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TO: Oregon Senate Committee on Judiciary

FROM: Attorneys Sarah Alvarez and Marianne Dugan

RE: Support for SB 188

We are staff attorneys at the nonprofit organization Civil Liberties Defense Center, handling both criminal defense and civil rights litigation. In that work we have encountered numerous instances of law enforcement violating ORS 181A.250:

No law enforcement agency, as defined in ORS 181A.010 (Definitions for ORS 181A), may collect or maintain information about the political, religious or social views, associations or activities of any individual, group, association, organization, corporation, business or partnership unless such information directly relates to an investigation of criminal activities, and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct. [Formerly 181.575].

That statute was written because of concerns that such collection and maintenance of information chills speech, freedom of expression, freedom of association, protest, and dissent. The Oregon legislature recognized that when it enacted this law in 1981, in response to the widespread police monitoring of college students and dissenters in general. However, without the passage of SB 188, ORS 181A.250 is virtually toothless in deterring or penalizing law enforcement officers and agencies that violate this important law.

In our experience as CLDC attorneys, we have seen Oregon law enforcement agencies regularly violate ORS 181A.250, in situations where the evidentiary exclusions provided by SB 188 would have helped remedy those violations. We have seen law enforcement collect and maintain information about political and social views, associations and activities of individuals and groups that was gathered before any reasonable suspicion of crime. In particular, police are regularly documenting people's social media connections and political relationships, such as posting support for Black Lives Matter -- in cases where such connections have nothing to do with any crime. The police then use that information in *later-occurring* criminal investigations and prosecutions. Police also regularly document evidence of people being unsupportive of law enforcement, when such evidence in and of itself has nothing to do with criminal activity.

Because typical suppression remedies are tied to a defendant's right to "privacy," we have seen judges reject suppression motions to exclude such evidence that was gathered before reasonable suspicion of a crime arose, in situations where the data was not kept "private" -- for

example, a public-facing Facebook post. ORS 181A.250 protects even such public or semi-public information from surveillance and data collection, but with no remedy in the criminal context. SB 188 would correct that anomaly by making explicit the mandate to suppress such illegally gathered evidence.

For example, during a 2020 Black Lives Matter protest in Springfield, Oregon, police marched undercover with protestors who were not engaged in criminal activity, collecting video and photos of protestors, and texting information about the marchers' statements and plans. They also monitored protestors' social media prior to any reasonable suspicion of a crime. Some of the protestors were *later* observed to be engaged in what the police considered to be criminal behavior, and were then charged with crimes, with the *earlier*, illegally-gathered information included in the criminal discovery file. Without SB 188, this evidence could not be suppressed.

In other cities, police officers and the Oregon Fusion Center collected and maintained information about activists' social media postings without any reasonable suspicion of a crime, and then later, *after* separate evidence of potentially criminal activity was gathered, the officers viewed the previously-gathered social media information to make guesses about who might have been involved in that later alleged crime. Again, without SB 188, this evidence could not be suppressed.

We urge you to vote in favor of SB 188 and move it forward through the legislative process.