



March 14, 2025

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

**Testimony Opposing HB 2851**

Chair Kropf, Vice-Chairs Chotzen and Wallan, members of the Committee,

Thank you for the opportunity to provide testimony on behalf of the ACLU of Oregon. I am Jessica Maravilla, the Policy Director. The ACLU of Oregon is a nonpartisan, nonprofit organization dedicated to defending and advancing democracy, civil liberties, and civil rights, with nearly 44,000 members and donor supporters statewide.

**We write to express our serious concerns regarding House Bill 2851 and the -1 Amendment. We oppose this bill.**

**During this time when the language of terrorism is being used to destroy American democracy, Oregon should be rolling back and not expanding so-called terrorism laws. These laws are ripe for abuse and unnecessary because we already have criminal laws that sanction harm to property.**

Our state should be a national model in protections for democracy, speech, and protest. However, when state lawmakers passed HB 2772, the underlying domestic terrorism bill in 2023, Oregon alarmingly went in the wrong direction. Our members and supporters agreed – they sent more than 15,000 messages to state lawmakers opposing HB 2772.

Federal, state, and local governments have a well-documented, very-long history of invoking terrorism and related laws to surveil and target Black and brown communities and silence those who engage in political dissent – including racial justice protestors and environmental justice activists.

Currently, we are seeing Trump weaponizing terrorism laws and language to silence dissent and destroy American democracy.

On January 30, 2025, Trump expanded Executive Order 13899. About this expansion, he stated: “To all the resident aliens who joined in the pro-jihadist protests, we put you on notice: come

2025, we will find you, and we will deport you.”<sup>1</sup> Last Saturday, Trump acted on his threat when ICE detained Mahmoud Khalil, a green card holder and Columbia University student. When Khalil’s attorney told ICE that he had a green card, they said the green card was revoked.

**The Trump administration is using the language of terrorism to justify their destructive, fascist actions:**

- Donald Trump said on Monday that the ICE detainment of Khalil was the “first arrest of many to come.” He added: “Many are not students, they are paid agitators. We will find, apprehend, and deport these **terrorist** sympathizers from our country – never to return again. If you support **terrorism**, including the slaughtering of innocent men, women, and children, your presence is contrary to our national and foreign policy interests, and you are not welcome here.”<sup>2</sup>
- On Tuesday, regarding what specifically Khalil engaged in, White House Press Secretary Leavitt said that Khalil distributed pro-Hamas flyers on Columbia’s campus.<sup>3</sup>

These statements by Trump and his administration indicate that Trump is punishing Khalil for exercising his free speech rights, and it is the **unproven allegation of terrorism** and nothing more that is being used to detain Khalil and revoke his green card.

Yesterday, Trump also threatened to expand domestic terrorism laws by saying he would consider vandalism against Tesla to be terrorism. **We ask: Why are Oregon lawmakers considering anti-democracy frames being weaponized by Trump?**

Our serious concerns about the dangerous expansion of domestic terrorism laws are shared by many pro-democracy organizations:

- For example, when Congress proposed a new domestic terrorism charge to ostensibly address white nationalist violence, more than 150 organizations opposed the expansion because it would cause more harm than good. These organizations included long-respected civil and human rights organizations such as Leadership Conference on Civil and Human Rights, Amnesty International, Human Rights Watch, Lawyers’ Committee for Civil Rights Under Law, the National Bar Association, NAACP, and more.<sup>4</sup>

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<https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-takes-forceful-and-unprecedented-steps-to-combat-anti-semitism/#:~:text=Deport%20Hamas%20Sympathizers%20and%20Revoke,and%20we%20will%20deport%20you>.

<sup>2</sup> <https://www.cbsnews.com/news/trump-mahmoud-khalil-ice-columbia-university/>

<sup>3</sup> <https://time.com/7266683/mahmoud-khalil-columbia-green-card/>

<sup>4</sup> <https://civilrights.org/resource/135-civil-rights-organizations-oppose-a-new-domestic-terrorism-charge/>

- Similarly, more than 20 Oregon organizations opposed HB 2772, including Urban League of Portland, PCUN, Sierra Club, and more.

**In these dangerous times when terrorism laws are being used to dismantle our democracy and our basic constitutional rights, the ACLU of Oregon urges you to roll back rather than expand state-level terrorism laws and to stop using this framework that is being thoroughly weaponized against our democracy.**

**We urge you to not move House Bill 2851 and the -1 Amendment out of committee.**

Thank you,

Jessica Maravilla  
Policy Director  
ACLU of Oregon

Enclosures:

1. Article titled, “The Growing Threat of State Domestic Terrorism Laws to the First Amendment,” from: <https://www.justsecurity.org/99787/state-domestic-terrorism-laws/>
2. ACLU of Oregon Memo “Re: Concerns Regarding HB 2772” dated March 30, 2023, which sets out in more detail the significant dangers of state-level domestic terrorism laws like HB 2772
3. Letter to Joint Committee on Ways and Means from organizations that opposed HB 2772 and the -1 Amendment in 2023

**Enclosure 1: Article titled, “The Growing Threat of State Domestic Terrorism Laws to the First Amendment,” from:**

**<https://www.justsecurity.org/99787/state-domestic-terrorism-laws/>**

# The Growing Threat of State Domestic Terrorism Laws to the First Amendment

by [Nick Robinson](#)

September 5, 2024

While there is [no separate federal crime of “domestic terrorism”](#) in the United States, there is a crime of domestic terrorism in many U.S. states. In recent years, the use and content of these state terrorism laws have witnessed a significant shift, raising new threats to First Amendment rights. The International Center for Not-for-Profit Law (ICNL), where I work, released a new [report](#) on these laws today.

A majority of states – [32 states and Washington DC](#) – have the crime of domestic terrorism. Further, [21 states and DC](#) criminalize assisting or supporting terrorism, and [25 states](#) have a separate crime of terroristic threat. Most of these state domestic terrorism laws were [enacted](#) in the wake of 9/11. They traditionally were relatively rarely enforced as crimes of political violence can, and have been, prosecuted by federal or state officials using [other criminal law](#) provisions. However, as concerns about terrorism have evolved in the United States, these laws have taken on an increasingly prominent and often politicized role.

Prosecutors in Georgia brought [charges](#) last year using its state domestic terrorism law against dozens of activists protesting a proposed law enforcement training facility near Atlanta, dubbed “Cop City.” While this case has progressed further than others, this targeting of protest-related activity is not a new occurrence. In the last few years, authorities in [Oklahoma](#), [New York](#), [Louisiana](#), and [Florida](#) have all used domestic terrorism laws in the context of protests or activism. Meanwhile, three states – Texas, North Dakota, and Oregon – [adopted](#) domestic terrorism laws for the first time in 2023, signaling new interest in these laws. And in the 2024 legislative session, at least 15 states [have considered changes](#) to their domestic terrorism laws, many in response to pro-Palestine protests.

Since political violence is [already criminalized](#) under other state and federal laws, state domestic terrorism laws are arguably unnecessary. In addition, these laws create serious, and often underappreciated, civil liberties concerns, particularly in relation to the freedoms of speech, assembly, and association. State domestic terrorism laws are frequently overbroad and trigger severe penalties that have been used in multiple states to target individuals, including nonviolent activists, in activity not typically associated with terrorism. Policymakers in both major political parties though are only slowly waking up to the danger these laws can pose.

