2013 LEGISLATIVE REPORT

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INTRODUCTION

The 77th Oregon Legislative Assembly drew to a close on July 8th, taking 155 days to pass 813 bills, including all of the ACLU's priority bills (marked in **bold** below). Throughout the course of the session, we reviewed close to 3,000 bills and actively monitored hundreds of those that might impact civil liberties. We met with legislators, partnered with allies, testified at hearings, and called on our e-activists to advocate for the issues at the top of our agenda and to scale back or defeat the bills we opposed. With some exception, we were successful on all of these fronts. Though we consider the outcome of our efforts to reform criminal sentencing policy a disappointing missed opportunity, on the whole the Legislature meaningfully advanced civil liberties this session, most notably in the areas of immigrant rights and privacy.

Session Summary: New technology presents the opportunity for ever increasing surveillance over the daily lives of Oregonians. Whether in the form of cameras in the sky or a nosey employer over your shoulder, constant monitoring of everything we do and say will fundamentally reconfigure our concept of privacy and its protection against intrusion without cause. Oregonians are not accepting of this kind of presence in our lives and, at our urging, neither are legislators. **HB 2654** and **SB 344** prohibit employers and institutions of higher education, respectively, from requiring employees or students to hand over the password to their private social media accounts such as Facebook and email. **HB 2710** prevents law enforcement agencies from using unmanned aerial vehicles – otherwise known as "drones" – for indiscriminate mass surveillance, requiring that drones be used by law enforcement only with a warrant based on probable cause or for limited uses such as search and rescue of a missing person.

In the area of immigrant rights, we joined coalition partners across diverse interest areas from business to law enforcement to labor and community advocates on two important victories. The passage of **HB 2787** ends a more than decade-long battle to ensure access to education for all Oregonians. Known as the Tuition Equity bill, **HB 2787** provides for in-state tuition to our colleges and universities to otherwise eligible immigrant youth. And **SB 833** restores access to driving privileges to Oregonians who cannot provide proof of lawful presence in the country, a privilege that was taken away in 2007 with an Executive Order signed by then-Governor Ted Kulongoski. While we work to achieve meaningful immigration reform at the federal level, these bills are examples of what states can do to promote public safety and to ensure that immigrant residents are treated with the dignity and respect that should be afforded to all Oregonians.

HB 3194 was the product of the Governor's Commission on Public Safety that, with support from the Pew Center on the States, met in the year preceding the 2013 session to examine Oregon's criminal justice system and set forth recommendations for reform. The version of the bill that passed abandoned what we believed to be critical, though modest, adjustments to a handful of mandatory minimum sentences – adjustments that were initially recommended by the Commission. Remaining after late-session amendments were merely small changes to sentencing laws that are projected to flatline prison population growth over the next 5 years and reinvest savings into local public safety infrastructure. These changes are all steps in the right direction but fall far short of the reform that Oregon needs. Judges should have the tools they need to apply discretion in sentencing. And offenders in prison, especially youth, should be better

incentivized to take steps to rehabilitate and prepare to reintegrate after prison as contributing members of their community. Unfortunately, **HB 3194** is a disappointment.

Other victories this session included SB 463 that enables legislators in future sessions to request a racial and ethnic impact statement on pending legislation that will describe the potential effects of specific legislation on the racial and ethnic composition of the criminal offender population or recipients of human services. And HB 2192 requires that school districts revise their policies on student discipline so that suspension and expulsion will be considered only as last resorts and instead prioritize keeping students in school. Our recent update to the School to Prison Pipeline Report confirmed that many students of color in Oregon public schools continue to be more frequently expelled or suspended than their white peers and, from that point, more likely to be funneled into the juvenile justice system. We hope that the improvements to discipline policy required by HB 2192 will help to reverse these trends. In the area of transgender rights, HB 2193 repealed an Oregon statute that required surgery in order to update a birth certificate gender marker, even for those transgender people who did not need or want surgery, or were unable to access surgery for financial, medical, or other reasons.

Finally, as with any session, it is our advocacy on "defense" that is just as important as the work we do to affirmatively advance priority bills. In the area of medical privacy, we were able to scale down but not defeat SB 470, which expands the Prescription Drug Monitoring Program (PDMP). The PDMP collects prescription drug records of Oregonians who are prescribed Schedules II, III, or IV drugs (primarily sleep aids and some pain or anxiety medication). The most significant change authorized by SB 470 is the ability of doctors and pharmacists to delegate access to the database to staff in their offices. We were successful in clarifying that upon such delegation the doctor and pharmacist remain responsible for any misuse or abuse of the system by their staff. We were also successful in removing provisions of the bill that would have authorized the Board of Pharmacy to add any new prescription drug to the list of those monitored and provisions that would have set up an "alert system" to flag for doctors and pharmacists multiple prescriptions or "potentially dangerous" interactions between drugs.

At our urging, HB 2828 to authorize the State Police to retain fingerprint records of innocent people after employment criminal background checks and HB 2595 to create new and significant criminal penalties for forest protestors were both defeated, as well, along with dozens of other bills that would have eroded privacy, free speech, or due process and criminal justice rights.

Legislative Report: This report is meant to provide a more comprehensive overview of the bills we tracked, their implications for civil liberties, which legislators supported or opposed them, and how they fared. Bills included in the ACLU Legislator Scorecard (see page 60) are marked with "*SCORECARD VOTE*."

Each session there are many more bills than there are hours and staff to track them, and this report does not include all of those bills, only a sampling to give readers a sense of the Legislature's work and how the ACLU of Oregon's advocacy can have an impact. Copies of bills are available on the Legislature's website: http://www.leg.state.or.us/bills_laws/.

PRIVACY: GOVERNMENT SURVEILLANCE

Regulate use of domestic drones in Oregon (HB 2710, SB 71): We were pleased to team up with Representative John Huffman (R-The Dalles) to advocate for the passage of HB 2710, one of our priority bills, to put in place clear guidelines for law enforcement on the use of unmanned aerial vehicles – more commonly known as "drones." Drones are designed to reach and fly around airspace without a human pilot onboard. Some drones are remote-controlled by a human on the ground, others purely automated. Many drones can reach great heights so as to elude the human eye and, because of their size and unique maneuverability, redefine what it means for those in possession to engage in surveillance. Undoubtedly, this is an area of technology that is quickly developing and, in our view, there is a great danger to the privacy of Oregonians if the technology is abused.

