

HOUSE JUDICIARY COMMITTEE
Subcommittee #1
Room 14B, State Capitol
February 28, 1973

3:00 p.m.

PUBLIC HEARING

Members present: Rep. Norma Paulus, Subcommittee Chairman
Rep. Lewis Hampton
Rep. Robert Marx
Rep. Robert Stults

Delayed: Rep. George Cole, Chairman, House Judiciary
Committee

Excused: Rep. Vera Katz

Also present: Donald L. Paillette, Legal Counsel

Witnesses : House Bill 2166

(Proponent) Helen F. Althaus, American Civil Liberties Union
(Opponent) Kenneth R. Schramm, Oregon Land Title Association

House Bill 2253

Senator Norm Howard
George Scheler, President, Oregon Association
of the Deaf

Interpreter: Roma Cline, Vocational Rehabilitation and
Interpreters

(All proponents) Alan Brickley, Legal Counsel, Oregon Association
of the Deaf

House Bill 2269

Al J. Laue, Department of Justice, for Public
Utilities Commission

House Bill 2313

E. L. Crawford, Attorney, Salem, Oregon

House Bill 2371

Rep. R. Stults, on behalf of Rep. Macpherson

House Bill 2166

Helen Althaus, representing the American Civil Liberties Union, testified in support of the purpose of this bill prohibiting racial restriction clauses in land conveyance agreements or instruments. She submitted a statement (See Exhibit "A" on file), departing therefrom for comments and discussion.

Ms. Althaus said the bill will make statutory the rules established by the United States Supreme Court that restrictive clauses are unconstitutional and cannot be enforced if they appear in deeds or other instruments, and this is a laudable purpose. She believed the bill should be amended in several respects, however.

Ms. Althaus said Section 1 of the bill would make void the whole instrument and she suggested this was inadvisable, since the purchaser may be penalized by having to return the property to the seller, who may have inserted the clause without the knowledge of the purchaser. She suggested that only the provision be unenforceable, not the deed itself.

Section 2, Ms. Althaus remarked, requires that a county clerk or recording officer shall refuse to record a conveyance containing such a restrictive clause and this would pose many practical problems. She said the clause could be hidden by a reference to another conveyance and the determination of this would be a legal problem that may not be properly made by a clerk. Since the instrument, itself, must be acknowledged, Ms. Althaus had two possible alternatives to the bill language:

(a) Attach a small affidavit to the deed or contract, to be executed by the seller verifying that no such restrictions are in the deed. This would point up the issue to the seller.

(b) Since deeds and contracts vary extremely in length and a standard clause could be modified to include the restriction with just a few words, Ms. Althaus suggested the recording officer be required not to record the instrument only if he had reason to believe such a clause was contained in that deed or other conveyance.

Ms. Althaus said the bill should also be amended to add, after the word "color", "race, religion or national origin". The ACLU, she said, had also considered including "sex", but believed that was not the original purpose of the bill, and Chairman Paulus said she believed this had been taken care of, in any event.

The Chairman did ask why "race" and "color" were both used, and Ms. Althaus said many states, in the past, had made determination of race by as little as 1/32nd degree, regardless of whether the person appeared to be of another race based on color. Chairman Paulus said the phrase was slightly offensive to her, although she could not say exactly why. Ms. Althaus perhaps there would be little practical effect, but other ACLU lawyers believed "color" should be included.

Rep. Stults asked what would happen to title insurance companies where there had been a pre-existing covenant, and Ms. Althaus replied that, under the present law, they would be unenforceable in the courts, and this law would take effect on conveyances after January 1, 1974. There was a short discussion on the question of whether a title company would disclose such a restriction in a title search, since they now include a reference to there being no such clause, but the matter was unresolved.

Mr. Paillette noted that Section 3 provides for a fine of \$500 as punishment and he asked if Ms. Althaus believed this to be of value. This provision applied only to Section 1, Ms. Althaus remarked, and would not pertain to a recording officer, but she again referred to her suggestion that the grantor submit an affidavit, swearing there was no restriction clause, pointing out that if the restriction were then found to be included in the conveyance, it would be a matter of perjury, carrying a more severe punishment than the \$500. She also said that, if the deed were declared void and the property returned to the seller, this would not seem to be a great penalty, especially if the property had increased in value.

