

HOUSE JUDICIARY
SUBCOMMITTEE ON
JUVENILE JUSTICE

Hearing Room
Tapes - 20

MEMBERS PRESENT:

Rep. Del Parks, Chair
Rep. Lisa Naito, Vice-Chair
Rep. Kate Brown
Rep. Floyd Prozanski
Rep. Eileen Qutub
Rep. Veral Tarno

STAFF PRESENT:

Holly Robinson, Committee Counsel
Janet Ellingsworth, Committee Assistant

MEASURES HEARD:

Public hearing on HB 3430
Public hearing on HB 3323
Public hearing on HJR 63
Public hearing on HJR 20

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE , A

004 CHAIR PARKS: Convenes meeting at 8:33 A.M.

OPENS the PUBLIC HEARING on HB 3323, HJR 63, HB 3430

006 REPRESENTATIVE SHARON WYLIE, DISTRICT 22: Testimony on HB 3323, HJR 63, HB 3430. [EXHIBIT A].

106 CHAIR PARKS: Asks Rep. Wylie for the cite of a case.

107 KAREN ELLIOTT, ATTORNEY at LAW: Gives cite.

109 CHAIR PARKS: You mentioned a study, is that in Texas?

111 REP. WYLIE: Correct.

113 CHAIR PARKS: When was the study?

116 REP. WYLIE: I don't have that information with me, I can get it for you.

117 CHAIR PARKS: I'd be interested in seeing the studies in more detail because I'm not sure that they are valid.

124 REP. WYLIE: I can provide you with the study. The city of Portland police department has kept better track of changes in areas that get new adult business's.

129 CHAIR PARKS: I would be interested in what the Portland police have on that.

132 REP. NAITO: Last session we passed over a bill similar to this. Wasn't that limited to live facilities, did it include the book store provisions?

134 REP. WYLIE: Yes it did. Some of those definitions became more specific as the bill was worked on last time.

136 REP. NAITO: Comments about neighborhoods in Portland. I'm concerned that every "R" rated movie would be swept in under the motion picture definition.

158 ELLIOTT: Reads into the record the cites used to draft this legislation.

242 CHAIR PARKS: What do you mean it's "clearly unconstitutional"?

244 ELLIOTT: "Clearly unconstitutional" under the federal constitution because there are a couple cases under United States constitution law that say, thirty days may be too long to decide if you don't build certain guidelines into the bill.

249 CHAIR PARKS: Just for business's that have first amendments?

251 ELLIOTT: Correct.

252 CHAIR PARKS: If all these things are standard, why are we putting them into the bill?

256 ELLIOTT: They are in the bill because the case law is very abstract in this area.

266 CHAIR PARKS: There is a policy decision to make 750 foot intervals between these business's, why do you choose that instead of putting them all together?

270 ELLIOTT: You have to be able to give these business's a reasonable opportunity to relocate.

280 REP. WYLIE: One of the studies we looked at showed there was a much greater increase in crime when you clustered the business's together.

292 CHAIR PARKS: What are we trying to do?

298 REP. WYLIE: This is not different than what we had last session, which
is to have both options
within the bill.

308 REP. QUTUB: For a City to prove the secondary effects, would they have
to base that on some
effects that are taking place right in the vicinity?

319 REP. WYLIE: You can base the expectation of secondary effects on
research that's been done in
other city's and states.

325 ELLIOTT: Under the Oregon constitution, The Oregon Supreme Court has
required that the secondary effects be shown.

341 CHAIR PARKS: How do make a legislative finding in a community that
does not have one of these business's?

344 ELLIOTT: This is an option that a city of county can do.

350 CHAIR PARKS: They can do that now, with out this?

353 ELLIOTT: No.

359 CHAIR PARKS: Do they have to do that if this bill is enacted?

361 ELLIOTT: They have to that if they decide to regulate this type of
business.

363 CHAIR PARKS: How do you do that when you don't have any experience?

365 ELLIOTT: There is not a lot of case law on that issue.

381 REP. QUTUB: I'm thinking about the city I live in.

393 ELLIOTT: There are two different standards. The United States says
you can rely on information from other communities, the Oregon Supreme
Court says "no", there has to be
a secondary effect occurring at the place and time.

