

## Testimony in support of HB 3446

To: House Education Committee

From: Dorothy Karman, board member the Oregon Christian Home Education Association Network

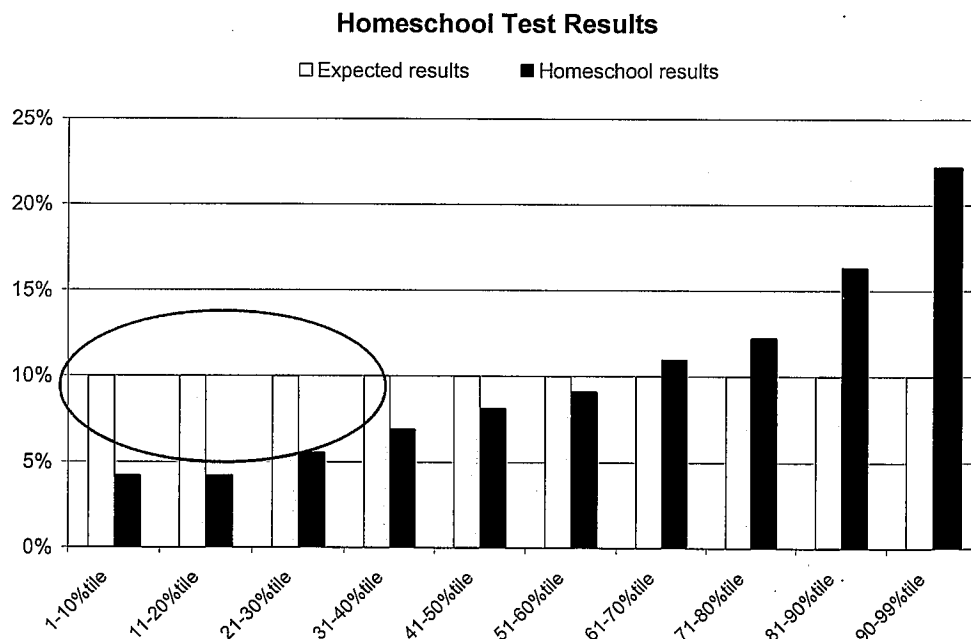
Almost thirty years of state oversight and testing in Oregon have shown clearly that home education is a highly effective educational alternative that produces sound results. Acknowledging this success, HB 3446 removes mandatory notification and testing requirements.

### Why you should support HB 3446

**Home education is private education**, not public education. Homeschooling should not be under the authority of the *Superintendent of Public Instruction*.

**Standardized tests don't measure individualized education** and home education is a very individualized, tailor-made education. For more than 28 years, tests have proven that home educators do a good job. *It is time to stop requiring home educators to prove that homeschooling works.*

**Test results for the last 28 years seem to indicate students with a potential for low achievement are being helped by homeschooling.** If homeschoolers followed the pattern of the norming group, we would expect many more students on the low end of the scale. It appears that, as an educational method, homeschooling helps those on the low end of the spectrum.



Source: Oregon Department of Education, Homeschool test scores for 1998, <http://www.ode.state.or.us/teachlearn/specialty/home/1998/scores98.pdf>

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**Testing puts a great pressure on struggling learners to focus on passing the test**, not on meeting the student's individualized needs. The students on the low end of the chart are the ones for whom the tests are high stake. If they don't make the 15<sup>th</sup> percentile, they are in jeopardy of being sent to a classroom for their education. They will be moving from a one-on-one teaching situation where the teacher cares passionately about their success to a classroom of 25 to 30 students where even the most caring and compassionate teacher does not have enough time to meet everyone's needs. So under the current testing system for homeschool students, the students in most need of one-on-one attention are those at risk of being sent to a classroom situation.

How do homeschool parents determine their child's progress? Homeschool families use other ongoing assessments, such as lists of essential learning objectives, chapter tests and discussions to identify student progress.

**Home educators bear the financial burden for their children's education**, including testing. *It is time to stop requiring home educators to bear the additional burden of proving home education works.*

**Testing is not only burdensome, it does not accomplish its goal.** The current law attempts to identify which students will do better in a classroom situation by allowing an ESD Superintendent to remand low scoring children to a classroom. A snap-shot of a child's achievement such as a standardized achievement test cannot possibly indicate which educational venue (public, private or home school) is the best for that child.

