



PUBLIC SCHOOL TEACHERS & RELIGIOUS DRESS (ORS 342.650)

ISSUE

The ACLU of Oregon is aware of an effort to repeal ORS 342.650, which prohibits public school teachers from wearing religious dress in the classroom. While proponents of this change are promoting quick action in the upcoming February session, we urge the Legislature to postpone consideration until 2011. Repealing this law would be likely to affect the religious neutrality of Oregon public schools and we believe it is essential to fully understand the legal ramifications before taking action.

BACKGROUND

ORS 342.650 prohibits public school teachers from wearing any religious dress while engaged in the performance of duties as a teacher. This law, originally passed in 1923 at a time of strong anti-Catholic sentiment, was the subject of significant amendments by the 1965 Oregon Legislature. Those amendments were signed into law by then-Governor Mark Hatfield.

In the mid 1980s, Janet Cooper violated the statute by wearing white clothes and a white turban after becoming a Sikh. After she was dismissed by the Eugene School District, Cooper challenged the law as a violation of her religious free exercise rights under both the Oregon and U.S. Constitutions. The case ultimately was heard in the Oregon Supreme Court. After much debate and discussion the ACLU of Oregon Board of Directors voted to support the Oregon law and filed an *amicus* (friend of the court) brief urging the Court to uphold ORS 342.650. The Oregon Supreme Court held that the law was constitutional because it fosters the state interest of maintaining religious neutrality in public schools for the benefit of students and their families. The law has since remained on the books.

After the issue arose this summer, with some advocates urging repeal of the law, the ACLU of Oregon Board of Directors met on November 14, 2009, to consider the affiliate's long-standing position in support of the religious dress law. Our Board of Directors deliberated at length and agreed that it would take no formal action at this time to change ACLU policy, but left the door open to a modification after further discussions. The ACLU board directed staff to urge legislators to defer action on the issue to the 2011 session, but also directed staff to oppose any repeal the law if such action is considered in February.

In the coming months, the ACLU of Oregon board intends to gather more information so that it can more fully understand the ramifications of any proposed change in the law and to provide thoughtful and meaningful guidance in the consideration of any repeal or amendment to ORS 342.650.

Public schools have a special obligation to ensure an atmosphere that is welcoming to all students and their families regardless of their religious beliefs. The ACLU also

recognizes the importance of the religious liberty rights of individuals and their ability to practice their faith. However, any change or repeal of the Oregon religious dress law may have unintended consequences that could result in an inappropriate expansion of religious activity in our public schools.

Some repeal proponents recognize how complicated this issue is and that repealing the current prohibition, alone, would risk injecting additional controversy related to religion in our public schools. ACLU believes that without this law, existing constitutional protections and other statutes may not be adequate to protect the religious neutrality of public schools.

LEGAL ISSUES

We are aware of the recent letter by Labor Commissioner Brad Avakian and Superintendent of Public Instruction Susan Castillo advocating repeal of ORS 342.650. We do not agree with their legal analysis or conclusions. As noted above, the Oregon Supreme Court upheld ORS 342.650 in 1986 in *Cooper v. Eugene School Dist. No. 4J* and resolved some of the questions now being raised. We do not agree that the threat of future litigation should be the basis for a quick repeal of the law.

CALL TO ACTION

Religious activity in public schools is a very important issue to Oregonians and, without a larger conversation, it would be premature to change Oregon law. The ACLU of Oregon also believes it is critical to address and resolve these questions in a considered and respectful manner. It simply would not be possible to accomplish this task and also address the important legal ramifications between now and the end of the February 2010 session.

We want to emphasize that the ACLU is committed to continued analysis and discussions in the coming months. However, since no official action was taken by the ACLU of Oregon Board of Directors at its November meeting to change our long-standing position, the ACLU of Oregon continues to support the current statute at this time. As a result, if the issue does arise in the February 2010 session, we would strongly oppose any attempt to repeal ORS 342.650.