

REVENUE: No revenue impact

FISCAL: No fiscal impact

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<b>Action:</b>	Without Recommendation as to Passage and Be Referred to the Committee on Elections, Ethics and Rules
<b>Vote:</b>	8 - 1 - 0
<b>Yeas:</b>	Bonamici, Cameron, Flores, Komp, Krieger, Read, Whisnant, Macpherson
<b>Nays:</b>	Barker
<b>Exc.:</b>	0
<b>Prepared By:</b>	Matt Kalmanson, Counsel
<b>Meeting Dates:</b>	4/30

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**WHAT THE MEASURE DOES:** Creates ballot title for HJR 56, which would amend Constitution to allow state or local government to regulate “any strip act” to the extent permitted by the federal Constitution.

**ISSUES DISCUSSED:**

- Article I, section 8 of the Oregon Constitution
- Supreme Court rulings in *City of Nyssa v. Dufloth/Smith*, 339 Or 330 (2005) and *State v. Ciancanelli*, 339 Or 282 (2005)
- Permissible regulation of strip acts under federal Constitution
- Secondary effects of strip acts and impact on communities
- Potential ambiguities/unintended consequences
- Pending litigation concerning similar initiative and prohibition on referring multiple amendments to voters

**EFFECT OF COMMITTEE AMENDMENT:** No amendment.

**BACKGROUND:** Oregon’s free speech provision, Article I, section 8 of the Oregon Constitution, provides: “No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.” It prohibits public bodies – in the words of the Oregon Supreme Court – from “enacting restrictions that focus on the content of speech or writing, either because that content itself is deemed socially undesirable or offensive, or because it is thought to have adverse consequences.” *State v. Robertson*, 293 Or 402 (1983). However, governmental bodies may restrain expression if the drafters of the Constitution intended, in 1859, to allow governmental bodies to restrain that type of expression. The Supreme Court applied that test to an ordinance that regulated nude dancing in the 2005 case, *City of Nyssa v. Dufloth/Smith*, concluding that nude dancing qualified as expression within the meaning of Article I, section 8, and the drafters of the Constitution did not intend to exempt that expression from the provision’s reach.

HJR 56 would amend the Oregon Constitution to permit regulation of any “strip act,” to the extent permitted by the United States Constitution. Nude dancing falls within the “outer ambit” of the First Amendment and thus under the federal Constitution, government may regulate strip clubs in order to prevent unwanted “secondary effects,” such as crime.