the question that must be answered in any victim’s rights proceeding under

³ Because the state agrees with the victim’s detailed argument concerning the construction of the restitution statutes, it does not repeat those arguments in this brief.

ORS chapter 147, this court must address it before turning to the proper interpretation of the restitution statute.

Barrett is instructive in that regard. There, this court declined to address a statutory violation in an appeal under ORS chapter 147; instead, it addressed only the violation of the victim's constitutional rights. *Barrett*, 350 Or at 397. This court noted that, "ordinarily, [its] salutary sense of judicial restraint would lead [it] to avoid reaching constitutional questions in advance of the necessity of deciding them" where it could simply decide the case on statutory grounds. *Id.* However, despite the statutory issues present in that case, this court concluded that the "procedural path" to a remedy for a statutory violation was not clear, whereas the path for a victim to assert claims for the violation of her constitutional rights clearly existed in ORS chapter 147. *Id.* at 398-99. Consequently, this court declined to address whether the victim was entitled to a remedy for a violation of her "statutory right," and instead chose to address the victim's constitutional claims. *Id.* at 399.

Like in *Barrett*, this case involves questions of both statutory and constitutional interpretation. And, like in *Barrett*, this appeal arises under ORS chapter 147; therefore, there is no clear procedural path for directly addressing the statutory violation. Consequently, the question this court must answer is whether the victim's constitutional rights were violated by the trial court's restitution judgment in this case. As explained below, that question

ultimately turns on whether the trial court correctly interpreted the restitution statute, but the interpretation of the restitution statute is not the first or the only step of the analysis.

B. By ordering defendant to pay restitution in an amount that was less than the victim’s economic damages, the trial court violated the victim’s constitutional right to “receive prompt restitution.”

Article I, section 42, of the Oregon Constitution provides crime victims with several rights, including the right to receive restitution for damages caused by a criminal defendant. It provides, in part:

(1) To preserve and protect the right of crime victims to justice, to ensure crime victims a meaningful role in the criminal and juvenile justice system, to accord crime victims due dignity and respect and to ensure that criminal and juvenile court delinquency proceedings are conducted to seek the truth as to the defendant’s innocence or guilt, and also to ensure that a fair balance is struck between the rights of crime victims and the rights of criminal defendants in the course and conduct of criminal and juvenile court delinquency proceedings, the following rights are hereby granted to victims in all prosecutions for crimes and in juvenile court delinquency proceedings:

* * * * *

(d) The right to receive prompt restitution from the convicted criminal who caused the victim’s loss or injury.

Or Const Art I, § 42(1). The issue presented by this case is, what does the right to “receive prompt restitution” entail? More specifically, is the “restitution” contemplated by this right the restitution that a trial court in a criminal trial held *today* would be required to order? Is it the restitution

that a trial court would have been required to order in 1999, when the constitutional amendment was enacted? Or is it the restitution that a trial court would have been required to impose in 2008, when Article I, section 42, was last amended giving crime victims remedies for violations of their rights?

If a victim's constitutional right to receive "prompt restitution" is based on the definition of restitution that existed in 1999, the victim's claim in this case fails. That is because, in 1999, restitution was entirely a matter within a trial court's discretion, and a victim had no statutory right to receive *any* restitution (promptly or otherwise). But if the constitutional right to receive prompt restitution is meant to reflect the restitution statutes as they have evolved, the victim was denied her constitutional right to receive prompt restitution because the court limited the amount of restitution she could receive in a way not permitted by the restitution statutes.

For the reasons explained below, when the voters enshrined a right to "receive prompt restitution" in 1999, they did not intend to set in stone a discretionary definition of restitution as it existed in statutes at the time. Instead, the voters would have intended the newly created right to "receive prompt restitution" to be a procedural right entitling victims to be able to timely obtain from defendants whatever restitution those

defendants were statutorily required to pay. Alternatively, as explained below, if the constitutional right to receive restitution is substantively tied to the restitution statutes at the time the constitution was amended, the appropriate reference point would be the restitution statutes as they existed in 2008—when Article I, section 42, was most recently amended.