403 REP. TARNO: How will this impact a regular "R" rated video?

408 ELLIOTT: We hope this has been drafted narrowly enough that it will
not effect that type of store. Refers to definitions.

441 CHAIR PARKS: Definition F, on page 9 of HB 3323, that describes half
the regular movie
theaters in Portland.

454 ELLIOTT: If a city or county enacts an ordinance based on this bill,
and there would almost certainly be litigation, the city or county attorney
would present the case to the court in light of all
the other standards that are in the bill.

TAPE 18, A

033 REP. NAITO: My thought is to try and limit place's where people
congregate. I don't think

we are here to limit what people view in the privacy of their own home but rather prevent some neigHB orhoods from going downhill because people congregate in some places.

047 ELLIOTT: That's the whole point of the conditional use permit. If the siting requirements don't work, the business owner can apply for a conditional use permit.

055 REP. WYLIE: What I'm hearing from you is that your comfortable having additional regulation on business's where people participate and stay for a while and where there are sexually oriented activities going on as the attraction. Your less comfortable with the possibility that a video or book store that has some X-rated materials would be subject to this regulation.

065 REP. NAITO: I don't have a problem with the adult arcade provisions.

077 REP. WYLIE: I would be willing to entertain some changes that narrow it in that direction.

080 REP. PROZANSKI: If we already have on the books the ability to limit any business from a residential area, why are we looking at some type of restrictions and new zoning when from my understanding we already have it in place?

089 ELLIOTT: The issue is free speech. When you regulate anything that has to do with free speech, there has to be special requirements met.

092 REP. PROZANSKI: If we already have on the books the ability for city's to regulate business's out of residential areas, why are we looking at doing that with this bill?

097 ELLIOTT: To create a "buffer zone" to keep these business's from locating within a certain distance of residential areas and requiring them to be in a commercial zone.

103 REP. WYLIE: The reality is that there are places where adult business's have located where other business's are already located, but have had a real detrimental effect on the neigHB orhood in terms of crime.

114 REP. PROZANSKI: Should we look at other types of business's that cause the same impact on neigHB orhoods?

119 REP. WYLIE: Small towns have been able to manage that on a case by case basis. Unfortunate it does not seem to be as easy to do that with the adult business's.

130 REP. QUTUB: We do have nuisance laws against dogs "pooping" on sidewalks, so I think it's perfectly valid to try and get rid of some nuisance type of activities.

133 CHAIR PARKS: His point is, we do have nuisance ordinances and if their

doing something that's a nuisance, why don't they enforce the nuisance ordinance's.

135 REP. QUTUB: I think that what Rep. Wylie was trying to express is that she knows about business's that it's very hard to use the existing ordinances to keep them from establishing that business.

142 REP. WYLIE: I would like for you to incorporate the -2 amendments in HB 3323 and the -1 amendments in HJR 63. [EXHIBITS B & C]

168 REP. BROWN: How effective have other methods been as to dealing with these adult business, and have there been other neighborhood associations that has been successful using other methods?

176 REP. WYLIE: What seems to happen is that the police response for the kinds of repeated nuisances that are associated with these business's varies a lot depending on what else is coming in over the radio, so being able to document the nuisances and have them in the written record and to get police action is really difficult.

203 REP. BROWN: Some of us who supported similar measures last session are concerned about supporting similar measures this session in light of measure 19 that the voters turned down, can you respond to that?

206 REP. WYLIE: My sense from talking to people that voted against measure 19, is that if they understand it they will vote for this measure because it's based on the adverse impact and it is local control.

