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Jeffrey, Marci Beagley found guilty in Oregon City faith-healing trial

By Steven Mayes, The Oregonian
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OREGON CITY -- A Clackamas County jury sent a clear signal Tuesday that parents who rely solely on faith healing to treat their children face prison if a child dies.

Jeffrey and Marci Beagley were found guilty Tuesday of criminally negligent homicide in the death of their 16-year-old son, Neil. The boy died in June 2008 of complications from an undiagnosed congenital urinary blockage after his parents attempted to heal him with prayer, anointing with oil and laying on of hands.

They are the first members of Oregon City's Followers of Christ church convicted of homicide in the congregation's long history of children dying from from treatable medical conditions.

"This is a signal to the religious community that they should be on notice that their activities will be scrutinized," said Steven K. Green, director of Willamette University's Center for Religion and Democracy. Other prosecutors may be emboldened to take similar cases to court, the law professor said.

Prosecutor Greg Horner asked that the Beagleys immediately be taken in to custody. Clackamas County Presiding Judge Steven L. Maurer denied the request, saying the Beagleys were not a flight risk or threat to the community.

What's next

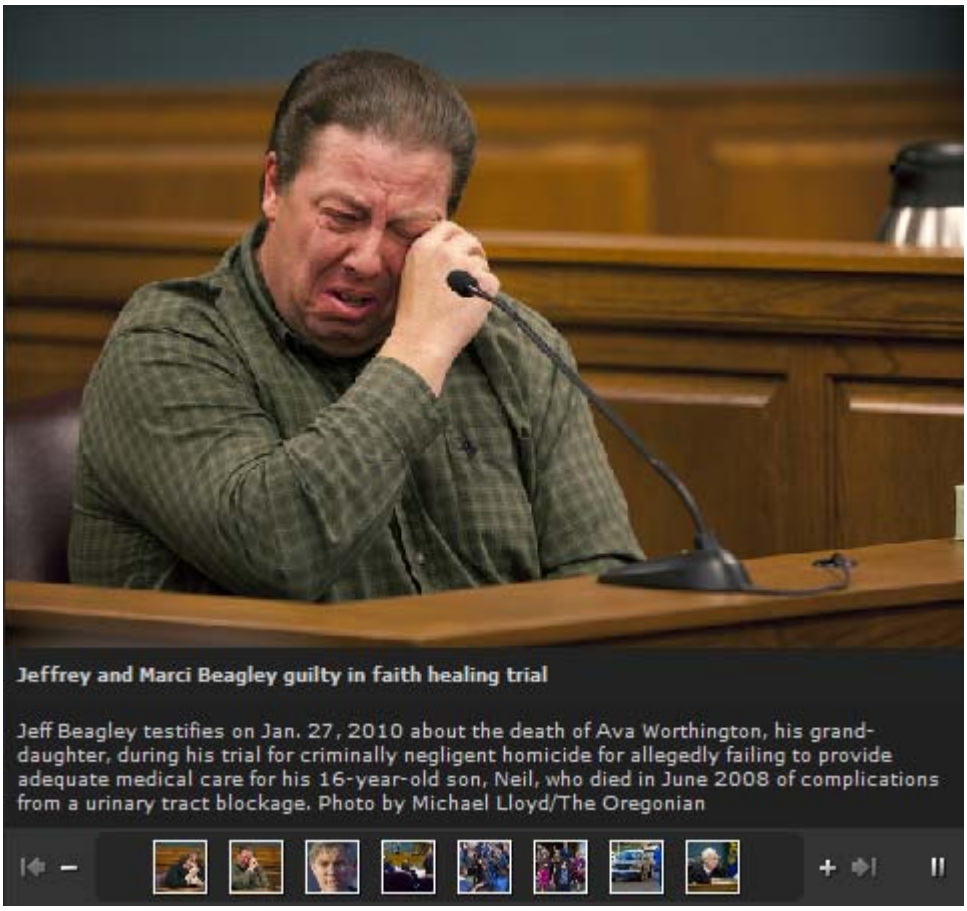
Sentencing: Scheduled for Feb. 18. Criminally negligent homicide is a Class B felony punishable by up to 10 years in prison. Normal sentencing range for defendants with no criminal history is 16 to 18 months.

Religious exemption: Under an exemption from Oregon's mandatory sentencing laws, parents who offer a religious defense in the death of a child may be eligible for

Friends and family reacted to the 10-2 verdicts with stunned silence. Marci Beagley hugged her mother in the courthouse lobby as both women wept. Other family members quietly stood by.

probation rather than prison.

The Beagleys will be sentenced Feb. 18. The maximum penalty for criminally negligent homicide is 10 years, but the Beagleys likely will receive no more than 18 months in prison and could be sentenced to probation.



Jeffrey and Marci Beagley guilty in faith healing trial

Jeff Beagley testifies on Jan. 27, 2010 about the death of Ava Worthington, his granddaughter, during his trial for criminally negligent homicide for allegedly failing to provide adequate medical care for his 16-year-old son, Neil, who died in June 2008 of complications from a urinary tract blockage. Photo by Michael Lloyd/The Oregonian

Steve Lindsey, who represented Marci Beagley, said he would recommend a "non-jail sentence" that would include probation and possibly other conditions, such as counseling, supervised medical care for the Beagleys' 16-year-old daughter, Kathryn, and cooperating with state child-welfare investigators. Lindsey said such a sentence could educate the Followers about their legal responsibilities as parents.

As the verdict was read and the jury was polled on Tuesday, Marci Beagley and a few of the jurors cried. The strain of the nine-day trial was apparent. Jurors, with one exception, declined to speak with reporters.

The Beagleys are considering their options and may file a appeal, said attorney Wayne Mackeson, who represented Jeffrey Beagley.

"If conviction and a prison sentence meant they would get their son back, they would do that in a heartbeat," he told reporters gathered on the courthouse steps.