## **State Domestic Terrorism Laws and Protests**

The high-profile use of Georgia's state terrorism law in charges against Cop City activists highlights some of the First Amendment concerns domestic terrorism legislation raises. In an [indictment](#) handed down by the Georgia Attorney General's office in July 2023, 61 people, including a [legal observer](#) from the Southern Poverty Law Center, were charged with [racketeering](#) for engaging together to prevent the construction of a police training center on public forest land. During a music festival on the forest land in March 2023, at least a hundred people had [walked](#) to the construction site, where some knocked over a fence, threw rocks, and burned equipment. For many of the defendants, the indictment stated that they joined the group at the construction site, "thereby aiding and abetting in the offense of arson and domestic terrorism." In the same indictment, five individuals were charged with domestic terrorism arising out of a separate protest in January 2023 that was sparked by the law enforcement killing of a protester occupying the forest land. The indictment alleged that these five attempted to commit arson against critical infrastructure, including police vehicles, as they were arrested with accelerant.

Under Georgia law, the predicate crime of [domestic terrorism](#) is a felony intended to cause serious bodily harm or to disable or destroy "critical infrastructure." "Critical infrastructure" is defined broadly to include any publicly or privately owned "facilities, systems, functions, or assets" providing services to the public. Georgia's domestic terrorism law, like almost all other state terrorism statutes, also has an [intent requirement](#), which can be met by committing the predicate offense with the intent to intimidate a civilian population or to alter or coerce government policy. In Georgia, terrorism is a felony [punishable](#) by a minimum of five years and up to life imprisonment.

While Georgia’s domestic terrorism law has been [challenged](#) for being vague and overbroad, some state domestic terrorism laws are even broader. In [Oklahoma](#), for example, a predicate offense for domestic terrorism includes any act of violence that results in damage to property or the threat of such violence, including even minor property damage. The offense is punishable by up to life in jail. In [Tennessee](#) the predicate crime for domestic terrorism can be literally any crime, including a relatively minor offense like [obstructing a sidewalk](#) or [disorderly conduct](#). The offense is punishable by 15 to 60 years in jail.

These broad definitions of domestic terrorism have repeatedly been used by law enforcement in protest contexts. In Oklahoma, a prosecutor [charged](#) five individuals, including three teenagers, with domestic terrorism in 2020 for alleged property destruction connected with a Black Lives Matter demonstration—a charge that [critics claim](#) was used to intimidate protesters. In New York City, police [arrested](#) a group of fourteen protesters for domestic terrorism in 2023 for delaying a subway train. The police claimed that in blocking the train they had engaged in [first degree tampering](#), a predicate offense under the [state’s domestic terrorism statute](#).

Lawmakers have also worked to expand domestic terrorism laws in response to protest movements. In 2021, for instance, Arkansas [amended](#) its law to include damage to public monuments as a predicate crime for domestic terrorism after Black Lives Matter protests in which demonstrators had toppled or vandalized confederate monuments. In the wake of protests over Israel’s invasion of Gaza that began in late 2023, several states proposed changing their domestic terrorism laws, including lawmakers in New York who introduced a [bill](#) in 2024 that would create a new felony domestic terrorism offense for obstructing roads or sidewalks in a manner that deliberately blocks traffic.

## **Support for Terrorism and Terroristic Threats**

Many states have not just a crime of domestic terrorism, but also crimes of terroristic threat or material support for terrorism. Both of these crimes also come into potential conflict with the freedoms of speech, association, and assembly.

Law enforcement in Louisiana, for example, [charged](#) two female environmental activists in 2020 under state law with “terrorizing,” after they engaged in a publicity stunt in



which they left a bucket of plastic pellets on the porch of the house of a chemical industry lobbyist. The activists claimed the plastic pellets were from a chemical factory that had dumped them into the Gulf of Mexico. This crime of terroristic threat in Louisiana is punishable by up to 15 years in jail.

The broad language of material support provisions also creates the potential for politicization. In late 2023, at the urging of Governor Ron DeSantis, the head of the Florida state university system [ordered](#) public universities to disband state campus groups linked to Students for Justice in Palestine (SJP), claiming that SJP was in violation of Florida's [material support of terrorism law](#) for statements that were supportive of the actions of Hamas (a federally designated foreign terrorist organization). Critics [pointed out](#) the state chapters of SJP were autonomous from the national organization and their activism for Palestine was protected under the First Amendment. Civil liberties groups [sued](#) to challenge the order, and the Florida government eventually backed away from efforts to disband the state groups. Providing "material support" to a terrorist organization is a felony under Florida law punishable by up to 30 years in jail.

Significantly, Florida, like some [other states](#), criminalizes not just material support to a federally designated foreign terrorist organization, but also material support for any act of domestic terrorism. Since domestic terrorism is defined so broadly in some states to potentially include acts like purposefully [delaying a train](#) or even engaging in a [sit in](#), these provisions can potentially capture people who never engaged in violence or even thought they were connected with terrorism.

## **Moving Forward**

While most state domestic terrorism laws were passed in the wake of 9/11, many have been enacted or amended more recently. The motivations of legislators have been tellingly diverse, highlighting a lack of political consensus about the target of these laws.

Last year, for instance, [lawmakers](#) in Texas enacted [domestic terrorism legislation](#) to fill a claimed legislative gap and after Governor Abbott had [designated](#) Mexican drug cartels as terrorist organizations in 2022. This is part of a larger [Republican push](#) to have drug cartels designated as terrorist organizations by the federal government. Meanwhile, lawmakers in West Virginia have [repeatedly introduced](#) a bill, including this session, that



would criminalize “terrorist violent mass action” in response to fears about antifa and other protest groups.

Those on both sides of the aisle have reasons to be concerned about the increasing turn towards state domestic terrorism laws. After the September 11th attacks, the Muslim, Arab, and South Asian communities bore a disproportionate brunt of surveillance and investigations in the name of fighting terrorism, often based on thin evidence and [racial or religious profiling](#). In recent years, the label of terrorism has been applied by [federal officials](#) and politicians against members of a varied range of groups, including [Black Lives Matter activists](#), [abortion activists](#), [environmental activists](#), [anti-government proponents](#), [Trump supporters](#), [white supremacists](#), [individuals associated with antifa](#), and [pro-Palestine protesters](#).

This labeling of a broad set of groups and individuals by officials as potential terrorists is a source of concern as more groups and individuals may become targets of state domestic terrorism laws in a politicized manner. However, the more unrestrained use of this label can also potentially create a larger constituency for reform. In North Dakota, lawmakers enacted a [domestic terrorism law](#) in 2023 out of concern that the crime of terrorism was being “weaponized” against conservative voices. Specifically, the law’s sponsors claimed their bill was in response to a [letter](#) that the National School Board Association sent to the FBI asking them to potentially investigate as domestic terrorists conservative parents who had sometimes made threatening statements at school board meetings. The enacted North Dakota [law](#) defines domestic terrorism to only include crimes done in cooperation with federally designated international terrorist organizations to try to limit the offense to these transnational contexts and not apply it against purely domestic actors.