**The ESDs spend a significant staff time and expense each year to keep track of homeschoolers.** That money could be used to help students in the public school system.

### **What does HB 3446 do?**

HB 3446 removes both notification and testing requirements for home educators, making the home school exemption from compulsory attendance laws similar to the requirements for private school students. Parents of private school students do not notify the public school educational establishment that they are placing their children in a private school. Neither do they have to turn in test scores for private school students to the public school establishment.

These changes are in keeping with U.S. Supreme Court decisions regarding parental rights to direct their children's education.

In its 1923 decision in *Meyer v. Nebraska*, the U.S. Supreme Court "held that the 'liberty' protected by the Due Process Clause includes the right of parents 'to control the education of their own.'"

Two years later, in *Pierce v. Society of Sisters*, the Court ruled:

The fundamental theory of liberty upon which all governments in this Union repose excluded any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the

state; those who nurture him and direct his destiny have the right and the high duty, to recognize and prepare him for additional obligations. (*Pierce*, 1925) (Underline added.)

After citing extensive precedent (not all of which is included above), the Court concluded in *Troxel v. Granville*:

In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children. (*Troxel*, 2000)

In addition, the Oregon legislature has affirmed basic principles of parent's rights as enumerated in ORS 419B.090(3)

It is the policy of the state of Oregon to guard the liberty interest of parents protected by the Fourteenth Amendment to the United States Constitution and to protect the rights and interests of children, as provided in subsections (2) of this section. The provisions of this chapter shall be construed and applied in compliance with federal constitutional limitations on state action established by the United States Supreme Court with respect to interference with the rights of parents to direct the upbringing of their children, including, but not limited to:

- (a) Guide the secular and religious education of their children;
- (b) Make health care decisions for their children; and
- (c) Discipline their children. (Underline added.)

### **Doesn't the state have a "compelling interest" in the education of children?**

Under the Due Process clause of the 14th Amendment, a state can pass laws that impinge a fundamental right only if there is a compelling state interest to be served, and then the state must use the least restrictive means possible in order to achieve the state interest with the minimum "offense" to the Constitutional right. This "strict scrutiny" test is a far higher standard than for most laws (which simply require that a law is reasonably calculated to achieve an important state interest).

States have traditionally asserted that their interest in ensuring an educated population is a compelling interest. Oregon has shown that it can achieve its compelling state interest by allowing students to attend private schools without state oversight. This means that any additional oversight of home educated students fails the "least restrictive means" test and violates due process.

### **What about Federal mandates?**

Provisions enacted in Elementary and Secondary Education Act clearly state that the provisions that act are for public school students only. Both private and home schools are exempted. The pertinent exemptions state:

(b) APPLICABILITY TO HOME SCHOOLS- Nothing in this Act shall be construed to affect a home school, whether or not a home school is treated as a home school or a private school under State law, nor shall any student schooled at home be required to participate in any assessment referenced in this Act.(Underline added.)

(d) RULE OF CONSTRUCTION ON STATE AND LOCAL EDUCATIONAL AGENCY MANDATES- Nothing in this Act shall be construed to require any State educational agency or local educational agency that receives funds under this Act to mandate, direct, or control the curriculum of a private or home school, regardless or whether or not a home school is treated as a private school under state law, nor shall any funds under this Act be used for this purpose. (Underline added.)

The Elementary and Secondary Education Act does not compel state legislators to maintain oversight of private and homeschools.

