

SENATE COMMITTEE ON
JUDICIARY

July 27, 1993 Hearing Room C
1:00 p.m. Tapes 231-232

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

MEMBERS EXCUSED:

STAFF PRESENT: Bill Taylor, Committee Counsel
 Karen Quigley, Committee Counsel
 Kirk Bailey, Committee Assistant

ISSUES DISCUSSED: Reconsideration/Work Session: HB 2514
 Public Hearing/Work Session: SR6, HB 2364, HB 3500
 Work Session: HB 2256

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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 231 , SIDE A

003 CHAIR SPRINGER: Opens the hearing at 2:15 p.m.

HB 2364: Defines "in camera" for purposes of rape shield law.

WITNESSES: REPRESENTATIVE KEVIN MANNIX
 CLAUDIA BURTON, ACLU
 REP. KATE BROWN, DISTRICT 13

010 REP. MANNIX: Testifies in support of the bill. Provisions of the bill are likely to be familiar to this committee, as some provisions are similar to those found in SB 904. Rep. Brown and I worked together on HB 2364 which makes one technical change in the law, but it is significant. Current law contains a "rape shield" provision which protects the rape victim from testifying in public about prior sexual history unless it is determined by the judge that the history is pertinent to the case. The victim testifies "in chambers" regarding

this history. The Oregon Court of Appeals wasn't sure whether this meant the press was excluded, and they ruled that the public and press could be in chambers when this information was being provided. This was not what the legislature intended - just the judge, the attorneys and the parties involved could be there. HB 2364 states that those proceedings shall be "in camera" and this means out of the presence of the public and the jury. We are making intent very clear. The right of privacy should be respected, unless the judge determines otherwise. This committee has already passed this provision in SB 904, but SB 904 was broader.

062 CHAIR SPRINGER: This was a Court of Appeals case, with no appeal to the Supreme Court?

065 MANNIX: The Supreme Court case is State ex rel Davey v. Frankel 312 Or. 286 (1991). Concedes that there could be a constitutional issue involved, but with the right of privacy factored in, one could decide in favor of the victim. There are many situations where a judge is allowed to review information "in camera" such as corporate secrets.

085 CLAUDIA BURTON: Submits and reviews written testimony in opposition to the bill (EXHIBIT A).

172 CHAIR SPRINGER: Are you familiar if any other states have a constitutional provision similar to Oregon's which could provide guidance?

175 BURTON: As I recall, relatively few states are similar to Oregon's. The Oregon Supreme Court tends to interpret its own constitution not in a balancing fashion, but rather on face value.

190 REP. KATE BROWN: Testifies in support of the bill. Reminds committee of SB 904's passage. Notes that sexual history can be used to intimidate the victim.

210 CHAIR SPRINGER: Closes hearing on HB 2362 and opens hearing on SB 350 0.

HB 3500: Prohibits political subdivision from enacting or enforcing ordinance

or policy granting special rights or singling out any citizen or group on account of sexual orientation.

WITNESSES: REPRESENTATIVE JIM EDMUNSON, DISTRICT 39
REPRESENTATIVE GAIL SHIBLEY, DISTRICT 12
REPRESENTATIVE GEORGE EIGHMEY, DISTRICT 14
MARILYN COFFEL, BUREAU OF LABOR & INDUSTRY
JANET ARENZ ACLU
FRED NEAL, RIGHT TO PRIVACY INC.
DAVID ALLEN, OREGON GAY AND LESB IAN LAW ASSOCIATION
ELSIE FORD, CITIZEN
LESLIE BRANDT, CITIZEN
JULIE DAVIS, SUPPORT OUR COMMUNITIES
LON MABON, OREGON CITIZENS ALLIANCE

220 CHAIR SPRINGER: Explains time constraints and conflicts.

230 REP. JIM EDMUNSON: Testifies in support of the bill. There needs to be one standard for everyone and a stop to fighting this battle in the local community. The bill prevents something from being given to someone solely based on sexual orientation, and prevents taking away something from someone based on sexual orientation. When I use the term "special rights" I'm talking about privileges and immunities that are not enjoyed by citizens equally. A community cannot grant a privilege or an immunity based on sexual orientation that is not enjoyed by everyone, equally. This is not a "gay rights" bill, it is a preemption on the entire area of adult sexual orientation. It preserves our right as a state to vote on a common question and does not allow a patchwork of laws which subdivides Oregon on this division subject. During House Committee hearings widespread fear was voiced that citizens felt they were being targeted for unequal treatment - that's true for people on both sides of the issue. The outcome of these votes was hatred. There is sincere disagreement over what is right and what is wrong, and that's why its important that this issue be dealt with on a statewide level, rather than by community by community. This bill is not a compromise or substitute for SB 34. It's a different issue. After 14 hours of moving testimony in the House it became clear that we have a clear and immediate problem in Oregon that voting community by community will not solve. The bill will provide some breathing room.

