



March 7, 2023

Chair Prozanski
Senate Committee on the Judiciary
Oregon Legislative Assembly
900 Court Street NE
Salem, OR 97301

RE: Oregon Public Broadcasting Concern for SB 619

Chair Prozanski,

Thank you for the opportunity to testify regarding SB 619. I write today as President and CEO of Oregon Public Broadcasting (OPB) to express serious concerns that SB 619 in its current form raises for our organization, as well as other public media and nonprofit organizations providing vital public interest services in the state of Oregon. We strongly urge this committee to adopt amendments exempting nonprofits and media organizations from the purview of this bill.

OPB appreciates the consumer safety concerns animating SB 619 and supports the overall intent of this bill. We believe that the privacy of consumers should be respected and protected.

However, there are aspects of this bill, when applied to a nonprofit public-supported journalism organization like us, which are very problematic. It would require extensive system overhauls, create onerous costs, and invade into journalistic activity and therefore hamper our ability to serve our public service mission. Organizations like ours are situated very differently from the kinds of commercial data outfits that this bill means to address, and we hope that the committee will adopt appropriate exemptions to avoid those unintended harms.

OPB is a public service, supported by the public

OPB is a nonprofit charitable organization that provides essential news, arts, and culture media to communities across the state of Oregon. We operate a vast network of non-commercial radio and television stations that provide programming for free to millions of Oregonians.

OPB takes great pride in its unique role in Oregon's civic life, and in our journey from a physics project a century ago at Oregon State University, to a state agency, and since 1993 to the independent nonprofit

form we hold today. Our present independent structure was intentionally chosen to best position OPB to have the flexibility and resources to serve the needs of Oregonians across the state. As the news media industry faces increasing challenges and other journalism organizations close or reduce their services, our work in public service journalism and civic information has grown in importance, and OPB is actively stepping into the gaps left in our media landscape. As media consumers have moved ever more online, OPB has adapted to serve more Oregonians in many different ways.

Universal free access is one of OPB's core values. We are proud of the fact that 73% of our operating funds come from donor support—funds contributed by everyday Oregonians to support the media content that we then distribute to all free of charge. Without this support, OPB could not fulfill its public service mission.

We are already subject to significant, rigorous regulation and oversight because of our nonprofit status generally, and through our specific status as the operator of non-commercial broadcast licenses. But more deeply, maintaining donor trust and safety is a core OPB value, and guarding that trust is essential to sustaining the public service we seek to provide. It is this broad support, and the volume of donors who support our continued work, that would bring us under the ambit of SB 619 in its current form. This would pose unique and uniquely burdensome challenges for organizations like ours that would seriously compromise our ability to use those funds trusted to us for their intended purpose.

Without exemptions, SB 619 will directly interfere with OPB journalism

SB 619 in its current form is a serious threat to the integrity of Oregon journalism. We have been encouraged by conversations with the Oregon Attorney General's staff in recent days about this issue, and we appreciate their receptiveness to our concerns. We believe that nobody wants to see journalism compromised by this new system, and we are hopeful that we will reach agreement. For the following reasons, such protections must be in the final version of this bill.

SB 619 is meant to safeguard consumer privacy from commercial exploitation. However, when applied to a journalistic organization, its structural requirements and external oversight tools create serious risks to journalistic integrity. It could prevent journalists from doing their jobs. Journalists necessarily gather personal data to investigate and report on matters of public concern. Personal data is collected and processed during crucial newsgathering activities such as: cultivating sources, conducting interviews, notetaking, making recordings, collaborating with colleagues, protecting the identities of confidential sources, and preparing materials for publication or broadcast. In any consumer data privacy bill, these kinds of journalistic activities should be fully exempt. Yet, as currently written, SB 619 lacks any explicit media protection, and leaves journalists in the untenable position of hoping for court intervention down the road.

The broad definitions of covered data within this bill in its current form would reach not only OPB's core membership and fundraising functions, but would also reach information gathered, maintained, and used by our journalists in the course of their reporting. Not only is this data exceedingly difficult (if not impossible) to track across a large organization, but the kinds of systemic accounting and intervention required by this bill would force breaches of editorial firewalls and compromise requirements of journalistic ethics.

Even worse, it is easy to envision how the tools made available to consumers could be weaponized by outside parties seeking to interfere with OPB journalism. OPB journalists cover many controversial and significant matters that subjects likely would not want to see brought to light, and SB 619 would give them tools to meddle in that coverage. It is easy to imagine a subject of an investigative story learning that OPB is digging into their past, and then using their SB 619 rights to demand access to all the data that OPB has on them—not only learning what OPB knows and who our sources are, but also demanding that we delete that data.

We are sure that these kinds of impacts are not the intent of the drafters of SB 619. Yet, as currently drafted, there are no significant protections for journalists in the bill itself. Other states have included broad statements recognizing First Amendment protections for speech and press activity, but these have been omitted here so far. While state and federal constitutional provisions would be available as defenses for some intrusions on our journalism, and Oregon’s reporters shield law may or may not apply, those uncertain and contingent tools are no substitute for clarity and certain protection on the front end. Constitutional limitations only truly exist when and where courts choose to enforce them, and OPB could be subject to long and burdensome litigation before ever getting a court answer. Nor is there any guarantee that we would ultimately win the kinds of protection we need to protect the integrity of our journalism. With no real certainty, OPB would be burdened with significant compliance costs and face serious intrusion into our journalistic mission.

