

SENATE JUDICIARY
COMMITTEE

April 12 , 1993 Hearing Room C
1:00 p.m. Tapes 100-102

MEMBERS PRESENT: Sen. Dick Springer, Chair
Sen. Jeannette Hamby
Sen. Karsten Rasmussen
Sen. Gordon Smith
Sen. Bob Shoemaker, Vice Chair
Sen. Catherine Webber

VISITING MEMBERS: Rep. Brown

STAFF PRESENT: Karen Quigley, Committee Counsel
Kate Wrightson, Committee Coordinator
Ellen L. Senecal, Committee Assistant

ISSUES DISCUSSED: Public Hearing on SJR43.
Work Session on SB 128, SB 64, SB 371, SB 407, SB
209 ,
SB 458.
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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.
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TAPE 100, SIDE A

003 CHAIR SPRINGER: Opens the hearing at 1:09 p.m.

PUBLIC HEARING

SJR43:
Proposes Constitutional amendment to require statement in proposed
Constitutional amendments and revisions on whether amendment or
revision
would amend or affect provisions of Article I of Constitution.

WITNESSES:
CHUCK DIMOND, PORTLAND
CHARLES HINKLE, PORTLAND
DAVID FIDANQUE, ACLU OF OREGON
ELLEN LOWE, ECUMINICAL MINISTRIES OF OREGON
JOEL ARIO, OSPIRG

013 CHUCK DIMOND: Submits and reviews written testimony in support of
SJR
43. (EXHIBIT A, B, C, D)

061 SEN. SHOEMAKER: What if, despite such disclaimer, the amendment
clearly
does change or affect the bill of rights? Would that declaration, non
the less, control in a court?

063 DIMOND: One of the attorneys here could better answer your question.

083 CHARLES HINKLE: Testifies in support of SJR43.
- Our Constitution starts with a statement of individual rights.
(Article I)
- Individual liberties are prior to government.
- A positive step to protect the Bill of Rights from negative
efforts
to amend it.

Sen. Shoemaker the answer to your question is in Sub-section 2, lines
14-16. If the proponents of a measure say that it isn't intended to
amend or affect Art. I of the Constitution, then "the amendment or
revision shall be interpreted and applied in a manner that does not
conflict with or modify the provisions of Art. I".

155 SEN. SHOEMAKER: And if you have two inconsistent provisions within
the
Constitution would the Bill of Rights take precedent over the other
one
by virtue of this?

HINKLE: If the measure so said.

189 DAVE FIDANQUE: Testifies in support of SJR43.
- The Oregon Bill of Rights has become more important as a
safeguard
for Oregonians against unnecessary intrusion into personal
liberties
by state and local governments.
- Makes it a little more difficult to amend the Bill of Rights and
take away rights of Oregonians.

237 ELLEN LOWE: Testifies in support of SJR43.
- Thirty-two percent of Oregonians are identified with faith
community.
- We are a minority group and the Constitution supposedly protects
us.
- Place ourselves in danger by allowing majority votes to take away
rights.
- SJR43 would allow Oregonians to recognize why we have a Bill of
Rights.

302 SEN. SHOEMAKER: This comes to us with a formal resolution of the EMO

in
support of
SJR43?

LOWE: Not specifically of SJR43, the support of human rights and
civil rights. This is in keeping with our statements on civil rights and our
recognition of the danger that amendments to the Bill of Rights place
on minority groups.

319 JOEL ARIO: Testifies in opposition to SJR43.
- When expression of society is restricted it causes counter
productive results.
- Federal Constitution stays in place, so attempts by Oregon voters
to make decisions that would roll back fundamental rights would be
unaffected by this measure.

ARIO: Continues testimony.
- When the Oregon Bill of Rights is decided by Oregon Supreme Court
to have a different meaning than the Federal Bill of Rights this
resolution would come into play.

TAPE 101, SIDE A

003 ARIO: Continues testimony.

021 SEN. SHOEMAKER: If the voters were to adopt a measure limiting
campaign spending, but if the measure was not to affect under our Bill of
Rights,
then in affect, if the court were to find that that limitation did
violate freedom of speech it would fail?

