

HOUSE JUDICIARY COMMITTEE ON CIVIL LAW

May 25, 1999 Hearing Room 357

1:00 p.m. Tapes 174 - 177

MEMBERS PRESENT: Rep. Lane Shetterly, Chair

Rep. Max Williams, Vice-Chair

Rep. Judy Uherbelau, Vice-Chair

Rep. Vic Backlund

Rep. Randall Edwards

Rep. Kathy Lowe

Rep. Vicki Walker

Rep. Larry Wells

Rep. Bill Witt

STAFF PRESENT: Aaron Felton, Counsel

Nancy Richards, Administrative Support

MEASURE/ISSUES HEARD:

SB 176A - Work Session

HJR 29 - Work Session

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 174, A		

003	Rep. Uherbelau	Calls meeting to order at 1:23 p.m.
<u>SB 176A - WORK SESSION</u>		
008	Rep. Backlund	MOTION: Moves to SUSPEND the rules for the purpose of RECONSIDERING the vote on SB 176A.
		VOTE: 8-0-1 EXCUSED: 1 - Chair Shetterly
	Rep. Uherbelau	Hearing no objection, declares the motion CARRIED.
014	Rep. Backlund	MOTION: Moves to RECONSIDER the vote by which "SB 176A was sent to the floor DO PASS".
		VOTE: 8-0-1 EXCUSED: 1 - Chair Shetterly
	Rep. Uherbelau	Hearing no objection, declares the motion CARRIED.
034	Rep. Williams	MOTION: Moves to ADOPT SB 176A-2 amendments dated 05/24/99.
040	Counsel Felton	Discusses why SB 176A was brought back before the committee, and explains the ñA2 amendments (EXHIBIT A).
051	Rep. Walker	Is the Marine Board in support of these amendments?
056	Paul Donheffner	Director, Marine Board Testifies in support of SB 176A and the ñA2 amendments.
060	Rep. Walker	Page 2, line 33 of SB 176A states, "unless the boat presents a hazard, the law enforcement agency shall allow a sufficient time before taking the boat", but doesn't specify what is a sufficient time period and who determines that?

068	Donheffner	Explains the minimum time periods for removing a boat.
086	Rep. Lowe	Explains that SB 176A was opposed on the House floor because of the strong penalties imposed beginning on page 4, line 44 of SB 176A. Are we going to address these strong penalties?
103	Counsel Felton	The ñA2 amendments move the penalties in Section 3, page 1 of SB 176A to a Class B misdemeanor rather than a Class A misdemeanor.
110	Donheffner	The reference to a Class C felony relates to a different statute, not to Section 3.
		<p>VOTE: 8-0-1</p> <p>EXCUSED: 1 - Chair Shetterly</p>
	Rep. Williams	Hearing no objection, declares the motion CARRIED.
137	Rep. Edwards	MOTION: Moves SB 176A to the floor with a DO PASS AS AMENDED recommendation.
		<p>VOTE: 6-2-1</p> <p>AYE: 6 - Backlund, Edwards, Lowe, Walker, Wells, Williams</p> <p>NAY: 2 - Uherbelau, Witt</p> <p>EXCUSED: 1 ñ Chair Shetterly</p>
	Rep. Williams	<p>The motion CARRIES.</p> <p>REP. WALKER will lead discussion on the floor.</p>
157	Rep. Williams	Closes the work session on SB 176A.
<u>HJR 29 WORK SESSION</u>		
176	Rep. Kevin Mannix	State Representative, House District 32