### **What about parents who do not act responsibly?**

*The U.S. Supreme Court maintained in Parham v. J.R.:*

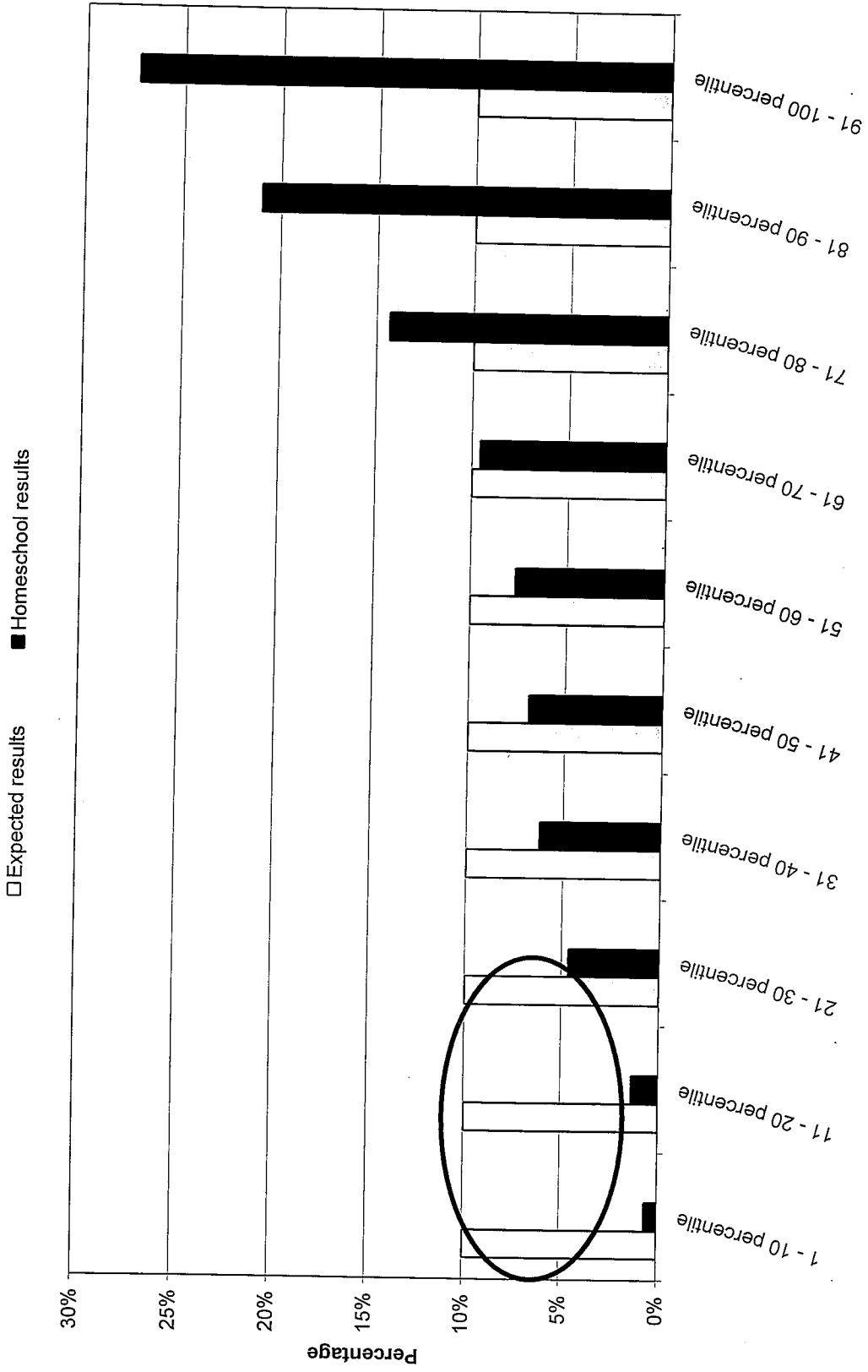
That some parents “may at times be acting against the interests of their children” . . . creates a basis for caution, but it is hardly a reason to discard wholesale those pages of human experience that teach that parents generally do act in the child’s best interest. The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition.(*Parham v. J.R.*) (Underline added.)

Clearly, the U.S. Supreme Court continues to uphold the right of parents to direct the upbringing of their children, including the right to direct their children’s education.

### **In summary:**

Home educators in Oregon are asking this legislature to recognize that home schools are not public schools by enacting HB 3446. Since the 1985 law was enacted, home educators in Oregon have demonstrated through testing that home education works very well. This method of education more than meets the state’s compelling interest in children’s education. Home education freedom works. Please vote for HB 3446.

### Homeschool Test Results 2010-2011



Source: Data submitted by ESDs to the Oregon Department of Education in March and April, 2012. OCEANNetwork obtained the data in April 2013 and produced the graph on 4/3/2013. OCEANNetwork, 17985 Falls City Road, Dallas, OR 97338.