

HOUSE COMMITTEE ON RULES AND ELECTIONS

March 26, 1997 Hearing Room A

1:00 PM Tapes

MEMBERS PRESENT:

Rep. Lynn Snodgrass, Chair

Rep. Peter Courtney, Vice-Chair

Rep. Lee Beyer

Rep. Bill Markham

Rep. Ken Messerle

Rep. Bob Montgomery

MEMBER EXCUSED:

Rep. Kitty Piercy

STAFF PRESENT:

Rosemary Wood, Committee Administrator

MEASURE/ISSUES HEARD:

Joint Meeting with Senate Committee on Rules and Elections

Introduciton of Committee Bills

SB 485 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		
		The House Committee on Rules and Elections met jointly with the Senate Committee on Rules and Elections. Please refer to the Senate Committee on Rules and Elections' minutes of March 26, 1997, 1:00 p.m.

Submitted by, Reviewed by,

Valerie H. Luhr Janet Adkins

Administrative Support Specialist Policy Analyst

HOUSE COMMITTEE ON RULES AND ELECTIONS

March 26, 1997 Hearing Room E

4:00 P.M. Tapes 27 - 28

MEMBERS PRESENT:

Rep. Lynn Snodgrass, Chair

Rep. Peter Courtney, Vice-Chair

Rep. Lee Beyer

Rep. Bill Markham

Rep. Ken Messerle

Rep. Bob Montgomery

Rep. Kitty Piercy

STAFF PRESENT:

Rosemary Wood, Administrator

Valerie Luhr, Administrative Support

Kellie Shoemaker, Committee Clerk

MEASURE/ISSUES HEARD:

HJR 41 Public Hearing

HJR 9 Public Hearing

HJR 67 Public Hearing and 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 27, A		
003	Chair Snodgrass	Opens meeting at 4: 10 p.m.; opens public hearing on HJR 41
<u>HJR 41 - PUBLIC</u>		

<u>HEARING</u>		
010	David Schuman	<p>Deputy Attorney General. Wrote memo on this resolution to Rep. Courtney (a longer and more detailed letter to Rep. Courtney than what was written to Chief of Staff of Majority Office). The letter was in response to a letter Rep. Courtney received from Legislative Counsel advising that HJR 41 would pass muster under the establishment clause of the federal constitution. Testifies that he believes that HJR 41 in its current form not only violates the federal and state constitutions, but does so in obviously flagrant fashion. Outlines his reasoning in his four-page letter to Rep. Courtney.</p> <p>* Government cannot endorse one sect over another. Christianity is regarded as a single denomination. Since 1989 establishment clause law has progressed, the "Lemon test" is no longer applied. HJR 41 singles out a particular religion and asks all Oregonians to observe an honoring of that religion.</p> <p>* Oregon constitution states an even stronger position than the federal with regard to separation of church and state.</p>
110	Schuman	<p>Has confidence in the accuracy of his conclusions. Believes this is a flagrant violation of the establishment clause in both the federal and state constitutions. The establishment clauses are much more tolerant of truly nondenominational affirmations of the role of religion in the history of a state or country and its current makeup. If explicit references to Christianity are changed to references to religion in general, you will avoid constitutional problems.</p>
136	Vice-Chair Courtney	<p>The unofficial and informal opinion received from Mr. Schuman was pretty absolute in the conclusion that HJR 41 would violate both the Oregon and federal constitutions (EXHIBIT A). Went to Legislative Counsel seeking the possibility of amendments to resolve the problems.</p>
146	Vice-Chair Courtney	<p>Asks Schuman to state his background for the record.</p>
147	Schuman	<p>Reviews background.</p>
165	Vice-Chair Courtney	<p>Simply wanted to note that background truly qualifies Mr. Schuman as a constitutional lawyer. Calls Tom Clifford forward. Asks if the committee will indulge a dialogue between Mr. Clifford and Mr. Schuman.</p>
184	Vice-Chair Courtney	<p>Asks Mr. Clifford if he is aware that Mr. Schuman vigorously disagrees with his opinion. Asks if putting a period after the word Oregon in line 28 would help at all.</p>
194	Schuman	<p>Helps some, doesn't get you where you need to go. Called Legislative Counsel's office before he sent the letter to Rep. Courtney.</p>
202	Vice-Chair Courtney	<p>What needs to be done with the resolution?</p>