		<p>Testifies in support of HJR 29. Discusses the amendments to HJR 29 (EXHIBIT B) and explains that further refinements are needed. Explains why the definition of a marriage needs to be put into the constitution. Discusses that this legislation does not prevent any unit of government from enacting benefits or privileges that might be extended to other individuals or groups. Reviews the <u>Tanner v. Oregon Health Sciences University (OHSU)</u> court case allowing domestic partner benefits for same-sex marriages because government was already providing such coverage to heterosexual marriages. No other state has had this kind of decision imposed upon it through the judicial process. HJR 29 refers to the voters the opportunity to reaffirm the traditional definition of marriage and reaffirm the power and authority of government to give married couples the rights or benefits of marriage as opposed to anyone else.</p>
306	Rep. Witt	Do you believe that the court, through the logic of Tanner, could overturn the marriage statute?
309	Rep. Mannix	Yes. Discusses statutes that may come under attack in future litigation regarding same-sex marriages.
355	Rep. Uherbelau	Describes what a "perverse decision" means. Why would the state want to put into the constitution a religious-based definition of marriage?
376	Rep. Mannix	Explains why the state needs a definition of marriage in the constitution.
393	Rep. Uherbelau	Why do you consider that tremendous problems could occur in the future if we honor the relationship of same-sex partners?
410	Rep. Mannix	Discusses validation vs. tolerance stating that we can be tolerant of a wide variety of lifestyles, but we don't have an obligation to put the government's stamp of approval on those relationships. I object to persons using the courts to rewrite social structure when that is the purview of the legislature and the people.
432	Rep. Lowe	The legislature makes the laws, but it is the court's job to interpret them. If you feel the Tanner decision discriminates unfairly against heterosexual unmarried couples, why aren't we considering passing legislation that would allow an extension of benefits to unmarried, heterosexual couples in a stable relationship?
TAPE 175, A		
010	Rep. Mannix	You, as a legislator, can offer a majority or minority report or alternative resolution that would do that. I do not feel that is something the people of this state would vote for.
032	Rep. Anitra Rasmussen	State Representative, House District 11 Testifies in opposition to HJR 29 stating that many same-sex couples have just as strong and meaningful a relationship as heterosexual married couples.

081	David Schuman	Deputy Attorney General, Department of Justice Discusses the court decision in the case of <u>Tanner v. OHSU</u> concerning allowing spousal benefits to same-sex domestic partners. The decision does not directly address the issue of the constitutionality of the marriage statute and disavows saying anything about it. Cites that Tanner is only an opinion of the Oregon Court of Appeals, not the Oregon Supreme Court. Discusses the opinion issued by Attorney General, Hardy Myers, regarding state income taxation of health insurance coverage in light of the Tanner decision (EXHIBIT C).
239	Rep. Williams	Is the Court of Appeals decision in the Tanner case the law of the land today concerning benefits for same-sex partners?
248	Schuman	Yes. Unless the Oregon or U. S. Supreme Court articulates a different rule, state government is bound by that court case.
259	Rep. Williams	Under the Tanner decision, would same-sex marriage be prohibited?
276	Schuman	I would be extremely reluctant to speculate about the rule in Tanner to any situation that has not come before the court or that our office has not had the chance to study and form an opinion.
304	Rep. Witt	Wouldn't the court in the Tanner decision affirm that it was dealing strictly with the issue of insurance benefits and not the issue of the marriage statute?
314	Schuman	Yes.
319	Rep. Witt	Are you aware of any other court in any state that has required all government units of that state to provide benefits to same-sex partners?
326	Schuman	There is no other such decision, but clarifies that the Tanner decision is based solely upon the Oregon Constitution so no other state would be applying that legal argument. However, there are states where the subject has arisen, but a decision like Oregon's has not occurred.
336	Chair Shetterly	How does the Department of Revenue (DOR) view the Tanner decision?
346	Schuman	If they choose to follow the advice in the Attorney General's opinion, the Department of Revenue must treat, for purposes of state income tax, money that is used to buy insurance for domestic partners the same as they treat money that is used to buy insurance for spouses. They can treat both as taxable or both as non-taxable.
364	Chair Shetterly	Is that at the DOR's discretion or is it a legislative directive?

367	Schuman	The DOR is obligated to do what it believes the legislature authorized.
373	Rep. Witt	Are you aware of any government units in Oregon that were providing the benefits that the Tanner decision requires as compared to those that were not, but are now required under the Tanner decision?
380	Schuman	I know Portland and Ashland were two cities providing benefits, but I don't know about others.
384	Rep. Edwards	Could you clarify what you were saying earlier about the Tanner decision not referring to unmarried, heterosexual couples?
392	Schuman	The Tanner decision does not impose any obligation on government units to treat different-sex domestic partners the same as spouses.
400	Rep. Edwards	Could you expound on what the court looks at when determining if there are genuine differences to deny benefits to a particular group or class of people?
409	Schuman	The court looks at genuine, relevant differences for making a distinction between a particular group or class of people. In Tanner, no one could suggest any relevant differences between spouses and same-sex domestic partners.
TAPE 174, B		
004	Rep. Edwards	Was the same-sex couple's length of relationship a factor in the Tanner decision?
006	Schuman	Explains the kind of criteria used by the courts in recognizing same-sex domestic partners.
014	Chair Shetterly	Do you anticipate opinion requests from other state agencies regarding programs that might be affected by the issues related to marital status in the Tanner decision?
020	Schuman	We will be getting some mail.
040	Rev. Jerry Propst	Minister Testifies and submits written testimony in support of HJR 29 (EXHIBIT D). Describes how the principle of a marriage being one man and one woman has stood the test of time. Discusses why marriage is about responsibility, not rights. Cites instances of churches being faced with discrimination litigation.
151	Rep. Walker	How are churches discriminated against?

