



May 26, 2021

Secretary Brocker:

I would like to submit a vote explanation for my motion to withdraw SJR 23 from the Senate Committee on Rules.

This motion was designed to give Oregonians a say in how they are governed. SJR 23 would have put the question to Oregon voters as to how they would like their elected representatives in the legislature to constrain or check the Governor's power via unelected bureaucrats.

For the last year, by executive fiat and administrative rule, the Governor and her appointees have imposed destructive and harmful regulations which have severely curtailed Oregonians' freedoms. These actions are not laws passed by this body, but rather regulations imposed by unaccountable, unelected government bureaucrats. If the legislature wants to reclaim its place as a co-equal branch of government, SJR 23 would be a good place to start.

As background, Oregon already has detailed legal procedures for addressing communicable diseases and for testing, treating, quarantining, or isolating individuals believed to pose a threat to public health.

Oregon's existing statutes, akin to those upheld in the U.S. Supreme Court in *Jacobsen v. Massachusetts*, 197 U.S. 11 (1905), express a fundamental legislative determination that the appropriate response to serious communicable diseases was to delegate to the State Public Health Director or others the power to petition a court for an order to isolate or quarantine a person or group of persons as necessary (ORS 433.123) or use emergency administrative orders as needed (ORS 433.121). No violation of the separation of powers and other provisions of the Oregon Constitution is required to implement such procedures and protect the public welfare in cases of epidemics.

The effort to withdraw SJR 23 from the committee would have allowed the Senate to appropriately deliberate and discuss the Governor's sweeping abuse of powers which violates separations of power guaranteed in the Oregon Constitution.

Specifically, Article IV, § 1 of the Oregon Constitution provides:

"The legislative power of the state, except for the initiative and referendum powers reserved to the people, is vested in a Legislative Assembly, consisting of a Senate and a House of Representatives." No legislative powers are vested in the Governor.

Article I, § 21 of the Oregon Constitution provides:

". . . nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution".



Article I, § 22 provides:

“The operation of the laws shall never be suspended, except by the Authority of the Legislative Assembly.”

Article III, § 1 of the Oregon Constitution provides:

"The powers of the Government shall be divided into three separate (sic) departments, the Legislative, the Executive, including the administrative, and the Judicial; and no person charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided."

My motion was necessary because SJR 23 found itself aground on the sands of political despotism fortified by the committee process and upheld by the majority party. Yet, ensuring the protected constitutional rights and representation for the public is this body's responsibility. Our Governor, to date, has participated in executive overreach and declined to exercise the constitutional emergency powers granted by Oregon Constitution in response to the COVID-19 pandemic.

SJR 23, if approved by voters, would give the Legislative Assembly the power to overturn tyrannical rules imposed by the executive branch. This policy would provide much-needed protections to Oregon's maintenance of the separation and balance of constitutional power.

Although the legislature retains the power to end by statute an emergency, thereby overturning a Governor's declaration of an emergency and orders issued thereunder, the motion presented would ensure public involvement to prevent or adequately mitigate the harm caused by the unconstitutional power grabs.

The Governor's exclusive control over the executive branch, such as Oregon OSHA, would be directly challenged if the Legislative Assembly had approved this motion. Instead, the Legislative Assembly declined to exercise its obligations and constitutional responsibilities by striking down this motion.

No doubt, future overreaches like the current COVID-19 policy scandals will continue to occur without the legislature taking responsibility. As elected representatives, we were elected to make hard decisions. SJR 23 would have challenged the Governor and shown that the legislature won't shy away from our responsibility to govern.

My motion for SJR 23 would have brought to the floor a simple question: What would Oregonians want? After all, as I understand it, that's how a democracy is supposed to work. Oregonians deserve a voice in their own governance.

Respectfully submitted into the Senate Floor record,

A handwritten signature in black ink, appearing to read "Dennis Linthicum".

Dennis Linthicum
Oregon State Senator
District 28