This year, the Idaho state senate [passed](#) a similar law to North Dakota’s [out of fear](#) law enforcement may target groups like Moms for Liberty as domestic terrorists. Meanwhile, a number of proposed [amendments](#) that would have strengthened state terrorism laws in the wake of pro-Palestine protests did not pass, in part because of their First Amendment implications.

The broad provisions of state domestic terrorism laws empower law enforcement to use them in a discretionary manner. This has already created a climate of fear amongst activists and protesters in the United States. Moving forward, state lawmakers should prioritize First Amendment and other civil liberties concerns when considering domestic terrorism legislation.

The experiences of states with domestic terrorism laws should serve as a warning to those who have [advocated](#) for a separate federal crime of domestic terrorism. So far, such a push has failed to move forward largely because a federal crime of domestic terrorism is arguably [unnecessary](#) given that political violence is already a crime and because such proposals often raise serious First Amendment concerns. However, state experiences with domestic terrorism laws also provide additional evidence about how such a federal law could become politicized.

As even more groups are impacted by these state terrorism laws on both the political left and right, there is an opportunity for a broader political consensus to emerge around a more targeted approach to combatting political violence. This vision for combatting political violence should be clear about the dangers these state laws create to our First Amendment protected rights.

*IMAGE: Atlanta Police Department officers monitor a pro-Palestinian protest against the war in Gaza at Emory University on April 25, 2024, in Atlanta, Georgia. (Photo by Elijah Nouvelage / AFP) (Photo by ELIJAH NOUVELAGE/AFP via Getty Images)*

## About the Author(s)

Nick Robinson

Nick Robinson (@NLR100) is a Senior Legal Advisor at the International Center for Not-for-Profit Law (ICNL).

**Enclosure 2: ACLU of Oregon Memo “Re: Concerns Regarding HB 2772” dated March 30, 2023, which sets out in more detail the significant dangers of state-level domestic terrorism laws like HB 2772**



From: **ACLU of Oregon**  
To: **Champion and Sponsors of HB 2772 and Members of the House Committee on Judiciary**  
Re: **Concerns regarding HB 2772, creates a crime of Domestic Terrorism**  
Date: **March 30, 2023**

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## **I. Introduction**

The ACLU of Oregon opposes House Bill 2772. Passage of HB 2772 would follow Georgia's lead in adding a stigmatizing label and harsher punishment to property crimes that are already illegal under state law. This law, like other terrorism laws across the country, could be wielded to disproportionately target already over-policed communities and to punish people expressing political beliefs.

This memorandum is organized in the following sections:

- 1. Existing State and Federal Laws Already Prohibit Activity Proscribed Under HB 2772**
  - a. Oregon Laws Already Apply to Conduct Proscribed by HB 2772*
  - b. Oregon's Criminal Mischief in the First Degree Statute is Clearly Intended to Encompass Damage to Critical Infrastructure*
  - c. Oregon Laws Cover Acts of Widespread Harm*
  - d. Federal Law Further Proscribes Attacks on Critical Infrastructure*
- 2. The Language of HB 2772 Remains Overbroad and Ripe for Abuse**
- 3. The Legislative Record Demonstrates an Expansive and Capacious Legislative Intent**
- 4. HB 2772 Disproportionately Threatens Already Over-Policed Communities and Risks Stifling Protest**
- 5. HB 2772 Will Not Address the Problem of Violent Extremism in Oregon**
- 6. The Basis for HB 2772 is a Deeply Flawed Advisory Report by the Oregon's Secretary of State**

### **1. Existing State and Federal Laws Already Prohibit Activity Proscribed Under HB 2772**

- a. Oregon Laws Already Apply to Conduct Proscribed by HB 2772*

Oregon criminal statutes already prohibit all hypothetical and real conduct described as the basis for the creation of a domestic terrorism offense under HB 2772. These offenses include but are not limited to: Criminal Trespass or Criminal Trespass while in possession of a firearm, Criminal Mischief, Reckless Burning, Arson, Possession of a Destructive Device, Riot, Reckless Endangerment, Assault, Negligent Homicide, Manslaughter, Murder, or attempts of these crimes.<sup>1</sup> Oregon's conspiracy statute imposes

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<sup>1</sup> Criminal Trespass or Criminal Trespass while in possession of a firearm (ORS 164.245, ORS 164.265), Criminal Mischief (ORS.345, ORS 164.354, ORS 164.365), Reckless Burning (ORS 164.335), Arson (ORS 164.315, ORS 164.325), Possession of a Destructive Device (ORS 166.382), Riot (ORS 166.015) Reckless Endangerment (ORS 163.195), Assault (ORS 163.160, ORS



liability on coordinated group criminal activity.<sup>2</sup> These laws negate the need for a “domestic terrorism” offense, which would simply create harsher penalties for already-proscribed conduct.

During his discussion of HB 2772 at the February 8 public hearing, invited witness Aaron Knott, the Policy Director for Multnomah County District Attorney and drafter of the -1 language, cited many of the above listed offenses on the record as laws that currently apply to the various scenarios for which the Bill’s chief sponsor hopes to capture.

*b. Oregon’s Criminal Mischief in the First Degree Statute is Clearly Intended to Encompass Damage to Critical Infrastructure*

According to its chief sponsor, Representative Evans, HB 2772’s central aim is to protect Oregon’s “critical infrastructure.” At the February 8 public hearing, Rep. Evans indicated that there is a gap in Oregon’s criminal statutes regarding attacks on critical infrastructure.<sup>3</sup> We disagree. Oregon’s First Degree Criminal Mischief statute, ORS §164.365, explicitly covers damage to property defined under HB 2772 as “critical infrastructure.”

The relevant language of the criminal mischief statute that would overlap with the “critical infrastructure” elements of HB 2772 includes the following:

*(1) A person commits the crime of criminal mischief in the first degree who, with intent to damage property, and having no right to do so nor reasonable ground to believe that the person has such right:*

*(a) Damages or destroys property of another:*

*(A) In an amount exceeding \$1,000; [OR]*

*(B) By means of an explosive; ...[OR]*

*(E) Which is the property of a public utility, telecommunications carrier, railroad, public transportation facility or medical facility used in direct service to the public...ORS § 164.365.*

This law makes it a class C felony to intentionally damage property “by means of explosive” *or* to damage property of “a public utility, telecommunications carrier, railroad, public transportation facility or medical facility.” Class C Felonies are punishable by up to five years in prison and a fine of up to \$125,000.<sup>4</sup>

During Mr. Knott’s February 8 testimony, he suggested that First Degree Criminal Mischief is an insufficient charge for the conduct covered by HB 2772 because it encompasses low-level property crimes, such as striking a car with a baseball bat and causing \$1,000 in damage, as well as more serious crimes

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163.165, ORS 163.185, ORS 163.175), Negligent Homicide (ORS 163.145), Manslaughter (ORS 163.125, ORS 163.118), Murder (ORS 163.115, ORS 163.107), or attempts of these crimes (ORS 161.405).

<sup>2</sup> Criminal Conspiracy (ORS 161.450).

<sup>3</sup> See Representative Evans remarks during Public Hearing on HB 2772, February 8, 2022,

<https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2023021114>, at 0:49:00-00:49:52.