153	Rev. Propst	Explains how the church has discriminated against certain people in their hiring practices and found themselves in litigation.
161	Rep. Walker	Has the church refused to hire someone for any other reason than homosexuality?
162	Rev. Propst	This decision is made on a religious basis.
164	Rep. Lowe	Are you aware that there are many Christian ministries that do perform a sanctioning of same-sex marriage?
171	Rev. Propst	Yes.
190	Chair Shetterly	Recesses the work session on HJR 29 at 2:30 p.m.
<u>HJR 29 RECONVENES WORK SESSION</u>		
196	Rev. Propst	Discusses the need for providing adequate health care no matter what a person's lifestyle. However, HJR 29 speaks to what constitutes a marriage and family and other vehicles could be used to determine who is entitled to health care benefits. Cites definitions of "marriage" used in other instances.
264	Rep. Lowe	Are you testifying today because you take offense with the courts comparing a homosexual partnership with a marriage?
268	Rev. Propst	When I was asked to testify on HJR 29, I knew nothing about the Tanner decision. I wanted to reaffirm, at a constitutional level, what describes a marriage for the benefit of family welfare.
291	Rep. Lowe	Can you reference cases where homosexuals wanted positions in a church?
297	Rev. Propst	Relates two court cases where homosexuals were seeking positions in a church.
312	Rep. Uherbelau	Did you say you would not deny someone health care benefits just because they were homosexual?
317	Rev. Propst	Yes.
340	Rep. Uherbelau	If the issue is "who constitutes a marriage", why include the portion of the amendment concerning "benefits" on line 6, page 1 of the ñ6 amendments in the constitution?

346	Rev. Propst	Explains that the function of marriage is to provide an appropriate environment for the rearing of children.
365	Rep. Uherbelau	Are you saying that you would support giving benefits to homosexual individuals, but would deny same-sex couples benefits based upon the relationship that they have?
378	Rev. Propst	Yes.
390	Earl Radmacher	President Emeritus, Western Seminary, Portland, Oregon Testifies and submits written testimony in support of HJR 29 (EXHIBIT E). Defines "marriage" in the Webster dictionary, the World book Encyclopedia, and Godís definition.
TAPE 175, B		
001	Radmacher	Continues to discuss reasons why he supports HJR 29. Explains what marriage is and why marriage should be between a man and a woman. Explains how the definition in scripture relates to HJR 29.
137	Rep. Walker	Is the definition of marriage that you just gave us the Judeo Christian interpretation?
141	Chair Shetterly	A call of the House recesses the committee at 3:10 p.m.
<u>HJR 29 RECONVENES WORK SESSION</u>		
245	Radmacher	Yes.
247	Rep. Walker	Do we have many religions in our country?
248	Radmacher	Yes.
249	Rep. Walker	Do we have freedom of religion in our country?
249	Radmacher	Yes.
261	Michael Howden	Executive Director, Oregon Center for Family Policy Testifies and submits written testimony in support of HJR 29 (EXHIBIT F). Explains why marriage between one man and one woman is the foundational bedrock of family and community throughout history. Cites that 29 states have passed legislation supporting marriage between one man and one woman.

331	Rep. Uherbelau	Does the legislation passed in those 29 states go beyond addressing marriage as the union of one man and one woman to include benefits?
343	Howden	No.
345	Rep. Edwards	Did all 29 states put that definition of "marriage" in their constitutions?
347	Howden	Around 50% put it in the constitution.
363	Emanuel Rose	Rabbi, Congregation Beth Israel, Portland, Oregon Testifies and submits written testimony in opposition to HJR 29 (EXHIBIT G). Asks for a distinction between personal beliefs and common civic concern and primary responsibility for the rights and welfare of all Oregonians.
TAPE 176, A		
014	Christine Tanner	Plaintiff in <u>Tanner v. OHSU</u> Testifies and submits written testimony in opposition to HJR 29 (EXHIBIT H). Discusses that the commitment of her and her partner is just as deserving of health care benefits as a couple consisting of one man and one woman.
059	Jimmy Walters	Citizen, Tigard, Oregon Testifies and submits written testimony in opposition to HJR 29 (EXHIBIT I). Discusses how HJR 29 could erode health care benefits that many companies are currently providing to homosexual couples.
113	Robert Ekstrom	Citizen, Scappoose, Oregon Testifies in support of HJR 29.
136	Chair Shetterly	A call of the House recesses the committee at 3:38 p.m.
<u>HJR 29 RECONVENES WORK SESSION</u>		
173	Ekstrom	Discusses that the fundamental foundation of marriage in this society consists of one man and one woman.
243	Rep. Lowe	Do you have any objection to insurance benefits accruing to someone's partner if they are not married?