ARIO: Federal courts have said that spending limits are
unconstitutional. But, on contribution limits that's correct

031 SEN. SHOEMAKER: If the sponsors said the measure said that it
was intended to effect the Bill of Rights and it got 60% then it would be
in affect under our Constitution?

ARIO: My guess is that we would check the box saying this is intended
to affect the Bill of Rights and therefore, have to get a 60% majority.

042 LOWE: The Oregon Supreme Court and the Oregon Bill of Rights
is extremely important to the religious community.

WORK SESSION:

SB 209:

Authorizes Supreme Court to adopt rules to govern appearance in legal proceedings by attorneys who are not licensed to practice in Oregon.

063 GEORGE REAMER, OREGON STATE BAR: Testifies in support of SB 209.
- ORS. 9.240
- UTCR 3.170
- We would like to allow Supreme Court clearer authorization to establish criteria for the admission of out-of-state lawyers.

083 BOB FRAZIER, OREGON STATE BAR: Testifies in support SB 209.
- Not an attempt to restrict access to Oregon courts to out-of-state lawyers.
- They will be subject to Oregon discipline and have professional liability insurance.
- We want the ability to allow out-of-state lawyers to meet the same tests and criteria as Oregon lawyers.

126 SEN. RASMUSSEN: There is some concern about this being an effort to facilitate the use of national corporate council coming in. Does this have any impact on that one way or the other?

132 FRAZIER: What happens in Oregon is cleaner. Most times young lawyers will be picked by corporate council and they get swept up in the whole thing. It will be much more comfortable for Oregon lawyers to make sure these people are subject to the laws.

158 SEN. HAMBY: Has anyone spoken to fees?

REAMER: There is a proposal that has been reviewed, which requires that a notice be filed with state bar and they can charge a fee to cover the cost of processing these notices so that we can keep tabs of the lawyers that are admitted.

204 MOTION: CHAIR SPRINGER: Moves that SB 209 with added language "if associated with an active member of the Oregon State Bar" in line 7.

VOTE: Hearing no objection the amendment is ADOPTED.

213 MOTION: CHAIR SPRINGER: Moves that SB 209 AS AMENDED be sent to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE.
The motion is ADOPTED. SEN. RASMUSSEN will CARRY.

SB 128:

Creates Oregon Human Rights Commission consisting of 11 members appointed by Governor for four-year terms.

217 QUIGLEY: Presents hand-engrossed amendments. (EXHIBIT F)
- The representative from the Indian Services Commission stated
that Board met and agrees with the concept of Human Rights Commission
and with the language, but wanted to make clear that ISC wasn't an
advocacy group appointed by the Governor.

273 CAROL MORSE, GOVERNOR'S OFFICE: Gives overview of draft amendments to
SB 128. (EXHIBIT G)

295 JEANNETTE PIE, AFFIRMATIVE ACTION: Gives further explanation
of amendments.
- Adding gender as one of the classes under Intimidation Law. SB
904 currently proposes the addition. Will wait to see what happens with
SB 904 before adding it to SB 128.

305 MORSE: Continues overview of draft amendments.

310 PIE: One of the Governor's priorities is that we keep the number
of commissioners on the Human Rights Commission at a manageable level.
Don't want more seats to be added to the commission.

325 SEN. SHOEMAKER: Does your problem with that also reach to there
being ex-officio non-voting?

327 PIE: Yes.

MORSE: Sec. 3, Sub. sec. 5 specifically mentions relationship between
this commission and the three Advocacy Commissions in BOLI.

340 CHAIR SPRINGER: So, everyone is fine with the engrossed version with
a couple of minor changes, i.e. add Superintendent of Public
Instruction.

344 SEN. SHOEMAKER: In line 6-8 of engrossed version, is it intending
the process provide pro-active intervention directed at mitigating the
filing of formal state and federal civil rights complaints?

PIE: It would attempt to mitigate the seriousness of an issue and perhaps resolve it before it got to the need for filing a complaint.

359 SEN. SHOEMAKER: I wonder if that needs clarification on how
one mitigates the filing of complaints?

MORSE: The idea obviously not to stop people from doing that.

366 SEN. SHOEMAKER: Do you mitigate the occurrence of various behaviors
or the effect?

MORSE: Maybe it should say at the end "or the need for the filing
of"?