Mr. Paillette said that when a provision like this is written into a bill, it is cranked into the criminal justice system, and he asked Ms. Althaus if she believed it was advisable to bring the district attorney in to prosecute, as an offense, someone violating the provisions of this act. She acknowledged his point and said the affidavit procedure would mean something different, agreeing with Mr. Paillette that action on an affidavit would "be through a different door." He asked if she thought some criminal sanctions should be imposed, and Ms. Althaus replied that there should be something.

Rep. Hampton asked against whom the statute would run, i.e. the draftsman of the contract (Stevens-Ness), the typist who may insert a phrase? Ms. Althaus said against the person who made the affidavit, referring again to her suggested amendment, and she admitted the present language was unclear and did not specifically say if it was the grantor. Rep. Hampton said inclusion of such a phrase would probably be made by a seller ignorant of the law, or by a real estate broker or assistant, asking Ms. Althaus if she agreed, and she said this was probably true.

Since "99.44%" of the instruments conveying property contained no restrictions, Rep. Hampton suggested, was a remedy being devised that was larger than the ill, itself, and he asked Ms. Althaus if this wasn't a search for "Martians". Ms. Althaus said it may appear to be so, but she stated that, even with all the laws against racial discrimination, it was still extensively practiced in the selling of real estate, often through a "gentlemen's agreement", and she could see no reason why a law should not be enacted against it.

Rep. Hampton said he had never seen an occasion of the practices Ms. Althaus referred to and she discussed some transactions she knew of. Rep. Hampton said the use of an affidavit would seem a needless requirement against the many, to apprehend a possible few, and Ms. Althaus said the same thing might be said of non-military affidavits, but they were still required, and Rep. Hampton said his position was the same on those particular affidavits; that they were anachronistic and had no place in the law.

Chairman Paulus and Mr. Paillette asked if this could be considered an incorporeal hereditament and Ms. Althaus said it was a fettering and could run with the land.

Rep. Hampton wondered if it would be possible to insert some language to make the law apply only if such a clause were inserted "with the intent of oppression or intimidation" or words to that effect, and Chairman Paulus said the suggestion would be considered.

Kenneth R. Schramm, attorney, representing the Oregon Land Title Association, said he did not support the bill, although he was not opposed to preventing racial clauses, but the means taken by this bill would raise some problems and would fetter conveyances by creating additional requirements that could cause a mechanical failure of conveyance.

Mr. Schramm mentioned the information that must now be included on a deed, i.e. the description of the grantor and grantee; statement of the consideration, and the proper acknowledgement, and said he was opposed to adding requirements other than to actually move the title.

In Section 2, Mr. Schramm suggested, the language should be changed so that only the clause would be void, rather than the whole instrument. He also spoke to the provision prohibiting a clerk from recording the instrument, pointing out that several bills had been introduced, at this and previous sessions, which would make the clerk the person responsible for enforcing required provisions. Mr. Schramm said this imposed a great burden on a clerk, requiring some type of check-off list, and the problem would still remain as to what happens on those which slip through.

Mr. Schramm said he believed the burden on the clerk should be completely eliminated, but suggested an amendment in case the committee did feel some reference to the clerk was required, and his suggestion was that if the instrument were recorded without complying with the law's requirement, it would not be deemed an unrecorded instrument but rather a breach of duty on the part of the clerk. He said he was troubled on the point of who would be charged with the penalty, since a clerk could perhaps be violating the section, if such a clause slipped through, resulting in a criminal action for negligence against that clerk.

It is often very difficult in these instruments to detect a racial clause, Mr. Schramm said, since he was unsure what the statute would mean in those instances where reference is made on one instrument that it was subject to the conditions and restrictions on another, which is quite common.

Mr. Schramm also said the parties should be more clearly identified, if there is a penal section, specifying "the grantor(s) conveying or the parties contracting".