<sup>4</sup> The five-year maximum exceeds the sentencing recommendation for a first time criminal mischief offense, but prosecutors may seek a higher sentence than recommended if warranted.



against public infrastructure.<sup>5</sup> First, we disagree with the proposition that a charge of First Degree Criminal Mischief is an ineffective penalty for crimes against public infrastructure simply because the statute also addresses less severe misconduct. The fact that it addresses a variety of criminal behavior does not negate the fact that the statute already explicitly applies to the conduct intended to be addressed by HB 2772.

Second, we note that the \$1,000 property damage threshold included in the statute – which seems to be a point of concern for Mr. Knott – has not been adjusted for inflation since the law was originally drafted 52 years ago, in 1971.<sup>6</sup> In today’s dollars, that \$1,000 threshold would be approximately \$7,460. This, along with the statute’s focus on property damage “by means of explosive” and attacks on public infrastructure, suggest that the law was never intended primarily to punish low-level property damage. We are concerned that Oregon’s district attorneys may be overcharging for low-level property damage that was never intended to be covered by First Degree Criminal Mischief, and that, as a result, the statute may now be seen as an insufficient deterrent for the very conduct it was drafted to address. To remedy this issue, the minimum property damage threshold in ORS 164.365 §1(a)(A) could be adjusted to reflect inflation.

*c. Oregon Laws Cover Acts of Widespread Harm*

Oregon law already criminalizes intentional acts that cause widespread harm. Furthermore, any crime injuring or killing over 50 people would almost certainly have some hook for additional federal jurisdiction. Mr. Knott’s February 8 testimony indicated that because district attorneys lacked consensus on how to charge a hypothetical attempted but aborted poisoning of the Bull Run Reservoir, existing laws were insufficient. We disagree. The fact that Oregon prosecutors have different approaches to this hypothetical scenario is not an indication that the state lacks applicable charges; it simply shows that the attorneys consulted had varying opinions on which charges were most appropriate. If anything, that there were myriad conclusions indicates that there are multiple ways that this misconduct might be addressed under existing law.

We note that this hypothetical could be addressed under federal law, as the Bull Run Reservoir is almost entirely federal property.<sup>7</sup> Federal prosecutors were able to successfully charge Rajneeshee leaders for their role in a mass poisoning in 1984.<sup>8</sup>

*d. Federal Law Further Proscribes Attacks on Critical Infrastructure*

Additionally, some of the key “critical infrastructure” defined in HB 2772 can fall under federal protection. Among other infrastructure, the U.S. Army Corps of Engineers owns and operates 11 dams and 13

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<sup>5</sup> See Mr. Knott’s remarks during Public Hearing on HB 2772, February 8, 2022, <https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2023021114>, at 00:52:02-53:15.

<sup>6</sup> See Attachment 1: §164.365, Chapter 164, 1971 Replacement Part, Offenses Against Property, p.1239.

<sup>7</sup> “The US Forest Service owns 94 percent of the land in the watershed.” *How Bull Run is Protected*, City of Portland, <https://www.portland.gov/water/about-portlands-water-system/how-bull-run-protected>.

<sup>8</sup> *Former Aides to Guru in Oregon Plead Guilty to Numerous Crimes*, New York Times, July 23, 1986, <https://www.nytimes.com/1986/07/23/us/former-aides-to-guru-in-oregon-plead-guilty-to-numerous-crimes.html>.



reservoirs in the Willamette River Basin and three dams on the Mid-Columbia River Basin.<sup>9</sup> The Ruby Pipeline, a 678-mile natural gas pipeline, cuts through federal land, and the proposed Jordan Cove LNG pipeline also would have cut through federal lands.<sup>10</sup>

The spate of attacks on electric substations across the country are also subject to federal jurisdiction. The FBI has taken the lead on investigating attacks on electronic infrastructure across the United States and such crimes have been prosecuted by the United States Department of Justice. In 2022, three white supremacists from Wisconsin, Ohio, and Texas pled guilty to federal charges for conspiring to provide material support for terrorists relating to an agreement to take down electric substations across the country.<sup>11</sup> Federal authorities also made arrests in 2022 attacks on electric substations in Washington state.<sup>12</sup> Under federal law, conspiracy to damage energy facilities (18 U.S.C. 1366) is punishable by up to 20 years in prison.

There is no compelling basis for a new criminal statute on widespread harm or damage to critical infrastructure, as Oregon already possesses laws intended to encompass these offenses and federal charges for such misconduct have also already successfully been prosecuted.

## **2. The Language of HB 2772 Remains Overbroad and Ripe for Abuse**

The language of HB 2772, and specifically the -1 Amendment which creates a class B and C felony offense for the crimes of domestic terrorism in the first and second degree, remains overbroad and ripe for abuse. Specifically, we are alarmed by the inchoate crime language of § 3(1)(c) in the -1 Amendment. This section would classify an “intentional attempt” to “destroy or substantially damage critical infrastructure” as domestic terrorism in the second degree, a class C felony.

This section poses a significant risk of application to protesters or activists who have caused no damage yet could face arrest on specious attempt charges. Because § 1(1) of the -1 Amendment defines critical infrastructure to include a “road” or a “bridge” (where many protests take place) and a person must intend merely the “disruption of services provided by critical infrastructure” (i.e. blocking vehicular traffic), it is not hard to imagine allegations of attempted damage and thus, “domestic terrorism”, arising from protest activity. Further, if a protest becomes a riot (ORS §166.015) on or around “critical infrastructure,” the line between the riot provision’s “tumultuous and violent conduct” and an attempt to “substantially damage”

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<sup>9</sup> US Army Corps of Engineers, *Dams and Reservoirs*, <https://www.nwp.usace.army.mil/Missions/Flood-Risk-Management/Dams-and-Reservoirs/>.

<sup>10</sup> U.S. Department of the Interior Bureau of Land Management, *Oregon/Washington Oil and Gas*, <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/about/oregon-washington#:~:text=Oil%20and%20Gas%20Pipelines%20on%20Federal%20Lands%20in%20Oregon%2FWashington&text=It%20went%20into%20service%20in.crosses%20federal%20land%20in%20Oregon>.

<sup>11</sup> *Three Men Plead Guilty to Conspiring to Provide Material Support to a Plot to Attack Power Grids in the United States*, US Department of Justice, Feb. 23, 2023, <https://www.justice.gov/opa/pr/three-men-plead-guilty-conspiring-provide-material-support-plot-attack-power-grids-united>.

<sup>12</sup> Conrad Wilson, *FBI warns of neo-Nazi plots as attacks on Northwest power grid spike*, OPB, Jan. 19, 2023, <https://www.opb.org/article/2023/01/19/surge-in-oregon-washington-substation-attacks-as-fbi-warns-neo-nazi-plots/#:~:text=As%20a%20string%20of%20attacks,5%2C%202023>.



under HB 2772 risks becoming very blurry. Presence at a riot, of course, is not generally conceived of as a terrorist activity. In any case, rioting is already penalized under Oregon law as a Class C felony.

The application of HB 2772’s “attempt” language may be clearer where, for example, a group has snuck into critical infrastructure carrying a “destructive device.” But Oregon law already has a statute making possession of such devices a class C felony (ORS 166.382). Thus, even here, HB 2772 once again proves extraneous.