Congress has directed the Federal Aviation Administration (FAA) to develop policies by 2015 to integrate drones into domestic airspace and, in the meantime, any individual or entity that intends to fly a drone in federal airspace (generally 400 feet above ground, or higher) must obtain a permit to do so from the FAA. The ACLU is aware of a small number of public agencies in Oregon that have applied for a permit but, on the whole, these administrative barriers and the timeline from Congress have presented an opportunity for states to think ahead about what guidelines around usage of drones is appropriate.

HB 2710 proposed a very basic but important concept: ensure that our law enforcement agencies are not using drones for mass surveillance of innocent Oregonians. Collaborating with a long list of stakeholders including the Oregon Department of Justice, the Governor's office, the Oregon Association of Chiefs of Police, the Oregon Criminal Defense Lawyers Association, the Oregon Department of Aviation, and more, we reached a compromise on the specifics of the bill. Most importantly, the bill prohibits the use of drones by law enforcement except under limited circumstances: pursuant to a warrant based on probable cause including exceptions for exigent circumstances, with consent of the individual be surveilled, for search and rescue or in an emergency including a state of emergency declared by the Governor, to map a crime or accident scene, or for law enforcement training purposes where information collected is used only for training. These provisions ensure that law enforcement will not use drones for indiscriminate, general surveillance.

HB 2710 includes additional provisions, some of which were concessions we made to move the bill forward and not necessarily pieces we would have written or supported on our own initiative. The bill requires that starting in 2016 public bodies using drones register the drone with the Oregon Department of Aviation and report annually to the Department on their use of drones. It also includes a prohibition on use of weaponized drones by public bodies, creation of new crimes of intentional interference with a drone operation, imposes new civil penalties for interference and for trespass using a drone, state preemption of local laws relating to drones, and requirement that the Oregon Department of Aviation report to an interim legislative committee on the status of federal regulation of drones. While we would like to see in the future additional limitations on use of drones by public agencies, including guidelines around destroying surveillance footage collected by drones when it is no longer needed and prohibitions on sharing footage with other agencies or entities, HB 2710 is an important first step in outlining what usage of drones will look like in Oregon.

Rep. Huffman was not the only legislator interested on moving drones legislation this session. Senator Prozanski (D-South Lane and North Douglas Counties) introduced SB 71, which proposed to impose a large set of regulations on individual and private use of drones by Oregonians. Facing strong opposition from hobby groups, drone development industry representatives, and recreational pilots associations, Sen. Prozanski agreed to abandon SB 71 and combine efforts with Rep. Huffman and HB 2710. We too opposed SB 71 because the regulations on law enforcement use of drones were overly permissive to law enforcement, using a standard for privacy protection that was much weaker than even the current case law from the Oregon Supreme Court. A few pieces of SB 71, including the penalties for trespass with a drone, were incorporated into HB 2710, but very little else regulating private use of the new technology or authority for use by law enforcement without probable cause of criminal wrongdoing.

Victory! SB 71 died in committee. HB 2710 passed: 56-3-1 (House approval of conference committee report; Voting No: Barton, Gilliam, Holvey; Excused: Hicks), 24-6 (Senate approval of conference committee report; Voting No: Baertschiger, Beyer, Boquist, Johnson, Olsen, Whitsett). SCORECARD VOTE.

Expand authority for use of mobile tracking devices by State Police (SB 186): The Fish and Wildlife Division of the Oregon State Police brought forward SB 186 so that it could begin using mobile tracking devices when investigating wildlife, commercial fishing, and guide/outfitter crimes. Oregon law contains specific authorization for use of mobile tracking devices (listed under ORS 133.619). Not only must use of the tracking devices be conducted only with a probable cause warrant, but it can only be employed for investigating certain crimes that are listed in the statute. In order to begin using the devices for fish and wildlife related crimes, the Division needed express statutory authority to do so. The Division argued that, unique to other types of crimes, the crimes and individuals they investigate often operate in very remote areas such as the ocean, a marine reserve, or deep in the forest, creating special necessity for such tool in their work.

We initially opposed the bill because of our skepticism of expanding the use of mobile tracking devices, particularly to misdemeanor rather than felony level crimes. It is important to note, though, that while we believe it is unconstitutional for a law enforcement agency to deploy mobile tracking technology without a warrant based on probable cause or, worse, GPS location tracking technology on a mass or indiscriminate basis, the request from the Division in this case was for the authority to utilize mobile tracking *with* a warrant. After negotiation with the parties involved, however, we moved to a position of neutral because the Senate Committee on Judiciary adopted an amendment that put important sidebars on the issuance of warrants for mobile tracking devices for all authorized crimes. We decided that, on balance, the additional requirements that courts issue mobile tracking warrants for a period of time not to exceed 30 days (law enforcement may ask for an extension) were more valuable than any opposition to the expansion of their use to this new narrow set of crimes.

Passed: 25-5 (Senate; Voting No: Baertschiger, Boquist, George, Olsen, Whitsett), 51-9 (House; Voting No: Conger, Freeman, Gilliam, Hicks, Huffman, McLane, Thatcher, Weidner, Whitsett),

20-8-2 (Senate concurrence; Voting No: Baertschiger, Boquist, Close, George, Knopp, Kruse, Olsen, Whitsett; Excused: Courtney, Ferrioli).

Limit access to location tracking of mileage tax payers (HB 2453, SB 810): Responding to the dwindling revenue from the gas tax, the 2001 Legislature set up the Road User Fee Task force to begin to explore a per-mileage tax for Oregon drivers. After at least one failed attempt to pass this tax in past legislative sessions, and after pilot projects in both 2007 and 2012 to test a new system, the Oregon Department of Transportation (ODOT) led an effort this session to pass HB 2453. The bill would have put in place a new tax applicable to fuel efficient vehicles based on miles traveled as opposed to the current gas tax, which charges based on the amount of gas used.