220 CHAIR PARKS: There's a discussion of available sites. On page 7, line 3, you have sites that are not available, I don't understand that.

227 ELLIOTT: The court took great pains to define what the relevant real estate market is.

240 REP. NAITO: If HB 3323 as amended is drafted carefully to withstand some of the constitutional tests, why is it we need the corresponding constitutional measure? Why can't we draft something narrow enough to respond to a problem without changing the Oregon constitution?

245 ELLIOTT: It is my opinion that it's better to err on the side of being ultraconservative in constitutional matters.

270 REP. NAITO: My problem is with HJR 63, the definition of sexually oriented business is what I'm concerned about. If we could define it narrow enough in a statute, I think I could feel comfortable about it. But your saying that HB 3323 on

it's own could pass constitutional muster.

283 ELLIOTT: Yes, it's drafted to pass constitutional muster under article 1, section A.

296 DAVID FIDANQUE, AMERICAN CIVIL LIBERTIES UNION (ACLU): Testimony in opposition to HB 3323, HJR 63, HB 3430.

400 FIDANQUE: Referring to HB 3323, we oppose the proposed bill dealing with the ballot title.

If you move this legislation out, we would strongly encourage you to not move the ballot title out.

438 REP. QUTUB: Are you familiar with Fantasy Videos in Portland?

445 FIDANQUE: I'm familiar with it in the sense that I have driven past it but I have never been inside.

451 REP. QUTUB: Are you aware of the publicity that took place when it was sited there?

454 FIDANQUE: I'm some what familiar with that controversy.

457 REP. QUTUB: Explains concerns. Fantasy Video is still there, so I guess neighbors testimony didn't do any good, are you aware of what happened with that?

TAPE 17, B

036 FIDANQUE: What I was referring to was the process that the legislature set up to deal with drug houses.

060 REP. QUTUB: Explains need for this legislation.

078 CHAIR PARKS: If you put a church in your neighborhood and you don't happen to go to that church, and every Sunday your going to have people parking in front of your house among other problems, it probably does lower your value.

082 REP. QUTUB: Homeowners have also filed suits against churches, especially with regard to parking.

085 CHAIR PARKS: But we have statutes where they can do that and they can address those issues as another type of a problem.

087 REP. QUTUB: I really am curious about Fantasy Video, and if anyone in the room knows anything I would like to know.

091 FIDANQUE: My understanding is the testimony was in response to request to site the business there rather than any legal action.

111 CHAIR PARKS: Last session when the bill went from the House to the

Senate, was there a constitutional amendment with it?

113 FIDANQUE: Yes.

115 BRIAN CHASE, DIRECTOR of FACILITIES, PORTLAND STATE UNIVERSITY:
Testimony in support of HB 3323. [EXHIBIT D] Discusses problems in
Portland.

137 CHAIR PARKS: Where is this at?

140 CHASE: It is located at the corner of 5th and College street, about 2
blocks over from Broadway.

145 CHAIR PARKS: Your concern is over this one establishment?

148 CHASE: I think it's a good example of where a nude establishment has
entered the area, it's not
compatible with what the mission of the University is.

151 CHAIR PARKS: And the adverse impact on the students is what?

152 CHASE: We think we have cases of female students who are being exposed
to sexual harassment.

154 REP. NAITO: This is a live nude dancing facility?

156 CHASE: Yes, it is live.

165 REP. NAITO: Some of the definitions in the bill, in looking at your
bookstore and some of the
books you have for your classes, you may be covered.

171 CHASE: I think it's a good point.

195 REP. PROZANSKI: I'm wondering if we're trying to ban some kind of
business that has constitutional privileges, even though we may not agree
with it and using secondary effects that
we find commonly in other areas.

204 CHASE: It's a complex issue. I know from previous experience, based
on my understanding of the law, that if we don't deal with this with the
narrow focus and the protections your talking about, we will not be dealing
with the real problem that exists.