Rita Swan, president of Children's Healthcare is a Legal Duty, an Iowa-based advocacy group, hailed the conviction as a victory for Oregon children.

"I know the parents are broken-hearted. But love and good intentions are not all it takes to be a good parent," said Swan, who previously lobbied

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from the faith-healing trial of Jeffrey and Marci Beagley.

The trial attracted national attention and was filmed gavel to gavel by TruTV for later release as a multi-part documentary on cable television.

Prosecutors focused on the Beagleys' lifelong rejection of medical care and on a family dynamic that placed immense pressure on Neil Beagley to conform to his church's reliance on faith healing.

They noted that Neil had limited contact with people outside his church who might have noticed health problems. He was home-schooled, and his social life did not extend beyond other church members.

Defense attorneys presented jurors with a picture of a typical hard-working suburban family whose lives blended daily with the secular world. They showed the jury family pictures and videos of Neil growing up and depicted the Beagleys as part of the mainstream and anything but isolated and clannish.

Three doctors testified for the defense, generally saying that Neil Beagley's symptoms wouldn't necessarily have appeared life-threatening.

In his closing argument, prosecutor Greg Horner noted that the Beagleys would not take their son to a physician but relied on medical experts to defend their actions.

It is "a rich irony," Horner said.

Jurors were asked to consider whether the Beagleys' actions were "a gross deviation" from what a reasonable person would have done in a similar situation.

The state did not have to prove that the Beagleys intended to cause Neil's death or that they knew he was going to die.

Defense attorneys downplayed the religious aspects of the case while prosecutors said the law, faith and parental duties were inseparably bound.

Neil Beagley "grew up in a world where medicine is weakness, faith is strength," prosecutor Steven Mygrant told jurors.

Neil embraced the church's belief that seeking medical care shows a lack of faith. None of his relatives used doctors. And Neil was unable to make an informed health-care decision because he didn't know he was on the verge of death, prosecutors said.

"For me, this case was not about faith healing and it was not a referendum on the church," Mackeson said. "It was about two parents who loved their son and did not know how sick he was."

The jury agreed with Mackeson -- up to a point.

The Beagleys are decent people who made a fatal mistake, said juror Robert Zegar. The couple should have known their son needed more than prayer, but they ignored warnings, including the death of another family member, Zegar said.

Last summer, another jury found church members Raylene and Carl Brent Worthington not guilty of manslaughter in the death of their 15-month-old daughter, Ava. Raylene Worthington is the Beagley's daughter and Neil Beagley's sister. Carl Worthington was convicted on a lesser charge.

Prosecutors successfully argued that they should be allowed to discuss the Worthington case because the Beagleys were present when Ava died. That pre-trial victory helped pave a path to Tuesday's guilty verdict.

Maurer's decision to allow references to the Worthington case "was a very big difference," said attorney Mark Cogan, who represented Carl Worthington. "That was the biggest difference between the two trials."

The Beagleys were at the Worthington home for 24 hours before Ava died. No one called for an ambulance or tried to revive the Ava when she stopped breathing.

Neil Beagley died three and a half months later in similar circumstances.

He became ill in March 2008 with a cold that developed into something Marci Beagley and other relatives believed could be life-threatening. The Beagleys treated him with faith healing but did not take him to a doctor.

Neil recovered but got sick again in early June 2008. After a week or so, he became too weak to walk. Jeffrey Beagley had to carry him to the bathroom. Marci Beagley fed him in small meals, but Neil couldn't keep his food down.

When he died, as with Ava Worthington, no one called 9-1-1.

Rick Bella, Nicole Dungca, Dana Tims and Yuxing Zheng contributed to this report.

-- **Steven Mayes**

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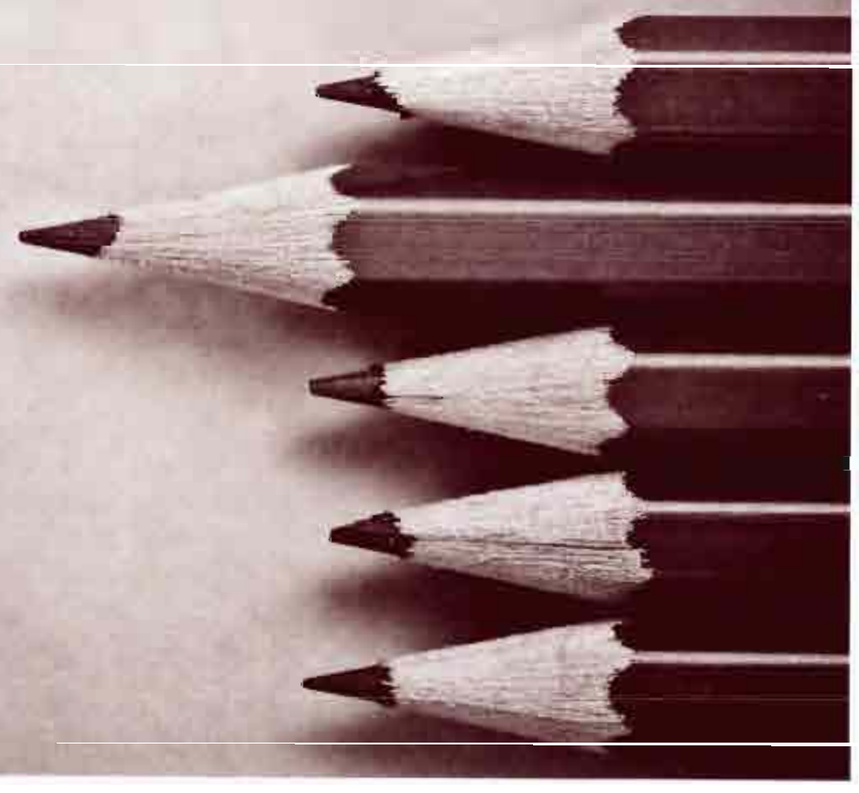
Pierce v. Society of Sisters and the Struggle over Compulsory Public Education