The ACLU's advocacy on this issue has always centered on the privacy rights of drivers subject to the tax. Past proposals have outlined a system that relies on GPS technology to calculate miles driven, in some instances charging a higher tax based on the time of travel and specific location of the driver. Location tracking can of course expose very personal details about a person – everything from where he or she chooses to worship, to what political associations he or she may have, to information about any mental or physical conditions for which he or she may seek treatment. This information should be collected and shared only when necessary, and certainly not as an inevitable consequence of complying with tax law.

Because we had raised these issues in the past, ODOT introduced HB 2453 with new provisions to try to alleviate some of the privacy concerns. Rather than require GPS tracking for the system to work, the bill proposed a list of options for how a driver could track miles and pay the tax, including a flat tax option, odometer based tracking, and a GPS option. After the bill received its first hearing in the House Committee on Transportation and Economic Development, we worked with ODOT to ensure additional privacy protections in the program. We negotiated amendments to ensure that personally identifiable information collected could only be disclosed when necessary for any particular entity to carry out its duties in administering the program. Further, our amendments required that location data be destroyed when no longer needed to enforce tax compliance and that location data only be provided to a law enforcement agency pursuant to a warrant based on probable cause. Private details of an innocent driver's comings and goings should not be handed over without cause to law enforcement and should not be held indefinitely to enable snooping, abuse, or misuse. These amendments were positive steps to guard against these threats.

Bills that impose a new tax require a vote of 3/5th of the legislature, as opposed to the majority vote required of other bills, and as the session waned it became clear that ODOT did not have the votes it needed to pass HB 2453 for reasons unrelated to the ACLU amendments. Instead, the Legislature passed SB 810 that set up in statute a new pilot program for motorists to *opt in* to paying the per-mile road tax. It is yet to be seen how many people will voluntarily subscribe to a new taxation scheme, but the hoped for objective on the part of ODOT is that this structure will provide a framework for expansion of the program in future sessions. SB 810 retained all of the same privacy protections that we negotiated in HB 2453; therefore we raised no objections to its passage.

VICTORY! HB 2453 died in committee. SB 810 passed: 24-6 (Senate; Voting No: Boquist, Close, Ferrioli, Knopp, Kruse, Whitsett), 47-13 (House; Voting No: Barton, Fagan, Freeman, Gallegos, Gilliam, Gorsek, Hanna, Hicks, Sprenger, Thatcher, Unger, Weidner, Whitsett).

Expand use of footage from red light traffic cameras (HB 2601): First passed in 2001, ORS 810.434 limits the use of photographs from red light cameras (cameras that snap photos of drivers when they run a red light) to those that are for the purpose of proving or disproving a violation of traffic light laws. Over a decade later, the Oregon Association of Chiefs of Police (OACP) brought HB 2601 this session, asking the Legislature to expand the use of these photos to any criminal proceeding. OACP argued that such photos, which are only taken when a driver runs a red light and do not collect continuous video footage of an intersection, would be helpful for the purpose of investigation for other crimes to place a criminal suspect at a specific time and place. A criminal fleeing the scene of a crime, they argued, might run a red light and, in doing so, provide valuable evidence to find or convict him.

Skeptical of any efforts to expand the use of surveillance technology beyond the purpose for which it was originally approved, we negotiated with OACP to narrow the bill. We struck a compromise to say that red light photos could be used as evidence outside of the context of traffic light violations, but only for felony or Class A misdemeanor level crimes.

Passed: 57-3 (House; Voting No: Huffman, Thatcher, Weidner), 22-8 (Senate; Voting No: Baertschiger, Boquist, Close, George, Olsen, Shields, Starr, Whitsett), 53-6-1 (House concurrence; Voting No: Huffman, Kennemer, Richardson, Thatcher, Weidner, Whitsett; Excused: Esquivel).

Expand authority for use of photo radar by law enforcement (HB 3438): Former Portland Police officer Representative Chris Gorsek (D-Troutdale) introduced HB 3438 to expand authority to all cities in Oregon to use photo radar in school zones and to remove the requirement in current law that photo radar in school zones be operated by a uniformed police officer and operated out of a marked police vehicle. We testified in opposition to HB 3438. As surveillance tools in policing becoming increasingly available and advanced, we urged great caution in undertaking expansion of their use. In the case of photo radar, current law limits it to a short list of jurisdictions in Oregon and to a limited number of hours per day. Current law also requires that photo radar be operated by a uniformed police officer and operated out of a marked police vehicle. HB 3438 proposed to remove these deliberate limitations on use of photo radar.

Surveillance tools may play a role in policing, but they cannot be effective when they are expected to replace the work of an officer. An officer on the scene to operate the photo radar system brings with him or her the judgment and context needed to evaluate whether imposing a penalty on someone is appropriate. Boots on the ground policing will always be more effective than outsourcing such work to technology. Moreover, the creeping expansion of surveillance is an ongoing concern, leaving us with the responsibility to look critically at any proposal to remove limitations on existing surveillance programs.

Ultimately, a conference committee of legislators from both chambers and both parties that convened to work out the final version of HB 3438 agreed with us. The conference committee amended the bill to expand the use of photo radar to the City of Fairview only, and left intact the requirement that an officer be present to operate the photo radar system.

Passed: 54-4-2 (House approval of conference committee report; Voting No: Gelser, Kennemer, Thatcher, Weidner; Excused: Barker, Smith), 18-11-1 (Senate approval of conference committee report; Voting No: Baertschiger, Boquist, Close, Ferrioli, George, Hansell, Knopp, Kruse, Olsen, Starr, Whitsett; Excused: Thomsen).

PRIVACY: DIGITAL AND FINANCIAL INFORMATION

Social media privacy in employment (HB 2654): We worked with Representative Margaret Doherty (D-Tigard) to draft and introduce HB 2654, a priority bill of ours to update digital privacy protections for public and private employees in Oregon. A growing number of employers nationwide are demanding that job applicants and employees hand over the passwords to their private social networking accounts such as Facebook. Such demands constitute a clear invasion of privacy. Private activities that would never be intruded upon offline should not receive less privacy protection simply because they take place online. Of course an employer would not be permitted to read an applicant's diary or postal mail, listen in on the chatter at private gatherings with friends, or look at that person's private videos and photo albums. They should not expect the right to do the electronic equivalent.