219 REP. PROZANSKI: I would assume that on your campus you have
fraternities?

221 CHASE: Yes.

224 REP. PROZANSKI: I would assume there are propositions and sexual
harassment that occurs at fraternity parties against coeds?

226 CHASE: That is true, but the primary purpose of a fraternity or
sorority is not sexual
harassment or sexually explicit activities.

230 SUSAN MARSHALL, ATTORNEY at LAW: Testimony in support of HB 3323, HB
3846 and HJR 63. [EXHIBIT]

430 REP. NAITO: Please summarize the rest of your testimony.

436 MARSHALL: I'm worried about the proof of secondary effects.

TAPE 18, B

030 REP. NAITO: I have not driven down Sandy Boulevard lately, the shops that are there, are they live and are they the arcades?

035 MARSHALL: Yes, many of them are including the video stores.

040 REP. NAITO: It's not a place where someone may rent a video and take it home?

041 MARSHALL: Fantasy Video can do that, and I think that harm has much less of an effect on our neighborhood than the live performances or viewing the video's right there.

042 CHAIR PARKS: We will recess for the full committee and reconvene after.

RE-OPENS THE PUBLIC HEARING ON HB 3323, HJR 63, HB 3430

046 TED HUGHES, MOTION PICTURE ASSOCIATION: Testimony on HJR 63, HB 3323, HB 3430. [EXHIBIT F]

050 CHAIR PARKS: How do we resolve the issue if we adopt defining obscene?

053 HUGHES: That is another problem, if you like I will go back to them and ask if they have an "A" and a "B" to define "obscene".

075 MARGE KAFOURY, CITY OF PORTLAND: Testimony on HB 3323.

080 MADELINE WESSELL, CITY ATTORNEY, CITY OF PORTLAND: Testimony on HB 3323.

104 CHAIR PARKS: Do you support this or not?

106 WESSELL: I don't think the city could support it as it's currently drafted.

108 REP. BROWN: There is a business in Portland that sells lesbian erotica, so I would probably include it under the adult business. I have concerns that the city is picking on what type of adult business's they want to restrict.

117 WESSELL: I think the bill creates a lot of flexibility for making decisions.

121 REP. NAITO: It's my understanding that the city says that there's really nothing we can do about zoning where some of these facilities are, is that your opinion also?

125 WESSELL: All of us who have examined the constitutional context today

agree that it is difficult if not impossible to utilize zoning as a tool to regulate these business's.

132 REP. NAITO: Have you proposed any legislation?

137 MADELINE: I think this bill could be amended and some of the "may" and "shall" language varied somewhat to make it more consistent with a local option to adopt standards that make sense.

141 KAFOURY: I think the mayor has expressed some interest in the constitutional amendment, but when we saw that it was originally accompanied with HB 3323, our legal department reviewed HB 3323 and raised these issues.

CLOSES the PUBLIC HEARING on HB 3323, HB 3430, HJR 63
OPENS the PUBLIC HEARING on HJR 20

165 SUSAN MARSHALL, ATTORNEY at LAW: Testimony on HJR 20. [EXHIBIT G]

175 CHAIR PARKS: The Sandy Boulevard problem is this place next to the Indian drum store, is that the problem?

177 MARSHALL: It's all up and down Sandy Boulevard.

182 REP. NAITO: If your traveling eastbound and you take a left where Sandy Boulevard and Burnside meet, from there on to about 32nd there are a number of places.

186 MARSHALL: I am speaking in support of HJR 20.

220 CHAIR PARKS: What's the difference between this and measure 19?

226 MARSHALL: I think there is a higher likely hood for it passing for a number of reasons that don't just have to do with the language.

266 CHAIR PARKS: I sit in the middle. Maybe I would agree with you but the language in this and what the voters disagreed with 5 months ago.