CROSS PURPOSES

Pierce v. Society of Sisters and the Struggle over Compulsory Public Education

PAULA ABRAMS

The University of Michigan Press
Ann Arbor

INTRODUCTION One Flag, One School

The message tacked to the St. Mary's Academy door just before midnight on November 7, 1922, confirmed the worst fears of the nuns and schoolchildren asleep within. "The School Bill passed. Fiat!" Hours earlier, the people of Oregon became the first in the nation to approve a ballot initiative compelling public education for all children between the ages of 8 and 16. The law made criminals of parents or guardians who sent their children to private schools. The oldest Catholic school in the state, St. Mary's Academy had educated Portland children since 1859; now it faced certain closure. A late-night rain splattered the rows of darkened windows across the ivy-covered facade of the school at the corner of Fourth Street and Mill. The massive brick and stone building already looked deserted.

The passage of the School Bill ordained the ruin of both secular and religious private schools throughout the state. Of Oregon's 175,000 students, 12,000 attended private schools. More than three-quarters of these privately educated students attended schools operated by the Roman Catholic Church. Opponents of the School Bill, pointing to such statistics, charged that it was the product of anti-Catholic bigotry.

It was not that simple.

The Oregon School Bill emerged from the nativist furor sweeping the United States. Between 1901 and 1920, over 14 million immigrants came to America, the large majority of them from southern and eastern Europe, most of them Catholics and Jews. The Great War heightened hostility to-

ward foreigners and to ideas perceived as anti-American. Victory did not alleviate this antipathy. As Americans struggled to "return to normalcy," many argued that immigrants who spoke different languages and practiced different religions were destabilizing the country and threatening the American way of life.

The country's preoccupation with nativism, patriotism, and ideological conformity reached its apex with the Red Scare of 1919–20. Headlines warned of Bolshevik "terrorists" who plotted to bring violence and revolution to America.[1] Attorney General A. Mitchell Palmer and his young assistant, J. Edgar Hoover, led a campaign to deport thousands of immigrant members of the Communist Party. The crusade to purge America of Bolshevist influence spread throughout all facets of society. One British journalist observed, "No one who was in the United States . . . in the autumn of 1919, will forget the feverish conditions of the public mind at that time. It was hag-ridden by the ghost of Bolshevism. . . . Property was in an agony of fear, and the horrid name 'Radical' covered the most innocent departure from conventional thought with a suspicion of desperate purpose."[2]

Radicalism also preoccupied the Supreme Court, which, like the nation, struggled to adapt to a world of vast and rapid change. The spate of wartime legislation restricting radical speech forced the Court to decide how far the government could go to suppress subversive influences. Like the rest of the country, the Court took a hard line on radicalism. Under the Espionage and Sedition Acts, it upheld convictions of immigrants, antiwar activists, and socialists for subversive speech. In case after case, the Supreme Court affirmed lengthy prison sentences for speech critical of the government and the war. Eugene Debs, the Socialist candidate for president through five elections, was among those whose antiwar speeches yielded ten-year prison terms.

The postwar Bolshevik hysteria fueled intolerance toward immigrants. The Bolshevist label was code for all things considered unAmerican. Patriotic societies argued that the "best antidote for Bolshevism is Americanism." For many Americans, the drive to assimilate immigrants became a patriotic mission to protect national security.

The call for compulsory public schooling grew out of this crusade to Americanize immigrants. Compulsory public schooling offered a potent means of acculturation, training impressionable children to become loyal Americans. In 1920, sociologist John Daniels proclaimed the virtues of public education: "[Children] go into the kindergarten as little Poles or Italians or Finns, babbling in the tongues of their parents, and at the end of half a dozen years or more . . . [they] emerge, looking, talking, thinking, and behaving generally like full-fledged Americans."[3] The public school, then, was to be the great American melting pot.

The Ku Klux Klan supported compulsory public education as part of its political agenda. Reconstituted in Atlanta in 1915 as the Invisible Empire and energized by the national success of the racist, pro-Klan film classic *The Birth of a Nation,* the Klan seized on the unrest in the country and embarked on a successful nationwide recruiting drive. It married racist, nativist, anti-Semitic, and anti-Catholic messages to fears of radicalism. The Klan denounced aliens, blacks, Jews, and Catholics as un-American "agents of Lenin." The KKK's postwar strategy of cloaking bigotry in the garb of patriotism was phenomenally successful. The Klan also benefited from a rising religious fundamentalist movement, whose members were drawn to Klan Protestantism. National membership surged in the early 1920s from less than 5,000 to more than 4,000,000. Shortly after his inauguration, President Warren G. Harding became a member of the Klan in a secret ceremony in the Green Room of the White House.[4] In the Klan's view, mandatory public schooling would instill "100 percent Americanism" in every one of the nation's children.[5] It also would eliminate Catholic private education.

In the fall of 1922, Oregon adopted the model of Americanized, egalitarian education envisioned by the champions of mandatory public schooling. Populist and progressive politics, anti-Catholic and nativist sentiments, and fears of radicalism all made the state fertile ground for adoption of compelled public education, as did the Oregon initiative process, one of the country's most vigorous experiments in direct democracy. Each of these forces alone probably would not have yielded a majority vote, but together they moved Oregonians to embrace a dramatic social experiment.

The opponents of the School Bill were not ready to accept defeat. For St. Mary's Academy and other private schools in the state, the School Bill meant the dissolution of their work and calling. By the time the votes were tallied, the providers of private schooling in Oregon already were formulating a strategy to challenge the new law. The Society of the Sisters of the Holy Names of Jesus and Mary, the dominant provider of Catholic education in the state and the founders of St. Mary's Academy, joined forces with Hill Military Academy, a nonsectarian private school. In the ensuing legal battle, the parties argued about parental rights, economic interests, Bolshevism, and state-controlled curriculum. When *Pierce v. Society of Sisters* was finally decided by the U.S. Supreme Court in 1925, it became a landmark case

in constitutional law. The Court rejected the state's claim that it had the authority to impose compulsory public schooling. Parents, the Court decreed, have a constitutional right to decide how to educate their children, including the right to send them to private schools.