Finally, “disruption of services” seems to constitute a wholly different category of damage than “widespread death, serious physical injury, sickness, or contagion.” This element’s inclusion seems ripe for abuse and overreach — abuse and overreach that already very much occurs within terrorism litigation across the United States. For instance, consider the use of domestic terrorism charges in Atlanta, Georgia, to suppress political protest by racial justice and environmental activists.<sup>13</sup>

As we have outlined above, Oregon already has laws protecting key critical infrastructure from damage and prohibiting causing widespread harm. Creating a new domestic terrorism offense to impose harsher penalties on conduct that is already illegal, while also newly criminalizing the intent to “disrupt [] services provided by critical infrastructure” – as the -1 Amendment aims to do – does little to make Oregonians safer, and instead risks heavy-handed government application that chills legitimate speech and stifles lawful protest activity.

### **3. The Legislative Record Demonstrates an Expansive and Capacious Legislative Intent**

“Terrorism” is a grave term that conveys weighty, and generally deadly, conduct performed with a specific mental state, often along the lines of “intimidation and coercion”.<sup>14</sup> It is not a term that should be applied lightly to mere vandalism, whether intentional or reckless, even if this vandalism causes damage of great consequence. Yet the public hearing on HB 2772 indicated legislative intent to classify ordinary vandalism as “domestic terrorism”.

During the February 8 public hearing, when the chief sponsor of this bill described the conduct he hoped HB 2772 would proscribe, he included an example of intentional or reckless vandalism, conduct that is far from what might ordinarily be classified as terrorism. In specific, he mentioned his intent for HB 2772 to apply: “if someone decides *for a fun evening* to go after an electric substation”.<sup>15</sup> [Emphasis added].

This example, while certainly a case of knowing and wanton vandalism, far exceeds the ordinary conception of terrorism. This is the type of activity often attributed to bored teenagers who may cause great harm while

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<sup>13</sup> Sarah Taitz and Shaiba Rather, *How Officials in Georgia are Suppressing Political Protest as ‘Domestic Terrorism’*, ACLU, Mar. 24, 2023, <https://www.aclu.org/news/free-speech/how-officials-in-georgia-are-suppressing-political-protest-as-domestic-terrorism>.

<sup>14</sup> OHCHR and terrorism and violent extremism, OHCHR, <https://www.ohchr.org/en/terrorism>.

<sup>15</sup> See Representative Evans remarks during Public Hearing on HB 2772, February 8, 2022, <https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2023021114>, at 0:49:41-00:49:46.



possessing an inadequate or underdeveloped understanding of the potential consequences of their actions. A look at the enormous public pressure for retribution against the 15-year-old boy who started the 2017 Eagle Creek Fire lends insight into how this power might go awry.<sup>16</sup>

The ACLU of Oregon hopes lawmakers do not intend to pass a law that would classify such thoughtless yet consequential actions as terrorism. Yet Oregon prosecutors could point to the legislative record on HB 2772 and the chief sponsor's own words on the statute's ambitions to evidence a far more expansive legislative intent.

#### **4. HB 2772 Disproportionately Threatens Already Over-Policed Communities and Risks Stifling Protest**

Law enforcement in the United States has a well-documented history of abusing efforts to address terrorism and extremism to target minority communities, stifle political dissent, and harass and intimidate activists. We are concerned that HB 2772 would further enable these abuses without protecting Oregonians from conduct that is, as outlined above, already proscribed under existing law. In other words, HB 2772 poses serious risks to vulnerable communities with very little accompanying benefit to the state as a whole.

Government overreach in the name of terrorism prevention has taken myriad forms over the past several decades. Perhaps most notably, however, the post-9/11 era has led to blanket surveillance and over-policing for Muslims and Middle-Easterners in the United States. The expansive authority granted to federal law enforcement following 9/11 resulted in, among other things, the FBI surveilling and infiltrating Muslim communities around the country, conducting sting operations that tended to reflect deeply held institutional biases rather than prevent future attacks.<sup>17</sup>

In that same vein, anti-terrorism and anti-extremism efforts have historically overlooked or minimized the threat of violent white supremacy in favor of demonizing minority populations. For example, in 2017, as white supremacist rhetoric proliferated in advance of the now-infamous events in Charlottesville, an FBI report warned of "Black Identity Extremists." In creating this novel designation, the FBI pointed to a disaffiliated conglomeration of Black Panthers, Washitaw Nation, and Black nationalists in order to identify a movement that does not exist.<sup>18</sup> They then wielded this designation to heighten surveillance of Black activists, regardless of their affiliation to these groups.<sup>19</sup> Similarly, earlier in 2017, then-President Trump

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<sup>16</sup> Fedor Zarkhin, *Mortified mom of teen charged in Eagle Creek fire speaks: 'This is a trauma for him'*, Oregonian, Aug. 30, 2019, [https://www.oregonlive.com/wildfires/2017/11/mortified\\_mom\\_of\\_teen\\_charged\\_in\\_eagle\\_creek\\_fire\\_speaks\\_this\\_is\\_a\\_trauma\\_for\\_him.html](https://www.oregonlive.com/wildfires/2017/11/mortified_mom_of_teen_charged_in_eagle_creek_fire_speaks_this_is_a_trauma_for_him.html).

<sup>17</sup> Faiza Patel, *We Don't Need More Terrorism Laws After the Capital Riot. Just Look at Our 9/11 Mistakes*, Newsweek/Brennan Center for Justice, Feb. 16, 2021, <https://www.brennancenter.org/our-work/analysis-opinion/we-dont-need-more-terrorism-laws-after-capitol-riot-just-look-our-911>.

<sup>18</sup> FBI "Black Identity Extremists' Report Stirs Controversy", Southern Poverty Law Center, Oct. 25, 2017, <https://www.splcenter.org/hatewatch/2017/10/25/fbi-black-identity-extremists-report-stirs-controversy>.

<sup>19</sup> Jana Winter and Sharon Weinberger, *The FBI's New U.S. Terrorist Threat: 'Black Identity Extremists' Law enforcement calls it a violent movement. Critics call it racist*, Foreign Policy, <https://foreignpolicy.com/2017/10/06/the-fbi-has-identified-a-new->

charged DHS's Countering Violent Extremism program to exclusively focus on Muslim extremists, despite the evident and alarming rise of violent white nationalism.<sup>20</sup>

Here in Oregon, racial justice activists have real and recent precedent for alarm at the creation of a broad "domestic terrorism" offense. Over June and July 2020, the Department of Homeland Security spied on Oregonian activists and their friends, family, and associates while investigating spurious domestic terrorism allegations. According to a DHS report, the department collected intelligence on "protesters arrested for trivial criminal infractions having little to no connection to domestic terrorism."<sup>21</sup> The report found that the then-acting undersecretary of DHS's intelligence unit called lawful protesters "Violent Antifa Anarchists" despite "overwhelming intelligence" to the contrary.<sup>22</sup>

Environmental activists have been similarly unjustifiably targeted by law enforcement, with the FBI designating "eco terrorism" as the top threat in the United States from 2004 to 2008 although not a single fatality was attributed to environmental activists.<sup>23</sup> Although the eco-terrorist threat has been demonstrably overstated, the federal government has continued to dedicate outsized resources to tracking political activists protesting oil and gas pipelines and even harassing their legal counsel.<sup>24</sup>

While proponents may point to the "intent" requirement of HB 2772 as a check on potential law enforcement overreach, we would remind lawmakers that these checks can only be fully actualized in the context of a lengthy criminal trial. Across the United States, 97 percent of state-level criminal convictions are the result of guilty plea deals,<sup>25</sup> and given Oregon's incredibly over-burdened public defense system, the pressure to make these deals is enormous. A January 2022 report by the American Bar Association found that public defenders in Oregon have only minutes to spend with each client.<sup>26</sup> Relying on HB 2772's "intent" language to curb government overreach means relying on the strained public defense system to successfully and expeditiously litigate complex questions of scienter, while giving law enforcement the discretion to levy terrorism charges in a broad array of scenarios.