There is simply no need for this burden to fall so heavily on OPB and other journalism and public media organizations when we can avoid it with clear guidelines from the start. For that reason, we strongly urge the committee to adopt amendments to explicitly exempt journalism from the requirements of this bill.

SB 619 threatens unmanageable burdens that will overwhelm nonprofits like OPB

Nonprofit organizations, including OPB, have incentives to respect individuals’ privacy and to dutifully manage personal information provided by or about donors, beneficiaries, users, volunteers, and others. Similar to many other nonprofits, OPB collects limited data with consumers’ consent only to the extent necessary to serve them with high-quality news, public affairs, educational, or other content on our digital platforms; enhance the user experience through features and functionality for audiences; and reach new and existing members whose support is critical to upholding the public-private partnership that sustains OPB.

OPB does not engage in commercial advertising in the ways for-profit media does, but works with local businesses, foundations, and other community partners through local sponsorships and underwriting. Indeed, the FCC specifically prohibits noncommercial media from broadcasting advertisements and heavily regulates the content of our on-air sponsorship messages. From all angles, regulators including the Corporation for Public Broadcasting, the IRS, and state Attorneys General work to ensure that noncommercial media benefits the public, rather than using charitable dollars to enhance private or commercial interests.

Without an exemption, nonprofits will be subject to numerous new regulations and requirements that would be costly and burdensome. The ability of nonprofits to respond to new consumer rights assumes personnel and technological capacity that few nonprofits have. And, importantly, nonprofits process data for reasons very different than commercial enterprises. Although the bill sets a threshold that the drafters believed would exempt most nonprofits, we believe this bill will impact many more nonprofits

than the drafters have presumed. To my knowledge, there has been little effort expended to determine how many nonprofit organizations will be impacted by this bill and how it will impact them. We urge the committee to gather this information before proceeding, so that the true impacts and costs of the bill are understood up front.

The structure and function of a public media organization like OPB, both internally and in its partner relationships through the region, raises special challenges for implementation and compliance under this bill. This bill will require remaking the architecture of many systems and operations both within our organization and in our dealings with myriad outside vendors and community partners (including many smaller nonprofits who might not otherwise be impacted by the bill). It may also raise complications for our relationships with national partners like NPR and PBS. Because of OPB's reliance on a wide and diverse pool of donors for support, we easily fall under the threshold of this bill, but that support – built on smaller donations from Oregonians throughout the state—does not automatically translate to robust resources to meet the challenge of these serious compliance hurdles.

Meeting these obligations will force nonprofits like OPB to divert significant resources from mission-directed services. The potential costs are not small. California estimated compliance costs for its data privacy law to be about \$50,000 for each small business. With that in mind, California fully exempted nonprofits from their consumer data privacy law, in part for these reasons. Given the volume of donors that contribute to OPB and the breadth of our services, we expect the costs of compliance to be much higher. Some requirements may not be technically feasible for an integrated donor-supported nonprofit like ours, and many will entail a serious diversion of funding away from our primary mission of journalism and public affairs media and into data systems and data management. Donors give to OPB to support our programming, and we do our best to use those resources as efficiently as possible to provide the maximum programming value with the funds entrusted to us.

We also have concerns about the liability provision in the bill as it pertains to nonprofit organizations. It exposes volunteers who serve as board members for OPB and other nonprofit organizations to personal liability. Unlike the large for-profit corporations that are the primary concern of this bill, OPB directors and other nonprofit leadership generally serve on a volunteer basis. They take on this work in order to perform a public service and give back to their community by supporting our mission. That volunteer effort already brings various fiduciary liability obligations and other ethical requirements as potential risks for that service. The kinds of personal liability in this current bill will add new and serious risk to these volunteer positions, and may create strong disincentives for people otherwise eager to take on these service positions from contributing to our organization. This impact is yet another reason why nonprofit corporations have been generally exempted from similar laws adopted in other states.

Oregon should follow the lead of states that exempt journalism and nonprofits

Due to the significant negative impacts that these consumer data protection laws may have if fully applied to public media or other nonprofit organizations, 4 out of 5 states to recently adopt these laws have included specific carveouts and exceptions to protect organizations like OPB. Specifically, California, Virginia, Connecticut, and Utah exempted nonprofits from their data privacy laws. Only Colorado applied their law to nonprofit organizations, and exemption is now being explored there in the regulatory enactment process. We believe that hobbling the missions of OPB and other nonprofit organizations was never the intent of this data privacy bill, and at this point we still have the chance to follow the overwhelming majority of states to address this question and make these protections clear

from the outset. We urge the Committee to adopt amendments adding exemptions for nonprofit organizations and for journalism organizations that are necessary to protect the function and role of institutions like OPB.

Respectfully,

Steven M. Bass
President & CEO, Oregon Public Broadcasting