The *Pierce* decision has helped shape the course of modern American constitutional law. It continues to be extolled as the "Magna Charta" of American education by parents who seek to shape educational policy. The Court's recognition of parental rights also impacts the law over a wide spectrum of public policy matters, including health care, privacy, and religion. At the same time, *Pierce* stands as a pivotal decision in the judicial resolution of numerous controversies, including abortion, death with dignity, sexual preferences, and a host of family and personal liberties.

The story of *Pierce* vividly illustrates the stresses placed on American democracy during times of national crisis. Nativism endures as a persistent political force in American society. The pressure to conform to mainstream ideology and culture remains intense in times of national crisis, when immigrants become targets of hostility and fear. The passage of the Oregon School Bill and the litigation that followed reveal a countty embroiled in nationalist fervor and willing to brand minority groups as unpatriotic. By striking down the initiative, the Supreme Court rejected the plebiscite's determination that immigrants, particularly Catholics, posed a threat to national security.

Pierce, despite its significance, is frequently misunderstood. In numerous opinions, the Court has treated *Pierce* like a constitutional chameleon, disputing whether the decision is primarily about privacy or the free exercise of religion or free speech rights. Outside the legal community, the common perception of *Pierce* is that it is a case rejecting anti-Catholic bigotry. That the perceptions of *Pierce* vary is not surprising; the decision speaks to all these values.

The chronicle of *Pierce,* from the Oregon initiative campaign to the chambers of the Supreme Court, reveals how deep-seated political and social conflicts lead to landmark decisions. The School Bill fight is an account of post–World War I America. The struggles that defined this era led to the passage of the Oregon law and shaped the legal challenges and Supreme Court decision that followed. The import of *Pierce,* and its modern progeny, emerge from this profound narrative.

PART I Initiative

CHAPTER 1 One Hundred Percent Americanism

The Oregon School Bill fight was never simply a local issue. The inspiration for the Oregon School Bill came from a resolution adopted at Colorado Springs, Colorado, by the Supreme Council of the Scottish Rite Masons, Southern Jurisdiction, in May 1920. The resolution represented the will of Masons in 33 southern and western states.

> Resolved: That we recognize and proclaim our belief in the free and compulsory education of the children of our nation in public primary schools supported by public taxation, upon which all children shall attend and be instructed in the English language only, without regard to race or creed, as the only sure foundation for the perpetuation and preservation of our free institutions, guaranteed by the constitution of the United States, and we pledge the efforts of the membership of the order to promote by all lawful means the organization, extension, and development to the highest degree of such schools, and to oppose the efforts of any and all who seek to limit, curtail, hinder, or destroy the public school system of our land.[1]

The national leadership of the Masons and other supporters of compulsory public education wanted all children in America to attend public schools. Oregon became the center of an unfolding national debate on the merits of compelled public schooling. Many Oregonians called the

School Bill the most significant local political issue to agitate the state since slavery, but both the campaign and the ensuing litigation proceeded with a keen awareness of the national attention focused on Oregon.

The Oregon Masonic Grand Lodge adopted the Supreme Council's resolution in July 1920. The proposal garnered little political attention at the time. Nearly two years later, Republican state senator Charles Hall revived the languishing resolution and made compulsory public schooling the most contentious issue in the May 1922 Oregon gubernatorial primary, in which Oregon's incumbent Republican governor, Ben Olcott, faced primary challenges from five Republicans, including Hall and state senator Isaac Patterson.

In what the *New York Times* described as the "most bitter primary campaign in the history of Oregon,"[2] Senator Hall emerged as the primary challenger to Olcott. Hall brought compulsory public education to the governor's race by running on the platform "One Public School for All Eight Grades." He aggressively took his message around the state: "The public school is one of the fundamental factors in our system of government. I favor compulsory attendance in the primary grades. Teach pure Americanism to all pupils at an early age. Continue to strengthen and build up this typical American institution."[3]

While Hall traveled the state proclaiming the virtues of mandatory public schooling, white-hooded figures threatened the nuns and students of St. Mary's Academy when they walked down tree-lined Park Avenue. Some children were curious about the costumed figures, but most were frightened. At night, crosses burned on Portland's Mount Tabor and Mount Scott, on Skinner's Butte in Eugene, and on the hills surrounding smaller communities all over Oregon. These events were not unconnected. The fate of Oregon private schools became entwined with the rise of the most powerful political force in Oregon—the Knights of the Ku Klux Klan. Hall's support for compulsory public education secured him the endorsement of the Klan. Governor Olcott was a bitter enemy of the Klan and an opponent of compelled public schooling.

The Klan Moves into Oregon

The Knights of the Ku Klux Klan arrived in Oregon in 1921. They brought with them the "One Flag, One School" campaign, a centerpiece of the Klan's platform of 100 percent Americanism. The Klan oath included a vow to champion public education: "I believe that our Free Public School is the cornerstone of good government, and that those who are seeking to destroy it are enemies of our Republic and are unworthy of citizenship."[4] The Klan's aggressive support of compulsory public schooling would prove to be critical to the passage of the School Bill. The Klan brought to the campaign a formidable state political machine capable of delivering votes.