253	Ekstrom	I am not in favor of denying someone benefits that are due them, but society should be willing to encourage the institution of marriage between a man and woman.
273	Rep. Lowe	Would you object to a definition of "family" being non-related people?
276	Ekstrom	According to my studies and beliefs of the Bible, I don't believe that we can safely promote and normalize homosexual relationships in the same way that we promote a man and wife relationship.
298	Lou Beres	Executive Director, Christian Coalition of Oregon Testifies and submits written testimony in support of HJR 29 (EXHIBIT J).
379	Rep. Lowe	Should basic benefits, such as insurance, be denied to adult partners, be it married, unmarried or same-sex partners?
386	Beres	I thought this bill didn't cut out insurance benefits.
388	Rep. Lowe	This bill does cut out insurance benefits and specifies that a marriage shall consist of one man and one woman.
401	Chair Shetterly	HJR 29 does not specifically eliminate benefits, it eliminates the constitutional underpinning for the provision of benefits.
419	Rep. Walker	Why do you think that the judges who made the Tanner decision have little respect for the right of the people to make the laws we live under?
434	Beres	Because Oregon is the only state that has rendered a decision like the one made in <u>Tanner v. OHSU</u> .
TAPE 177, A		
007	Rep. Walker	Asks for an explanation of the statement "it is now clear that homosexuals will use the Tanner case to bring suit to have Oregon's marriage law declared unconstitutional for denying equal protection of the laws to homosexuals"? How has that been made clear to you?
012	Beres	Discusses the Attorney General's opinion regarding state income taxation of health insurance coverage.
027	Rep. Witt	Explains that HJR 29 does not deny benefits to anyone.
032	Rep. Uherbelau	Did the Christian Coalition or a like organization bring initiatives to the people

		of Oregon regarding homosexuality and both times the initiatives were turned down?
036	Beres	That was not the Christian Coalition.
090	Rep. Uherbelau	Calls attention to a letter written by Candace Steele in opposition to HJR 29 (EXHIBIT K) .
100	Dave Fidanque	Executive Director, American Civil Liberties Union of Oregon Testifies and submits written testimony in opposition to HJR 29 (EXHIBIT L) . Discusses the Oregon Constitution with regards to granting all citizens equal rights. Explains that HJR 29 will set aside one class of citizens that should be granted the same rights as all citizens.
201	Dominick Vetri	Oregon Citizen Testifies and submits written testimony in opposition to HJR 29 (EXHIBIT M) . Discusses why HJR 29 is unconstitutional and does nothing to benefit heterosexual marriages.
344	George Eighmey	Oregon Citizen Testifies and submits written testimony in opposition to HJR 29 (EXHIBITS N) . Discusses three reasons for opposing HJR 29: 1) it violates Article I, Section XX of the Oregon Constitution, 2) it is unnecessary to prohibit same-sex marriages because there is already a statute that does that, 3) it discriminates against a class of people for no legitimate reason other than animus. Proposes amendments to HJR 29 (EXHIBIT O) .
TAPE 176, B		
043	Rep. Walker	Discusses that (2) of Paragraph 1 of the original HJR 29 grants no licenses, rights or benefits to unmarried individuals. Wouldn't that conflict with your amendments?
053	Eighmey	Legislative Counsel could correct that. States that by using the phrase "not withstanding" anything that follows, even if in conflict, holds true.
059	Rep. Uherbelau	Are we setting up a class of people that we are discriminating against?
063	Eighmey	Yes.
080	Doug Vande Griend	Chief Operating Officer, Western Center for Law and Religious Freedom Testifies in support of HJR 29. Discusses some of the mechanical, legal difficulties that would exist if HJR 29 does not pass.

