Testimony of Andrea Meyer
The ACLU of Oregon
on
HB 3604
Pledge of Allegiance

Before the House Rules Committee

April 25, 2011

The ACLU of Oregon opposes HB 3604. Indeed, we believe that ORS 339.875 that sets forth the requirement that public schools provide students the opportunity to recite the version of the pledge of allegiance on a weekly basis that includes "One Nation under God" violates Oregon Constitution's religious freedom provision, Article I, section 5. That provision states in part: "No money shall be drawn from the Treasury for the benefit of any religeous (sic), or theological institution. . . ." To the degree that the current law is vulnerable to a challenge, amending it from weekly to daily will make it five times more likely

For most of this nation's history, the Pledge originally did not include God. It states:

> I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands; one Nation, indivisible, with liberty and justice for all.

It was only in 1954, in the midst of the McCarthy era "red scare" period, that Congress added "Under God." The hallmark of the McCarthy era was its pressure to conform in politics and religion, in speech and belief. The prevailing assumption was that all good (non-communist) Americans believed in a monotheistic God. Untrue in the 1950s, this assumption is more strikingly untrue today. Many Americans subscribe to no religion. And even people who do worship a monotheistic God show great variation in their definition of the deity; many do not subscribe to the idea that God's role is to organize the affairs of humans and countries, as embodied in the phrase "one nation under God."

If the goal of this law is patriotism, then we should chose a non-religious expression of patriotism, such as the pre-1954 Pledge. Choosing to include the words "under God" indicates that the real purpose of the Pledge, here, is religious, not patriotic.

The law allows a child to "maintain a respectful silence during the salute." We have received a number of complaints by parents and students since

this law was passed, requiring them to stand and otherwise force them to participate in the pledge against their beliefs, be they religious or for other reasons. The right to express oneself by not participating in the pledge includes the right to remain seated while others stand. The famous case of *Tinker v. Des Moines School Dist.*, 393 US 503 (1969) upheld the rights of students to silently protest by wearing black armbands. Remaining seated during the pledge is a form of silent expression just like the black armbands in Tinker.

The practical result of this law will be to ostracize students who cannot or choose not to participate in the pledge for whatever reasons they or their parents decide. It is callous for the government to force schoolchildren of minority faiths to isolate themselves from their classmates to avoid participating in a religious exercise in violation of their conscience. And under this proposal, children will be forced daily to set themselves apart from their peers. This is just the type of difference that other children quickly pick up on and use to bully and harass the lone child who is now marked as different, and "bad" from the majority of other students in that school. For the last few years, we have become increasingly aware of the devestating effects that bullying has, especially on children who are isolated from their peers because of real or perceived differences. Now is not the time to add to this.

The Oregon Supreme court has recognized the importance of our public schools in protecting our children.

> Parents and lawmakers may and do assume that the hours, days and years spent in school are the time and the place when a young person is most impressionable by the expressed and implicit orthodoxy of the adult community and most sensitive to being perceived as different from the majority of his or her peers; famous constitutional cases have involved this socializing rather than this intellectual function of the schools. *Cooper v. Eugene School District 4J*, 301 Or 358 (1986).

The most powerful testimony on how dangerous it is when governments begin to require adherence to compulsory measures reflecting national unity was made in the 1943 U.S. Supreme Court case *West Virginia State Board of Education v. Barnette,* 319 US 624 (1943). There, Jehovah's Witnesses challenged the requirement that they participate in the Pledge of Allegiance. In siding with the Jehovah's Witnesses, the Court noted the following lesson of history.

> Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good, as well as by evil, men. Nationalism is a relatively recent phenomenon, but, at other times and places, the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an ever-increasing severity. As governmental pressure toward unity becomes greater, so

> strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

The ACLU of Oregon urges this Committee not to proceed on HB 3604.