Once a person shares his or her social media or other electronic account passwords, that person can be subject to screening not just at that time but also on an ongoing basis. Some companies even sell software that performs such continual screening automatically, alerting employers to any behavior or speech they might find objectionable. Further, when a person is forced to share the password to a private account, not only that person's privacy has been violated, but also the privacy of friends, family, clients, and anyone else with whom he or she may have communicated or shared files. Finally, sharing a social network password may also expose a lot of information about a job applicant – such as age, religion, ethnicity, pregnancy – about which an employer is forbidden to ask. That information could expose an applicant to unlawful discrimination.

The purpose behind HB 2654 was to help preserve for employees a distinction between what information of theirs is public and what information is private from their employer. The bill prohibits employers from requesting or requiring that an employee or an applicant for employment provide to the employer access to their private social media accounts, including email. The bill further prohibits employers from taking any adverse action against an applicant or employee for failure to do so. The bill enjoyed strong support from labor groups and the Oregon Bureau of Labor and Industries (BOLI). Representing the business interests of large technology employers, TechAmerica requested a series of amendments to clarify that nothing in the bill would prevent employers from protecting the security of their business-related information or from conducting investigations of employee misconduct. We negotiated the wording of these amendments with TechAmerica to the point where all parties could move forward without objection.

Additional amendments were requested by the Oregon State Sheriffs' Association (OSSA) that would have created an exception to the new law for law enforcement agencies. OSSA recognized that it did not have the votes it needed to get an exception to all parts of the bill, so the group was asking for authority to require job applicants to log in to their social media accounts during a job interview to let supervisors look through private postings, messages, photos, etc. Because supervisors might be looking over the shoulder of an applicant to view the contents of the applicant's social media account, we referred to this practice as "shoulder surfing." We opposed the request from OSSA to allow for law enforcement to shoulder surf. The objective of HB 2654 was to maintain a distinction between public and private activities of employees and to import those principles into the modern world of online communication. We believe there is no reason

why law enforcement officers should not enjoy the same privacy protection they always have. The Senate Committee on General Government, Consumer and Small Business Protection agreed with us and refused to adopt the OSSA amendment.

Victory! Passed: 56-3-1 (House; Voting No: Gilliam, Hicks, Whitsett; Excused: Bailey), 28-1-1 (Senate; Voting No: Whitsett; Excused: Johnson), 56-3-1 (House concurrence; Voting No: Gilliam, Hicks, Whitsett; Excused: Fagan). SCORECARD VOTE.

Social media privacy in education (SB 344): A companion bill to HB 2654, which prohibits employers from compelling access to an applicant or employee's social media account, SB 344 extends this prohibition to Oregon colleges and universities, restricting their access to applicants' or students' private social media accounts. Introduced by Senators Ginny Burdick (D-Portland) and Elizabeth Steiner Hayward (D-NW Portland/Beaverton), SB 344 initially addressed only social media privacy in the employment setting and was meant to be a Senate version of the very similar bill on the House side. The two bills ran concurrently in the early weeks of the session until it became clear that the employment and higher education issues should be addressed separately. Senators Bruce Starr (R-Hillsboro) and Tim Knopp (R-Bend) added their support as sponsors to SB 344 and the bill became the vehicle to address social media privacy in higher education.

Working with each of these Senators, with House sponsor Representative Margaret Doherty (D-Tigard), and with representatives from the Oregon University System (OUS), we negotiated amendments that enabled the bill to move forward without opposition. Primarily, like industry interests in regard to HB 2654, OUS wanted the bill to make clear that institutions could investigate specific instances of student misconduct just as they always have, that they could utilize cyber-security software, and that they could continue to access otherwise public information about applicants and students. We were able to reach agreement on these items, but left on the table one additional issue where OUS was not in agreement. We wanted to include provisions in SB 344 that would have prohibited teachers, coaches, and administrators from requiring that a student "friend" them on social media. Schools are requiring student-athletes, in particular, to make these "friend" connections on social media sites such as Facebook, the effect of which is to provide access to the coach (or other administrator) to a student's information that is otherwise not visible to the general public. These forced connections can expose a student to monitoring of private communication amongst friends and family, monitoring that is sometimes outsourced to automatic social media monitoring companies like UDiligence and Varsity Monitor. Unfortunately, OUS did not agree to a prohibition on "coercive friending" on social media and, in the interest of moving forward with consensus amongst stakeholders, we agreed postpone further debate on that issue for a later date. We are pleased with the outcome of SB 344, a priority bill of ours that will better protect college age students from electronic snooping by their education officials.

Victory! Passed: 28-0-2 (Senate; Excused: Johnson, Winters), 57-1-2 (House; Voting No: Hicks; Excused: Kotek, McLane). SCORECARD VOTE.

PRIVACY: DIGITAL AND FINANCIAL INFORMATION

Allow access to personal digital accounts after death (SB 54): In advance of the legislative session, the Estate Planning and Administration Section of the Oregon State Bar set up the Oregon State Bar Digital Asset Work Group. The charge of the group was to look at how Oregon law addresses "digital estates." What happens to a person's online bank accounts and investments once he or she dies? What about photos and messages posted on social media? Practically, a personal representative to an estate, a conservator for a protected person, or a trustee for a trust needs access to a decedent's information so as to properly wrap up his or her estate after death. And such access can be therapeutic, as well, for surviving family members who may find comfort in photos or information that may help piece together the details of a fatal accident or a suicide. The work group developed SB 54 to try to address some of these issues. The bill would have required that personal representatives of decedents be granted access to electronic mail, financial, personal and other online accounts, as well as any photos or multimedia information available. The Senate Committee on Judiciary heard testimony on SB 54 but soon after that the bill met opposition from a collection of technology company interests who preferred to wait to legislative this issue in a future session, at which time other states and national work groups would be expected to have come up with some recommendations for the best way to approach this complicated issue of digital assets.

We too were pleased to see the conversation postponed to a later session. Concerned for the privacy rights of the decedents, our position was that even after death a person's wishes in regard to what information he or she wants to remain private should be honored. Balancing these wishes with the need to access critical financial documents, for example, is a complex task. We know that the Uniform Law Commission, a national work group that often researches and develops model policies on emerging legal issues, has established a committee to come up with recommendations relating to digital assets and digital estates. We look forward to reviewing the outcome of that work and collaborating with stakeholders to implement the best policy in Oregon.

