

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.

HOUSE COMMITTEE ON JUDICIARY FAMILY JUSTICE

May 8, 1991Hearing Room 357 3:20 p.m.Tapes 117 - 118

MEMBERS PRESENT:Rep. Kelly Clark, Chair Rep. Judy Bauman Rep. Marie Bell Rep. Jim Edmunson Rep. Kevin Mannix Rep. Tom Mason Rep. Del Parks Rep. Ron Sunseri

STAFF PRESENT: Holly Robinson, Committee Counsel Kathy Neely, Committee Assistant Holly Blanchard, Transcriber

MEASURES CONSIDERED: HJR 45 PH (Constitutional Amendment Regulating Nude Dancing)

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TAPE 117, SIDE A

003 CHAIR CLARK: Calls the meeting to order at 3:20 p.m.

010 CHAIR CLARK: Recesses at 3:25 p.m. Reconvenes at 3:30 p.m.

HJR 45 - PUBLIC HEARING

013 CHAIR CLARK: Discusses what happened last session regarding this issue.

028 REPRESENTATIVE KEVIN MANNIX, DISTRICT 32: Testifies in favor of HJR 45 which was HJR 20 during the 1989 legislature. Although HJR 20 passed the House by an overwhelming margin it went nowhere in the Senate. *HJR 45 is very straight forward. *Oregon needs HJR 45 because of a U.S. Supreme Court ruling that public nudity is not protected by the First Amendment. But the ruling protects artistic performances and freedom of expression. *The Oregon Supreme Court has interpreted the Oreogn Constitution to be more protective of freedom of expression to not allow the government to regulate public nudity in most forms. *Discusses regulation of alcohol and use of that regulation to balance freedom of expression restraints to regulate nudity in bars. *Authority to regulate alcohol does not reach far enough to allow us to regulate nudity in these kinds of establishments. *If HJR 45 passes the government will have the authority to regulate alcohol and nude dancing. *HJR 45 states that government may regulate public nudity--not ban it. But nudity could be banned in places that serve alcohol under the U.S. Constitution. Refers to a letter from the City of Salem concerning its

frustrations trying to eliminate these kinds of establishments from the community (EXHIBIT D). Reiterates testimony presented last session in favor of regulation.

195 RALF WALTERS, CITY COUNCILOR, CITY OF SPRINGFIELD (EXHIBIT A): The City

of Springfield has passed a resolution in support of HJR 45. Submits a petition (for the record) opposing the opening of Springfield's first tavern featuring nude dancing (EXHIBIT A). We feel this exploitation and degradation of women in Springfield runs counter to the family atmosphere and respect for individuals we cherish. Feel helpless in regulating or preventing this human rights violation towards women and would welcome voter initiated amendments giving the City authority in this area.

228 REX ARMSTRONG, ACLU OF OREGON (EXHIBIT C): Testifies in opposition of HJR 45. Discusses the Bill of Rights in relation to the issue.

253 REP. MANNIX: This is not proposing to amend the Bill of Rights.

255 ARMSTRONG: Yes, you are--the Oregon Bill of Rights.

257 REP. MANNIX: You'd agree that what's being proposed does not impinge on the First Amendment freedom of expression protections of the U.S. Constitution?

259 ARMSTRONG: Because you don't have the power to do it.

261 REP. MANNIX: But we can decide we don't like the judge's interpretation of the Oregon Constitution and let the people of Oregon make a decision about that?

267 ARMSTRONG: That doesn't change my point which is the Oregon Bill of Rights exists to protect the people of Oregon against governmental action. If we amend the Oregon Bill of Rights whenever we don't like a decision, we no longer have an Oregon Bill of Rights.

290 CHAIR CLARK: Had similar discussion a couple of weeks ago concerning whether or not a portion of the Bill of Rights for criminal defendants should be linked to interpretations by the U.S. Supreme Court of federal Bill of Rights language. Advocated against that. Who owns the Constitution?

294 ARMSTRONG: The people own the Constitution. Legislators should not send out for plebisite every sentiment people might have that involves a change in the Bill of Rights. The Bill of Rights needs to be preserved against transitory shifts in public perception. The point of the Constitution is to provide a dependable, durable framework.

307 CHAIR CLARK: What if the same problems are present 10 years from now?

310 ARMSTRONG: Confident that won't be the case. The Oregon Bill of Rights provisions have not been amended since they were adopted.