383 SEN. SHOEMAKER: Change "mitigating" to "reducing".

386 CHAIR SPRINGER: Do we want to keep the language there about the need
for the filing of formal complaints?

SEN. SHOEMAKER: I don't think you need it now.

392 SEN. G. SMITH: What is the purpose of adding the Superintendent
of Public Education?

MORSE: When we went on road with the bill people kept bringing that
up. Felt children should learn at an early age how to get along with each
other.

412 SEN. G. SMITH: I have a concern about how this may be perceived.
Find similarities with SB 34. I'm concerned, will we create a situation
where, if a young boy or girl goes to church and their Minister
teaches that Homosexuality is wrong and on Monday their principle teaches that
there should be no value judgement made, you will pit the church and
state against one another. I basically support this commission, but
I'm anxious that it not establish what is state orthodoxy.

TAPE 100, SIDE B

003 MORSE: The issues we're dealing with are behaviors, not beliefs.
We're trying to stop improper behavior.

008 SEN. G. SMITH: I wonder if it would be possible to add some language
to state just that.

012 MORSE: I think it is in the bill in sec. 1, sub. sec. 3.

023 CHAIR SPRINGER: This bill will be sent to Ways and Means. It could be

possible to catch it there.

- There is the issue of Senate Confirmation, which the Chair supports, then we could consider the SB 128-1 amendments as further amended with the language on lines 6 & 7.

047 SEN. SHOEMAKER: Pondering Sen. Smith's concerns and the word bigotry is frequently used in the bill. What is meant by bigotry?

PIE: Any kind belief that would say that an individual would be considered less than the norm and therefore should not have the same rights.

055 SEN. SHOEMAKER: So it is within conduct, its belief. We need to be clear about this.

PIE: As it addresses an individual's equal rights. It does not indicate that the commission would sit in judgement as the moral conscience of the state.

063 SEN. G. SMITH: This bill needs to be value neutral. I don't think this does this.

073 SEN. WEBBER: Sen. Smith, do you have any language that could accomplish this?

075 SEN. G. SMITH: This may not be artful, but in sec. 1, sub. sec. 3 add to end of sentence ",and not to establish orthodoxy of belief." or something like that.

- I don't want this to become the Homosexual Rights Commission. But a commission to serve a useful purpose in mitigating behavior that is violent.

097 SEN. RASMUSSEN: If we start down this path I'm beginning to wonder if we've taken ourselves out of this bill. The concerns Sen. Smith raises seem to be First Amendment concerns.

SEN. SHOEMAKER: I just penciled in "but not to control any particular set of beliefs."

115 SEN. G. SMITH: Or "but not to control or establish...etc".

SEN. SHOEMAKER: I think that's appropriate.

119 MORSE: How about a sentence that would say "It shall be done for
all citizens of the state regardless of belief."?

126 SEN. SHOEMAKER: I would add ",but not to control or establish
any particular set of beliefs.". So there won't be proactive intervention
aimed at beliefs. Is that consistent with the Governor's idea?

MORSE: As long as what you mean is that behavior is still something we
can look at and help with.

145 MOTION: SEN. SHOEMAKER: Moves to ADOPT the additional language on line
9 of SB 128 hand-engrossed amendments.

VOTE: Hearing no objection the additional amendments are ADOPTED.

148 MOTION: CHAIR SPRINGER: Moves to ADOPT SB 128-1 AMENDMENTS
with additional amendments on page 1, line 6, and including previously
adopted amendments.

VOTE: Hearing no objections the amendments are ADOPTED.

156 CHAIR SPRINGER: I'll take a try at my amendments, which is that we
add Senate Confirmation as part of appointment process and that would be a
conceptual amendment.

162 SEN. G. SMITH: Could you give reason why you feel this is important?

CHAIR SPRINGER: The other Advocacy Commissions have it. It is a matter
of consistency.

172 SEN. G. SMITH: I support your amendment.

178 MORSE: We feel that Legislative oversight is already in there
through other means.

190 MOTION: CHAIR SPRINGER: Moves to ADOPT SB 128 conceptual amendments.

VOTE: Hearing no objection the amendments are ADOPTED.

195 MOTION: SEN. HAMBY: Moves that SB 128 AS AMENDED be sent to
the Committee on Ways and Means with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE.