Mr. Schramm said all title policies were stamped with the information that any racial clauses, and there were such provisions in some deeds, were void. This had been initiated at the request of the U.S. Justice Department, he said, to bring pressure against some of the national title companies.

Mr. Schramm reiterated his proposed amendments; that only the clause be void and not the whole instrument; that Section 2 be eliminated or, if not, that the instrument would be deemed a recorded instrument and the clerk considered as having committed a breach of duty.

Mr. Paillette asked Mr. Schramm if he believed there was any value to having a penal provision in the bill and Mr. Schramm said he did not think so, since such clauses were not enforceable and had been stricken down by the courts. He said the bill merely sets out the state's position and he doubted if action would be taken against the person, ignorant of the law, who would be most apt to use such a clause. Mr. Schramm agreed with Mr. Paillette that the bill is unclear as to whom any penal action might be taken.

Mr. Schramm also said he was opposed to the use of an affidavit, since this problem would only come up with one deed in a thousand and he thought it would make conveyance extremely difficult.

House Bill 2253

Senator Norm Howard indicated his support of this bill to provide interpreters for the deaf in case of arrest. He said he and Rep. Bob Elliott had been contacted two years ago by representatives from the Oregon Association of the Deaf and by students from the deaf school on this problem. He said other witnesses would testify, with the help of an interpreter, and he commented on his own poor hearing, but pointed out that he could still hear with the use of a hearing aid, but there were many who could not.

George Scheler, President of the Oregon Association of the Deaf, testified in support of the bill and answered questions with the assistance of Roma Cline, interpreter from Vocational Rehabilitation and Interpreters. Mr. Scheler said this was the second attempt to have this bill passed, it having died somewhere in the last session, and he said such a bill was already in effect in other states. Since he had never required an interpreter, in an arrest situation, Mr. Scheler said, he was not too familiar with exactly what effect the bill would have, but he said he had asked the association's lawyer, Mr. Alan Brickley, to speak to this point, since he was familiar with the problem.

Rep. Hampton asked if Mr. Scheler would mind staying at the witness bar while the attorney joined in the testimony, and Mr. Scheler did so, with Ms. Cline interpreting questions and discussion in sign language.



Feb. 28, 1973

311 SENATOR BLDG., PORTLAND 97204
TELEPHONE 227-3186 (AREA CODE 503)

H. JUDICIARY COM.

OREGON STATE ARCHIVES

February 27, 1973

Statement by Helen F. Althaus, Esq. on behalf of
The American Civil Liberties Union of Oregon
Regarding House Bill 2166

The American Civil Liberties Union of Oregon enthusiastically supports the purpose underlying House Bill 2166, to enact into statutory law the rule established by the courts that restrictions on the use of real property be reason of race, religion or national origin are unconstitutional, void and unenforceable. The ACLU feels such legislation is desirable because the very existence in writing of such restrictions, in conveyances of real property, even though unenforceable in the courts, can very well be misleading to many persons who might not know the law and might mistakenly feel legally obligated to obey such a restriction spelled out in a solemn instrument such as a deed or contract. In fact, the existence of such unenforceable provisions could very well foster types of "gentlemen's agreements" to violate the law.

However, the ACLU likewise feels that to accomplish this purpose effectively and properly, the bill requires amendment in several respects, as follows:

- A. Section 1 would make the whole instrument void rather than the unconstitutional restriction. The effect of this could well be to penalize an innocent buyer, by making the conveyance received by the buyer void and reward the guilty seller by causing the property to revert to seller and thus allowing the seller to reap a profit (which could very well be more than the \$500 fine imposed by Section 3 of the bill) by selling to another. Putting aside the serious question of the validity of Section 1 as written, it is the suggestion of ACLU that section (2) should be amended to read to the following effect:

"(2) Any provision included in an instrument in violation of subsection (1) of this section is void and unenforceable."