1. When enacting the constitutional right to receive prompt restitution in 1999, the voters would not have intended to create a substantive right that was limited by the restitution statutes that existed in 1999.

When Article I, section 42, was enacted in 1999, the statutory definition of restitution was “full, partial, or nominal payment of pecuniary damages to a victim.” *Former* ORS 137.103(3) (1999). “Pecuniary damages,” in turn, was limited to “special damages * * * which the person could recover against the defendant in a civil action” arising out of the defendant’s criminal activity. *Former* ORS 137.103(2) (1999). There was no requirement that a sentencing court order a defendant to pay “the full amount” of the victim’s damages; in fact, whether or not restitution was imposed was entirely within the sentencing court’s discretion. *See former* ORS 137.106(1) (1999) (making restitution a discretionary part of a defendant’s sentence). Quite simply, in 1999, courts were under no obligation to include *any* restitution as part of a criminal sentence. Therefore, if a victim’s constitutional right to

“receive prompt restitution” was tied to the statutory definition of “restitution” as it existed in 1999, the right would essentially be an illusory one.

Now, however, restitution is defined in statute to mean “full, partial or nominal payment of economic damages to a victim,” ORS 137.103(3), and a sentencing court is required to order a defendant to pay restitution “in a specific amount that equals *the full amount of the victim’s economic damages.*” ORS 137.106(1)(a) (emphasis added). “Economic damages,” in turn, “means objectively verifiable monetary losses.” ORS 31.710. This includes, but is not limited to, “reasonable charges necessarily incurred for medical hospital, nursing and rehabilitative services and other health care services, * * * loss of income, * * * reasonable and necessarily incurred costs due to loss of use of property and reasonable costs incurred for repair or replacement of damaged property[.]” *Id.*; *see also* ORS 137.103(2)(a) (providing that “economic damages” for restitution statutes “[h]as the meaning given that term in ORS 31.710,” but does not include impairment of future earning capacity). Under the restitution statutes today, then, a sentencing

court is required to order a defendant to pay as restitution the full amount of the victim's economic damages.⁴

Whether the voters intended to tether the constitutional right to receive prompt restitution to the statutory definition of restitution as it existed in 1999—or even to some other fixed definition of restitution—is a question of constitutional interpretation. When interpreting a constitutional provision created through an initiative petition, this court's task is to discern "[t]he people's understanding and intended meaning" of the provision. *Stranahan v. Fred Meyer, Inc.*, 331 Or 38, 57, 11 P3d 228 (2000). "[T]he text and context" of the provision "are the most important clue" to understanding that meaning. *Id.* Beyond merely examining the text and context, "the history of the * * * measure," including "relevant materials in the voters' pamphlet" are also relevant in considering the provision's meaning. *Flavorland Foods v. Washington County Assessor*, 334 Or 562, 575, 54 P3d 582 (2002).

"Restitution" is not defined in the constitution, and the *Black's Law Dictionary* in use in 1999 provides little guidance as to the intended

⁴ The state agrees with the victim's more detailed analysis of what current restitution statutes require and that they do not incorporate civil-law notions of comparative fault. (Pet Br 11-30).

meaning of the term.⁵ As noted above, restitution had a statutory meaning in 1999, but the 1999 statutes would not have *required* restitution in any case, and they would not have vested crime victims with the right to receive any particular amount of restitution.

More important than any particular definition of “restitution,” though, the people enacting Article I, section 42, in 1999, would have been aware that criminal restitution principles were not fixed. As demonstrated by the many changes to restitution in Oregon, discussed below, the voters in 1999 would have been aware that the criminal restitution statutes were in a regular state of flux. That awareness, in turn, is strong evidence that the voters would not have intended to limit a victim’s right to restitution to the statutes in existence in 1999.

Restitution in Oregon criminal cases traces its roots to 1931, and ORS 137.540, which authorized the payment of restitution as a condition of probation. Or Laws 1931, ch 396. It was not until 1977, though, that restitution became available as a stand-alone part of a criminal sentence in what is now ORS 137.106. Or Laws 1977, ch 371.

⁵ It provides that, as the term is used in criminal law, a “restitution program[]” is one in which “the criminal offender is required to repay, as a condition of his sentence, the victim or society in money or services.” *Black’s Law Dictionary* 1313 (6th Ed 1995).

