

HOUSE COMMITTEE ON GENERAL GOVERNMENT

April 19, 1999 Hearing Room E

6:00 p.m. Tapes 66 - 69

MEMBERS PRESENT: Rep. Carl Wilson, Chair

Rep. Jason Atkinson, Vice-Chair

Rep. Chris Beck, Vice-Chair

Rep. Jo Ann Bowman

Rep. Ryan Deckert

Rep. Steve Harper

Rep. Bruce Starr

Rep. Ron Sunseri

Rep. Terry Thompson

STAFF PRESENT: Cara Filsinger, Administrator

Faye D. Trupka, Administrative Support

MEASURE/ISSUES HEARD: HB 3469 Public Hearing

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 66, A		
004	Chair Wilson	Opens meeting at 6:05 p.m. and opens public hearing on HB 3469.

HB 3469 PUBLIC HEARING

010	Rep. Bruce Starr	Representative, House District 3. Explains HB 3469 (EXHIBIT A).
060	Rep. Starr	Explains the 1997 <i>City of Boerne v. Flores</i> U.S. Supreme Court case which ruled the Religious Freedom Restoration Act (RFRA) passed by Congress was unconstitutional. States that with this case the U.S. Supreme Court, not Congress, is the final arbiter in interpreting the Constitution.
120	Rep. Starr	Indicates that other states have adopted similar legislation supporting the right to freely exercise religious beliefs. States that HB 3469 does not effect the Establishment Clause of the First Amendment.
170	Rep. Starr	Lists five reasons that he opposes any exemption regarding the prison system.
220	Rep. Starr	Explains if HB 3469 becomes a law, the state will have to prove that it is essential and the least restrictive means to achieve a compelling state interest.
244	Scott Somerville	Home School Legal Defense Association, Virginia. Testifies in support of HB 3469. Cites the case about the use of peyote by a member of a Native American church. Explains it was part of a religious ritual and that he had been fired from his job as a drug counselor.
314	Somerville	Cites an example of restriction of religious freedom in a school sports event. Says that religious parents have had more experience with home school issues.
TAPE 67, A		
004	Somerville	States that without an RFRA, cases will go to court for an interpretation of the Constitution. Explains that an RFRA can be amended by legislation.
032	Rep. Bowman	Asks if Oregon is having a problem with people being able to exercise their religious rights.
034	Rep. Starr	Reads from an Oregon Department of Education memo to an educational service district superintendent regarding religious discrimination during school prayer.
057	Rep. Bowman	Asks who decides what is the appropriate religion to recognize in a classroom.
067	Rep. Starr	Replies that the parents would decide what religion that the children practice.
069	Rep. Bowman	Asks who would decide the appropriate prayer activity for that classroom.

074	Rep. Starr	Replies that education takes place in the classroom and not religious indoctrination.
078	Rep. Bowman	Asks how the 30 religions would operate differently within a public school environment.
079	Rep. Starr	Responds to question.
082	Somerville	Gives an example of a fifth grade student who does not want to participate in a Valentine's Day celebration at school because of his religion.
092	Rep. Bowman	Asks if public schools are forcing children to participate in Valentine's Day.
096	Somerville	Replies yes and gives example. States that HB 3469 gives a choice to make an exception.
104	Rep. Bowman	Asks if HB 3469 gives the student empowerment to approach the teacher and state that they do not want to participate because of religious preference. Asks why the student does not already have that right.
112	Somerville	Replies that HB 3469 will make a difference and cites examples of parents who have approached a school and whose preferences were not considered.
115	Rep. Bowman	States that HB 3469 will not give more voice to other minorities.
120	Somerville	States that he grew up in Alabama with the Civil Rights movement. Says that HB 3469 empowers people.
131	Rep. Bowman	Asks for copies of RFRAs from other states.
143	Rep. Kevin Mannix	Representative, House District 32. Explains HB 3469-2 amendments (EXHIBIT B).
193	Rep. Mannix	Continues to testify in support of HB 3469-2 amendments. States that if the bill is adopted without the HB 3469's amendments it would allow prisoners to litigate.
243	Rep. Mannix	States that HB 3469 without the HB 3469's amendments will create enforceable rights for inmates in Oregon's prisons and jails to claim religiously motivated beliefs and practices. Explains these rights would be far greater than those exercised by federal prisoners under the First Amendment.
303	Rep. Bowman	Asks how many cases were brought before Oregon courts by prisoners.

