



February 13, 2025

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

RE: Testimony in Opposition to Senate Bill 473

Dear Chair Prozanski, Vice-Chair Thatcher, 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 40,000 supporters statewide. **We oppose Senate Bill 473 in its current form, which would create a new class of misdemeanor and felony offenses for the crime of threatening a public official.**

Oregonians are deeply invested in their constitutional rights to free speech and free expression. Oregon is home to countless organizations and individuals passionate about participating in public discourse around many different issues. Legislation, such as SB 473, that impacts what an individual can say or do is relevant to every Oregonian, particularly those engaged in political activity.

SB 473 is designed to address the increase in threats against public officials. The ACLU takes the rise in political violence in this country extremely seriously. Unfortunately, SB 473, as currently written, raises concerns for us as to whether civil liberties will be fully protected in the process.

As an initial matter, this bill is duplicative as it is already illegal to threaten someone with serious injury. *See* ORS 166.065(1)(c) (Harassment); ORS 163.190(1) (Menacing).

There are also sections that are vague or too broad. Section 1 of SB 473 criminalizes threatening communications that are not only made “directly,” but “indirectly” as well. This reference to “indirect” threats is very broad and could potentially encompass unserious comments posted on social media or expressed in the heat of a public debate. And while a court or jury must then determine whether “a reasonable person would expect the threatening communication to be followed by unlawful acts of violence,” it appears that a subjective test is applied in determining whether the communication is threatening or not in the first place. The bill defines “threatening communication” as one “that instills in the recipient a fear that the person conveying the communication will cause imminent” physical harm or death to the recipient or their immediate family. This ambiguous subjective standard could not only produce a chilling effect on political speech, but also result in any number of meritless lawsuits that are dismissed after a court applies the objective standard and determines that while subjectively “threatening,” no “reasonable person” would have expected the threat to be followed by “unlawful acts of violence.” This would not only amount to a waste of judicial resources, but would create a

further chilling effect on speech and lead to long-lasting negative consequences for wrongfully accused Oregonians.

The reference to communications made “by any means” in section 1 is likewise too broad. This language appears to encompass social media posts, form emails sent to legislators, and even protest chants. Without clearer safeguards for protected speech and expression, this provision casts too wide a net.

We are particularly concerned by how these broadly defined crimes can disproportionately affect individuals with serious mental illness. The rate of serious mental illness among incarcerated people is two to six times higher than it is in the general population. The response ought not be punishing these individuals even more, whose mental illness so clearly contributes to their behavior. Instead, a greater emphasis on evidence-based social work and intervention would allow the State to protect Oregonians, while assisting as many people as possible. Existing laws against stalking, harassing, and menacing would remain available for law enforcement to intervene when necessary, including when an individual is fully competent and intentionally threatening a public official.

Moreover, in Section 1(c), the bill requires a nexus between the person’s motive for sending the communication and (A) the performance or nonperformance of a public duty, (B) the status or position of the official, or (C) “any other factor related to the public official’s office or duties.” This third provision is too expansive a catch-all and the term “any other factor” could easily be interpreted to include virtually anything a public official does.

Finally, the definition for “threatening communication” specified in the bill applies a higher standard of danger to the threat than the “reasonable person” standard that is used to determine whether the threat is credible or not. The definition for “threatening communication” includes a fear on the part of the recipient that the person delivering the threat “will cause imminent or serious physical injury to or the death of the recipient or the recipient’s immediate family.” However, the “reasonable person” standard only requires that a reasonable person expect the threat to be followed by “unlawful acts of violence.” This must include acts short of “serious physical injury” or “death,” like misdemeanor assault. These incongruous standards risk confusing courts, public officials, and individual Oregonians seeking to participate in the political process.

Senate Bill 473, as currently written, does not appropriately balance the civil liberties of Oregonians with the State’s interest in protecting public officials from threats. The bill uses overbroad standards that risk chilling speech and producing meritless investigations or prosecutions. **The ACLU of Oregon urges this committee to oppose SB 473.**

Respectfully,

Michael Abrams, Policy Counsel
ACLU of Oregon

If you have any questions or requests for clarifications, please email Jessica Maravilla, Policy Director, at jmaravilla@aclu-or.org