320 CHAIR CLARK: Think it's better for the people to dialogue with the court rather than the judges becoming the issue.

351 REP. MANNIX: Refers to the DD Code containing a provision banning

public nudity (1870's).

361 ARMSTRONG: Public nudity can still be banned. Discusses model ordinances by the Oregon Attorney General. OLCC has adopted restrictions on nude dancing.

396 REP. EDMUNSON: Is there anything that stops the public from picketing a location to discourage nudity?

433 ARMSTRONG: Not at all. If it's racist speech or any other type of speech, other than sexually explicit speech, it is protected.

TAPE 118, SIDE A

041 ARMSTRONG: Continues testimony against HJR 45.

048 REP. SUNSERI: You said poeple aren't here to testify because there can be laws written to address this. But you also said government cannot statutorically deal with it. *People have given up trying to deal with government. *City councils won't deal with it due to possible lawsuits and budgets. *Don't think government has represented the people in this. *Think people should determine the standards in their communities.

074 ARMSTRONG: If that were the premise there would be no freedom of expression. Discusses racism.

REP. SUNSERI: Not trying to prohibit nude dancing but where it will be.

088 ARMSTRONG: They will prohibit it--where liquor is sold. *Point remains that the city enacted an ordinance comparable to that of the Attorney General. *Discusses federal and state constitutions.

110 REP. SUNSERI: Don't think this legislation is out of line.

114 REP. MASON: Where do the Oregon and federal Bill of Rights receive their legitimacy? A social contract or natural rights theory?

128 ARMSTRONG: I think of it as a social contract.

141 REP. MASON: Is there any defense against the people repealing the Bill of Rights?

156 ARMSTRONG: There's no legal defense but the society we would then have would be very unpleasant. Discusses freedoms in Eastern Europe.

229 REP. BELL: Discusses concept of government involvement and freedom to vote on nudity issue.

246 ARMSTRONG: Doesn't think the Bill of Rights should be changed according to current public sentiments. It's difficult to get things voted out of the Constitution once the change is made.

301 REP. MANNIX: There will always be a constant tension of values in our society.

377 ARMSTRONG: The problem is mistakes in civil liberties are very hard to change. There are existing restrictions that apply to nudity.

TAPE 117, SIDE B

006 REP. MANNIX: Suggests moving public nudity out of a favored class to a nonfavored class--a generic class. It could be subject to regulation but if it goes too far, look to other Constitutional protections.

012 ARMSTRONG: Look to the First Amendment of the U.S. Constitution which wasn't initially adopted to have any application to the states.

015 CHAIR CLARK: Did you just say the First Amendment wasn't intended to apply to the states?

017 ARMSTRONG: Without question it wasn't. The First Amendment was adopted to limit what the federal government could do.

023 CHAIR CLARK: Does the ACLU still support a federal equal rights amendment?

024 ARMSTRONG: I assume it does.

025 CHAIR CLARK: So it's O.K. to amend the federal Constitution sometimes?

049 ARMSTRONG: To expand civil liberties.

073 CHAIR CLARK: Discusses civil liberties with Mr. Armstrong.

116 JANET WEBSTER, OREGON LIBRARY ASSOCIATION (EXHIBIT B): Testifies in opposition to HJR 45. Reads from written testimony. Librarians are concerned about any legislation that might infringe on freedom of speech.

161 RALF WALTERS: In response to Mr. Armstrong's comments:
*Advertising is considered paid expression and is protected under the First Amendment. It is regulated against false claims. *Nude dancing is a paid expression, a message for hire. *Child pornography is not permissible, there are some regulations against it. Some would argue that nude dancing is a form of visual, live pornography.

177 CHAIR CLARK: Adjourns the meeting at 4:40 p.m.

Submitted by, Reviewed by,

Holly Blanchard
Manager

David Harrell Transcriber

Office

EXHIBIT LOG:

A - Written testimony, HJR 45, City of Springfield, 26 pages B -
Written testimony, HJR 45, Oregon Library Association, 1 page C - Legal
Case, HJR 45, Rex Armstrong, ACLU of Oregon, 11 pages D - Written
testimony only, HJR 45, City of Salem, 2 pages E - Oregon Attorney
General's Office Opinion, No. 8209, HJR 45, Committee Counsel, 21 pages