



Testimony in Support of HB 4097A

Submitted by Courtney Helstein on behalf of ACLU of Oregon

Senate Judiciary Committee

February 24, 2020

Chair Prozanski and Members of the Committee:

For many years, the ACLU of Oregon has raised concerns about transit fare enforcement policies and tactics, including their disparate impacts on people of color, low-income people and other historically marginalized communities. In 2017, the legislature began reforming Oregon's laws related to fare enforcement in mass transit districts through the passage of SB 357, partially decriminalizing fare evasion, and HB 2777, authorizing the creation of an administrative process to help people with transit citations avoid entanglement with the justice system.

It is clear, however, that further reform is needed. This is highlighted by the traumatic and unlawful fare inspection and arrest that one of our former clients experienced in 2018 and by ongoing problems in the system that continue to criminalize vulnerable Oregonians in the name of transit enforcement.

HB 4097A, as passed by the House, responds to this need by keeping law enforcement officers focused on public safety, not mass transit fare inspections and citations.

Deploying law enforcement to conduct fare inspection stops without individualized reasonable suspicion raises serious constitutional concerns and diverts law enforcement resources away from legitimate public safety needs. For many people in our communities, contact with law enforcement can be intimidating, triggering anxiety and fear—particularly for communities of color, the houseless, individuals with mental health issues, and low-income people.

Passing this bill would not hinder law enforcement's ability to address unlawful conduct that is not fare-related. Subsection (2) of this bill expressly provides that police officers may continue to enforce laws unrelated to fare payment. The laws that police use now to keep the peace on mass transit will remain fully available if necessary.

We have reviewed the proposed A-7 and A-8 amendments to this bill. We oppose the A-8 amendment, which is a major step backwards. As to the A-7 amendment, we oppose section (1)(a) of the A-7 amendment, which permits police to participate in fare enforcement when a fare inspector is present and directing the fare enforcement mission. Under the decision in *Oregon v. Valderrama*, Case No. 18CR17532, Opinion and Order on Motion to

Suppress (Mult. Cty. Sept 20, 2018),¹ police may not be involved in fare enforcement without individualized suspicion, irrespective of the presence of a fare inspector. That decision made clear that, under current Oregon law governing fare enforcement, the involvement of police rendered the fare enforcement search criminal in nature, and therefore unlawful without individualized suspicion. We support section (1)(b) of the A-7 amendment, which prevents general warrant searches, with the deletion of the words “participating in a fare enforcement mission.”

We believe HB 4097A is an important and much-needed next step in the reform of transit fare enforcement policies. We urge your support for the original bill or for the bill with certain, but not all, of the provisions of the A-7 amendment.

¹ https://aclu-or.org/sites/default/files/field_documents/state_v_valderrama_opinion_order_18cr17532.pdf