- B. Section 2 of the bill which prohibits a recording officer from accepting for record any instrument containing such

- 2 -

a restrictive clause raises practical questions. Often such a provision may be incorporated by a mere reference to another instrument by book and page. The objectionable provision may be buried in a long paragraph and not easily ascertained. It is suggested that this section be amended to require before recording (instead of a determination by the recording officer) that the instrument be accompanied by a simple sworn statement executed by grantor or seller that the instrument contains no such restrictive provision. An alternative suggestion would be to make the prohibition against recording depend on knowledge of the recording officer of the existence of the illegal restriction (or of facts which give the officer reason to believe such illegal restriction exists).

- C. The ACLU believes it would be well to add to subsection (1) of Section 1 the word "color" to the objectionable restrictions so that the phrase would read, "race, color, religion or national origin."

#####

HB 2166

[2] House Judiciary Committee
Feb. 28, 1973

1 A BILL FOR AN ACT

2 Relating to instruments of conveyance; and providing penalties.

3 **Be It Enacted by the People of the State of Oregon:**

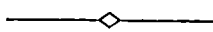
4 **SECTION 1.** (1) No person conveying or contracting to convey fee
5 title to real property may include in an instrument for such purpose a
6 clause restricting the use of the real property by any person or group of
7 persons by reason of race, religion or national origin.

8 (2) Any ^{such clause in an} instrument executed in violation of subsection (1) of this sec-
9 tion is void.

10 **SECTION 2.** No instrument conveying or contracting to convey fee
11 title to any real property may be accepted for recording by any county
12 clerk or recording officer in this state if such instrument contains a clause
13 restricting the use of the real property by any person or group of persons
14 by reason of race, religion or national origin. 1/

15 **SECTION 3.** Violation of section 1 of this Act is punishable, upon con-
16 viction, by a fine of not more than \$500.

17 **SECTION 4.** This Act applies to instruments described in section 1 of
18 this Act that are executed on or after January 1, 1974.



1/ If an instrument is recorded without complying with the require-
ments of this section, it shall not be deemed an unrecorded
instrument by reason of the terms of this section; but such
recording shall be a violation of the duty of the county clerk
or recording officer who recorded the instrument.

HB 2166 4/74

HOUSE JUDICIARY COM.

OREGON STATE ARCHIVES



City of SALEM, OREGON

SALEM AREA HUMAN RELATIONS COMMISSION

TELEPHONE (503) 581-5123
ZIP CODE 97301

STEVE CHAMBERS
PRESIDENT

STATEMENT ON HB 2166
HOUSE JUDICIARY COMMITTEE
on behalf of the Salem Area Human Relations Commission
March 13, 1973

Members of the Committee:

The Salem Area Human Relations Commission supports legislation which will make equality a fact.

Our Legislative Action Committee recommends you actively support HB 2166 which prohibits person from executing instrument conveying, or contracting to convey, fee title to real property that contains clause restricting use of such property by reason of race, religion or national origin.

We expect active leadership from the State of Oregon in all areas of discrimination and see HB 2166 as a strong bill in this direction. We ask you to give it a "do pass" recommendation.

Sincerely,

Norm Perry, Chairman
Legislative Action Committee

Barbara Aiken, Member
Jack Thornton, Member
Joanne Thorne, Member
Rafael Pablo Ciddio y Abeyta

FROM THE DESK OF
GEORGE F. COLE
STATE REPRESENTATIVE - DIST. #2
CLATSOP, COLUMBIA & WASHINGTON COUNTIES

HB 2143, SB 338, HB 2269, HB 2265 -- PUBLIC HEARING
HB 2253, HB 2166, HB 2313, SB 208, HB 2371 -- WORK SESSION

HOUSE JUDICIARY COMMITTEE
Room 14 State Capitol

Subcommittee No. 1
April 4, 1973
3:00 p.m.

