

From the desk of Representative

**LEW FREDERICK**



## **The ACLU of Oregon Urges a Yes Vote on HB 2704**

**It should not be a crime to pull out a phone, hold it up, and record an officer who is engaged in misconduct.** As recent events have shown, bystander video can be a powerful tool for police accountability. Unfortunately, however, Oregon law currently criminalizes certain recordings of police officers—recordings which courts overwhelmingly agree are protected by the First Amendment.

Under current Oregon law, it is a crime to record a conversation without “specifically informing” the parties to the conversation (interpreted by Oregon courts as “unequivocal warning”). The problem is sometimes it’s not safe for a person to interrupt an officer to provide warning, such as:

- When an officer is engaged in a dangerous situation and will be distracted by the warning.
- When an officer is actively engaged in misconduct, and warning the officer may provoke additional misconduct directed at the person recording.

Many officers would also prefer that people quietly stand by while recording, rather than having to listen to warning upon warning in the middle of what may already be a tense situation. In addition, **because it is common knowledge that the public has a right to record on-duty police, people all over Oregon are unintentionally violating Oregon’s eavesdropping statute** when they openly record without a warning.<sup>1</sup>

**We support a very simple fix. Add an exemption for “[a] person who *openly* records a law enforcement officer while the officer is performing official duties.”<sup>2</sup>** This would simply change the requirement that an individual “specifically inform” the officer to a requirement that the individual provide notice by “openly” recording. “Openly” commonly means “without concealment, deception, or prevarication, especially where these might be expected.”

HB 2704 will not:

- Prevent officers from securing crime scenes or ordering people to step away.
- Give anyone special rights to trespass, harass or interfere with police.
- Allow secret recording of police.

**Please support HB 2704 to clarify that the public cannot be punished for taking bystander videos of police encounters and to ensure Oregon law complies with the First Amendment.**

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<sup>1</sup> The ACLU of Oregon believes (as do many courts around the nation) the First Amendment protects certain surreptitious recordings of on-duty police. While this bill does not address such recordings, which will remain criminal under Oregon law, HB 2704 takes a significant step toward protecting the right to record on duty police in Oregon.

<sup>2</sup> HB 2704 limits this exemption to recordings made in places open to the public. Current constitutional law also protects the right to record in a person’s own home and other locations where a person has a right to be. Regardless, the ACLU of Oregon supports this bill because we are particularly concerned with protecting recordings in public spaces.