305	Rep. Mannix	Replies he does not know.
306	Rep. Starr	Asks if he is aware of the prisoner-filed frivolous lawsuits prior to the 1990 U.S. Supreme Court case.
315	Rep. Mannix	States that he recalls a lawsuit about sweat lodges in a separate structure for religious purposes.
325	Dave Cook	Director, Oregon Department of Corrections. Testifies in opposition to HB 3469 (EXHIBIT C) . Explains that HB 3469 will upset the balance of the rights of inmates to practice their religion and the security needs of Oregon prisons and jails.
375	Cook	States that HB 3469 may have significant financial impact. Explains the increase in inmate litigation over religious issues in recent years. Suggests that the HB 3469's amendments must be adopted.
TAPE 66, B		
012	Father Michael Sprauer	Oregon Department of Corrections. Testifies in opposition to HB 3469. States concern over whether religious services might pose a security risk for the correctional facility.
062	Karen Brazeau	Oregon Youth Authority. Testifies in opposition to HB 3469. Gives an example of sweat lodge use with inmates. States that the youth in their facilities are often susceptible to cults. Asks for the decision regarding religious preferences be left in the hands of adults.
112	Rep. Starr	Asks if prison security, conduct of other inmates, and health issues are the concern of the state.
117	Cook	Replies yes.
120	Rep. Starr	Asks if it is a compelling interest.
123	Cook	States that it is the institution's duty to protect those within their facility.
125	Brazeau	Replies that it puts the burden on the correctional institution to demonstrate compelling state interest.
130	Sprauer	States that the existing law sets forth four standards from which a religious program can be evaluated within a correctional institute.
163	Rep. Starr	Asks what the Attorney General budget was for the Department of Corrections.

165	Cook	Replies that he does not know.
168	Rep. Starr	Asks about the total Attorney General budget.
169	Cook	Replies he does not know.
170	Rep. Starr	Explains that during the three years the RFRA was enacted there were 8,800 civil cases and that eight were regarding the RFRA.
175	Cook	States that eight cases is an insignificant number. Describes the expense of those eight cases.
189	Brazeau	States that her organization is relatively new. Explains that under the RFRA, the relationship with the tribes was less one of partnership and more one of threatening lawsuits if the agency did not follow the tribal wishes for the location and running of the sweat lodge.
200	Rep. Wilson	Distributes written testimony from Attorney General Hardy Myers (EXHIBIT D).
230	Roger A. Norrie	Association of Christian Schools International (ACSI). Testifies in support of HB 3469 (EXHIBIT E). Explains that the schools which are members of ASCI save the state approximately \$87,600,000 each year. States that HB 3469 will provide protection for families as they seek to educate their children according to their religious convictions.
254	Rep. Bowman	Asks how HB 3469 will effect his schools.
267	Norrie	Replies that they will not operate differently.
273	Rep. Bowman	Asks how it will strengthen private schools.
282	Norrie	States that if a challenge is issued to a Christian school HB 3469 will support their right to freely exercise religion.
284	Rep. Bowman	Asks if HB 3469 would prevent the state from intervening in the case of a student who is failing.
290	Norrie	Explains that the state must prove a compelling interest before they can intervene.
300	Dan McCulloch	Department of Religious Liberty, Seventh-Day Adventist Church. Testifies in support of HB 3469

340	Greg W. Hamilton	Director, Department of Public Affairs and Religious Liberty, Seventh-Day Adventist Church. Testifies in support of HB 3469. Reads from written testimony (EXHIBIT F). Discusses proposed HB 3469-3 amendments.
TAPE 67, B		
012	David Fidanque	Executive Director, American Civil Liberties Union of Oregon (ACLU of Oregon). Testifies in opposition to HB 3469. States that Oregon courts should have looked at the "free-exercise" provisions.
062	Fidanque	States that he does not believe that HB 3469 is needed. States that ORS 327.109 prohibits public schools from promoting or engaging in any religious activity.
122	Fidanque	Explains there is an exemption from the Religious Freedom Protection Act being proposed at the national level for the enforcement of civil rights laws.
186	Rep. Bowman	Asks what happens in public buildings if HB 3469 becomes law.
193	Fidanque	Replies that he does not know. States that public agencies are prohibited from discriminating against religious activities if public meeting rooms are available.
210	Deborah L. Knapp	Testifies in support of HB 3469 (EXHIBIT G). Points to memo from the Oregon Department of Education EXHIBIT G , which prohibits faculty and employees from participating in prayer with students on campus before school and during any extracurricular activities or ceremonies. States her belief that HB 3469 supports a moral law government.
260	Dale Penn	Oregon District Attorney Association. Testifies in support of HB 3469-2 amendments. States that HB 3469 creates a new statutory right of action.
310	Penn	Asks for a statutory exemption to prosecutions of felony crimes. States the protection of children is a compelling interest.
354	Rep. Starr	States that under the statutes felony crimes are a compelling interest.
370	Penn	Replies that HB 3469 should exempt felony crimes for the purpose of preventing a cause of action claim where a perpetrator claims they have an exemption and are utilizing their religious beliefs.
394	Bob Castagna	Oregon Catholic Conference. Testifies in support of HB 3469.
TAPE 68, A		
004	Bruce Fitzwater	Christian Science Church. Testifies in support of HB 3469 (EXHIBIT H). States

