



**House Judiciary Committee, Subcommittee on Equitable Policing**

Testimony submitted by Kelly Simon, Interim Legal Director, ACLU of Oregon

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Chair Bynum, Vice-Chair Noble and Members of the House Subcommittee on Equitable Policing, and staff:

The American Civil Liberties Union of Oregon<sup>1</sup> has long fought to preserve and extend the constitutionally guaranteed rights of people who have historically been denied their rights on the basis of race and denied their rights to gather together to dissent in the face of government abuses of power. We stand with Black leaders and all who call for ending police violence.

As we continue to come together with a commitment to fundamentally redesign and realign our communities around what public safety means and looks like, the ACLU of Oregon is grateful to be invited here today in support of HB 3059, and we thank Representative Bynum for bringing this important bill forward on our behalf.

ORS 131.675 gives police outsized power to silence dissent. ORS 131.675 requires arrest for those who do not yield their right to assemble anytime police makes a declaration of “unlawful assembly.” This law provides no standard or definition about what constitutes an unlawful assembly, such as violence or other threats to public safety. Because there is no standard or definition, this law does not provide any limitations on police authority to arrest or disperse. By providing no guidance for an officer’s discretion in simply declaring a situation to be an “unlawful assembly,” ORS 131.675 allows for police to wield unfettered control and power to silence those they dislike. In weaponizing potential implicit or racial biases, this law is antithetical to notions of freedom and fairness.

And ironically, in Oregon, unlawful assembly declarations too often are precursors to police violence against those asking for the government to recognize their right to be safe. It is no surprise to me that, in Oregon, I have observed this law and declarations of unlawful assembly

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<sup>1</sup> The American Civil Liberties Union of Oregon (ACLU of Oregon) is a nonpartisan organization dedicated to the preservation and enhancement of civil liberties and civil rights. We have more than 30,000 members and supporters in the State of Oregon, and that number is growing.

used to disrupt vigils for Michael Brown, vigils for Quanice Hayes, counter-protests of white supremacy groups but not the assemblies of white supremacists, and Black Lives Matter protests against police violence. This biased application is a result we see time again when law gives unchecked discretion to law enforcement and government officials.

There are two constitutional concerns I want to highlight for the committee today, which are addressed in more detail in the ACLU of Oregon's white paper which has also been submitted for the record:

*First*, ORS 131.675 is overbroad. By failing to define "unlawful assemblies" but nonetheless prohibiting them, the statute reaches constitutionally protected conduct, including the right to free speech, peaceful assembly, and freedom of the press.

*Second*, ORS 131.675 purports to authorize the arrest of participants who fail to disperse once an officer deems an assembly "unlawful." Any such arrest would violate state and federal prohibitions on unreasonable seizures, and corresponding Oregon statutory law. See U.S. Const. amend. IV US Const, Art I, § 4; Or Const, Art I, § 9; ORS 133.310.

Finally, I want to highlight why the ACLU of Oregon has called for full repeal as outlined in HB 3059, rather than amending ORS 131.675. The simple reason is that such amendments would render ORS 131.675 superfluous as Oregon already has a riot statute, ORS 166.015. Redundancy in the law risks confusion and inconsistent application.

**The ACLU of Oregon urges your support of HB 3059 and looks forward to continued work with this subcommittee. Thank you for the opportunity to provide testimony.**