

BAN ON RELIGIOUS GARB FOR OREGON TEACHERS GETS PULLED OUT OF THE CLOSET FOR A FRESH DEBATE

DRESS CODE

BY JON BELL

No teacher in any public school shall wear any religious dress while engaged in the performance of duties as a teacher.

— OREGON REVISED STATUTE 342.650

SABA AHMED DOES NOT WANT TO BE A PUBLIC SCHOOL TEACHER IN OREGON.

The 25-year-old Pakistani native and current Portland resident earned her law degree from Lewis & Clark Law School last year and currently works as a patent analyst for Intel Corp. She's also now pursuing an MBA at the University of Portland.

If she wanted to teach in a public school in Oregon, under current Oregon law, she would have to shed her Muslim headscarf and leave it outside the classroom.

"It's so personal," Ahmed said. "It's like someone asking you to take your clothes off."

Though she's not an educator, Saba Ahmed, a spokesperson for the Oregon Muslim Citizens' Alliance, has been active in the debate to repeal the ban on religious wear in Oregon's public school classrooms.





Supporters and opponents of the current ban on religious wear gather to testify at a Jan. 13 House Education Committee Hearing at the Oregon state capitol. The committee later voted to repeal the ban on religious wear in public schools.

Charles Hinkle, an attorney with Stoel Rives LLC in Portland who specializes in constitutional law, is himself a religious man. In addition to his Yale law degree, he earned a master of divinity from Union Theological Seminary and he's an ordained minister with the United Church of Christ.

But Hinkle doesn't want to see headscarves, priests' collars, Jewish yarmulkes or any other piece of religious clothing on any teachers inside Oregon's public schools.

"My view," he said, "is that it is important to keep all sectarian religious influences out of the classroom."

And therein lies the simple division between those who think an 87-year-old Oregon law prohibiting religious dress in the classroom denies personal religious expression and those who believe the law helps to preserve a constitutionally-mandated neutrality in public schools.

Proponents of the ban say that any religious attire can make an impression on students, whether teachers are actively proselytizing or not, and that such garb may convey a district's endorsement of one religion over another. Opponents say the prohibition is discriminatory and antiquated, and that wearing a turban in a classroom because one's religion requires it is a simple expression of identity, not an attempt to recruit new disciples.

The Oregon Legislature touched only lightly on the issue in 2009, when it passed the Oregon Workplace Religious Freedom Act. The law requires employers to accommodate employees'

religious beliefs, including time off for religious holidays and, in most cases, the wearing of religious clothing. The one exception: public school teachers, who were intentionally left out of the legislation last year.

At the prodding of some state officials, individuals and organizations, however, the Legislature is picking up the issue during its current special session this February and will likely decide whether to repeal the ban or leave it in place. Legislation to remove the ban, introduced by Speaker of the House Dave Hunt, D-Gladstone, is expected to pass. On Feb. 5, the House Education Committee voted 6-4 to end the ban; five days later, members of the House voted 51-8 to lift the ban. The issue now goes to the Senate floor.

And though little formal opposition is expected, the debate will no doubt be a spirited one. It already is.

HISTORY LESSONS

Oregon's ban on religious garb in the public classroom stems from a law enacted by the Legislature in 1923. According to the Oregon Blue Book, sentiments at the time leaned anti-immigrant and anti-Catholic. Groups like the Ku Klux Klan and Federation of Patriotic Societies worked to pass a law in 1922 requiring all children



to attend public schools, threatening parochial schools' ability to operate in the state. Both the Oregon Supreme Court and the U.S. Supreme Court ruled the law unconstitutional.

But in 1923, the Legislature enacted the law that made it illegal for any teacher in an Oregon public school to wear religious dress or garb while teaching. Though the law did not list any specific religions, its main targets were likely nuns and priests who might otherwise have worn their habits or vestments while teaching.

The Legislature revised the law in 1965, primarily making

This year, the religious wear debate will be key to OEA's First Freedom Caucus, headed up by (from left) Dan Domenigoni, membership wrangler, Kathy Paxton-Williams, secretary, Bruce Adams, president, and DeDe Johnson, vice president.

changes that tightened up the wording. Gov. Mark Hatfield signed the revised law the same year.