Some leading Oregonians, including Governor Olcott, initially underestimated the impact the Klan would have in their state. Kleagle Luther I. Powell, sent by the Klan's highest officer, the Imperial Wizard, proved to be an effective organizer and front man for the Klan; he rapidly recruited the mayor of Medford and so impressed the local paper, the *Clarion,* that it described the Klan as "the very antithesis of lawlessness." In September 1921, Governor Ben Olcott dismissed the influence of the Klan in Oregon, informing the *New York World* that "because of wholesome conditions in Oregon, with little discontent and a satisfied people, the Ku Klux Klan . . . has made little or no progress and I am informed it is now folding its tent like the Arab and as silently stealing away."[5]

Governor Olcott quickly came to rue his assessment that the Klan in Oregon made "practically no impression on our people."[6] The Oregon Klan recruited an estimated 20,000 new members statewide from a total population of nearly 750,000. In an address to the National Governor's Conference, Olcott expressed puzzlement that the Klan appealed to Oregonians: "We have not the so-called Catholic menace in Oregon; the Catholic population is comparatively small; we have no so-called Jewish menace in Oregon, because the Jewish population is also comparatively small. Some of the best citizens and the most far-seeing and forward-looking citizens of the state are Catholics and Jews. We have no negro population there, only a total of about 1800 negro votes in the whole state of Oregon."[7]

Olcott failed to appreciate that the meteoric rise of the Klan in Oregon was not simply about bigotry. The Klan's law-and-order platform resonated with diverse Oregon communities. In the lively port town of Astoria, the Klan successfully attracted citizens who abhorred the flagrant wantonness of the port culture, as well as those who felt threatened by the city's large Finnish population. Anti-Catholic sentiment swelled Klan membership in rural Tillamook, as did fears of labor unrest in a community heavily dependent on timber and dairy. In the urban communities of Portland, Eugene, and Salem, the Klan softened its nativist agenda with an antielitism message designed to appeal to conservative values of working-class and middle-class Protestants.

The Oregon Klan offered members Protestant solidarity and shared values. It required each applicant to certify that he was a "white male Gentile person of temperate habits, sound in mind, and a believer in the tenets of the Christian religion, the maintenance of white supremacy, the practice of an honorable klanishness and the principles of a pure Americanism."[8] The Klan's aggressive Protestantism resonated with the increasing numbers of religious fundamentalists in Oregon. The *Oregonian* in Portland reported on local Klan induction ceremonies in February and April of 1922, noting that the over 2,000 inductees came "from all the important walks of life in the city" and included "doctors, lawyers, business men of all kinds, railroad men, clerks, and citizens from other professions and employments." Journalist Waldo Roberts claimed, "Not the bad people of the State, but the good people—the *very* good people—are largely responsible for the transformation of the Oregon commonwealth into an invisible empire."[9] Benjamin E. Titus, a Portland journalist and briefly a member of the Klan, described the thrill of attending his first Klan meeting as "a feeling that I was now identifying myself with a body of citizens pledged by oaths and ideals as high and as holy as those that bound our forefathers when they founded these United States and consecrated them to liberty and preservation of human rights against all forms of unjust aggression."[10]

Portland Klan No. 1, the largest chapter in the state, with 9,000 members, became the center of Klan operations in Oregon. Fred Gifford, Exalted Cyclops, brought middle-class respectability to the face of the Klan. In his midforties, with steely gray hair, Gifford left a successful management career at Northwestern Electric Company for Klan leadership, increasing his monthly salary in the process from $250 to $600. Gifford's middle-class roots proved a valuable recruiting tool among Portland's urban middle-class population. Gifford made the School Bill a top priority, and his leverage among this socioeconomic group would yield votes.

Gifford's influence was due in part to his success in selling the Klan as a legitimate patriotic organization. In March 1922, the *Oregon Voter,* hostile to the Klan, interviewed Gifford and came away impressed. Gifford's description of the Oregon Klan invoked democracy and nationalism.

> The objects we seek to attain are such that you, as an American citizen, will probably be in harmony with in the main. We are opposed to control of American public affairs by aliens, or by so called Americans whose primary allegiance is to some foreign power. We do not see how any genuine American could differ with us as to this. We are not anti-Catholic or anti-Jew or anti-anything, but pro-American.

Gifford responded with a smile to charges that the Klan threatened democratic values. He predicted, "After a few years, . . . you will not regard the Klan as a menace." The *Oregon Voter* article concluded by describing Gifford as "the reputed boss of Oregon politics, who within a few years is expected to control pretty much all of the legislative and public offices in the state."[11] In January 1922, Gifford inducted a number of state legislators into the Klan in a secret ceremony held in a Salem hotel.

Oregonians saw the ascendancy of the Klan confirmed on the front pages of their newspapers. A photo appearing in the August 2, 1921, *Portland Telegram* shows Gifford and King Kleagle Powell, in full Klan regalia, posing with Mayor Baker, Captain Moore of the Portland police, chief of police Leon Jenkins, district attorney Walter Evans, U.S. attorney Lester Humphrey, Sheriff Tom Hurlburt, and Philip S. Malcolm, inspector general in Oregon for the Supreme Council of the Scottish Rite Masons, Southern Jurisdiction. The two attorneys present later claimed that the Klan tricked the public officials into the photograph. According to the attorneys, the politicians attended a cryptically sponsored reception and agreed to pose for a photograph, only to have the hooded Klansmen pop out from behind the backdrop and into the picture at the last minute.[12]

Most of the Oregon press watched mutely as the Klan rose to political dominance during 1922. Governor Olcott complained that the Klan had "become so strong that the metropolitan papers of the state said not one word against them."[13] The Salem *Capital Journal* and the *Portland Telegram* waged the most aggressive editorial battles against the Klan. The editor of the *Capital Journal,* George Putnam, described the stakes in Oregon as a debate "over the efforts of unscrupulous grafters to commercialize religious and racial animosities for personal or political profit."[14] A number of other papers, including the *Medford Mail Tribune,* the *Corvallis Gazette-Times,* and the *East Oregonian* opposed the Klan, but the most prominent papers, the *Oregonian* and the *Oregon Journal,* stayed silent. The editor of the *Medford Mail Tribune,* Robert W. Ruhl, blasted his fellow editors for failing to take a stand on the power of the Klan in 1922: "During all this time in at least 80 percent of the newspapers of Oregon there was not the slightest editorial reference to this amazing development."[15]

The editorial silence stemmed both from the wide support for the Klan

and from fear of retaliation. Papers that opposed the Klan felt its wrath. The Klan organized boycotts of opposition press. Advertisers reported visits by Klansmen, letters, and telephone calls, all threatening economic boycotts of their businesses unless they cancelled their advertisements in the targeted papers. Some editors suffered personal harassment, threats to their families, and smear campaigns. The *Portland Telegram* lost 5,000 subscribers and the lease on its new offices. Despite the meekness of the Oregon press, the Klan's activities in Oregon captured national media attention. In articles and editorials across the country, the national press excoriated Oregonians for their capitulation to the Klan. The failure of many in the local press to challenge the Klan would play a role in the success of the School Bill. Press criticism of the measure, for the most part, would be too little, too late.