359 REP. GAIL SHIBLEY: Submits and reviews written testimony in support
of
the bill (EXHIBIT F). The intent of the language is that all
communities can prohibit discrimination based on sexual orientation,
but
cannot single out homosexuals, homosexuality, bisexuality, or
heterosexuality. Gay and Lesbian Oregonians will not be treated as
less
than equal, under the law, than other citizens. There's no special
rights, no affirmative action for homosexuals. The Gay community has
never asked for special rights. The bill makes any local ordinances
invalid and unenforceable. HB 3500-A may reduce the amount of
litigation because there will only be one law to challenge, rather
than
many local ordinances.

482 SMITH: Are there some rights or privileges uniquely owed
to
heterosexual couples that will be invalidated by this? Like marriage?

TAPE 232, SIDE A

040 SMITH: Most people do not want persecute people based on
sexual
orientation. But most Oregonians don't want to grant or deny rights
based on sexual orientation. How does this bill impact the institution
of marriage?

047 EDMUNSON: We don't have same sex rest rooms either, so we do
recognize
gender differences in our society. Heterosexual couples who do not
marry legally do not have the benefits and protections of marriage,
even
though in other states common law marriage is recognized.

072 SMITH: I think most Oregonians want to know where we are going
with
this. I see the potential in this statute.

078 EDMUNSON: This bill is limited to local ordinances, and I am not
aware
of any local marriage law. This bill does not invalidate any state
law.

093 MARILYN COFFEL: Testifies in support of HB 3500. We need to begin
to
heal the state from the bitterness and divisiveness brought about by
Ballot Measure 9. HB 3500 will help accomplish this. This bill will

send a message from the legislature that bigotry will not be tolerated.

It doesn't address the civil rights of Oregonians, however, but this is a step in the right direction.

120 FRED NEAL: Submits and reviews written testimony in support of the bill (EXHIBIT G).

138 JANET ARENZ: Testifies in support of the bill (EXHIBIT C).

166 REP. EIGHMEY: Submits and reviews written testimony in support of the bill (EXHIBITS E, D).

277 SMITH: Where do you think we are going with this? Many fear that there is an attempt to redefine what a family is, under law, and the right to marry is going to be opened up to a degree where a majority of Oregonians do not find acceptable.

292 EIGHMEY: This question has been put to me by a variety of OCA members. It is a lie that our agenda is to suppress the rights of others. You will never hear from me again, the day I receive the same rights as heterosexuals; equality is all I ask for.

314 SMITH: The definition of equality probably includes legal marriages.

316 EIGHMEY: People are treated differently, in a variety of ways. Married couples with children are given preferential tax treatment, as an example. All I want is to be treated equally.

333 DAVID ALLEN: Submits and reviews written testimony in support of the bill (EXHIBIT H).

410 ELSIE FORD: Testifies in opposition to the bill. Supports the original description of the bill, that of "leveling things out" without giving special rights to homosexuals but not allowing the OCA to discriminate against them. Now there seems to be confusion over what the bill really does. Is concerned over domestic partnerships; supports "family values." Wants everything to be fair.

TAPE 231, SIDE B

054 CHAIR SPRINGER: Apologizes for the need to leave for a conference committee.

058 LESLIE BRANDT: Testifies in opposition to the bill. Was originally happy with HB 3500, no longer believes the legislation does what was purported. It is not just the OCA who oppose gays. Concerned about marriage and state benefits.

114 RASMUSSEN: The bill does not impact state marriage law or domestic partnership law.

121 BRANDT: Concerned that the bill may be interpreted to include those issues.

135 JULIE DAVIS: Testifies in support of the bill.

144 WILLIAM FLOOR: Testifies in opposition to the bill. Concerned about precedent being set by this bill regarding self determination on the local level. It implies that the legislature does not think the local community members are smart enough to make these decisions. Homosexuals want minority status. Religious values are involved.

191 LON MABON: Testifies in opposition to the bill. The bill nullifies the actions of the "pro family forces" but advances the homosexual "agenda." Homosexuals want legal marriages. Passage of this bill will not end the debate. Many cultures have judged homosexuality to be wrong, and you cannot recognize wrong behavior. Behavior should not be put on equal standing with race. Over seventy percent of people believe homosexuality is wrong. Recommends removing the emergency clause.

369 CHAIR SPRINGER: Asks staff to seek out committee members to establish a quorum so action may be taken. Will continue to hear other bills in the meantime.

381 HAMBY: Explains there is nothing in this bill that takes away the right to vote. Explains the 1-hour notice and the importance of legislative intent when there is confusion in the courts.

Work Session: SR6: Honors Senator Frank Roberts.

437 CHAIR SPRINGER: Explains the measure.

MOTION: Chair Springer moves SR6 to the Senate Floor with a "do

pass" recommendation.

VOTE: The motion passes, Hamby, Webber, Rasmussen, Springer voting aye. Sen. Shoemaker and Smith excused.