204	Schuman	Must become truly nonsectarian, truly nondenominational in his opinion. The state can take action that honors the role that religion has played in its history and the role that it continues to play in the lives of its citizens, but cannot do that by indicating a preference for a denomination.
217	Vice-Chair Courtney	Asks Mr. Clifford to explain what Mr. Schuman just said.
220	Tom Clifford	Legislative Counsel. This is about a series of tests that apply to state actions of this kind. These tests help us determine what is proper and constitutional, or improper and unconstitutional. Explains the testing process and how it applies to this measure.
264	Rep. Montgomery	States his position is going to be no until the attorneys agree.
288	Rep. Markham	What happens if we pass this the way it is?
292	Schuman	The committee would not be liable to anyone in damages. Someone could bring some sort of declaratory action against the state. That's not the important issue. My role is to give you the best nonpartisan legal advice I can give you to help you meet your sworn obligation to uphold the constitutions of the State of Oregon and the United States.
313	Rep. Markham	Can this be fixed without destroying the idea?
318	Clifford	Responds. Is there a legitimate secular purpose? Nothing is clear. Whether it could be cured of all constitutional difficulties and still get you anywhere in the neighborhood of where this resolution is right now is still a question.
340	Rep. Beyer	If you were to alter it slightly to recognize Religious Heritage Month, would that get us closer?
345	Schuman	Responds and explains his conclusion.
355	Rep. Beyer	The problem is recognizing one denomination over another.
363	Vice-Chair Courtney	Would like to do something with this.
370	Chair Snodgrass	Is there anything on here that is not true?
375	Schuman	I don't know the history. Explains his response.
385	Chair Snodgrass	What line on the bill advances Christianity?
390	Schuman	I'd begin with the title.
392	Snodgrass	How does that advance Christianity?
395	Schuman	It conveys the impression that the state is privileging one sect over others.
400	Chair Snodgrass	Uncomfortable testimony received last week with reference to October. Was that the advancement of that, also? What is the difference?

408	Schuman	The constitution nowhere prohibits the state from taking a position for or against any sexual orientation. It does contain an explicit command that the state cannot take a position for or against any religion.
418	Chair Snodgrass	What does the Book of Heaven refer to? Is that the same thing as the gospel? Do Jewish people believe in the gospel?
422	Schuman	No, they do not.
425	Chair Snodgrass	Disappointed that this is being proclaimed as an advancement of any religion. Still fails to see how it is an advancement, merely says that we will observe it and recognize historical facts.
TAPE 28, A		
004	Schuman	The issue isn't advancement, it is endorsement.
007	Chair Snodgrass	You have said "advancement" four times in your testimony.
011	Schuman	If I indicated that the constitutional test was advancement, I was probably mis-stating the accurate word, under the most current test the accurate word is endorsement. Also would like to state that the opinion he is giving should be taken as a statement that the people who are proposing, advancing and arguing in favor of this are not bad people. But you will look long and hard before you will find a constitutional scholar who will tell you that this bill is constitutional under either the Oregon or the federal constitution.
025	Chair Snodgrass	Does this resolution stop anyone from coming and proclaiming a Jewish Heritage Month or Native American Heritage Month?
028	Schuman	Yes it does. Explains answer.
035	Chair Snodgrass	Please give me a definition of denomination.
037	Schuman	Relates the definition the Supreme Court uses and elaborates on the definition.
045	Chair Snodgrass	Did you give the Governor the same advice last year when he proclaimed April as Christian Heritage Month?
050	Schuman	The office did, I was not employed at that time.
051	Chair Snodgrass	Do you have any knowledge as to why he chose not to take the advice?
052	Schuman	We gave him the advice after he had already made the proclamation.
053	Vice-Chair Courtney	Is there a way to keep the word Christian or Christianity in here and still recognize its role in the history of Oregon? Can you help me on that?
057	Schuman	There wouldn't be anything wrong with a resolution recognizing that people who were Christians have been important in the history of Oregon. This resolution states that it is their Christian belief that is the subject of honor.
065	Vice-Chair	I would like to talk with you about this. I don't think we can do it here, but I would like to suggest that maybe we could develop some