The Klan as Political Machine

The meteoric ascent of the Klan in Oregon transformed the 1922 political campaigns, shaping the course of the governor's race and the fate of the School Bill. The Klan wielded such clout that the influential *Oregon Voter* timidly concluded in January 1922, "We would not regard membership . . . or activity in the Ku Klux Klan as disqualifying anyone from holding public office, even though we condemn the principles, purpose and activities of the Klan itself."[16] The *Catholic Sentinel,* a Portland weekly, warned Oregonians that Hall and other supporters of compulsory public education intended to destroy the Catholic schools in the state.

Klan activities undermined its claims to Protestant propriety. Near hangings and harassment and intimidation of minorities and of businesses that did not support the Klan spread throughout Oregon. Just six days before the primary, Governor Olcott tried to convince Oregonians of the threat posed by the Klan. On May 13, 1922, following a series of night ridings and near lynchings by the Klan in the southern Oregon town of Medford, Olcott issued an anti-Klan proclamation.

> Dangerous forces are insidiously gaining a foothold in Oregon. In the guise of a secret society, parading under the name of the Ku Klux Klan, these forces are endeavoring to usurp the reign of government, are stirring up fanaticism, race hatred, religious prejudice, and all of those evil influences which tend toward factional strife and civil terror. Assaults have been committed in various counties of the state by unknown, masked outlaws, the odium of which has reflected on the Ku Klux Klan. Whether or not these outlaws were connected with that organization is immaterial. Their vile acts demonstrate that the name of the organization may be used for evil purposes and that from the nature of its activities it has the moral effect of causing unthinking and misguided persons to enter into unlawful conspiracies and to perpetrate unlawful deeds.[17]

In his proclamation, Olcott ordered all law enforcement officers to make vigorous use of the state's antimask law to "insist that unlawfully disguised men be kept from the streets." But hooded figures continued to march through the streets of Oregon communities. At a Klan rally in Salem, an airplane strung with lights in the shape of a cross lit up the darkness, dipping its wings to frighten nearby citizens.

Klan sympathizers charged Olcott with political opportunism and allegiance to Catholics. A Klan spokesman accused Olcott of "an unwarranted attack bearing all the earmarks of Roman politics."[18] Olcott's proclamation consolidated Klan support for Senator Hall, and Hall came very close to taking the election. Olcott prevailed in the Republican primary, but by less than 600 votes out of the approximately 116,000 cast. The editor of the *Oregon Voter* observed that "bitter prejudice against the Catholics, based on their supposed domination in political affairs, was the actuating motive for the tens of thousands who supported Hall in May."[19] The Klan in Salem responded to Hall's loss by circulating a letter claiming, "Hall's opponents have stolen the nomination for a candidate whose every recent act has borne the indelible stamp of the Catholic Pope in Rome."[20]

Hall refused to accept defeat. He demanded a recount, charging fraud by Catholic Democrats illegally voting in the Republican primary, but he abandoned the challenge when the early tallies yielded additional votes for Olcott and evidence of fraud by Hall supporters.[21] With Klan backing, Hall decided to run as an independent in the governor's race, opposing Olcott and the Democratic candidate, state senator Walter Pierce. His candidacy assured that compulsory public schooling would remain a significant issue in the general election.

Despite Hall's defeat in the primary, the Klan claimed substantial political victory throughout the state. In Portland's Multnomah County, Klan-endorsed Republican candidates swept 12 out of 13 slots in the delegation to the Oregon House of Representatives. The *Oregon Voter* reported, "Reli-

giously, the election was a torrid encounter." The paper concluded, "May 19 may pass into history as the Dawn of the Nightshirt Era in Oregon politics."[22] After the primary, Governor Olcott again blasted the Klan, this time in the national press, with a statement to the *New York Herald Tribune* warning, "No greater menace confronts the United States today than this monster of invisible government."[23] In a speech to the National Governor's Conference, Olcott admitted, "We woke up one morning and found that the Klan had about gained control of the state. Practically not a word has been raised against them."[24] With Klan assistance, the Masons' proposal for compulsory public education was about to become the political firestorm of an already combative campaign season.

CHAPTER 2 We the People

A small group of Oregon Masons, spurred by the statewide focus on compulsory public education during the primary, mobilized to place an initiative on the Oregon ballot in the November general election. Judge John B. Cleland, a Mason and Past Grand Master of the Grand Lodge of Oregon, drafted the initiative. The measure required public schooling for all children between the ages of 8 and 16, except for those physically or mentally "abnormal." Parents or guardians who violated the law were guilty of a misdemeanor and subject to a fine up to $100, 30 days in jail, or both. There were fourteen sponsors of the initiative, all prominent Masons. Robert E. Smith, president of the Lumberman's Trust Company in Portland, spearheaded the initiative campaign.