196	Rep. Uherbelau	You spoke to a man and a woman marrying for procreation, but do all married people have children?
199	Vande Griend	No.
206	Rep. Uherbelau	Should a married couple's marriage be invalid if they don't have children?
210	Vande Griend	No.
220	Rep. Uherbelau	Is it more important that children be raised by a mother and a father than two people of the same sex even if the mother and father teach hatred and prejudice, and the same-sex couple teach love and respect?
224	Vande Griend	Discusses that there are many variables in deciding how and where children should be raised.
240	Suzanne Cook	Oregon Citizen Testifies in support of HJR 29. Relates her own personal story of homosexuality in the family and the effect it had on her life.
376	Curt Mudd	NIKE, Inc. Testifies and submits written testimony in opposition to HJR 29 (EXHIBIT P) stating that Oregon must be a leader among states in supporting equal rights, not special rights, for all of its citizens..
403	Alan Hodges	President, Portland General Operations Testifies and submits written testimony in opposition to HJR 29 (EXHIBIT Q). Discusses that equal benefits for all employees supports the mission of Enron, Portland General Operations' parent company.
TAPE 177, B		
024	Diane Walter	Oregon Citizen Testifies in opposition to HJR 29. States she is in a heterosexual marriage with a heterosexual daughter and a gay son. States a concern that both children can grow up with the same rights.
044	Rev. Richard Burdon	Retired Clergy from United Methodist Church Testifies and submits written testimony in opposition to HJR 29 (EXHIBIT R) stating that this legislation seeks to deny civil rights to a minority of the residents of Oregon.

139	Rev. Dee dee Walters	Pastor, University Park United Methodist Church Testifies and submits written testimony in opposition to HJR 29 (EXHIBIT S). Discusses why her pastoral experience provides insight into homosexual problems.
214	Rep. Uherbelau	Comments on the high suicide rate of homosexual teens in Oregon.
240	Chair Shetterly	Closes the work session on HJR 29.
241	Chair Shetterly	Adjourns meeting at 5:22 p.m.

Transcribed By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

- A - SB 176A ñ2 amendments (LC 986), dated 5/24/99, staff, 1 pg.**
- B - HJR 29, ñ6 amendments (LC 2608), dated 5/21/99, Rep. Kevin Mannix, 1 pg.**
- C - HJR 29, opinion written by Attorney General Hardy Myers, dated 5/25/99, 3 pgs.**
- D - HJR 29, written testimony submitted by Rev. Jerry Propst, dated 5/25/99, 5 pgs.**
- E - HJR 29, written testimony submitted by Earl Radmacher, 3 pgs.**
- F - HJR 29, written testimony submitted by Michael Howden, dated 5/25/99, 3 pgs.**
- G - HJR 29, written testimony submitted by Rabbi Emanuel Rose, dated 5/25/99, 1 pg.**
- H - HJR 29, written testimony submitted by Christine Tanner, dated 5/25/99, 1 pg.**
- I - HJR 29, written testimony submitted by Jimmy Walters, dated 5/25/99, 1 pg.**
- J - HJR 29, written testimony submitted by Lou Beres, dated 5/25/99, 1 pg.**
- K - HJR 29, written testimony submitted by Candace Steele, dated 5/25/99, 1 pg.**
- L - HJR 29, portions of the Oregon Constitution submitted by David Fidanque, ACLU, 6 pgs.**

M - HJR 29, written testimony submitted by Dominick Vetri, dated 5/25/99, 4 pgs.

N - HJR 29, written testimony submitted by George Eighmey, dated 5/25/99, 3 pgs.

O - HJR 29, proposed amendments submitted by George Eighmey, 1 pg.

P - HJR 29, written testimony submitted by Curt Mudd, NIKE, Inc., dated 5/25/99, 1 pg.

Q - HJR 29, written testimony submitted by Alan Hodges, ENRON, dated 5/25/99, 1 pg.

R - HJR 29, written testimony submitted by Rev. Richard Burdon, dated 5/25/99, 2 pgs.

S - HJR 29, written testimony submitted by Dee-dee Walters, dated 5/15/99, 2 pgs.

T - HJR 29, written testimony submitted by Rollie Smith, 1 pg.

U - HJR 29, written testimony submitted by Lois Kenagy, dated 5/24/99, 1 pg.

V - HJR 29, written testimony submitted by staff as submitter unknown, dated May 1999, 2 pgs.

W - HJR 29, written testimony submitted by staff as submitter unknown, dated May 1999, 4 pgs.

X - HJR 29, written testimony submitted by Lindsay Berryman, Mayor of Medford, dated 5/21/99, 1 pg.