



February 11, 2022

House Judiciary Committee  
Oregon State Legislature  
900 Court St. NE  
Salem, OR 97301

**RE: Testimony in Opposition to HB 4131 base bill and in Support of HB 4131-3 and HB 4008-8; Sharing serious constitutional concerns about HB 4131 base bill**

Chair Bynum, Vice-Chairs Noble and Power, and Committee Members,

I am Kelly Simon, Legal Director of the American Civil Liberties Union (ACLU) of Oregon, a civil liberties and civil rights organization representing more than 28,000 members statewide.

I submit this letter in support of HB 4008-8 and HB 4131-3 and in opposition to the base bill in HB 4131. We need your leadership to protect the constitutional rights of Oregonians, including their fundamental rights to free expression and assembly.

In the last 5 years alone, the ACLU of Oregon and our partner organizations have filed over 15 lawsuits due to abusive police tactics against protesters, many against the City of Portland. This is only a fraction of protest cases against police and an even smaller fraction of the lawsuits challenging police violence in the same time period. We, and our partners at organizations like the Oregon Justice Resource Center, and the many clients among us are unfortunately too well versed in the nefarious ways cities and law enforcement avoid accountability for committing violence against us. It must end, and we need your leadership and support to stop it.

Police and some members of the public have been violent at protests in recent years. When can the police step in during situations where the line between speech and violence is blurred? The U.S. Supreme Court has answered that question for us, and they have set a high bar based on the constitution. Whether we are talking about threats of violence or incitement of others to violence, police cannot punish a person unless that individual's threat or incitement of another presents an "imminent" or immediate risk of harm to another person. Likewise, when trying to address crimes like riot or disorderly conduct, the constitution-based standard requires there be "a clear and present danger" of serious harm. If an individual is not crossing these lines, the government cannot punish them. This is why indiscriminate responses, like tear gas, are sure to violate constitutional rights.

In other words, these fundamental constitutional requirements mean that police cannot end a protest because just a few people are breaking windows or setting fires. It also means that police cannot shoot a whole crowd because some people are screaming “ACAB” in their faces or chanting to burn down the whole system. This speech may feel threatening to the livelihood of police officers, but such inflammatory speech is protected by the constitution, which is the bedrock of our democracy.

When police are given vague standards like “threat of collective violence” – which is used in the base bill in HB 4131 as proposed by the City of Portland and the League of Oregon Cities – it is extremely likely that police and cities will continue constitutional violations and Oregonians engaged in no wrongdoing will be harmed by police, including peaceful protestors for racial justice, families and children in their homes poisoned by tear gas, school children in schools poisoned by tear gas, and Oregonians with land, water, and air poisoned by tear gas and other munitions. The Legislature should reject the City of Portland and League of Oregon Cities’ approach and adopt more exacting approaches like those set out in HB 4008-8 and 4131-3.

If the Judiciary Committee has questions regarding the serious constitutional implications of the base bill in HB 4131 or why HB 4008-8 and 4131-3 are better approaches aligned with our constitution, I am available to answer the Committee’s questions.

**We urge the Committee to oppose the base bill in HB 4131 and support HB 4131-3 and HB 4008-8.**

Thank you,

Kelly Simon  
Legal Director  
ACLU of Oregon  
Pronouns: she, her