Died in committee.

Protect students' digital privacy against teacher snooping (HB 2426): Representative Sara Gelser (D-Corvallis) introduced HB 2426 to better facilitate the use of personal electronic devices in schools, particularly for students with disabilities. We took no position on the underlying bill, which in part directs school districts to develop policies on use of personal electronic devices (such as laptops or iPads) in the school setting, but we were pleased that the House Committee on Education adopted our amendment to clarify that these policies should not be misunderstood to allow schools to snoop into the private social media or email accounts of students. SB 344 (see bill summary above) was a priority bill on our affirmative agenda this session and prohibits colleges and universities from requiring students to hand over the passwords to their private social media accounts, but that bill did not address similar requirements for lower schools. Without deciding the issue, HB 2426 with our amendment ensures that school districts or school employees interpreting the policies cannot use the personal electronic devices policy as a roundabout way to obtain private social media access from students.

PRIVACY: DIGITAL AND FINANCIAL INFORMATION

Passed: 50-9-1 (House; Voting No: Esquivel, Freeman, Gilliam, Hanna, Hicks, McLane, Richardson, Weidner, Whitsett; Excused: Spenger), 23-4-3 (Senate; Voting No: Baertschiger, Boquist, Olsen, Whitsett; Excused: Devlin, Johnson, Starr).

Clear personal data from government copy machines and scanners (HB 2429): Digital and electronic data storage devices, such as copy machines or scanners, can store images for sometimes indefinite periods of time and, when they are transferred or sold, access to the data and images may expand to recipients unintended at the original point of use of the machine. As both a privacy and a consumer protection measure, Representative Sara Gelser (D-Corvallis) introduced HB 2429 to require that public bodies develop and implement policies for removing personally identifiable information from their machines before sale or transfer, that these public bodies not contract with any non-public entity for copying work (with exceptions), and that private businesses post a notice to consumers that their information may be stored on the copiers or scanners.

The introduction of this bill provided an opportunity for us to connect with some of the experts in the technology field that we have met over the years in the course of our advocacy on digital privacy issues. With input from these experts, we submitted testimony in support of HB 2429 because of its acknowledgment of the sensitivity of much of the information collected by public and non-public entities and the importance of installing policies to guard against retention of such information when it is no longer needed for its original purpose. Unfortunately, concerned that the notice requirement would expose banks to liability under the Oregon Unlawful Trade Practices Act, the financial industry lobbied against the bill and it failed to move forward.

Died in the Ways & Means committee.

Give consumers more control over their private financial records (HB 2936): Important in both the public and private sector, we believe that the private information we hand over for one use should not be repurposed or shared with a third party without informed, express consent. A strong advocate for consumers and Chair of the House Committee on Consumer Protection and Government Efficiency, Representative Paul Holvey (D-Eugene) introduced HB 2936 to better protect the privacy of personal financial information by creating a presumption that such information may not be sold or otherwise disclosed unless permitted by law. While some laws at the federal level address the issue of disclosure of financial information, those bills allow that in certain circumstances consumers may have the opportunity to opt out of sharing their financial information beyond its initial recipient. We supported HB 2936 because we believe that companies should not have the right to share or sell confidential consumer information for secondary purposes without informed opt in consent. This important distinction can be the difference between a consumer enjoying a true choice over the scope of disclosure of his or her private financial information, or not. The Oregon Bankers Association voiced its strong opposition to this bill and after receiving one hearing in the House Committee it did not move forward.

Died in committee.

PRIVACY: MEDICAL RECORDS

Expand program that tracks prescription drug records (SB 470): The Oregon Prescription Drug Monitoring Program (PDMP) was passed in 2009 over the ACLU's strong objection and set up a mechanism for the government to collect, store, and track information about Oregonians' prescription drug records for Schedules II, III, and IV drugs. The ACLU has always believed that information we provide in exchange for a specific purpose, service or benefit should only be used for that purpose unless we consent to an additional use of our personal information. Any data collected, maintained and stored by the government, especially data about our private medical history should be as secure as possible and access to the data strictly limited.

Counter to these values, SB 470 was introduced this session with a long list of provisions to expand the program – both in the number of entities with access to the data collected and the scope of information collected. Currently, the State of Oregon is involved in litigation with the federal Drug Enforcement Agency (DEA), where the State is challenging the DEA's practice of obtaining private medical data from our PDMP without a warrant based on probable cause (a threshold of suspicion that must be met, according to Oregon state law, before law enforcement may access the data). The ACLU has intervened in this lawsuit in order to argue important issues of privacy. Particularly in light of this ongoing litigation, we argued to the Legislature that this session was the wrong time to undertake any expansion of the PDMP.

SB 470 proposed to collect and store more information about patients and their prescriptions, including sex, prescription number, number of days for which the drug was dispenses, number of refills authorized, and the source of payment from the patient. Our opposition resulted in changes to the bill to remove "source of payment" from the list of information collected and collection of sex to be reported only on an anonymous basis to be used as aggregate data for research purposes only. SB 470 also proposed to share access to the PDMP database with more parties, including doctors in neighboring states, additional staff in doctors' and pharmacists' offices, and to all of a patient's doctors and pharmacists on a new "alert system" to flag multiple prescriptions of the same drug or potentially dangerous interactions between different drugs. Further, the bill would have delegated authority to the Board of Pharmacy to add any additional prescription drug to the list of those tracked by the PDMP (current law limits the program to Schedules II, III, and IV drugs).

On the Senate side, our advocacy yielded only modest changes to the bill and 8 senators joined our opposition by voting "no" on the bill. On the House side, Representative Mitch Greenlick (D-Portland) was receptive to our concerns, to a degree, and though he did not prevent the bill from moving forward he did work with us to remove some of the most dangerous provisions of the bill. Rep. Greenlick's House Committee on Health Care removed the Board of Pharmacy authorization to add any new prescription drug and also removed the "alert system" provisions. We expect that both concepts will return in a future session.

