



May 12th, 2021

Senate Judiciary and Ballot Measure 110 Implementation Committee  
Oregon State Legislature  
900 Court St. NE  
Salem, OR 97301

RE: Testimony in Support of HB 3059A, Unlawful Assembly

Chair Prozanski, Vice-Chair Thatcher, and members of the committee,

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 3059A, and we thank Representative Bynum for bringing this important bill forward on our behalf.

As it currently stands, 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 make a declaration of “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 used to disrupt vigils for Michael Brown, vigils for Quance Hayes, counter-protests of white supremacy groups but not the assemblies of white supremacists, and Black Lives Matter protests

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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.

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, as it currently stands, 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. It also permits outside agitators in small groups of only five to go among peacefully assembled groups and disrupt their constitutional activity. It is an improvement to remove the word "riotously" as it removes redundancy in the law.

*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. Instead, HB 3059A removes the arrest mandate and limits arrests to "unlawful activity constituting an offense." This is a significant and necessary step to cure the constitutional infirmities in ORS 131.675.

**While we supported the introduced version of the bill, completely repealing ORS 131.675, the ACLU of Oregon urges your support of HB 3059A to provide constitutional limitations on the police power to arrest. Thank you for the opportunity to provide testimony.**

Kelly Simon  
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ACLU of Oregon