In a well-coordinated strategy, the Masons quietly circulated initiative petitions among its lodges and other Protestant patriotic organizations at 8:00 a.m. on Thursday, June 15. Signature collection ceased at 5:00 p.m. Smith claimed the collection of 50,000 signatures during that nine-hour period. The actual number of signatures collected appeared closer to 29,000, with 13,000 of those eventually rejected by the secretary of state, leaving 16,000 signatures, well beyond the 13,000 required by the state to place the initiative on the November 7 ballot. The Masons filed the initiative with the secretary of state on July 6. Smith boasted that the Oregon measure would be a model for the rest of the country.

268 US 510 Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary Same

268 U.S. 510

45 S.Ct. 571

69 L.Ed. 1070

PIERCE, Governor of Oregon, et al.

v.

SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY. SAME v. HILL MILITARY ACADEMY.

Nos. 583, 584.

Argued March 16 and 17, 1925.

Decided June 1, 1925.

Mr. Willis S. Moore, of Salem, Or., for other appellants.

[Argument of Counsel from pages 511-512 intentionally omitted]

Messrs. Wm. D. Guthrie, of New York City for appellee.

[Argument of Counsel from pages 513-521 intentionally omitted]

Mr. J. P. Kavanaugh, of Portland, Or., for appellee Society of the Sisters of the Holy Names of Jesus and Mary.

Messrs. George E. Chamberlain, of Portland, Or., and Albert H. Putney, of Washington, D. C., for appellant Pierce.

Mr. John C. Veatch, of Portland, Or., for appellee Hill Military Academy.

[Argument of Counsel from pages 521-529 intentionally omitted]

Mr. Justice McREYNOLDS delivered the opinion of the Court.

1

These appeals are from decrees, based upon undenied allegations, which granted preliminary orders restraining appellants from threatening or attempting to enforce the Compulsory Education Act[1] adopted November 7, 1922 (Laws Or. 1923, p. 9), under the initiative provision of her Constitution by the voters of Oregon. Judicial Code, § 266 (Comp.

St. § 1243). They present the same points of law; there are no controverted questions of fact. Rights said to be guaranteed by the federal Constitution were specially set up, and appropriate prayers asked for their protection.

2

The challenged act, effective September 1, 1926, requires every parent, guardian, or other person having control or charge or custody of a child between 8 and 16 years to send him 'to a public school for the period of time a public school shall be held during the current year' in the district where the child resides; and failure so to do is declared a misdemeanor. There are exemptions—not specially important here—for children who are not normal, or who have completed the eighth grade, or whose parents or private teachers reside at considerable distances from any public school, or who hold special permits from the county superintendent. The manifest purpose is to compel general attendance at public schools by normal children, between 8 and 16, who have not completed the eight grade. And without doubt enforcement of the statute would seriously impair, perhaps destroy, the profitable features of appellees' business and greatly diminish the value of their property.

3

Appellee the Society of Sisters is an Oregon corporation, organized in 1880, with power to care for orphans, educate and instruct the youth, establish and maintain academies or schools, and acquire necessary real and personal property. It has long devoted its property and effort to the secular and religious education and care of children, and has acquired the valuable good will of many parents and guardians. It conducts interdependent primary and high schools and junior colleges, and maintains orphanages for the custody and control of children between 8 and 16. In its primary schools many children between those ages are taught the subjects usually pursued in Oregon public schools during the first eight years. Systematic religious instruction and moral training according to the tenets of the Roman Catholic Church are also regularly provided. All courses of study, both temporal and religious, contemplate continuity of training under appellee's charge; the primary schools are essential to the system and the most profitable. It owns valuable buildings, especially constructed and equipped for school purposes. The business is remunerative—the annual income from primary schools exceeds $30,000—and the successful conduct of this requires long time contracts with teachers and parents. The Compulsory Education Act of 1922 has already caused the withdrawal from its schools of children who would otherwise continue, and their income has

steadily declined. The appellants, public officers, have proclaimed their purpose strictly to enforce the statute.

4

After setting out the above facts, the Society's bill alleges that the enactment conflicts with the right of parents to choose schools where their children will receive appropriate mental and religious training, the right of the child to influence the parents' choice of a school, the right of schools and teachers therein to engage in a useful business or profession, and is accordingly repugnant to the Constitution and void. And, further, that unless enforcement of lthe measure is enjoined the corporation's business and property will suffer irreparable injury.

5

Appellee Hill Military Academy is a private corporation organized in 1908 under the laws of Oregon, engaged in owning, operating, and conducting for profit an elementary, college preparatory, and military training school for boys between the ages of 5 and 21 years. The average attendance is 100, and the annual fees received for each student amount to some $800. The elementary department is divided into eight grades, as in the public schools; the college preparatory department has four grades, similar to those of the public high schools; the courses of study conform to the requirements of the state board of education. Military instruction and training are also given, under the supervision of an army officer. It owns considerable real and personal property, some useful only for school purposes. The business and incident good will are very valuable. In order to conduct its affairs, long time contracts must be made for supplies, equipment, teachers, and pupils. Appellants, law officers of the state and county, have publicly announced that the Act of November 7, 1922, is valid and have declared their intention to enforce it. By reason of the statute and threat of enforcement appellee's business is being destroyed and its property depreciated; parents and guardians are refusing to make contracts for the future instruction of their sons, and some are being withdrawn.

6

The Academy's bill states the foregoing facts and then alleges that the challenged act contravenes the corporation's rights guaranteed by the Fourteenth Amendment and that unless appellants are restrained from proclaiming its validity and threatening to enforce it irreparable injury will result. The prayer is for an appropriate injunction.

7

No answer was interposed in either cause, and after proper notices they were heard by three judges (Judicial Code, § 266 [Comp. St. § 1243]) on motions for preliminary injunctions upon the specifically alleged facts. The court ruled that the Fourteenth Amendment guaranteed appellees against the deprivation of their property without due process of law consequent upon the unlawful interference by appellants with the free choice of patrons, present and prospective. It declared the right to conduct schools was property and that parents and guardians, as a part of their liberty, might direct the education of children by selecting reputable teachers and places. Also, that appellees' schools were not unfit or harmful to the public, and that enforcement of the challenged statute would unlawfully deprive them of patronage and thereby destroy appellees' business and property. Finally, that the threats to enforce the act would continue to cause irreparable injury; and the suits were not premature.

