



**Testimony of Becky Straus, Legislative Director
In Opposition to SJR 23
Senate Committee on Education
February 21, 2013**

Chair Hass and Members of the Committee:

Thank you for the opportunity to provide comments in regard to SJR 23.

On behalf of the ACLU of Oregon, I am here to strongly urge you to oppose any constitutional amendment that would result in the payment of tax funds to private religious schools. Amending Article I, section 5 of the Oregon Constitution in this way is inconsistent with the strong tradition of separation of church and state that has existed in Oregon since the Oregon Constitution was written in 1857. And doing so would introduce into Oregon the potential for sectarian strife that has characterized several of the eastern states for many years.

Oregon's History: Strict Separation of Church and State

Oregon has been lucky to avoid the perennial and bitter disputes over aid to religious schools that have characterized many eastern states. We have avoided such disputes because the authors of the Oregon Constitution wanted to create a more complete separation of church and state than existed in any other state constitution at the time, designed to keep one function from influencing the other and vice versa. For this reason, the Oregon Constitution contains the strongest provisions for separation of church and state of any state constitution in the United States. Article I, section 5, reads:

“No money shall be drawn from the Treasury for the benefit of any religious [sic] or theological institution, nor shall any money be appropriated for the payment of any religious [sic] services in either house of the Legislative Assembly.”

Private religious colleges are religious or theological institutions, by anyone's definition. And when the state provides the tuition for a private religious school to obtain or retain students, that school has obtained a benefit at taxpayer expense.

More than 40 years ago, the Oregon Supreme Court specifically held that public funds cannot be used to buy books for students who attend parochial schools.¹ The Court has never retreated from that holding, and it is entirely consistent with the attitudes and intentions of the framers of the Oregon Constitution.

Those intentions are clear and unmistakable. When the delegates to the constitutional convention met in Salem in 1857, they were intensely aware of the religious strife that had

¹ *Dickman v. School District 62C*, 232 Or 238 (1962)

existed in the territory during the 1840s and 1850s. The majority of the delegates wanted to make sure both that Oregon would have a government free from sectarian strife, and that government would never have the power to use taxpayer money for the benefit of religion. The pervasively secular attitude of the majority of the delegates was clear from the first week. One of their first acts was to reject a proposal to hire a chaplain to begin each session with a prayer. And when they began drafting the language of the constitution, the intention to erect a strict separation of church and state was evident even in the wording of the Preamble to the constitution.

The delegates used the Indiana Constitution of 1851 as their model for nearly all of Article I of the Constitution, including the Preamble. The preamble to the Indiana Constitution read:

“To the end, that justice be established, public order maintained, and liberty perpetuated; we, the people of the state of Indiana, grateful to Almighty God for the free exercise of the right to choose our own form of government, do ordain this constitution.”

The Oregon framers adopted the opening clause of that preamble verbatim, but they deleted the reference to God. Oregon’s preamble reads: “We the people of the State of Oregon to the end that Justice be established, order maintained, and liberty perpetuated, do ordain this Constitution.”

Section 1 of Article I reflects the same intention to remove religious references. In the Indiana constitution, Section 1 begins with the statement that: “We declare, That all men are created equal; that they are endowed by their CREATOR with certain unalienable rights.” In contrast, Section 1 in the Oregon Constitution begins with the statement that “We declare that all men, when they form a social compact are equal in right.”

Thus, both the Indiana and the Oregon constitutions begin with a declaration of equality, but Indiana links the concept of equality to a belief in God, whereas the Oregon provision links it to the humanist conception of the social compact.

The majority of the delegates to the constitutional convention in 1857 were determined to create a government that was free from sectarian strife.

SJR 23

The amendment proposed by SJR 23 would change all that. SJR 23, if passed by the Legislature and approved by the voters, would amend Article I, section 5 of the Oregon Constitution to include the clause “An income or excise tax credit may be allowed for educational expenses paid to or for the benefit of a religion-based school or a nonsectarian school.” Relatively small changes would be made to the existing provisions of Article I, section 5.

SJR 23 proposes a tax credit for payments made to a religious institution. Use of a tax credit does not change the discussion or our position on the strict separation between church and state. We do not believe that the distinction between a payment from the Treasury, on the one hand, and being excused from making an otherwise mandatory payment to the Treasury, on the other,

is a distinction that has constitutional significance. And the U.S. Supreme Court agrees. It has recognized that state tax policies such as tax deductions, tax exemptions and tax credits are means of “channeling . . . [state] assistance” to private organizations, which can have “an economic effect comparable to that of aid given directly” to the organization.² The Court has therefore refused to make artificial distinctions between direct grants to religious organizations and tax programs that confer special benefits on religious organizations, particularly tax credits.

Please Refrain from Moving Forward with SJR 23

It would be a tragedy if Oregon turned its back on the wisdom of the authors of our state constitution. They were well aware of the dangers of sectarian strife, and they wrote a constitution that was emphatic in its insistence on separation of church and state. They deliberately removed from that Bill of Rights all references to God and to a religious basis for government.

Adoption of SJR 23 would reverse 154 years of Oregon history, and it would overturn a constitutional principle that has served the state well since it was admitted to the Union in 1859. We urge you to refrain from moving it out of committee.

² *Mueller v. Allen*, 463 U.S. 388, 399 (1983).