Passed: 22-8 (Senate; Voting No: Boquist, Burdick, Dingfelder, Edwards, George, Prozanski, Rosenbaum, Shields), 56-2-2 (House; Voting No: Thatcher, Whitsett; Excused: Buckley, Dembrow), 29-1 (Senate concurrence; Voting No: Knopp). SCORECARD VOTE.

PRIVACY: MEDICAL RECORDS

Require health care providers to report on health privacy measures (HB 2076): Chair of the House Committee on Health Care, Representative Mitch Greenlick (D-Portland) introduced HB 2076 to improve tracking and monitoring of health privacy measures taken by health care providers in the state. The bill would have required certain providers, including hospitals and other facilities, to submit an annual audit report to the state, demonstrating their compliance with federal and state health privacy and security laws. Particularly in light of advancements in health information technology, including the increased use of electronic health records and the disclosure of those records through health information exchanges, it is more important than ever that patients' private medical information is protected. HB 2076 would have been a small step toward greater protection of privacy for Oregon medical patients, working to ensure that policies are in place to avoid data breach, but the bill did not move out of Committee this session. We hope to work with Rep. Greenlick to bring back a similar concept in a future session.

Died in committee.

PRIVACY: STUDENT RECORDS

Prohibit location tracking of students: In November 2012 a student at a Texas school was kicked out of school for failure to wear a radio frequency identification (RFID) tag that the school had distributed for tracking attendance. RFID tags are tiny computer chips that are more commonly used to track everything from cattle to commercial products moving through warehouses. The National ACLU has been commenting on the use of RFID technology since 2005, concerned that privacy and data security issues may well outweigh any potential benefit. Hearing of the Texas example, Representatives Phil Barnhart (D-Central Lane and Linn Counties) and Lew Frederick (D-Portland) and Senator Betsy Close (R-Albany) were concerned, as well. They introduced HB 2386 to protect the privacy of Oregon students. The bill outlawed completely the use of RFID location tracking of students in Oregon schools.

We lent our strong support for the bill and it moved through Committee and off the House floor by a unanimous "yes" vote. With opposition from TechAmerica, an advocacy group for the technology industry, and less appetite on the part of the Chair of the Senate Committee on Education and Workforce Development, Senator Mark Hass (D-Beaverton), for an all-out ban, the final version of the bill required instead that the Oregon Department of Education set up administrative rules for RFID technology in schools. If any districts express interest in using the technology (no districts have done so, to date), their interest will trigger the rulemaking, which must set up provisions for the privacy of students and security of the data.

Though we were not successful in including in the bill a provision to require all location data to be deleted after a certain time period, we were successful in inserting a requirement that parents and students be notified of any use of the RFID technology and that they be provided an opportunity to opt-out of using it. If and when Oregon districts decide to move forward with this technology, we will be monitoring the use closely and work to influence the details of any administrative rules that guide their use. In the meantime, it was reported in July that the Texas school mentioned above has decided to abandon its use of RFID technology because the "smart ID" tracking badges had virtually no effect on student attendance.

Victory! Passed: 58-0-2 (House; Excused: Harker, Richardson); 28-2 (Senate; Voting No: Beyer, Boquist); 38-21-1 (House concurrence; Voting No: Bailey, Bentz, Cameron, Conger, Davis, Freeman, Gilliam, Hanna, Hicks, Krieger, McLane, Olson, Parrish, Richardson, Smith, Spenger, Thatcher, Thompson, Weidner, Whisnant, Whitsett; Excused: Esquivel).

Provide technical experts to help schools protect privacy of student records (HB 2666): Representative Lew Frederick (D-Portland) introduced HB 2666 to better safeguard the privacy and security of the increasing amount of data collected about students in Oregon schools. Amidst a complex web of information collected, technology used to store it, and laws regulating its collection and use, HB 2666 proposed to require that the Oregon Department of Education (ODE) provide technical expertise to assist schools in complying with student records retention rules from the State Board of Education. The bill further required privacy risk assessments of any data system, program or contract involving student education records. We supported HB 2666 because it is a smart proposal in the interest of both privacy and security of information collected about students. It is time for Oregon to make a commitment to the privacy of student records by better institutionalizing a check on large-scale collection of personally identifiable information.

HB 2666 would have been a step in that direction but, facing pushback from ODE about the cost of implementing such a bill, it did not move forward this session. We plan to continue educating legislators on issues of privacy of student records to come up with some strong proposals for a future session.

Died in committee.

Create Chief Privacy Officer position at Board of Ed.: Oregon Save Our Schools (OSOS) is a group of community activists that advocate on education issues, including data privacy of school records. On behalf of OSOS, Senator Mark Hass (D-Beaverton) introduced SB 567 that would have directed the State Board of Education to appoint a Chief Privacy Officer, responsible for ensuring that student information contained in student education records is adequately protected. The bill further would have required schools to provide information to students and parents about what student information is collected and shared, and would have allowed for parents to limit dissemination of certain student records to third party recipients. The web of information that is collected about students is complex and can include not only personally identifiable information about students but also grades, discipline records, and counseling or medical information. We testified in support of SB 567 because it takes a modest step to better monitor these collection processes. So often parents and students have no idea that the information is recorded and with whom it is shared. A representative from the Oregon Education Department (ODE) testified that the Chief Information Security Officer (CISO) already exists within ODE. The CISO monitors federal and state policies relating to information security. This testimony from ODE was enough to derail SB 567, but we do not believe that the CISO position is adequate to address the scope of student records privacy issues and we will be working both at the administrative and legislative levels to find ways to move forward with more comprehensive oversight.

Died in committee.

IMMIGRANT RIGHTS

Provide equal access to higher education to immigrant youth (HB 2787): Immigrant rights advocates had been working for over a decade on the issue until the Legislature finally passed HB 2787 this session, promoting equal access to education for all eligible Oregonians regardless of citizenship status. Introduced with strong bipartisan support from members in both the House and the Senate, HB 2787 enables Oregonians who have grown up in Oregon but are unable to prove lawful presence in the country to still apply for in-state tuition at Oregon colleges and universities. Students taking advantage of tuition equity are eligible if they attended an Oregon school during the three years prior to high school graduation, attended any school in the U.S. during the five years prior to high school graduation, received a high school diploma from Oregon, and demonstrate intent to become a citizen or lawful permanent resident in this country.