And then in the mid 1980's, Oregon's ban against religious clothing in the classroom encountered its first and only major legal challenge. In 1983, Janet Cooper, a middle school teacher in the Eugene School District, converted to Sikhism, a religion founded in the Punjab region of India in the fifteenth century that requires followers to wear turbans and various accoutrements.

For wearing her religious garb in violation of the law, Cooper was suspended and ultimately had her teaching license revoked. She sued the Eugene School District for violating her right to free exercise of religion as guaranteed by both the state and federal constitutions. In a 1986 appeal, the Oregon Supreme Court rejected Cooper's contentions, finding that the law did not violate her rights and that it actually helped preserve religious neutrality for students in a public classroom.

Cooper appealed to the U.S. Supreme Court in 1987, but the court upheld the Oregon decision and dismissed her case. Cooper has since moved to New Mexico, where she reportedly teaches in a private school. According to Ahmed, Cooper may have also converted to another religion.

Interested in continuing this conversation with your education colleagues? Consider joining OEA's First Freedom Caucus.

The OEA First Freedom Caucus discusses church/state issues, especially as they relate to public schools. The caucus meets once a year at the OEA Representative Assembly, but it is primarily an email discussion group. All active or retired OEA members are invited to join. There are no dues. To join or for more information, send your contact information (name, address, phone and your local association) to the caucus at: OEA1stFreedom@aol.com. You may unsubscribe from the list at any time.



Left: Portland attorney Charles Hinkle supports the ban on religious clothing, saying it protects a constitutionally-mandated neutrality in public schools. Right: Rep. Sara Gelsler, D-Corvallis, leads the House Education Committee hearing.

It wasn't until legislation relating to religious freedom in the workplace came up during the last legislative session that the clothing ban for teachers received further substantial attention.

But even then, teachers were singled out and the ban was kept in place, presumably so as not to stir the political pot too vigorously.

Hunt said the ban for teachers was retained under the Oregon Workplace Religious Freedom Act so that the accompanying debate wouldn't derail the effort to broaden religious freedoms for workers. To try to tackle the teacher issue along with the workplace one may have been too much — and incurred stiff opposition from the likes of the American Civil Liberties Union. But to not take up the workplace effort at all may have rubbed some business groups the wrong way.

"My assessment was that we couldn't handle both oppositions on one bill," Hunt said. "So we said we'd come back in 2010 and finish it up."

BANNING THE BAN

OEA has yet to take a formal position on the issue of religious garb in the classroom, but many others have.

Those advocating for a repeal include Hunt, State Superintendent of Public Instruction Susan Castillo, Oregon Labor Commissioner Brad Avakian, Ecumenical Ministries of Oregon (EMO), and the Oregon Family Council. They cite everything from a perceived vagueness in the statute to its KKK roots and its discrimination against religious minorities, who they believe are essentially disqualified from teaching in public schools if they can't wear what their religion requires.

"We think it's an issue of respect for diversity, tolerance and difference," EMO's director of public policy Kevin Finney said during a hearing before the House Education Committee on Jan. 13. "We also think it's an issue of hiring discrimination."

Ahmed, who also represents the Oregon Muslim Citizens

Alliance, said she knows several Muslim women who have either been denied teaching positions or been asked to remove their headscarves.

"Muslims are part of American society," said Salahudin Ali, a law student at Lewis and Clark, "and you shouldn't be segregated off and (told) you have the right (to wear religious clothing) in private schools, but not in mainstream American society."

At the January hearing, Castillo told legislators that she is concerned about whether or not the current statute violates Title VII of the federal Civil Rights Act, which prohibits employment discrimination. She said the statute is vague on its definition of religious dress — currently teachers can wear a Star of David on a necklace but not a yarmulke — and that existing statutes and policies already prevent teachers from taking religion too far, a sentiment echoed by Steven Green, a law professor and director of the Center for Religion, Law and Democracy at Willamette University.

"This is just not a problem," he said. "If a teacher does become overt or proselytizing, there are ways that we can address that without infringing on people."

Among those ways, according to Mark Toledo, general counsel for OEA, are various provisions in both the state and federal constitutions. One example: Article 1, Section 8 of the Oregon Constitution, which guarantees the right to free speech with the caveat that "every person shall be responsible for the abuse of this right."

"So there is this tension between the freedom of expression and the abuse of that right," he said.

