

I am an Oregon licensed attorney at the Civil Liberties Defense Center, CLDC. CLDC is a non-profit which specializes in supporting movements that seek to dismantle the political and economic structures at the root of social inequality and environmental destruction. We provide litigation, education, legal and strategic resources to strengthen and embolden their success; we celebrate our 20th anniversary of this work later this year.

My organization writes in opposition to HB 2572-3. First, I acknowledge that violent, far right extremism is a threat to Oregonians, and I believe this bill was well intentioned in that it seeks to remedy this problem. I also recognize this bill has been reformed and improved over time to attempt to address concerns of misuse and misapplication.

Unfortunately, even with the amendments to this bill, the law still presents serious risks of overzealous application to social justice, climate, and environmental activists in our state that may result in chilling these important political movements of civic engagement.

HB 2572 allows the Oregon Attorney General to bring civil actions, presumably including emergency injunctive motions, against protestors when the Attorney General "has reasonable cause to believe that a person or group of persons *has engaged in, or is about to engage in, paramilitary activity . . .*" (emphasis added). The law also allows any person who claims to be "injured" by paramilitary activity to sue for damages, injunctive relief, and attorney fees.

"Private paramilitary organization" is defined as "any group of three or more persons associating under a command structure for the purpose of functioning in public or training to function in public as a combat, combat support, law enforcement or security services unit." Combat support is undefined, but could logically include things which support combat operations such as medical, food, and/or communications aid. In application, these definition and required actions of "paramilitary activity" can include well-organized protests (for any cause) in circumstances where people take on different roles in a protest, such as medical assistance, legal observing, de-escalation, bike or car escorts, jail support, providing food and water, security, communications, sound systems, etc., if those individuals are armed with a "dangerous weapon" and "publicly engages in techniques capable of causing physical injury..."; "substantially disrupts governmental operations or a government proceeding.."; or interfere with another person so as to prevent or attempt to prevent someone from "engaging in conduct in which the other person has a legal right to engage...".

Dangerous weapon is not just a firearm, knife, or mace,—instead a dangerous weapon can be anything capable of causing death or serious physical injury in the circumstances. Oregon courts have considered totally innocuous objects “dangerous weapons” in certain circumstances. See, e.g., *State v. Gale*, 36 Or. App. 275 (1978) (permitting a jury to consider whether a can opener was a dangerous weapon); *State v. Anderson*, 242 Or. 585 (1966) (beer bottle a dangerous weapon); *State v. Bell*, 96 Or. App. 74 (1989) (cowboy boots a dangerous weapon). There have been instances of police claiming potatoes, eggs, and water bottles as “dangerous weapons” during protests.¹

Because of the inclusion of the overbroad terms “combat support” and “dangerous weapon” in the bill, the law appears applicable to peaceful protestors who blockade a road, march in the street, or occupy a public park—all First Amendment protected activity.

Further, in the case of the Attorney General seeking an injunction to stop or halt “paramilitary activity” on the street, there are no limitations or guardrails for how other protestors or citizens present on the street at the same time will have their First Amendment rights protected. If six members of a far-right paramilitary group descend upon a massive climate youth march, this law appears to permit civil action that could infringe on the entire marches’ constitutional rights. Worse still, is that the Attorney General is authorized to act if she has reasonable belief someone is “about to” engage in paramilitary restraint. Besides constitutional issues of prior restraint— government action that prohibits speech or other expression before the speech happens—the lack of clarity about what constitutes a “reasonable belief” leaves the door open for false flags² and intentional provocateurs to shut down constitutionally protected speech preemptively.

Finally, the private right of action opens the door to frivolous causes of action for anyone “harmed” by paramilitary activity. Meritless lawsuits against activist protests are a long-time, ongoing threat for social movements. For example, "Strategic Lawsuits Against Public Participation" (SLAPPS) are designed to chill speech and divert the resources of protesters and other activists. See

¹ *Cops Say Portland Protesters Threw 'Dangerous Objects,' Including Eggs, Potatoes and Water Bottles*, Newsweek. Matthew Impelli (August 11, 2020). <https://www.newsweek.com/cops-say-portland-protesters-threw-dangerous-objects-including-eggs-potatoes-water-bottles-1524303>

² “a hostile or harmful action (such as an attack) that is designed to look like it was perpetrated by someone other than the person or group responsible for it”

“False flag.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/false%20flag>. Accessed 4 May. 2023.

generally <https://protecttheprotest.org/>. Although SLAPPS generally are dismissed (because by definition they are frivolous), the mere filing of a civil suit, even a frivolous one, can be extremely disruptive and harmful to important and lawful organizing when a SLAPP'ed activist or organization has to spend time and resources defending against the suit. While many of us may believe and hope that Oregon's Attorney General would never bring a frivolous lawsuit just to halt criticism or stop a well-organized protest, HB 2572 permits *any* private citizen "injured as a result of paramilitary activity" to bring a suit, opening the floodgates for HB 2572-related SLAPPS in Oregon.

The bill in its current form remains a threat to important civic engagement and dissent and should not move forward without further revisions which address the concerns outlined herein.