200 The motion is ADOPTED.

SB 64:

Provides civil penalties of up to \$10,000 per day for unpermitted mining operation.

213 SEN. SHOEMAKER: This bill comes to us from the Committee on Agriculture and Natural Resources.

210 QUIGLEY: Ag. and Natural Resources narrowed the provisions of the bill. Some question about warnings and rules. The language doesn't differ from other Natural Resource agencies.

243 SEN. SHOEMAKER: And is the possible size of the penalty also consistent?

245 GARY LYNCH, DOGAMI: Yes.

240 SEN. WEBBER: Who does this apply to? If a farmer was mining gravel on her own land would there be any penalties that could accrue to her? LYNCH: There is a specific exemption saying they aren't subject to our rules.

268 SEN. WEBBER: So mining for your own use wouldn't be covered.

272 QUIGLEY: This is only for permit violations and would only reach those required to have a permit.

275 LYNCH: If one is operating outside of permit boundaries, they would be subject to these civil penalties.

292 MOTION: CHAIR SPRINGER: Moves that SB 64A engrossed be sent to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. Rasmussen excused.

The motion is ADOPTED.

SB 458:

Permits juvenile court order requiring child to pay restitution to be docketed as civil judgment.

316 QUIGLEY: Gives overview of amendments offered by Bill Linden.
(EXHIBIT

I)

- On March 24, Mr. Linden supplied the reasoning for the proposed amendments.

369 MOTION: CHAIR SPRINGER: Moves that SB 458 machine engrossed
AMENDMENTS
be ADOPTED.

VOTE: Hearing no objection the amendments are ADOPTED.

383 MOTION: CHAIR SPRINGER: Moves that SB 458 AS AMENDED be sent to
the
Floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. Sen. Hamby is
excused.

394 The motion is ADOPTED. CHAIR SPRINGER will CARRY.

SB 371:

Requires certain out-of-state companies to pay commissions owed sales
representatives within 14 days after termination.

401 SEN. RASMUSSEN: I would ask that I be shown as an AYE vote on SB 64.

TAPE 101, SIDE B

003 SEN. SHOEMAKER: The committee staff did research to see how other
states
handled this matter. They found that many of them provided for triple
damages, rather than open-ended punitive damages. Wondering if you'd
be
comfortable changing "punitive damages" to "treble damages"?

011 BRUCE ROSE: We're not opposed to that.

CHAIR SPRINGER: Do we have those amendments before us?

017 QUIGLEY: No.

019 SEN. SHOEMAKER: Most of the amendments call for attorney's fees.
There
are many state with the treble damage standard.

023 QUIGLEY: Perhaps the declaration of the personal jurisdiction and
the
non-resident principle deemed as doing business in the state for
purposes of jurisdiction.

028 SEN. SHOEMAKER: We do provide that a non-resident principle
contracts
is subject to jurisdiction of this state.

033 QUIGLEY: You had some question about the long arm statute?

035 SEN. SHOEMAKER: My question was why the long arm statute wouldn't simply apply anywhere?

- I want to make a single word change. I move that on line 27 the word "punitive" be changed to "treble".

045 SEN. WEBBER: What is the reason for that?

SEN. SHOEMAKER: It's a definite standard, which the court can quickly apply and it also is so that the defendants know what they are facing. It would give them more incentive to pay up. With punitive damage additional confusion is created.

054 SEN. WEBBER: Because of the nature of these cases?

SEN. SHOEMAKER: Yes. When there is a willful failure to pay they will be slapped with a triple damages.

067 MOTION: SEN. SHOEMAKER: Moves to substitute on line 27 "treble" for "punitive damages" and ADOPT amended language.

VOTE: Hearing no objection the amendment is ADOPTED.

068 MOTION: SEN. SHOEMAKER: Moves SB 371 AS AMENDED be moved to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE.

073 The motion is ADOPTED. SEN. SHOEMAKER will CARRY.

SB 407:

Allows donor of semen used in artificial insemination and woman who is artificially inseminated to agree that donor shall be father of child born as result of insemination.

082 VICKI WALKER, EUGENE: Reviews written testimony in opposition to SB 407 .

- It allow surrogacy arrangement to occur.
- It binds woman to procreate.
- Would the donor have all rights of a real father?
- These children are born by contract and puts children at risk.

