



Capital Construction Committee  
Oregon State Legislature  
900 Court St. NE  
Salem, OR 97301

**RE: Testimony in Opposition of HB 4156**

Dear Co-Chairs Girod and Holvey and Members of the Committee;

Thank you for the opportunity to provide testimony on behalf of the American Civil Liberties Union of Oregon (ACLU of Oregon). The ACLU of Oregon is a nonpartisan, nonprofit organization dedicated to preserving and enhancing civil liberties and civil rights, with more than 28,000 supporters statewide.

**The ACLU of Oregon opposes House Bill 4156**, which expands the definition of stalking. Given serious issues with the bill's expanded definition of what constitutes "contacts" that could make a person liable for stalking, we were alarmed to see the bill move forward.

We believe the plain text of the bill could chill or silence Constitutionally protected and legitimate speech and could infringe upon procedural due process protections.

- 1) Section 1(3)(m) is Overbroad and Raises Constitutional First Amendment and Due Process Concerns.

Section 1(3)(m) defines "Obtaining, possessing, transferring, creating, uttering or converting to the person's own use the personal identification of the other person" as a "contact" that could constitute stalking if unwanted and repeated. [Emphasis added].

Under Oregon law, the definition of "personal identification" includes, among other things, a person's name, maiden name, email, date of birth, or photograph (ORS 165.800). Thus, a plain reading of the statute would reasonably leave the reader believing they could not possess any documents or correspondence that includes the name, email, birthday, or any pictures of the petitioner. This would include ordinary wedding photos, family pictures, or correspondence from a previous relationship with the petitioner. Old tattoos with a former partner's name, birthdate, or likeness, could be construed as "personal identification" possessed for the person's own use.

In the criminal context, this element poses serious concerns for due process. A person may need to maintain records of their previous contacts and relationship with the petitioner for an effective defense. This section would seem to proscribe the possession, maintenance, and transfer to an attorney of materials and documents that might be vital to a criminal defendant's case. Given the plain language of this section, a defendant could reasonably believe that the definition requires them to delete any and all documentation, correspondence, or keepsakes from a previous



relationship—including potentially exculpatory evidence that might be vital to a later defense case. Such sweeping language could prove troubling for maintaining and possessing legal documents related to a stalking case, let alone transferring key documents to one’s attorney as part of a defense case.

We anticipate lawmakers do not intend to so expansively circumscribe any maintenance of keepsakes or documents nor to mandate tattoo removal. We also recognize that *State v. Rangel*, the limiting language of ORS 30.866 and ORS 163.750, and the Oregon and US Constitutions would significantly constrain how Courts could apply this section.

We ask that lawmakers clarify bill proponents’ intent for this incredibly broad definition of “contact” and consider whether a more narrowly defined wording would suffice to meet the stated intent of modernizing this statute. We urge lawmakers to reconvene a work group on this topic to ensure procedural due process protections for defendants and to delve into the Constitutional speech implications of a clause that would so expansively chill the utterance or memorialization of speech.

- 2) Section 1(3)(n) should make explicit protection for criminal defendant’s use of photos as exculpatory evidence to protect due process rights.

HB 4156 would define the following as a contact: “*Disclosing an image of the other person, whose intimate parts are visible or who is engaged in sexual conduct, without the consent of the other person;*” The ACLU of Oregon would request that this section make explicit due process exceptions to permit disclosure as permitted by appropriate and rational rules of evidence as exculpatory evidence in judicial proceedings to protect procedural due process. *See United States v. Scheffer*, 523 U.S. 303 (1998).

- 3) Section 1(3)(p) risks chilling or silencing Constitutionally protected speech and press coverage

Section 1(3)(p) of the statute defines the following as a “contact” for purposes of the Oregon stalking statutes:

*Causing or attempting to cause a third person to harass, humiliate or injure the other person by disclosing the other person’s name, image or personal information, as that term is defined in ORS 30.835, without the consent of the other person.*

The -A3 Amendment would remove “attempting to cause” from this section. Nonetheless, there remains a lot wrong with this clause. This subsection could be wielded to target or punish speech that names a person in a less than flattering context, something common in the realm of political and critical public discourse. **As articulated in testimony by independent journalists of**



**Oregon, this statute chill or silence speech by the press or whistle blowers.** This risk is particularly apparent because ordinary Oregonians cannot be expected to know the limiting interpretation used by courts in wake of *State v. Rangel*, 328 Or. 294, 302-03 (1999).

### *Constitutional Issues*

The U.S. Supreme Court's decision *Brandenburg v. Ohio*, 395 U.S. 444 (1969) is instructive as to why the broad causation element fails to adequately protect speech. In that case, the Court concluded that speech from a KKK leader making racial slurs and suggesting that vengeance may be necessary cannot be punished unless it is directed at inciting or producing *imminent* lawless action, *and* the speech is likely to result in that imminent lawless action. Even direct advocacy that a person commit a crime at some general future time is protected under the First Amendment. *See Hess v. Indiana*, 414 U.S. 105 (1973). A mere disclosure of information without such direct encouragement warrants even further protection.

While we recognize that the Oregon Supreme Court has applied a narrowing construction to the Oregon criminal stalking statute to require proof that a speech-based contact amounts to a threat, *see State v. Rangel*, it did so only in the context of direct contacts. This Bill introduces third party contacts merely caused by disclosure of information. It is entirely unclear to us how the state would prove a disclosure amounts to a threat as the constitution demands. At best, the Bill is completely vague as to what is and is not punishable, and that sort of law is exactly the kind that chills speech.

These issues of breadth and vagueness are compounded even further by the bill's inclusion of three undefined terms: "harass, humiliate, or injure." Even when statutes have tried to define these terms, we have seen laws like this abused to silence protected speech. For example, the first doxing case in Oregon after passage of ORS 30.385 (which actually included definitions for its usage of the terms "harass" and "injure") was a case filed against teachers and parents organizing against and criticizing members of a school board seeking to ban Black Lives Matter and Pride speech in their schools. *See DeHart et al. v. Tofte et al.*, 326 Or. App. 720 (2023). Without limiting definitions, this Bill is ripe for abuse, chilling of speech, and becoming a weapon to silence others who have a right to speak.

### Section 1(3)(p)

The stated basis for House Bill 4156 is to address advances of modern technology and how it is wielded for the purposes of stalking. Section 1(3)(p), however, could apply to any communication—even a private conversation between friends—that results in a third party's action. While this section would seem intended to apply to incidents of doxing, it is drafted to include a far broader subset of speech than ordinarily considered to be doxing.

### *HB 4156 Requires Extensive Revision*



Lawmakers should not pass HB 4156. These are serious issues that could chill or silence Constitutionally protected and legitimate speech and restrict the rights of the accused.

While we are sympathetic to the underlying aims of this bill. Those aims can be met with far more narrowly tailored legislation. The work group on this topic should be reconvened with Constitutional experts on speech and due process, and this topic should be revisited during a later session.

**Please do not pass HB 4156 which needs extensive revision and amendment.**

Thank you.  
Emily Hawley  
Senior Policy Associate  
ACLU of Oregon