Members Present: Rep. Norma Paulus, Subcommittee Chairman
Rep. George Cole, Committee Chairman
Rep. Lewis Hampton
Rep. Vera Katz
Rep. Dick Magruder
Rep. Robert Marx

Staff Present: Mr. Donald L. Paillette, Counsel

Witnesses: House Bill 2143

Hon. Lee Johnson, Attorney General

Senate Bill 338

Mr. Ed Branchfield, Legal Counsel to the Governor

House Bill 2269

Opponent:

Mr. Randall Kester, Chairman, Oregon Railroad
Association

House Bill 2265

Rep. Donald Oakes

House Bill 2253

Mr. Gordon Fultz, Association of Oregon Counties
Mr. Kurt Engelstad, Justice Coordinator for the City
of Portland and the County of Multnomah, appear-
ing on behalf of the Association of Oregon
Counties

PUBLIC HEARING

House Bill 2143

Attorney General Lee Johnson explained that HB 2143 had been introduced at his request and would add three qualifications to those presently required to qualify for the office of Attorney General. The

speak to the party. A distinction would then be made between civil and criminal actions and in criminal actions, the burden for payment would be placed on the state. In civil actions, the court would be required to allow an interpreter to be used but it would be at the expense of the party plaintiff.

Mr. Paillette said the Chairman's suggestion would contemplate adopting the proposed amendment to delete lines 8 through 23 on page 2 of the bill.

After further discussion, Rep. Hampton suggested the following amendment:

"When a handicapped person is a witness or a party in a civil proceeding, criminal proceeding or administrative proceeding, if an interpreter is necessary to effectuate understanding, the court or agency shall appoint an interpreter."

The matter of cost could then be dealt with in another section and the definition of "handicapped person" would be retained to make it clear that the bill included all persons who failed to comprehend the proceedings for any reason.

Mr. Paillette expressed approval of the approach suggested by Rep. Hampton except that the clause relating to the necessity for understanding could be deleted by reason of the definition of "handicapped person" which would write in that provision automatically.

Mr. Paillette asked Mr. Engelstad if he still believed it was necessary to include the proposed definition of "arresting officer." This was discussed briefly and the committee agreed to adopt Mr. Paillette's suggestion to insert "peace" before "officer" on line 32 of page 2 inasmuch as "peace officer" was already defined in the statutes.

The committee agreed to have Mr. Paillette prepare amendments to the bill as discussed above and to submit it to the full committee in that form.

House Bill 2166

Rep. Cole recalled that the problem involved in this bill was that there were many outstanding reservations and restrictions on property, some of which were probably invalid under court rule today, but when the property was transferred, the instrument of conveyance was subject to all the restrictions of record and they were automatically incorporated into every instrument. The bill would attempt to make it illegal for any person to deed a piece of property with a color restriction in it. Chairman Paulus explained that a color restriction was void in any event by court decision. She said she had some

reservations about the bill, one being that it contained a criminal penalty and she believed this type of activity should not be introduced into the criminal justice system. In addition, although the color restriction would be void, other restrictions in the deed should not be voided when the property was transferred.

Mr. Paillette suggested that the bill be narrowed down and made applicable only to the clause relating to the color restriction. Chairman Paulus agreed and expressed approval of passing a legislative statement on this subject by changing subsection (2) of section 1 to read: "Any such clause in an instrument executed in violation of subsection (1) of this section is void."

Rep. Cole agreed that the proposal would state legislative intent and he too advocated that the penalties be removed from the bill.

Mr. Paillette proposed to insert "color," before "race, religion or national origin" in section 1 (1) and the committee agreed.

Rep. Hampton suggested that "provision" in subsection (1) would be preferable to "clause" and the committee concurred.

It was pointed out that one of the witnesses at the previous hearing had indicated that prospective buyers were sometimes told that particular deeds carried a color restriction and the committee discussed methods of prohibiting this practice. It was decided to insert "and unenforceable" after "void" on line 9 to add further legislative direction in this area.

Rep. Cole then moved adoption of the following amendments to HB 2166:

In line 5, delete "may" and insert "shall".
In line 6, delete "clause" and insert "provision".
In line 7, after "of" insert "color,".
In line 8, after "Any" insert "such provision".
In line 9, after "void" insert "and unenforceable".
Delete lines 10 through 18.

A quorum of the full committee being present, vote was then taken on a motion to report the bill out of committee with a do pass recommendation. Voting for the motion: Hampton, Katz, Marx, Paulus, Chairman Cole.

House Bill 2313

In view of the fact that SB 208 was identical to HB 2313 and inasmuch as SB 208 had passed the Senate, Rep. Paulus moved that HB 2313 be tabled. Motion carried unanimously. Voting: Hampton, Katz, Marx, Paulus, Chairman Cole.