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[domestic-terrorist-threat-and-its-black-identity-extremists/](#); see Michael German, *Why New Laws Aren't Needed to Take Domestic Terrorism More Seriously*, *The Brennan Center for Justice*, Dec. 14, 2018, <https://www.brennancenter.org/our-work/analysis-opinion/why-new-laws-arent-needed-to-take-domestic-terrorism-more-seriously>.

<sup>20</sup> Julie Edwards Ainsley, Dustin Volz, Kristina Cooke, *Exclusive: Trump to focus counter-extremism program solely on Islam – sources*, Reuters, Feb. 3, 2017, <https://www.reuters.com/article/us-usa-trump-extremists-program-exclusiv/exclusive-trump-to-focus-counter-extremism-program-solely-on-islam-sources-idUSKBN15G5VO>.

<sup>21</sup> Andrew Selsky, *New report shows Department of Homeland Security gathered intel on Portland Black Lives Matter protestors*, Associated Press/PBS, Oct. 28, 2022, <https://www.pbs.org/newshour/nation/new-report-shows-department-of-homeland-security-gathered-intel-on-portland-black-lives-matter-protestors>.

<sup>22</sup> *Id.*

<sup>23</sup> German, *Why New Laws Aren't Needed to Take Domestic Terrorism More Seriously*, *supra* note 19.

<sup>24</sup> Adam Federman, *Lawyer for environmental group 'interrogated repeatedly' at US border*, *The Guardian*, July 6 2015, <https://www.theguardian.com/us-news/2015/jul/06/environmental-group-lawyer-interrogated>; German, *Why New Laws Aren't Needed to Take Domestic Terrorism More Seriously*, *supra* note 19.

<sup>25</sup> Beth Schwartzapfel, Abbie VanSickle, and Annaliese Griffin, *The Truth About Trials*, *The Marshall Project*, Nov. 3, 2020, <https://www.themarshallproject.org/2020/11/04/the-truth-about-trials#:~:text=Trouble%20is%2C%20trials%20are%20rare,the%20result%20of%20plea%20bargains>.

<sup>26</sup> American Bar Association and Moss Adams, *The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workload Standards*, January 2022, [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/lis-claid-or-proj-rept.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lis-claid-or-proj-rept.pdf).



Finally, no new domestic terrorism criminal offense should be passed in Oregon without extensive community engagement from the Oregonians who most directly experience the overreaches of state power. Yet there has been no outreach to or engagement with Oregon community groups and activists with lived experience in this area. The development and public discussion of HB 2772 thus reflects a deep failing of democratic process, adding to the arsenal of security-focused laws used to target minority and activist communities without any meaningful input from those communities.

## 5. HB 2772 Will Not Address the Problem of Violent Extremism in Oregon

Handing further power to law enforcement in Oregon will not address or solve the threat of violent extremist groups in our state, particularly that posed by right-wing extremists. This is because there is a longstanding and well-documented overlap between Oregon law enforcement and white supremacist and far-right ideologies, with members of law enforcement at times expressing explicit racism, as well as demonstrating sympathy with or direct involvement in violent right wing extremist groups.<sup>27</sup>

This problem is neither recent nor Oregon-specific, although it is highly relevant to our state. Across the United States, research organizations have documented hundreds of federal, state, and local law enforcement officials with actively racist, nativist, and sexist social media accounts.<sup>28</sup> According to the FBI's 2015 Counterterrorism Policy Directive and Policy Guide, "domestic terrorism investigations focused on militia extremists, white supremacist extremists, and sovereign citizen extremists often have identified active links to law enforcement officers."<sup>29</sup> The FBI's 2015 concerns were preceded by a 2006

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<sup>27</sup> Michael German, *Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement*, Brennan Center for Justice, Aug. 27, 2020, <https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law>; Jonathan Levinson, *Dozens of Oregon law enforcement officers have been members of the far-right Oath Keepers militia*, OPB, Oct. 15, 2021, <https://www.opb.org/article/2021/10/15/dozens-of-oregon-law-enforcement-officers-joined-far-right-oath-keepers-militia/>; Eric Ortiz, *'Disturbing' texts between Oregon police and far-right group prompt investigation*, NBC News, Feb. 15, 2019, <https://www.nbcnews.com/news/us-news/disturbing-texts-between-oregon-police-far-right-group-prompts-investigation-n972161>; Maxine Bernstein, *Portland Cop's Chatty Texts to Patriot Prayer Spur Outrage but Are Standard Police Strategy, Experts Say*, Oregonian, Feb. 16, 2019, <https://www.oregonlive.com/crime/2019/02/police-experts-weigh-in-on-portland-lieutenants-controversial-text-messages-with-patriot-prayer-leader.html>; Arun Gupta, *Playing Cops: Militia Member Aids Police in Arresting Protester at Portland Alt-Right Rally*, The Intercept, June 8, 2017, <https://theintercept.com/2017/06/08/portland-alt-right-milita-police-dhs-arrest-protester/>; ACLU of Oregon, *Sunday's Protests in Portland Were a Trial for the First Amendment and Policing*, June 6, 2017, <https://www.aclu-or.org/en/sunday%E2%80%99s-protests-portland-were-trial-first-amendment-and-policing>; Maxine Bernstein, *Portland police chief suspends Capt. Mark Kruger for erecting a shrine on Rocky Butte to five Nazi-era soldiers*, The Oregonian, Nov. 17, 2010, [https://www.oregonlive.com/portland/2010/11/portland\\_police\\_chief\\_suspends\\_1.html](https://www.oregonlive.com/portland/2010/11/portland_police_chief_suspends_1.html); Nick Budnick, *The Cop Who Liked Nazis Portland police officer gets new scrutiny*, Willamette Week, Feb. 10, 2004, <https://www.wweek.com/portland/article-2933-the-cop-who-liked-nazis.html>.

<sup>28</sup> Rashad Robinson, *We Can't Trust Police to Protect Us from Racist Violence. They Contribute to It*, The Guardian, Aug. 21, 2019, <https://www.theguardian.com/commentisfree/2019/aug/21/police-white-nationalists-racist-violence>.

<sup>29</sup> FBI, Counterterrorism Division, Counterterrorism Policy Directive and Policy Guide, 89 as cited in German, *Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement*, *supra* note 27.