	Courtney	wording. The word Christianity is critical.
076	Rep. Beyer	Does it make any difference if we don't proclaim it as Christian month, but merely recognize it as Christian month?
082	Schuman	Hard to see what difference it would make.
083	Rep. Beyer	Relates personal experiences with friends who are Jewish, Muslim - thinks we need to be careful. Would like to find a way to do this that doesn't offend anybody but recognizes the importance of religion in everyone's lives.
102	Chair Snodgrass	Moves on to others signed up to testify.
111	Karen Elliott	Mother, homemaker, and substitute teacher. Comments in support of HJR 41. Is concerned about the message the Governor is sending to children. Submits (EXHIBIT C) to be distributed to committee members.
179	Rep. Montgomery	Comments that he doesn't believe the Governor has had an opportunity to do anything on this yet.
185	Chair Snodgrass	Doesn't know for sure.
187	Rep. Montgomery	Believes this issue should be checked on just in case the Governor is taking a hit on something that he shouldn't.
190	Jane Krieger	Mother, homemaker. Testifies in support of HJR 41.
218	Faith Gabrielson	Submits and presents testimony (EXHIBIT B) in support of HJR 41.
238	Chair Snodgrass	Did you request of the Governor to have the Christian heritage month again this year?
245	Gabrielson	Yes. They were told it wouldn't be a problem, then when the Governor's office was called in May she was told there would be no proclamation. Goes on to explain what happened after talking to the Governor's office.
266	Vice-Chair Courtney	Is this language standard for the other states that are doing this?
268	Gabrielson	Responds. Will make copies of all other states' information available. Not the same proclamation as Governor Kitzhaber signed in the past.
283	Vice-Chair Courtney	Would like to see if there is some generic language that would satisfy all requirements.
277	Mary Barton	Testifies in support of HJR 41.
325	Chair Snodgrass	Asks Tom Clifford and David Schuman to come forward to discuss the testimony just received. Asks if either one of them are familiar with the Rutherford Institute. Asks Mr. Schuman to address the Rutherford information.
365	Schuman	Responds. The Institute is not in the business of giving neutral constitutional advice, and doubts if anyone at Rutherford has ever read the Oregon constitution.

TAPE 27, B		
010	Chair Snodgrass	The information includes states that have successfully had proclamations. Can you explain why other states have been able to do this when you are telling me that we will be unsuccessful in our attempt?
018	Schuman	Responds. The Oregon constitution has been interpreted as going farther in establishing a separation of church and state than the federal.
029	Chair Snodgrass	Several examples were cited - because they fall under a different category than earlier discussions, they would eliminate other races, genders, etc. Can you clarify this for me?
040	Schuman	Responds. Believes that if the state were to declare white history month, they might run into problems.
052	Chair Snodgrass	Please explain why there would be a problem with a white history month.
053	Schuman	Explains his reasoning.
056	Chair Snodgrass	Christians are a minority in Oregon. Doesn't it fall under that same line? Or are we still back to the separation of church and state?
065	Schuman	Responds. Religion is given a special place in the constitution.
067	Vice-Chair Courtney	What does the word Judeo-Christian mean?
076	Schuman	Responds.
079	Vice-Chair Courtney	Can we recognize the history of religion in Oregon?
083	Schuman	You could probably have resolution recognizing that people who contributed to history of Oregon happened to be of the Christian faith. You can even proclaim it.
095	Vice-Chair Courtney	Directs comments to Mr. Schuman and expresses challenge.
098	Chair Snodgrass	Echoes Vice-Chair Courtney's comments and expressed frustration over clause.
102	Schuman	The establishment clause has been a great source of frustration over many years.
109	Clifford	Mr. Schuman and I can meet and review this and see if we can find a set of suggestions for you to consider after the meeting next week.
115	Vice-Chair Courtney	Can't wait until next week - the clock is ticking since we're talking about April.
120	Chair Snodgrass	Indicates she was not aware of the concern and came into the meeting fully intending to pass it out and getting it over to the senate.
129	Rep. Messerle	What is the impact if we should pass this out the way it's written? Am I right in that the state could have a lawsuit?
138	Vice-Chair Courtney	Comments on his interpretation of the two lawyers and their positions.