1:00 P.M. -- Tape 34 -- Side 2 -- Meter Reading 221 - 526

SENATE COMMITTEE ON JUDICIARY
Room 407-A State Capitol
May 30, 1973

House Bills 2051, 2110, 2051, 2219, 2216, 2166, Senate
Bills 685, 538, 660, 379, 385, 403, 143, 708, 591, 623,
Senate Joint Resolution 33

MEMBERS PRESENT

EXCUSED

SENATOR KEITH BURNS
SENATOR JOHN BURNS
SENATOR GEORGE EIVERS
SENATOR C. R. HOYT
SENATOR ROBERT SMITH
SENATOR ELIZABETH W. BROWNE, Chairman

SENATOR VERNON COOK

WITNESSES:

Judge Joseph B. Felton, Judge Circuit Court, Marion County
Terry Johnson, Parole Board
Victor Pagel, Marion-Polk County Legal Aid
Al Laue, Attorney General's office
Steven Lowenstein, Oregon State Bar Committee on Legal Aid
Judge Branchfield, Governor's office

The meeting was called to order by Chairman Browne at 1:00 p.m. This was mainly a work session but some testimony was taken.

HOUSE BILL 2051

JUDGE FELTON -- Joseph B. Felton, Judge of Circuit Court of Marion County, Department of Domestic Relations. Judge Felton urged the passage of House Bill 2051. He feels that with the ever increasing divorce rate that this is very much needed legislation. Judge Felton called attention to Roebeck v. Roebeck (508 Pacific 2nd 1057). He also called attention to Lorenz v. Royer (194 Ore. 355, 1952) which said that unless the child was domiciled here in Oregon, the court had no jurisdiction to go in on what was the best interest and welfare of the child. Another line of cases started with Bartlett v. Bartlett which held that if the child was domiciled in Oregon you could go in what was the best interest and welfare of the child. Judge Felton stated that this is pointed out very well in the Volume 7 (1971) Page 498, the WILLAMETTE LAW JOURNAL. This is a discussion that this bill represents and what the situation is with respect to the conflict of laws in custody cases. The preparatory note appears on pages 171-174 in the Interim Committee Report on Laws Relating to Children. He also called attention to the Supreme Court case of Hawkins v. Hawkins decided in December, 1972 which overruled Lorenz v. Royer. It sets out some guidelines.

SENATOR BROWNE had a note of a telephone call from Judge Beckett of Lane County. He says that the Lane County judges support the bill; he feels the effective date should be delayed until 1975; and that he was not able to get away from his courtroom duties to appear.

HOUSE BILL 2216

SENATOR JOHN BURNS MOVED TO TABLE HOUSE BILL 2216.

ROLL CALL

Senator John Burns - Aye	<u>Excused:</u>
Senator Keith Burns - Aye	
Senator George Eivers - Aye	Senator Vernon Cook
Senator C. R. Hoyt - No	
Senator Robert Smith - Aye	
Senator Elizabeth W. Browne, Chairman - No	

HOUSE BILL 2166

SENATOR KEITH BURNS MOVED HOUSE BILL 2166 TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

ROLL CALL

Senator John Burns - Aye	<u>Excused:</u>
Senator Keith Burns - Aye	
Senator George Eivers - No	Senator Vernon Cook
Senator C. R. Hoyt - Aye	
Senator Robert Smith - Aye	
Senator Elizabeth W. Browne - Chairman - Aye	

SENATE BILL 143

MR. JOHN DEWENTER explained that there are some blank spaces that must be filled in and the recommendation has not come up from the Secretary of State as yet.

SENATOR JOHN BURNS moved the technical amendments to Senate Bill 143. These were reported to the subcommittee on May 28. (SEE MINUTES OF SENATE COMMITTEE ON JUDICIARY, May 28, 1:00 P.M. - Professor Dawson). These technical amendments were brought to the subcommittee's attention by Professor Dawson and Senators John Burns and Keith Burns went through the bill line by line with Professor Dawson.