8

No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.

9

The inevitable practical result of enforcing the act under consideration would be destruction of appellees' primary schools, and perhaps all other private primary schools for normal children within the state of Oregon. Appellees are engaged in a kind of undertaking not inherently harmful, but long regarded as useful and meritorious. Certainly there is nothing in the present records to indicate that they have failed to discharge their obligations to patrons, students, or the state. And there are no peculiar circumstances or present emergencies which demand extraordinary measures relative to primary education.

10

Under the doctrine of Meyer v. Nebraska, 262 U. S. 390, 43 S. Ct. 625, 67 L. Ed. 1042, 29 A. L. R. 1146, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be

abridged by legislation which has no reasonable relation to some purpose within the competency of the state. The fundamental theory of liberty upon which all governments in this Union repose excludes 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, coupled with the high duty, to recognize and prepare him for additional obligations.

11

Appellees are corporations, and therefore, it is said, they cannot claim for themselves the liberty which the Fourteenth Amendment guarantees. Accepted in the proper sense, this is true. Northwestern Life Ins. Co. v. Riggs, 203 U. S. 243, 255, 27 S. Ct. 126, 51 L. Ed. 168, 7 Ann. Cas. 1104; Western Turf Association v. Greenberg, 204 U. S. 359, 363, 27 S. Ct. 384, 51 L. Ed. 520. But they have business and property for which they claim protection. These are threatened with destruction through the unwarranted compulsion which appellants are exercising over present and prospective patrons of their schools. And this court has gone very far to protect against loss threatened by such action. Truax v. Raich, 239 U. S. 33, 36 S. Ct. 7, 60 L. Ed. 131, L. R. A. 1916D, 543, Ann. Cas. 1917B, 283; Truax v. Corrigan, 257 U. S. 312, 42 S. Ct. 124, 66 L. Ed. 254, 27 A. L. R. 375; Terrace v. Thompson, 263 U. S. 197, 44 S. Ct. 15, 68 L. Ed. 255.

12

The courts of the state have not construed the act, and we must determine its meaning for ourselves. Evidently it was expected to have general application and cannot be construed as though merely intended to amend the charters of certain private corporations, as in Berea College v. Kentucky, 211 U. S. 45, 29 S. Ct. 33, 53 L. Ed. 81. No argument in favor of such view has been advanced.

13

Generally, it is entirely true, as urged by counsel, that no person in any business has such an interest in possible customers as to enable him to restrain exercise of proper power of the state upon the ground that he will be de prived of patronage. But the injunctions here sought are not against the exercise of any proper power. Appellees asked protection against arbitrary, unreasonable, and unlawful interference with their patrons and the consequent destruction of their business and property. Their interest is clear and immediate, within the rule approved in

Truax v. Raich, Truax v. Corrigan, and Terrace v. Thompson, supra, and many other cases where injunctions have issued to protect business enterprises against interference with the freedom of patrons or customers. Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229, 38 S. Ct. 65, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461; Duplex Printing Press Co. v. Deering, 254 U. S. 443, 41 S. Ct. 172, 65 L. Ed. 349, 16 A. L. R. 196; American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184, 42 S. Ct. 72, 66 L. Ed. 189, 27 A. L. R. 360; Nebraska District, etc., v. McKelvie, 262 U. S. 404, 43 S. Ct. 628, 67 L. Ed. 1047; Truax v. Corrigan, supra, and cases there cited.

14

The suits were not premature. The injury to appellees was present and very real, not a mere possibility in the remote future. If no relief had been possible prior to the effective date of the act, the injury would have become irreparable. Prevention of impending injury by unlawful action is a well-recognized function of courts of equity.

15

The decrees below are affirmed.

[1]

Be it enacted by the people of the state of Oregon:

Section 1. That section 5259, Oregon Laws, be and the same is hereby amended so as to read as follows:

Sec. 5259. *Children Between the Ages of Eight and Sixteen Years*.—Any parent, guardian or other person in the state of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over at the commencement of a term of public school of the district in which said child resides, who shall fail or neglect or refuse to send such child to a public school for the period of time a public school shall be held during the current year in said district, shall be guilty of a misdemeanor and each day's failure to send such child to a public school shall constitute a separate offense; provided, that in the following cases, children shall not be required to attend public schools:

(a) *Children Physically Unable*.—Any child who is abnormal, subnormal or physically unable to attend school.

(b) *Children Who Have Completed the Eighth Grade*.—Any child who has completed the eighth grade, in accordance with the provisions of the state course of study.

(c) *Distance from School*.—Children between the ages of eight and ten years, inclusive, whose place of residence is more than one and one-half miles, and children over ten years of age whose place of

residence is more than three miles, by the nearest traveled road, from a public school; provided, however, that if transportation to and from school is furnished by the school district, this exemption shall not apply.

(d) *Private Instruction*.—Any child who is being taught for a like period of time by the parent or private teacher such subjects as are usually taught in the first eight years in the public school; but before such child can be taught by a parent or a private teacher, such parent or private teacher must receive written permission from the county superintendent, and such permission shall not extend longer than the end of the current school year. Such child must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If, after such examination, the county superintendent shall determine that such child is not being properly taught, then the county superintendent

shall order the parent, guardian or other person, to send such child to the public school the remainder of the school year.

If any parent, guardian or other person having control or charge or custody of any child between the ages of eight and sixteen years, shall fail to comply with any provision of this section, he shall be guilty of a misdemeanor, and shall, on conviction thereof, be subject to a fine of not less than $5, nor more than $100, or to imprisonment in the county jail not less than two nor more than thirty days, or by both such fine and imprisonment in the discretion of the court.

This act shall take effect and be and remain in force from and after the first day of September, 1926.

- 268 U.S.