The definition of restitution changed slightly in 1981, when the legislature created what are now compensatory fines and clarified that restitution was independent of compensatory fines. Or Laws 1981, ch 637. The definition of pecuniary damages—which was part of the definition of restitution—changed in 1983. Or Laws 1983, ch 488, § 1. Also in 1983, ORS 137.106 was amended to require district attorneys to present evidence of the nature and amount of the victim’s damages to the sentencing court. Or Laws 1983, ch 724, § 1. Minor changes to the restitution definition occurred again in 1987 and 1993. *See* Or Laws 1987, ch 905 § 16 (technical amendment to ORS 137.103); Or Laws 1993, ch 533 § 1 (amending ORS 137.106 to include restitution for violations). Finally, in 1997, the legislature added a requirement to ORS 137.106 that sentencing courts “shall order the prompt payment of the restitution whenever possible.” Or Laws 1997, ch 313 § 23.

So, it is against that backdrop—consistent changes to criminal restitution in the previous 22 years—that voters enacted the prompt restitution provision of Article I, section 42.⁶ By using the word

⁶ In fact, the voters first enacted an identical “prompt restitution” constitutional provision three years earlier, when they passed Ballot Measure 40 (1996). This court struck down that entire measure as violating the separate-vote requirement of Article XVII, section 1, of the Oregon Constitution. *Armatta v. Kitzhaber*, 327 Or 250, 285, 959 P2d 49 (1998). The substance of

Footnote continued...

“restitution” in 1999, the voters would have known that restitution was a statutory creation, the meaning of which had changed over time and would likely continue to change. Nothing in the text, context, or history of the 1999 constitutional amendments suggests that the voters intended to cement a particular substantive definition of restitution into the constitution. Rather, more likely, the voters intended to enshrine a procedural right for victims to be able to quickly receive whatever restitution was imposed.⁷

The 1997 statutory change, noted above, is important for two additional reasons. First, the 1997 amendment to ORS 137.106 was the

(...continued)

Measure 40 was then re-submitted to the voters in 1999 as eight separate measures. One of those measures, Ballot Measure 69 (1999), contained what is now Article I, section 42, of the Oregon Constitution—including the “prompt restitution” provision at issue here. Like the current version of the victims’ rights constitutional provisions, Measure 40 did not contain a definition of “restitution.”

⁷ The Arizona Constitution contains an almost identical “prompt restitution” provision. Enacted by Arizona voters in 1990, Article 2, section 2.1(A)8, of the Arizona Constitution provides that crime victims have the right to “receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim’s loss or injury.” The Arizona appellate courts have assumed, without directly deciding, that Arizona’s “prompt restitution” constitutional provision was meant to incorporate future changes to the state’s restitution statutes. *See, e.g., In re Stephanie B.*, 65 P3d 114, 117 (Ariz App 2003) (applying then current restitution statutes in evaluating whether a restitution award comported with constitutional “prompt restitution” provision).

most recent statutory change before the 1999 constitutional amendment; therefore, the substance of that change was most likely to reflect the intent of the voters who enacted Article I, section 42. Second, the 1997 statutory change is particularly relevant because it dealt with the same subject matter as what would become Article I, section 42. The 1997 change required a sentencing court to order “prompt payment of *the restitution* whenever possible.” Or Laws 1997, ch 313, § 23 (emphasis added). By using the phrase “the restitution,” the legislature signaled that this newly created statutory right to prompt restitution was not meant to limit the definition of restitution. Rather, the emphasis of this statutory right was on the victim’s right to receive a *prompt* payment of the restitution awarded—whatever that restitution award included.

A final indication that the voters did not intend to fix a victim’s constitutional right to restitution to 1999 statutes is that, in 1999, there was no statutory “right” to restitution. As explained above, in 1999, awarding restitution was entirely discretionary. A victim had no *right* to any restitution. Therefore, it is unlikely that the voters in 1999 intended to create a substantive right to a specific amount of restitution. Had that been the voters’ intent, one would have expected something more than a single sentence establishing a right to “receive prompt restitution,” without some explanation of what “restitution” entailed.