280 MARSHALL: Looking at the number of ballot issues , over 90 percent of the funds came from the pornography field.

314 LOUISE SHAW, ASSISTANT DIRECTOR for the OREGON WOMEN'S LEADERSHIP TASK FORCE: Testimony on HJR 20. [EXHIBIT H]

TAPE 19, A

025 MIKE POWELL, POWELL BOOKS, PORTLAND: Testimony in opposition to HJR 20.

111 MIRIAM SONTZ, POWELL BOOKS, PORTLAND: Testimony in opposition to HJR 20.

145 DEBORAH GARMAN: Testimony in opposition to HJR 20. [EXHIBIT J]

170 TOM HULL: Testimony in opposition to HJR 20. [EXHIBITS K & L]

240 REP. QUTUB: Referring to [EXHIBIT L], are any of these banned?
245 HULL: Several have been banned.
247 REP. QUTUB: You have challenged and restricted on here.
251 HULL: Shindler's List was challenged and prevented from being screened
in a number of places in the United States.
254 REP. QUTUB: Would you say that had to do with pornography?
257 HULL: I would say it had to do with the question of nudity and death
camp scenes because that is what was cited in the articles about it that I
have read.
260 REP. QUTUB: I find this very misleading by the title, referring to
[EXHIBIT L].
263 HULL: I find it very disturbing that this list exists.
269 RAY HOROWITZ, BOOK STORE OWNER: Testimony in opposition to HJR 20.
293 JOHN BURGER, OWNER, BOOK VAULT, BEAVERTON: Testimony in opposition to
HJR 20.
323 REPRESENTATIVE KEVIN MANNIX, DISTRICT 32: Testimony in opposition to
HJR 20.
Explains the distinctions between HJR 20 and measure 19.
418 BILL MCNALLY: Testimony in opposition to HJR 20.
452 MARIE BELL, CHILDREN'S JUSTICE ACT TASK FORCE: Testimony in support of
HJR 20. [EXHIBIT M]

TAPE 20, A

020 BELL: I don't need to elaborate on the sexual abuse of children
because all of you here know that. I want you to consider that it's even
worse when it's done to produce child pornography.
056 BELL: It does not make sense that it is constitutional in Oregon for
the state to tell individuals
what they can and cannot do with their own property, they can condemn it
and take it away from us but we can't zone sex oriented business's away
from our schools, playgrounds or day care
centers.
130 CHAIR PARKS: That concludes testimony at this time. With nothing
further the meeting
is adjourned.

Submitted by, Reviewed by,

Janet Ellingsworth Debra Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

- A - Testimony on HB 3323 - Rep. Wylie - 2 pages
- B - Proposed amendments to HJR 63 - Staff - 1 page
- C - Proposed amendments to HB 3323 - Staff - 11 pages
- D - Testimony to HB 3323 - Chases - 2 pages
- E - Testimony to HB 3323- Marshall - 5 pages
- F - Proposed Language for HJR 63 - Hughes - 1 page
- G - Testimony to HJR 20 - Marshall - 5 pages
- H - Testimony to HJR 20 - Shaw - 6 pages
- I - Testimony to HJR 20 - Hodson - 12 pages
- J - Testimony to HJR 20 - Garman - 2 pages
- K - Testimony to HJR 20 - Hull - 3 pages
- L - Testimony to HJR 20 - Hull 1 page
- M - Testimony to HJR 20 - Bell - 6 pages
- N - Testimony to HJR 20 - Lance - 2 pages
- O - Testimony to HJR 20 - Killian - 2 pages
- P - Testimony to HJR 20 - Killian - 1 page
- Q - Testimony to HJR 20 - Delaney - 6 pages
- R - Testimony to HJR 20 - Winchester - 2 pages
- S - Testimony to HJR 20 - Winchester - 2 pages
- T - Testimony to HJR 20 - Unknown - 11 pages
- U - Testimony to HJR 20 - Killian - 7 pages