Affordable college education for all students who graduate from high schools in Oregon, regardless of citizenship status, furthers principles of fundamental fairness. Undocumented students who benefit from the bill are, by and large, talented high achievers who arrived in Oregon as children, grew up in Oregon, and persevered against the odds to graduate from high school and secure admission to an Oregon college or university. The trend nationwide is moving toward acceptance and encouragement of these young students and, with its support of HB 2787, the Legislature joined a list of other states passing tuition equity bills this session. We were proud to support this bill and to work alongside our coalition partners including educators, business and faith leaders, and immigrant rights groups, to move the bill through the legislative process.

Victory! Passed: 38-18-4 (House; Voting No: Cameron, Conger, Davis, Esquivel, Freeman, Gilliam, Hanna, Hicks, Kennemer, Krieger, McLane, Olson, Richardson, Spenger, Thompson, Weidner, Whisnant, Whitsett; Excused: Jenson, Smith, Thatcher, Tomei). SCORECARD VOTE.

Restore driving privileges to immigrants in Oregon (SB 833): Since 2007, when then Governor Ted Kulongoski signed an Executive Order to require proof of lawful presence as a condition of obtaining a driver license, thousands of people in Oregon have been faced with the terrible choice between not driving to school, work, and medical appointments, or driving unlicensed with an ever-present fear of being pulled over. With the harmful and ongoing entanglement between local law enforcement and federal immigration enforcement, a routine traffic stop could lead to deportation proceedings, making this choice for unlicensed Oregonians even more high-stakes.

Governor John Kitzhaber convened a workgroup through the Oregon DMV to develop a legislative proposal for this session that would restore access to driver licenses that was taken away in 2007. We advocated strongly that the proposal should outline a “one-tier” system for licenses, meaning that every applicant, regardless of immigration status, would receive the same license if he or she met all other criteria (passed the road test, etc.). Safe driving has nothing to do with immigration status and we believe it is long past time that the two be de-linked. The complicated issues surrounding immigration reform should be addressed at the federal level, not through restricting access to driver licenses. While we were not successful in achieving a “one-

tier" solution, we supported SB 833 because we recognize that the status quo was harmful for road safety and public safety, and because the immigrant community in Oregon needed relief from this very desperate and untenable situation. The "two-tier" system outlined in SB 833 provides for applicants who are otherwise eligible for a license but cannot prove lawful presence in the country to obtain a short-term license for lawful driving, but the license cannot be used for federal ID purposes such as entering a federal building or boarding an airplane. Though the bill did not take the exact form we hoped it would, it is an important victory nonetheless. The bill provides more Oregon residents with access to the necessities of daily life and helps to improve public safety and security, ensuring that drivers on our roads are competent and insured. We joined a long list of coalition partners in support of SB 833, including business and faith leaders, law enforcement representatives, and civil rights advocates.

Victory! Passed: 20-7-3 (Senate; Voting No: Close, Girod, Knopp, Kruse, Olsen, Starr, Whitsett; Excused: Johnson, Shields, Winters), 38-20-2 (House; Voting No: Bentz, Berger, Cameron, Conger, Esquivel, Freeman, Hicks, Huffman, Kennemer, Krieger, McLane, Olson, Parrish, Richardson, Sprenger, Thatcher, Thompson, Weidner, Whisnant, Whitsett; Excused: Hanna, Lively). SCORECARD VOTE.

Mandate that all state agencies use E-Verify (HB 2358): Introduced by Representative Kim Thatcher (R-Keizer), HB 2358 proposed a mandate on all state agencies to use the federal E-Verify system. E-Verify is an internet-based computer database run by the U.S. Department of Homeland Security that is used by some businesses to verify the work eligibility of employees. The system is widely understood to be flawed and often inaccurate, each error increasing the risk that a U.S. citizen or legal U.S. worker could be denied employment and a paycheck because of the mistake. The State of Oregon, like the federal government, already verifies the eligibility of job applicants and prohibits those of undocumented status from receiving employment. Mandating the use of E-Verify will only serve to erect further bureaucratic barriers to employment for *eligible* workers who are already struggling in this recessed economy. The system could be set off by any number of errors, including misspellings, typos, or transposed numbers, and it could be very difficult or confusing for a worker to navigate the process simply to clear them up. In our view, HB 2358 is an attempt by its proponents to play into discriminatory anti-immigrant sentiment in our state, but they present it as a measure to help the unemployed. For several sessions now this messaging has not fooled the Legislature. Just like similar bills introduced in prior sessions, HB 2358 failed to receive even a hearing in committee.

Died in committee.

Enable expansion of municipal "sit-lie" ordinances (HB 2963): Seeking to expand the "sit-lie ordinance" in Portland, the Portland Business Alliance (PBA) introduced HB 2963. The bill would have overturned the decision in the 2009 Multnomah County case *State v. Perkins* where the judge said that the Portland ordinance that regulated when people could be on the sidewalk was preempted by state law and therefore was unconstitutional. HB 2963 seemed to be a pretty simple bill because it said only that state laws do not preempt local laws that address use of sidewalks. We opposed the bill because we believed that its reach would be greater than the face of the bill indicated.

For years in Portland, stakeholders from diverse perspectives – including the ACLU – have convened to try to settle upon a fair and equitable system for managing traffic and activities on the city's sidewalks. How a city governs its sidewalks can have implications not only for vulnerable populations such as those without housing or people experiencing mental health issues, but also for the free expression rights of people utilizing public space for constitutionally protected activities. Traditionally, proponents of sidewalk ordinances tend to be business interests, looking for a mechanism to clear certain groups of people from downtown areas. At the request of PBA, HB 2963 would have opened the door to significant expansion Portland's sidewalk ordinance (not to mention other cities and towns in Oregon), leaving the discretion of when and against whom to enforce the ordinance to local law enforcement officers. This kind of discretion concerns us because it invites disparate enforcement against vulnerable populations or people in engaging in expressive activity.

HB 2963 was passed by the House but, upon greater vetting on the Senate side, it did not move forward this session. We were pleased to see HB 2963 not move forward, but we expect to see the proposal come back in future sessions and, in the meantime, we are continuing to engage with stakeholders at the City of Portland to protect civil liberties interests in the face of any new changes to sidewalk management in Portland.

