



**Testimony of Becky Straus, Legislative Director
In Opposition to HB 2963
Senate Committee on Judiciary
May 8, 2013**

Chair Prozanski and Members of the Committee:

HB 2963 would carve out “use of sidewalks” from the purview of state law, stating that no local law shall be preempted by state law in the regulation of sidewalks. Because we believe this bill is unnecessary and risks implicating free expression rights, the ACLU is opposed to HB 2963. Thank you for the opportunity to provide comments to explain this position.

Certain State Law Provisions are Crucial to Protection of Rights on Sidewalks

In effect, HB 2963 asks the legislature to overturn a 2009 decision by a circuit court judge in Portland¹, which cited a 2005 Court of Appeals decision² to declare a 2003 Portland sidewalk ordinance, commonly known as the “sit-lie” ordinance because of its prohibition on people sitting or lying on the sidewalk, unconstitutional. In that case, the court said that because both the state law³ and the Portland ordinance were regulating the same conduct – obstructing traffic – and because the state law includes a provision that a person only be subject to a penalty for such conduct if the person was obstructing traffic with the requisite *intent* to “cause public inconvenience, annoyance or alarm,” the Portland law was pre-empted.

The intent element in this state law is crucial to the protection of free expression activities in public spaces, including sidewalks. Without it, people handing out leaflets with their political views, for example, selling newspapers, performing, or even simply stopping to rest could be cited for disorderly conduct. With this intent element, our state law is carefully crafted as to avoid implicating constitutionally protected activities.

Yet the proponents of HB 2963 are suggesting that this protection is not important when it comes to regulation of city sidewalks. If their goal is to expand the reach of the current sidewalk ordinance in Portland, we have cause for concern. Penalizing conduct described so vaguely as obstructing traffic, cities offer a great deal of discretion to law enforcement officers to determine what type of obstruction should be penalized and what should not. ACLU believes that with little exception these ordinances result in law enforcement targeting *certain* people in *certain*

¹ *State v. Perkins*, Multnomah Circuit Court, Case No. Z1757240.

² *State v. Robison*, 202 Or.App. 237 (2005). *Robison* was cited in a 2009 Multnomah County Circuit Court decision written by Judge Stephen Bushong as justification to strike down a subsequent version of the sit-lie ordinance (*State v. Perkins*).

³ ORS 166.025 (Disorderly conduct in the second degree)

places in our cities – disparate enforcement that greatly threatens civil liberties.

Regardless of the ultimate objective of the proponents, it is our position that the “fix” proposed here could have consequences beyond prompting policymakers in Portland to revisit their sit-lie ordinance. The 2009 court decision is not binding on any other cases or courts, so it is not necessary to overturn this case in statute in order to renew a conversation in Portland. We suggest that a conversation, rather than the preemption proposed in HB 2963, is the best next step.

First Step in Bigger Campaign to Reopen Controversial Issue in Portland

For years in Portland, stakeholders from diverse perspectives have convened to try to settle upon a fair and equitable system for managing traffic and activities on the city’s sidewalks. These conversations can be contentious, but they are done with mutual respect for the interests around the table. Part of our concern with HB 2963 is that it threatens the collaborative nature of those discussions. Rather than concluding together that this – not insignificant – legal change is necessary to address any ongoing issues with the current sit-lie ordinance, one particular interest has come forward with a proposal to “pre-empt” those discussions.

To the extent that this issue is a local issue, we respectfully request that you refrain from undermining the carefully crafted protections in our state law, and allow for stakeholders in Portland to come to a conclusion together as to the best path forward.

Thank you again for the opportunity to testify and for your consideration of our position. Please feel free to contact me at any time with comments or questions.