FBI assessment warning of “white supremacist infiltration of law enforcement . . . by organized groups and by self-initiated infiltration by law enforcement personnel sympathetic to white supremacist causes.”<sup>30</sup>

In Oregon, there is considerable evidence of disturbing levels of law enforcement sympathy and coordination with extremist groups. OPB reported that over two dozen current and former police officers, sheriff’s deputies, corrections officers, and members of the military in Oregon have joined the Oath Keepers militia since 2009, a militia that explicitly opposes the U.S. Government.<sup>31</sup> OPB research on these individuals showed Oath Keeper members in Oregon law enforcement had liked and/or shared openly racist, anti-Muslim, anti-immigrant, anti-indigenous and anti-Semitic content on social media platforms.<sup>32</sup>

Over 2017 and 2018, the commander of Portland’s Rapid Response team, Lt. Niiya, shared friendly correspondence with the leader of the far-right group Patriot Prayer, including information on how to avoid arrest on an outstanding warrant as well as purported details on the location and organization of leftist groups.<sup>33</sup> And at a May 2017 protest, DHS police conscripted right-wing groups for assistance in detaining and arresting leftist counter-protesters at a far-right rally while Portland police responded with disproportionate and indiscriminate force to counter protesters.<sup>34</sup>

In another highly troubling example, Portland Police Bureau’s Mark Kruger was allowed to rise through the ranks to the level of captain and retire in 2020 despite an overt and egregious history as a violent neo-Nazi.<sup>35</sup> In 2003, Kruger, then a sergeant, was documented using excessive force against anti-war protesters (including children and a camera woman).<sup>36</sup> It was then discovered that he was an open admirer of Adolf Hitler who publicly shouted racist and homophobic rhetoric, vandalized property with Nazi graffiti, dressed in Nazi uniforms, and collected Nazi memorabilia. None of this, apparently, was sufficient to justify his expulsion from the police force.

Sympathy for far-right ideologies continues to be a virulent problem in the ranks of Oregon law enforcement. Just earlier this month, Cottage Grove was required to release documents on a Police Chief

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<sup>30</sup> Federal Bureau of Investigation, *Counterterrorism Division, Intelligence Assessment, White Supremacist Infiltration of Law Enforcement*, October 17, 2006, 4, as cited in German, *Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement*, *supra* note 27.

<sup>31</sup> Levinson, *Dozens of Oregon law enforcement officers have been members of the far-right Oath Keepers militia*, *supra* note 27.

<sup>32</sup> *Id.*

<sup>33</sup> Ortiz, *'Disturbing' texts between Oregon police and far-right group prompt investigation*, *supra* note 27; Bernstein, *Portland Cop's Chatty Texts to Patriot Prayer Spur Outrage but Are Standard Police Strategy, Experts Say*, *supra* note 27.

<sup>34</sup> Gupta, *Playing Cops: Militia Member Aids Police in Arresting Protester at Portland Alt-Right Rally*, *supra* note 27; ACLU of Oregon, *Sunday's Protests in Portland Were a Trial for the First Amendment and Policing*, June 6, 2017, <https://www.aclu-or.org/en/sunday%E2%80%99s-protests-portland-were-trial-first-amendment-and-policing>.

<sup>35</sup> Maxine Bernstein, *Portland police Capt. Mark Kruger's past discipline to be erased -- including for tribute to Nazi-era soldiers -- under city settlement*, *The Oregonian*, Jul. 16, 2014, [https://www.oregonlive.com/portland/2014/07/portland\\_police\\_capt\\_mark\\_krug.html](https://www.oregonlive.com/portland/2014/07/portland_police_capt_mark_krug.html); Bernstein, *Portland police chief suspends Capt. Mark Kruger for erecting a shrine on Rocky Butte to five Nazi-era soldiers*, *supra* note 27; Nick Budnick, *The Cop Who Liked Nazis Portland police officer gets new scrutiny*, *supra* note 27.

<sup>36</sup> *Id.*



and Captain, who were pressured to resign in 2022 for displaying overt racism and homophobia among other extremely inappropriate behavior.<sup>37</sup>

Oregon law enforcement has a deeply embedded problem of sympathy with and involvement in white supremacy and far-right violent extremism. Expanding police powers cannot be the response to violent right-wing extremism in our state without a true and substantial reckoning with this problem, its history, and its continued and pervasive legacy. Handing law enforcement such broad authority without addressing this systemic problem threatens to continue a long history of over-policing marginalized communities and left-wing activists while allowing violent, right-wing extremists and white supremacist groups to operate unchecked – perhaps even with the tacit or explicit approval of law enforcement.

## **6. The Basis for HB 2772 is a Deeply Flawed Advisory Report by the Oregon’s Secretary of State**

According to the chief sponsor of HB 2772, the bill is motivated by a 2022 advisory report by Oregon’s Secretary of State: “Oregon Can Do More to Mitigate the Alarming Risk of Domestic Terrorism and Violent Extremist Attacks.”<sup>38</sup>

This report constitutes a flawed basis for new legislation. The report provides a shallow and uncritical summary of previous approaches to violent extremism in the United States and suggests that Oregon replicate efforts like criminalizing “domestic terrorism,” but does not mention or analyze the numerous and egregious human rights violations perpetrated during the “war on terror,” or reflect on these efforts’ lack of success. Indeed, many of the report’s recommendations seem geared towards emulating the coordinated federal response to 9/11.

This is an alarming model for any planned state-level response to violent extremism. The “war on terror” led to rampant abuses of civil rights and liberties both domestically and abroad.<sup>39</sup> Yet the advisory report touts key elements of this response — the creation of the Department of Homeland Security and the passage of the Patriot Act — as if they are a sound basis or model for state-level policy.

The report describes the creation of DHS as “an effort to correct ‘intelligence failures’” that led up to 9/11 and leaves its reader to understand this effort to have been an unqualified success.<sup>40</sup> On the Patriot Act, the report simply states: “October 1, 2001 (sic) The USA Patriot Act is signed into law to dramatically tighten U.S. national security in the wake of historic international terrorist attacks of 9/11.”<sup>41</sup>

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<sup>37</sup> Ryleigh Norgrove, ‘*Extremely unacceptable behavior*’ led to Cottage Grove PD resignations, The Chronicle, Mar. 10, 2023, <https://www.chronicle1909.com/2023/03/10/extremely-unacceptable-behavior-led-to-cottage-grove-pd-resignations/>.

<sup>38</sup> *Oregon Can Do More to Mitigate the Alarming Risk of Domestic Terrorism and Violent Extremist Attacks*, Oregon’s Secretary of State and Oregon Audits Division, Report 2022-12, March 2022, <https://sos.oregon.gov/audits/Documents/2022-12.pdf>.

<sup>39</sup> While this memorandum will focus on the domestic fall-out of the post 9/11 terrorism response, we would remind lawmakers that human rights impact internationally included the wrongful invasion of a sovereign nation based on false reports of weapons of mass destruction and the torture and mistreatment of detainees at Guantanamo and Abu Ghraib detention facilities.

<sup>40</sup> *Oregon Can Do More to Mitigate the Alarming Risk of Domestic Terrorism and Violent Extremist Attacks*, *supra* note 38, p. 8.

<sup>41</sup> *Oregon Can Do More to Mitigate the Alarming Risk of Domestic Terrorism and Violent Extremist Attacks*, *supra* note 38, p.1.





The report fails to mention that the Patriot Act granted unconstitutional and unchecked government power to spy on individuals, a power the government used to surveil and blacklist Muslim brown and Black individuals.<sup>42</sup> These policies of blatant religious and racial discrimination by the U.S. Government accompanied a rise in anti-Muslim sentiment and anti-Muslim discrimination across the United States that we still see in extremist far-right rhetoric and mainstream law enforcement biases today.

