

February 9, 2024

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

### **Testimony in Opposition of House Bill 4122**

Dear Chair Kropf, Vice-Chairs Andersen and Wallan, and Members of the Committee:

Thank you for the opportunity to provide testimony on behalf of the American Civil Liberties Union of Oregon (ACLU of Oregon). The ACLU of Oregon is a nonpartisan, nonprofit organization dedicated to preserving and enhancing civil liberties and civil rights, with more than 28,000 supporters statewide.

**The ACLU of Oregon Opposes House Bill 4122.** While the ACLU of Oregon recognizes the value of speeding up employment clearance processes and helping build up Oregon workforce, we are concerned that this bill places convenience over the important privacy rights and interests of Oregon workers, who will have no say in whether their employer or future employer consents to share their biometric information with the FBI.

The Rap Back program, as it collects data nationally, could easily expose private data on health outcomes or health decisions that Oregon protects but that in a post-*Dobbs* world has been criminalized in other states. This means that an employer could receive information on their employee's arrest or conviction for a miscarriages<sup>1</sup> or abortion care in another state.

Employers enrolled in the FBI "Record of Arrest and Prosecution Background" program will receive ongoing and realtime notifications not merely of convictions but arrests nationwide. This data includes arrests that take place at a protest or arrests at the scene of a domestic violence incident, where both the abuser and the victim may be subject to arrest (victims are arrested in an estimated 7 percent of these incidents).<sup>2</sup>

In impact, this means that while our criminal justice system requires the Government to meet the burden of "beyond a reasonable doubt" for a conviction, employment consequences may fall well before an individual is proven guilty. More concerning, the FBI data is often inaccurate: storing arrest data but failing to document the case's ultimate decision. National Employment Law Project data from 2013 showed that as many as half of FBI arrest records failed to include whether the charges had been dropped or the person had been convicted.<sup>3</sup>

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<sup>1</sup> Julie Carr Smyth, A Black woman was criminally charged after a miscarriage. It shows the perils of pregnancy post-Roe, AP News, December 16, 2023, <https://apnews.com/article/ohio-miscarriage-prosecution-brittany-watts-b8090abfb5994b8a23457b80cf3f27ce>.

<sup>2</sup> "Alexander, like 7 percent of all domestic violence survivors, was the target of a dual arrest, a deleterious practice in which both the victim and the abuser are arrested. Dual arrests force women to choose between personal safety and a potential arrest, a major problem given the severity of the domestic violence epidemic." Claire Hodges, From Abuse to Arrest: How America's legal system harms victims of domestic violence, Brown Political Review, August 23, 2021, <https://brownpoliticalreview.org/2021/08/abuse-to-arrest/>.

<sup>3</sup> National Employment Law Project, Wanted: Accurate FBI Background Checks For Employment, July 2013, <https://www.nelp.org/publication/wanted-accurate-fbi-background-checks-for-employment/>.

These impacts can further be anticipated to particularly disadvantage Oregon's Black, indigenous, and people of color communities who are consistently arrested at higher rates than white Oregonians.<sup>4</sup>

The ACLU of Oregon is also concerned about the dearth of current data and information on FBI Rap Back practices. While there was a spate of articles and analysis around the potential misuse of this database early in the Trump administration, there has been far less recent documentation of current FBI practices and data management. **Given this lack of data, the ACLU of Oregon would suggest founding a taskforce on this issue before handing over Oregon workers' biometric data to the federal government.**

**We urge you not to pass House Bill 4122 and to prioritize employee privacy over convenience.**

Respectfully,  
Emily Hawley  
Senior Policy Associate  
ACLU of Oregon

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<sup>4</sup> National Employment Law Project, Faulty FBI Background Checks For Employment: Correcting FBI Records Is Key To Criminal Justice Reform, December 8, 2015, <https://www.nelp.org/publication/faulty-fbi-background-checks-for-employment/>.