145	Clifford	I think that is correct.
149	Rep. Piercy	Asks about the events planned for April and if a broader interpretation could still embrace those events as planned?
154	Chair Snodgrass	Responds.
161	Rep. Piercy	Believes they should go ahead with what they have planned. Believes they should try to broaden the issue to meet the legal concerns brought before them. Doesn't think this would diminish the intent.
173	Chair Snodgrass	Believes the proclamation is to acknowledge our American history.
180	Rep. Piercy	Relates personal upbringing and that not everything that has been done historically under the heading of Christianity has been positive.
190	Schuman	Did not circulate the letter because he thought that today was simply a work session. He is really here for another bill.
198	Vance Day	Litigator - two forms of constitutional scholars, one focuses on teaching and the other is brought up through the courtroom. Comes from the latter. Associates with the National Legal Foundation, consults with the Rutherford Institute. Here as an Oregonian and a constitutional litigator. Presents testimony in support of HJR 41.
255	Day	Continues testimony. Thinks that the concern is some lawyer suing the state and saying the legislature messed up. Doesn't believe this is going to happen.
296	Rep. Piercy	Oregon was here before these historical things happened, right? And this didn't make Oregon, it was here before these things occurred.
305	Day	Responds affirmatively. Explains his response.
318	Rep. Piercy	The heritage you talk about is a very mixed heritage with a very different impact on a whole lot of people; some of it good, some of it not so good. This seems to be written to only acknowledge what one wants to see as the best part of Christianity in the state. Has trouble with the one-sided impression of the heritage of Christianity in the state.
340	Day	Responds. Thinks this focuses on the good and therefore should be done.
348	Chair Snodgrass	Closes public hearing on HJR 41. There will be no work session, will work with Rep. Courtney and encourages Faith to give them additional information. Opens public hearing on HJR 67.
<u>HJR 67 - PUBLIC HEARING</u>		
400	Rosemary Wood	Committee Administrator, reviews provision of measure.
411	Mary Jane Hunt	Executive Director, Oregon Donor Program, submits and presents testimony [EXHIBIT D] in support of HJR 67.

TAPE 28, B		
001	Hunt	Continues testimony in support of HJR 67.
019	Larry Grimes	Awaiting a liver transplant, testifies in support of HJR 67.
057	Chair Snodgrass	Closes public hearing on HJR 67, opens work session.
<u>HJR 67</u> <u>WORK</u> <u>SESSION</u>		
063	Vice-Chair COURTNEY:	MOTION: Moves HJR 67 be sent to the floor with a BE ADOPTED recommendation.
068		VOTE: 4-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 3 - Beyer, Markham, Montgomery
	Chair Snodgrass	The motion CARRIES. REP. PIERCY will lead discussion on the floor.
084	Chair Snodgrass	Closes work session on HJR 67, opens public hearing on HJR 9.
<u>HJR 9 -</u> <u>PUBLIC</u> <u>HEARING</u>		
088	Rep. Tony Corcoran	District 44, testifies in support of HJR 9 and explains the amendments that he is proposing to the bill.
141	Colleen Sealock	Director, State Elections Division. The Elections Division supports HJR 9 with the proposed amendments.
154	Chair Snodgrass	Asks Rep. Corcoran about a reference to a particular case that came forward that prompted this measure.
160	Rep. Corcoran	Responds that there are two measures, explains how this measure would impact the gathering process.
190	Snodgrass	What do you mean by illegal?
194	Rep. Corcoran	Responds with case in point. Voter registration cards were all received with one address of a motel in Washington County.
203	Sealock	When that information was received by Elections, they notified all county clerk offices. Out of the 220 there were about 14 that were properly registered. The information was forwarded to the Attorney General.
221	Rep. Corcoran	Comments on consequences if the petition does not have a proper signature at the bottom. There is no consequence if the signature gatherer is illegal.
234	Chair Snodgrass	What verifies or allows somebody to be a petition gatherer?

235	Sealock	Responds with requirements.
242	Chair Snodgrass	Refers to measure to change voter registration timeline to the day of an election. If this measure were passed, would HJR 9 still be necessary?
250	Rep. Corcoran	Responds affirmatively, explains.
266	Chair Snodgrass	Closes public hearing on HJR 9, adjourns meeting.
		(EXHIBIT E) from Rep. Eighmey submitted after meeting. (EXHIBIT F) from Faith Gabrielson submitted after meeting.

Submitted by, Reviewed by,

Valerie H. Luhr Rosemary Wood

Administrative Support Specialist Administrator

Transcribed by,

Carolyn Brooks

EXHIBIT SUMMARY

A - HJR 41, written material, Rep. Courtney, 5 pp

B - HJR 41, written material, Faith Gabrielson, 4 pp

C - HJR 41, written material, Karen Elliott, 1 pp

D - HJR 67, written testimony, Mary Jane Hunt, 1 pp

E - HJR 41, written material, Rep. Eighmey, 2 pp

F - HJR 41, written material, Faith Gabrielson, 1 pp