The report also makes no mention of the deep dysfunction of the DHS and the egregious human rights abuses ongoing under DHS purview. Indeed, the DHS is far from a model institution. Since its establishment, the Government Accountability Office has placed DHS on a “High Risk List” as a program vulnerable to “fraud, abuse, and mismanagement.”<sup>43</sup> The founding administrator of TSA colorfully described DHS as “a walking nightmare” in 2022.<sup>44</sup>

Earlier in this memorandum, we shared DHS’s recent history of baseless spying on Portland racial justice activists over the summer of 2020. Additionally, the Department is responsible for a range of outrages — including alleged sexual abuse — against migrants held in detention facilities. DHS is also the body that has overseen FEMA as the agency squandered billions of dollars in disaster relief.<sup>45</sup> The Secret Service also falls under DHS. The U.S. Secret Service, of course, is responsible for the likely criminal deletion of text messages relating to the January 6 invasion of the U.S. Capitol.<sup>46</sup> Finally, the very rise in violent domestic extremism that the advisory report purports to address occurred — relatively unchecked — under DHS watch.

The report further omits the alarming and widespread phenomenon of white supremacy and far-right militancy in law enforcement generally and in Oregon law enforcement, in particular.<sup>47</sup>

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<sup>42</sup> *Surveillance Under the USA/Patriot Act*, ACLU, <https://www.aclu.org/other/surveillance-under-usapatriot-act#:~:text=Under%20the%20Patriot%20Act%2C%20the,the%20Fourth%20Amendment%20explicitly%20requires>; Saher Khan and Vignesh Ramachandran, *Post-9/11 surveillance has left a generation of Muslim Americans in a shadow of distrust and fear*, PBS, Sep. 16, 2021, <https://www.pbs.org/newshour/nation/post-9-11-surveillance-has-left-a-generation-of-muslim-americans-in-a-shadow-of-distrust-and-fear>.

<sup>43</sup> *High Risk Area: Strengthening Departments of Homeland Security Management Functions*, US Government Accountability Office, <https://www.gao.gov/highrisk/strengthening-department-homeland-security-management-functions>.

<sup>44</sup> Description by John Magaw, founding administrator of the TSA and a former director of the US Secret Service. Amanda Chicago Lewis, *The 20-Year Boondoggle: The Department of Homeland Security was supposed to rally nearly two dozen agencies together in a modernized, streamlined approach to protecting the country. So what the hell happened?*, The Verge, November 2022, <https://www.theverge.com/c/23374767/dhs-homeland-security-bureaucracy-20-years>.

<sup>45</sup> *Abuse could push Katrina costs to \$2 billion*, Associated Press, Dec. 25, 2026, <https://www.nbcnews.com/id/wbna15587326>; Quinn Owen and Joshua Hoyos, *FEMA lost track of over a quarter-billion dollars in supplies intended for Puerto Rican hurricane relief: Report*, Oct. 1, 2020, <https://abcnews.go.com/Politics/fema-lost-track-quarter-billion-dollars-supplies-intended/story?id=73371292>.

<sup>46</sup> Dan Mangan, *Criminal probe opened into deletion of Secret Service Jan. 6 text messages, sources say*, CNBC, Jul. 21, 2022, <https://www.cnbc.com/2022/07/21/criminal-probe-opened-into-deletion-of-secret-service-jan-6-text-messages.html#:~:text=6%20text%20messages%2C%20sources%20say,-Published%20Thu%2C%20Jul&text=The%20Department%20of%20Homeland%20Security's,the%20matter%20old%20NBC%20News>.

<sup>47</sup> German, *Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement*, *supra* note 27.





AMERICAN CIVIL LIBERTIES UNION

## Oregon

The legacy of criminal enforcement of “terrorism”-adjacent laws in the United States cannot be separated from the deeply politicized and racist ways these laws have been enforced across our country. It is deeply unfortunate that the Secretary of State’s advisory report did not reckon with this history and the myriad ways state power has been—and continues to be—misused and abused. These glaring omissions—which range from the mass incarceration of Japanese Americans during World War II to the blanket surveillance of Muslims in America in the wake of 9/11—seriously undermine the report’s credibility. Any proposed legislation claiming a basis in this flawed and myopic analysis warrants additional circumspection.

### **7. Conclusion**

In conclusion, we respectfully urge Members of the House Judiciary Committee to oppose HB 2772. All Oregonians deserve to live in a safe and just state, but we fear such aspirations will not be realized when we fail to seriously grapple with the inherent racism and bias alive and well in our criminal justice and policing systems. In our current political moment and climate, we fear HB 2772 creates a new avenue for misuse and abuse of the law. Oregon criminal statutes already prohibit all hypothetical and real conduct described as the basis for the creation of a domestic terrorism offense under HB 2772. Regardless of content, no new domestic terrorism criminal offense should be considered in Oregon without extensive community engagement from the Oregonians who most directly experience the overreaches of state power.

**Enclosure 3: Letter to Joint Committee on Ways and Means from organizations that opposed HB 2772 and the -1 Amendment in 2023**

April 28, 2023

Joint Committee on Ways and Means  
Oregon State Legislature  
900 Court St. NE  
Salem, OR 97301

Dear Chair Steiner, Chair Sanchez, Vice-Chair Girod, Vice-Chair Gomberg, Vice-Chair Smith, and Members of the Joint Committee on Ways and Means:

We write to express our concern regarding House Bill 2772 and its -1 Amendment which would create a class B and C felony offense for the crimes of domestic terrorism in the first and second degree.

House Bill 2772 encompasses offenses already criminalized under Oregon statutes, including Oregon’s first degree criminal mischief statute (ORS § 164.365), which explicitly applies to damage to “the property of a public utility, telecommunications carrier, railroad, public transportation facility or medical facility used in direct service to the public” or “[b]y means of an explosive”.

House Bill 2772 further risks disparate impact on protesters, activists, and over-policed communities, including Black, Indigenous, and other Oregonians of color. The language of this bill and the -1 amendment remains overbroad and open to abuse. The February 8, 2023 Committee Hearing gave rise to further concern that this Bill’s intended ambit far exceeds ordinary conceptions of “domestic terrorism” and could be applied to ordinary vandalism and property damage.

Beyond our concerns with necessity, language, and potential application, however, we have concerns regarding democratic process. The legacy of criminal enforcement of “terrorism”-adjacent laws in the United States cannot be separated from the deeply [politicized](#), [racist](#), and [illegal](#) ways these laws have been enforced across our country and in [Oregon](#). It is unfortunate that the Secretary of State’s March 2022 [advisory report](#) on mitigating the threat of domestic terrorism and violent extremism did not reckon with this history and the myriad ways this state power has been—and continues to be—misused and abused.

Discussions on HB 2772 have similarly failed to conduct this reckoning. Forums on and discussions of HB 2772 have excluded the voices of Oregonians who have disproportionately suffered the impacts of over-policing, including BIPOC communities, houseless individuals, and activists.

**No new domestic terrorism criminal offense should be passed in Oregon without extensive community engagement, input, and listening from the Oregonians who most directly experience the overreaches of state power. We ask that you NOT PASS HB 2772.**