143 SEN. SHOEMAKER: I don't think this is directed primarily at surrogate mothers, so much as surrogate fathers.

WALKER: A surrogate mother is when the female is impregnated artificially for a married couple.

155 SEN. SHOEMAKER: But this bill is directed at the more customary case where there is a couple and the husband is infertile, so they contract with a man to donate his sperm, therefore the child will be born to that couple.

WALKER: I agree, but I can't understand a couple who'd want a sperm donor to be knowledgeable and take part in the child's upbringing.
- There is a small window that could be interpreted to apply to surrogate parenting arrangements.

169 SEN. SHOEMAKER: If bill could apply to surrogate mother situation, then would you be more comfortable?

WALKER: I have problem with making arrangements prior to conception. Must be made after birth.

215 REPRESENTATIVE BROWN, DISTRICT 13: Testifies in support of SB 407.
- Surrogacy isn't illegal in Oregon right now.
- The amendment doesn't impact the legal status of surrogacy contracts.

251 MARK JOHNSON, BAR SECTION OF FAMILY JUVENILE LAW: Testifies in support of SB 407.
- The status of surrogacy contracts is unsettled under Oregon law.
- SB 407 doesn't give father right to object to an abortion.

266 BROWN: She must have signed a waiver to terminate her parental rights.

JOHNSON: And nothing in this bill would compel her to do so.
- Most artificial inseminations the donor waives all of his rights to the child and has no obligation. But the court says we have to have a mechanism whereby the donor can retain his rights if he wishes to do so.

306 SEN. SHOEMAKER: How frequently does the donor wish to maintain a relationship with his child?

JOHNSON: I don't know. Maybe its relatively few.

321 SEN. G. SMITH: What is driving this?

JOHNSON: Uncertainty. The point of the bill is to make people write

down what they want to do.

332 SEN. RASMUSSEN: I'm feeling uncomfortable with this bill.

356 SEN. G. SMITH: Why would a person come back into the process?

BROWN: I don't know.

365 SEN. WEBBER: When a donation is made isn't there the option to
waive
rights?

JOHNSON: I don't know what procedure is used.

366 SEN. WEBBER: I would think the clinic would be real clear about that
to
avoid liability.

372 BROWN: The statute automatically terminates the parental rights
of
donor.

389 BOB CASTAGNA, OREGON CATHOLIC CONFERENCE: Testifies in opposition to
SB
407.

- No where in this bill do we see the best interest of the child.
- The bill is silent to the issue of who has custody in a
non-marriage situation.
- A child will become reduced to commodity status.

TAPE 102, SIDE A

002 SEN. SHOEMAKER: This would allow a donor who is a friend to the
family
to be a part of the family and that doesn't strike me as wrong.

013 SEN. HAMBY: Still uncomfortable because donor is anonymous and
the
mother is unaware of the character of the donor.

BROWN: The situation usually arises when the donor isn't anonymous.

024 MOTION: CHAIR SPRINGER: Moves that SB 407 be sent to the Floor with a
DO
PASS recommendation.

VOTE: In a roll call vote Sen. Hamby, Sen. Shoemaker, Chair Springer
vote AYE. Sen. Smith, Sen. Webber, Sen. Rasmussen vote NAY.

The motion FAILS.

033 CHAIR SPRINGER: Adjourns hearing at 3:02 p.m.

Submitted by:

Reviewed by:

Ellen L. Senecal
Assistant

Karen Quigley
Administrator

EXHIBIT LOG

- A - Testimony on SJR43-Chuck Dimond-2 pgs.
- B - Testimony on SJR43-Chuck Dimond-1 pg.
- C - Testimony on SJR43-Chuck Dimond-2 pgs.
- D - Testimony on SJR43-Avel Gordly-1 pg. *
- E - Testimony on SB 209-Kirk Hall-2 pgs. *
- F - Hand-engrossed SB 128-1 amendments-Staff-3 pgs.
- G - Draft amendments to SB 128-Morse-2 pgs.
- H - Testimony on SB 128-Mary Anderson-1 pg. *
- I - Machine engrossed SB 458-Bill Linden-2 pgs. *

* Submitted written testimony only.