481 CHAIR SPRINGER: Asks that the rules be suspended to allow
Sen. Shoemaker and Smith to cast their vote on SR6.

6 VOTE: Sen. Shoemaker and Smith vote "aye" on the motion to send SR
to the Senate Floor with a "do pass" recommendation.

Work Session: HB 3500

MOTION: Chair Springer moves HB 3500 to the Senate Floor with a "do
pass" recommendation.

TAPE 232, SIDE B

035 SMITH: Believes that the bill was brought with the best of motives,
but that it isn't even-handed, and won't support taking away the vote of
local communities.

055 SPRINGER: Calls attention to note in support of HB 3500 from Jane
Cease (EXHIBIT J).

061 HAMBY: I represent an area who voted to discriminate
against homosexuals. This bill will not allow them to enforce to
discriminatory provisions, that's all. They are perceived as a community that is
willing to discriminate and it will cost them.

075 SMITH: Repeats that he doesn't believe the bill "cuts both ways."

VOTE: The motion passes 4 - 2. Voting aye: Hamby, Webber,
Shoemaker, Springer. Voting no: Smith, Rasmussen. Chair Springer
will carry the bill.

Work Session: HB 2364

095 CHAIR SPRINGER: Reviews bill.

102 SHOEMAKER: As I understand it, the Oregon Supreme Court has not
ruled on this precise issue, but if confronted with the issue the ACLU
believes that the Court would hold that "in camera" as defined in this
bill would be held unconstitutional. This bill would force that
ruling,

and I would hope they would be able to uphold this bill. Raising the victim's past sexual history would have a chilling effect at a rape trial.

MOTION: Sen. Shoemaker moves HB 2364 to the Senate Floor with a "do pass" recommendation.

VOTE: The motion passes, 5 - 1. Voting aye: Hamby, Webber, Shoemaker, Smith, Rasmussen. Voting no: Springer. Sen. Tricia Smith to carry the bill on the Floor.

Work Session: HB 2514: Provides that person seeking relief from prohibition against possession of firearm apply to district or circuit.

161 BILL TAYLOR: Reviews bill and conflict amendments (EXHIBIT I). There are several bills amending the same section and many conflict amendments are expected on gun bills.

MOTION: Chair Springer moves that the vote by which HB 2514 passed be reconsidered.

VOTE: Hearing no objections, the motion passes.

MOTION: Chair Springer moves the -A4 amendments to HB 2514.

VOTE: Hearing no objections, the amendments are adopted.

202 HAMBY: There was no expiration date for the concealed weapons permit in another bill dealing with guns, and this bill could be used as a vehicle.

215 BILL TAYLOR: On page 13, section 5, refers to the concealed licensed form and it lists an expiration date.

MOTION: Chair Springer moves HB 2514-A as amended to the Floor with a "do pass" recommendation.

VOTE: The motion passes 4 - 0. Sen. Smith and Shoemaker excused. Sen. Hamby will carry the bill on the Floor.

Work Session: HB 2256: Expands category of persons who may draw blood for HIV testing following criminal conviction.

WITNESSES: ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSN.
FRED AVERA, OREGON DISTRICT ATTORNEYS ASSN.

238 BILL TAYLOR: Explains the original bill has been replaced (EXHIBIT K).

242 ROSS SHEPARD: Testifies in support of the amendments (EXHIBIT L).

286 FRED AVERA: Testifies in support of the amendments. The Court of Appeals decisions is not what anybody intended.

306 SPRINGER: Do you anticipate an adverse workload on the Court of Appeals with passage of this bill?

307 SHEPARD: No.

MOTION: Chair Springer moves to adopt the -A4 amendments.

VOTE: Hearing no objections, the motion passes.

MOTION: Chair Springer moves HB 2256-A as amended to the Senate Floor with a "do pass" recommendation.

VOTE: The motion passes 4 - 0. Sen. Shoemaker and Smith excused.

Sen. Rasmussen will carry the bill to the Floor.

329 CHAIR SPRINGER: Adjourns the hearing at 4:00 pm.

Submitted by,

Reviewed by,

Kirk Bailey
Assistant

Bill Taylor
Administrator

EXHIBIT SUMMARY

- A - Testimony, HB 2364, Burton, 12 pgs.
- B - Testimony, HB 3500, Saffir, 1 pg.
- C - Testimony, HB 3500, Hinkle, 8 pgs.
- D - Testimony, HB 3500, Steele, 2 pgs.
- E - Testimony, HB 3500, Eighmey, 2 pgs.
- F - Testimony, HB 3500, Shibley, 2 pgs.
- G - Testimony, HB 3500, Neal, 1 pg.
- H - Testimony, HB 3500 Allen, 3 pgs.
- I - Proposed amendments, HB 2514, staff, 14 pgs.
- J - Testimony, HB 3500, Cease, 1 pg.
- K - Proposed amendments, HB 2256, staff, 2 pgs.
- L - Testimony, HB 2256, Shepard, 2 pgs.

