



February 3, 2025

Senate Committee on Human Services
Oregon State Legislature
900 Court St. NE
Salem, OR 97301

RE: Testimony in Opposition to Senate Bill 644

Dear Chair Gelser Blouin, Vice-Chair Linthicum, and Committee Members,

I am Sandy Chung, Executive Director of the ACLU of Oregon. I am submitting this 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 defending and advancing democracy, civil liberties, and civil rights, with more than 40,000 members and donor supporters statewide.

We oppose Senate Bill 644 because it is undemocratic, contrary to core constitutional principles, and an abuse of power.

1. Democracy is served by nonprofit organizations that engage in political speech and activities related to the issues and communities they serve.

Protecting democracy requires government officials to honor their constitutional obligations to respect free expression, free belief, free association, a free press, and the right to seek redress from the government for grievances we have about how it is upholding its responsibility to the people. The ACLU has worked since 1920 to ensure that these underpinnings of democracy found in the First Amendment are protected for everyone.

As our world becomes more complex, it is increasingly difficult for everyday voters to understand and engage with the breadth and depth of public policy and legislation before state legislatures. This is where nonprofit organizations serve a vital role in our democracy – by doing research on public policy issues, educating community members about those issues, organizing people to advocate for their neighbors, and engaging government officials in direct conversation about issues impacting the communities they serve. This collective effort strengthens our democracy by ensuring more power and resources rest with the “all the people” that our democratic institutions are supposed to serve.

Consistent with this vision of an engaged democracy, federal regulations recognize the value of nonprofit organizations engaging in political advocacy and lobbying by

specifically allowing for it. Under federal regulations, 501(c)(3) organizations – not just 501(c)(4) organizations – may engage issues of public policy research and education, as well as a certain amount of direct and grassroots lobbying activity about legislation and ballot measures. For more information about these allowances, please go to the IRS website at <https://bit.ly/irs-nonprofit-lobbying>.

2. It is undemocratic, a dangerous abuse of power, and likely unconstitutional to target a nonprofit organization with an audit because of its political speech.

SB 644 singles out Oregon Food Bank for a state audit, focusing in particular on the Oregon Food Bank’s “political campaign activity or political issue activity.” It is our understanding that one motivation for this bill is that certain state lawmakers disagree with the lobbying positions that the Oregon Food Bank has taken related to hunger and poverty in Oregon. It is a chilling precedent to permit the state, for any reason, to single out a private organization for this type of financial scrutiny. It is especially dangerous to permit that targeting based on political viewpoint.

Not only is this type of government targeting and harassment undemocratic, but it also may violate the First and Fourth Amendments of the U.S. Constitution:

- *National Rifle Association v. Vullo*, 602 U.S. 175, 188 (2024): Under the First Amendment, “[a] government official can share her views freely and criticize particular beliefs, and she can do so forcefully in the hopes of persuading others to follow her lead. In doing so, she can rely on the merits and force of her ideas, the strength of her convictions, and her ability to inspire others. What she cannot do, however, is use the power of the State to punish or suppress disfavored expression.”
- *Bantam Books v. Sullivan*, 372 U.S. 58, 67 (1963): The First Amendment prohibits government officials from relying on the “threat of invoking legal sanctions and other means of coercion . . . to achieve the suppression” of disfavored speech. This is true even if the power exercised by government oversight bodies is limited to informal sanctions.
- *City of Los Angeles v. Patel*, 576 U.S. 409 (2015): A law violates the Fourth Amendment on its face if it allows the government to investigate records, but does not allow the investigated party to obtain judicial review of the investigation before they have to comply.

The ACLU of Oregon further notes that, in many cases, our state constitutional corollaries to the First and Fourth Amendment (Article I, sections 8 and 9) provide even greater levels of protection for our rights to expression, assembly, and privacy than do similar federal constitutional provisions. For example, Article I, section 8 prohibits laws directed at the content of speech. *See State v. Babson*, 293 Or 383, 391 (2014)(the first inquiry in the *Robertson* analytic framework for Article I, section 8 violations is whether the law is “written in terms directed to the substance of any opinion or any subject of

communication”); *Fidanque ex rel Or. Gov’t Standards and Pracs. Comm’n*, 328 Or 1, 8 n 4 (1998)(recognizing that “[l]obbying is political speech” and finding that charging \$50 for engaging in that speech was an impermissible restriction on the right to speak freely). Under both federal and Oregon law, SB 644 is on legally shaky ground when it uniquely burdens the Oregon Food Bank’s political speech with an audit requirement.

Given the legal risks, it is quite possible that beyond being a dubious and undemocratic bill, SB 644 may be costly for the state because of the potential for litigation.

3. The Oregon Legislature should lead in good democracy and reject political witch hunts by elected officials.

The type of targeting and harassment proposed by SB 644 is not novel. Unfortunately, we are seeing more of these types of abuses of power. The following are some recent examples in other states:

- In Texas, since 2023, Attorney General Ken Paxton’s office has issued information requests or demanded depositions from over a dozen organizations with which he politically disagrees, including organizations that provide services to migrants, a nonprofit that supports LGBTQ+ families (including those seeking gender-affirming care), and an organization that works to increase Latino voting participation.
- In 2024, Attorney General of Missouri Andrew Bailey launched an investigation into progressive watchdog Media Matters shortly after the nonprofit published a report showing that the online platform X had placed advertisements next to antisemitic content. The Media Matters report prompted numerous advertisers to leave X, and Stephen Miller, a close advisor to President Trump, publicly hinted that conservative state attorneys general should take legal action against the organization.
- In 2024, Indiana Attorney General Todd Rokita filed civil investigative demands on six nonprofits, companies, and local governments involved in refugee resettlement.

Similarly, President Trump and his supporters have threatened to target organizations, including non-profits, they perceive as political adversaries.¹

Political witch hunts offend our state’s most deeply-held values. The Oregon Legislature should reject such heavy-handed political tactics and focus its limited resources on building pro-democracy models for other states and the federal government to follow.

The ACLU of Oregon urges you to oppose Senate Bill 644.

Respectfully,
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¹ <https://www.theguardian.com/us-news/2024/dec/18/trump-non-profits-watchdog>