Existing ethical standards for teachers in Oregon are incredibly high, Toledo added — higher than those of many other professions. Couple those with the oversight of the Teacher Standards and

Practices Commission (TSPC), and teachers aren't likely to push it too far and get away with it.

"If a teacher crosses the line, a district has authority to take appropriate disciplinary action. And, TSPC has authority to take serious disciplinary action against a licensee for abuse of those standards," Toledo said.

In her testimony, Castillo also noted that the current ban only applies to teachers, not teaching assistants or other education support professionals who work in a public school. That means that while it would be illegal for a teacher to wear a full Muslim hijab, a para-educator in the same classroom would be free to do so.

Proponents of the repeal also note that Oregon is one of only three states in the nation to have such a law in place. "Forty-seven other states do not have this law on the books, and I haven't heard about a great wave of proselytizing anywhere," Hunt said.

There's also the idea that having a diverse teaching staff helps expose students to today's increasingly pluralistic society. And also that, impressionable as they are, students may simply see the teachers beyond the yarmulkes and turbans.

"Appearance aside, teachers are beloved by students," said Bruce Adams, a retired school teacher and current president of OEA's First Freedom Caucus, an email group that focuses on the separation of church and state. "Unless there's an adult there telling them there's something wrong, children won't see it."

PUSHING BACK

For every push for repealing the ban there is, of course, a push back.

Although the ACLU of Oregon has not taken an official stance, the group has pressed the Legislature to at least slow the repeal process down "to allow for full participation and deliberation," explains legislative director Andrea Meyer. Repealing the ban could open a "Pandora's Box" because there would be little room for regulation from either the government or school districts, she said.

Hinkle is quick to counter arguments of bigotry in the statute's roots, noting that it doesn't single out any specific religion and was instead aimed at maintaining religious neutrality. The Speaker of the House in 1923 may have had ties to the Klan, Hinkle said, but the law was revisited in 1965 and signed by Gov. Mark Hatfield, "a man of deep personal and religious convictions . . . who's never been accused of religious bigotry."

"This is not something that is the vestige of a long-ago period," Hinkle said.

As shown by the Cooper case, the ban has already been challenged at the state and federal level — and it has held up. And as for the 47 other states who don't have similar laws?

"Other policies address the issue in other states," Hinkle said. "I don't know of any state where you will find a Roman Catholic nun in full habit or a Muslim woman in a burka . . . who are allowed to teach in public schools."

In regard to free speech rights, Hinkle noted that public school teachers' right to free speech is already curbed when they set foot in the classroom. The very nature of the job precludes them from expressing their opinions to students on any political issue.

And if someone's religion absolutely requires them to wear a particular garment — which some say is more personal choice than mandate — then perhaps there are just going to be jobs that aren't available to them.

"I'm sorry, you can't be a judge wearing a Jesus Saves T-shirt even though your religion may compel you to do it," Hinkle said.

Additionally, Hinkle points to studies that show how impressionable children are when it comes to religious clothing or jewelry. One study by a professor of psychology and education at Columbia University showed that a group of students in a Catholic school did better on tests administered by a teacher wearing a cross on a necklace than those in another group whose test was given by a teacher wearing a Star of David.

There's also some concern that removing the ban will open the door for anyone to wear whatever they want and chalk it up to a religious belief. Along the same lines, Hinkle told legislators at the January hearing that if the ban is repealed, the state and its public schools should be prepared to accommodate not just mainstream religions, but those on the fringe, as well.



Reps. Chris Harker and Ron Maurer confer on religious garb.

"Some might take this as a sign that they can be more religious in the classroom," Green said, "so there may be more cases where some people are going to see how far they can go."

Though voices on either side of the issue conjure up worst-case scenarios — scores of qualified teachers discriminated against and turned away on one side, hordes of teachers spreading their own good word throughout their classrooms on the other — what may actually come of all this could turn out to be a little less dramatic.

The ban could be left in place as is, or it may end up being revised a bit to better clarify the issues over ESPs and what constitutes religious dress. If teachers end up being allowed to wear religious clothing in their classroom, a lot of people would be surprised at how little difference they'd actually see in schools, Adams said.

Either way, future issues regarding religious clothing are just as likely to be resolved based on the specific circumstances of the case as they are any hard and fast rule laid out by the Legislature. ■