		that HB 3469 is essentially reflexive. Explains that legislators are being asked to consider the effect of their legislation on the general population, as well as those of minority groups. Says that HB 3469 will restore the balance of religious freedom and society's needs.
051	Karen Davis	Christian Science Church. Testifies in support of HB 3469. Explains discrimination issues with the Employment Department where she works.
080	Rep. Bowman	Asks when an employee's rights interfere with other employee rights. States the need to write a law which will allow each individual to practice their religion while still getting the job done.
102	Davis	Replies that all employers would need to determine if there is a reasonable accommodation for providing the employees their freedom of religious beliefs.
123	Craig O. Luedeman	Christian Science Chaplain, United States Army. Testifies in support of HB 3469. States that HB 3469 would require state institutions to use the least restrictive means to accomplish their goals.
150	Victor Congleton	Department of Human Resources, Services to Children and Families. Testifies in opposition to HB 3469 (EXHIBIT I). Explains that a higher standard could make it difficult for the child protection system to complete an investigation or assessment if a parent claims a religious motivation for a practice which harms, endangers or even threatens the life of a child. States that an exemption for activities pursuant to ORS Chapter 419 could be a method of ensuring that it does not compromise the safety of abused or neglected children.
180	Rep. Starr	Asks if the state has a compelling interest in protecting children from child abuse.
190	Congleton	States yes.
195	Rep. Atkinson	Asks about problems that were encountered with state agencies prior to 1990.
198	Congleton	Replies that he is unaware of any problems that existed prior to 1990.
200	Ellen C. Lowe	Ecumenical Ministries of Oregon. Testifies in opposition to HB 3469. States that advocacy attempts to demonstrate respect for the religious beliefs of others.
250	Lowe	Gives history of organization.
318	Rep. Starr	Asks prior to 1990 if Oregonians enjoyed too much religious freedom.
323	Lowe	Replies that the Oregon Constitution has allowed Oregonians the freedom to exercise their faith.

331	Rep. Deckert	Asks for information about current statutes and where the language of HB 3469 might run into difficulties.
344	Lowe	Responds that the broadness of the language leads them to believe that something may come up in the future that is not anticipated. Gives example of the Rajneesh occupation of Antelope.
TAPE 69, A		
001	Michael Howden	Oregon Center for Family Policy. Testifies in support of HB 3469. Cites recent court case in South Carolina with a home bible study program. Explains that passage of HB 3469 will preempt these kinds of problems.
051	Howden	Points to a letter from the United States Department of Justice from Wallace Chaney to Attorney General Janet Reno which states that the Department of Justice supported the passage of RFRA in 1993.
062	Rep. Bowman	Asks about Oregon's Constitution providing greater protection than the statute would provide.
067	Howden	Responds that the Oregon Center for Family Policy is concerned with what might arise in terms of interpretation of HB 3469 in a court of law.
076	Vance D. Day	States that the statute turns back to the "playing fields" of the 1960s to 1990s. Disagrees with the comment that Oregon's Constitution provides greater protection than the statute would provide.
100	Rep. Bowman	Asks about a statement which was made regarding "sweeping coverage." Asks if it is a copy of what was done on a federal level and if so, wants to know the purpose of HB 3469.
114	Day	States that the court was focusing upon the balance of power issues before the court. States the court sent RFRA back to each state to create their own regulations.
125	Howden	Agrees with Rep. Bowman's comments and gives example of twenty day care centers that were served notice of ordinances prohibiting hiring on the basis of religion.
135	Rep. Bowman	Asks about the cases that Howden mentioned and asks if there is a similar state constitution to the State of Oregon.
136	Howden	States that he can not respond directly to that.
145	Barbara Simon	Oregon State Sheriffs Association. Testifies in support of HB 3469-2

		amendments.
170	Somerville	States that HB 3469 puts the law back into the hands of the people.
180	Chair Wilson	Closes the public hearing on HB 3469 and adjourns at 8:35 p.m.

Submitted By, Reviewed By,

Faye D. Trupka, Cara Filsinger,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ HB 3469, written testimony, Rep. Bruce Starr, 6 pp.

B ñ HB 3469, -2 amendments, Rep. Kevin Mannix, 1 p.

C - HB 3469, written testimony, Dave Cook, 1 p.

D ñ HB 3469, written testimony, Attorney General Hardy Myers, 3 pp.

E ñ HB 3469, written testimony, Roger A. Norrie, 3 pp.

F ñ HB 3469, written testimony, Greg Hamilton, 3 pp.

G ñ HB 3469, written testimony, Deborah L. Knapp, 3 pp.

H ñ HB 3469, written testimony, Bruce Fitzwater, 4 pp.

I ñ HB 3469, written testimony, Victor Congleton, 2 pp.