For all of those reasons, the voters would not have intended to leash a victim's right to "receive prompt restitution" to the restitution statutes as they existed at the time Article I, section 42, was enacted. Instead, this court should conclude that the constitutional right to receive prompt restitution is a procedural right that enables a victim to promptly receive the restitution that a convicted defendant is required to pay under current restitution statutes.

2. The 2008 amendments to Article I, section 42, establish a victim's right to receive restitution that equals the full amount of her economic damages.

Alternatively, if this court concludes that the voters in 1999 meant to create a substantive right to receive restitution in an amount fixed by the statutes that existed at the time, this should look past the 1999 statutes to the restitution statutes as they existed in 2008 for the scope of that substantive right. In 2008, following a legislative referral, the voters amended Article I, section 42, to provide, in part, that "[e]very victim * * * shall have a remedy by due course of law for violation of a right established in this section." Or Const, Art I, § 42(3)(a). The "right established in this section" includes the right to "receive prompt restitution" in section 42(1)(d). So, to the extent that "restitution" as used in Article I, section 42, has a substantive meaning tied to the restitution

statutes as they existed when the constitution was amended, the relevant statutes would be those that existed in 2008.

To be sure, nothing in the text of the 2008 amendments does any more to define what is meant by “prompt restitution” than did the 1999 enactment of Article I, section 42. However, the 2008 amendments clearly establish the voters’ intent for crime victims to be able to obtain substantive remedies for violations of their constitutional rights. *See* Official Voter’s Pamphlet, Primary Election, May 20, 2008, 40 (Summary of Ballot Measure 51 (2008): “Measure provides victims shall have remedy by due course of law for violations of these constitutional rights.”); Voter’s Pamphlet at 43 (Legislative Argument in Support of Measure 51, explaining that, “[c]urrently, victims cannot individually enforce” their Article I, section 42, rights); Voter’s Pamphlet at 43 (Argument in Favor by Attorney General Hardy Myers: “A right without a remedy is an illusory right.”). To the extent that Article I, section 42(1)(d) created an illusory right to restitution because that right was somehow tied to the restitution system in place in 1999, by amending Article I, section 42, in 2008 to create remedies for rights violations, the voters rectified that situation.

In summary, the restitution statutes that existed in 2008—and still today—require a court to order payment of full restitution that is not

limited by what a victim could recover in a civil action. Any doubt about the voter's intent in 1999 is removed by examination of the 2008 amendments to Article I, section 42.

CONCLUSION

For all of the foregoing reasons, this court should reverse the judgment of the trial court denying the victim's claim for a violation of her constitutional right to receive prompt restitution. As a remedy for that rights violation, this court should direct the trial court to vacate the restitution judgment and enter a new judgment requiring defendant to pay the full amount of both victims' economic damages.⁸

Respectfully submitted,

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⁸ Although only victim J.W.P. filed a claim for a victim's rights violation and is a party to this case, a ruling by this court that her constitutional right to receive prompt restitution was violated would necessarily mean that the second victim's rights were also violated when the trial court employed the same comparative-fault analysis to limit defendant's liability to pay restitution in an amount that was less than her full economic damages.

NOTICE OF FILING AND PROOF OF SERVICE

I certify that on March 20, 2013, I directed the original Brief on the Merits of Respondent on Review on Review, State of Oregon to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and electronically served upon Erick J. Haynie and Nathan R. Christensen, attorney for petitioner on review, by using the electronic filing system.

I further certify that on March 20, 2013, I directed the Brief on the Merits of Respondent on Review on Review, State of Oregon to be served upon Paula J. Lawrence, attorney for respondent on review Daniel Algeo, Margaret Garvin, attorney for amicus curiae National Crime Victim Law Institute, Honorable Ronald W. Stone, Yamhill County Circuit Court Judge, and Meuy F. Chao, Yamhill County Deputy District Attorney, by mailing two copies, with postage prepaid, in an envelope addressed to:

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CERTIFICATE OF COMPLIANCE WITH ORAP 5.05(2)(d)

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word-count of this brief (as described in ORAP 5.05(2)(a)) is 4,994 words. I further certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(2)(b).

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