Victory! Died in Senate committee. 57-2-1 (House; Voting No: Dembrow, Gelser; Excused: Sprenger).

Restrict bans on election signs by condo associations (HB 2823): The Oregon Real Estate Agency typically convenes what it calls the Joint Working Group to develop any legislative proposals relating to condominium and condominium association regulations. The Agency did so in anticipation of the 2013 session and helped to introduce HB 2823 as the Working Group's product. The ACLU had no position on this bill until late in the session when a new amendment was drafted and under discussion in the Senate Committee on General Government, Consumer and Small Business Protection. A condo owner constituent asked for the amendment to address an issue he was having with his condominium association (homeowners association or "HOA"). The owner was not able to post election-related signs on his lawn pursuant to his HOA rules so he asked the Committee to amend HB 2823 (procedurally this was possible because the topic was within the scope of the original bill) to say that HOA rules could never include prohibitions on election-related signs.

The ACLU's concerns with this proposal are two-fold. First, Article I, section 8 of the Oregon Constitution prohibits laws based on the content of the speech. With this amendment, the Legislature would be making a content-based decision as to what to regulate: here, election-related signs. Oregon courts routinely cite to the to the *Robertson* case (293 Or 402, 649 P2d 569 (1982)) when analyzing free expression cases. *Robertson* says that Article I, section 8 "forecloses the enactment of any law written in terms directed to the substance of any 'opinion' or any 'subject' of communication, unless the scope of the restraint is wholly confined within some historical exception." By singling out election-related signs, the Legislature would be enacting a "content-based" law. Our second concern were the implications for the freedom of association rights of the owners when the Legislature mandates that a group of people (here, an HOA), as opposed to a government entity, decides to govern their association in a particular way.

Before the amendment to HB 2823 was adopted in Committee, we were able to negotiate some changes to say that HOA's could not prohibit any particular sign based on its content. This change alleviated the concern that the Legislature was favoring election-related signs over other types of speech and with our recommended changes included we refrained from opposing the bill. Our second concern was not addressed. Ultimately, though, left with a bill that was now amended to say, in effect, that HOA's could not ban certain types of signs at the HOA's discretion, HB 2823 attracted a great deal of other, non-civil liberties-related opposition and the proponents of the original bill decide to refrain from moving the bill further.

Died in conference committee.

Create new criminal penalties targeting forest protestors (HB 2595): Representative Wayne Krieger (R-Gold Beach), with the support of the logging industry, introduced HB 2595 in order to shut down protest activity by environmental interests defending Oregon forestland. The bill would have created a new crime of "interference with state forestland management," punishable with one year's imprisonment (and/or $6,250 fine) for the first offense and 13-18 months' imprisonment (and/or $125,000 fine) for any subsequent offense. Because HB 2595 imposed heightened penalties on conduct that is already punishable under existing criminal laws and because the bill's vague terms invited disparate enforcement based on the content of the free speech of the offenders, we strongly opposed this bill.

Victory! Died in Senate committee. 43-12-5 (House; Voting No: Bailey, Barnhart, Buckley, Dembrow, Frederick, Gomberg, Greenlick, Holvey, Keny-Guyer, Nathanson, Tomei, Vega Pederson; Excused: Gilliam, Gorsek, Hanna, Jenson, Kotek).

Create new civil cause of action against forest protestors (HB 2596): While HB 2595 (above) was defeated, its companion bill HB 2596 passed, creating a civil cause of action for logging companies to sue protestors for "obstructing forest practice" and requiring that the court award those companies attorney fees if they won.

Passed: 51-4-5 (House; Voting No: Frederick, Greenlick, Holvey, Tomei; Excused: Gilliam, Gorsek, Hanna, Jenson, Kotek), 25-3-2 (Senate; Voting No: Dingfelder, Rosenbaum, Shields;

Excused: Edwards, Starr), 56-3-1 (House concurrence; Voting No: Frederick, Gallegos, Holvey; Excused: Kotek).

Urge Congress to amend the Constitution to address *Citizens United* (HJM 6): At the request of a group called Move to Amend, Representative Brian Clem (D-Salem) introduced HJM 6 to urge Congress to propose a constitutional amendment to limit certain political contributions and to "clarify the distinction between the rights of natural persons and the rights of corporations and other legal entities." Even before but especially in the aftermath of the U.S. Supreme Court's decision in *Citizens United v. FEC*, there is growing skepticism in the integrity of our election system. Public concern over the skyrocketing costs of political campaigns is justified, but amending the U.S. Constitution is unlikely to cure this problem and will definitely create new – and even bigger – problems. For this reason we opposed the Memorial.

If the Constitution is amended in response to Citizens United, it will mark the first time in our nation's history that the Constitution has been amended to erode the fundamental protections of free expression provided in the First Amendment. Such an historic change will have implications far beyond campaign finance. Further, in calling for an amendment that might erode the constitutional rights of statutory entities, including corporations, HJM 6 will have a host of unintended consequences that could jeopardize the privacy of all Americans. For example, if a corporation is denied constitutional rights, the government would not need a probable cause warrant to search the records of corporations that hold very private information about Americans. The Citizens United decision did not mention, rely upon or in any way depend upon the concept of "corporate personhood." So abolishing corporation constitutional rights as they apply to elections would have no effect on the court's analysis in these types of cases and, instead, could have a host of unintended consequences.

In an effort to solve one problem, HJM 6 risks exposing us to many others. Responding to a flood of public support for the Measure that was organized primarily by Move to Amend, Legislators approved the Memorial over our objection.

Passed: 48-11-1 (House; Voting No: Cameron, Esquivel, Freeman, Huffman, Jenson, Krieger, McLane, Parrish, Smith, Thompson, Whitsett; Excused: Hanna), 17-13 (Senate; Voting No: Baertschiger, Boquist, Ferrioli, George, Girod, Hansell, Knopp, Kruse, Olsen, Starr, Thomsen, Whitsett, Winters).

RELIGIOUS FREEDOM

Mandate daily opportunity for Pledge of Allegiance in schools (HB 3014): Representative Sal Esquivel (R-Medford) introduced HB 3014, which would have required Oregon public schools, including public charter schools, to hang a U.S. flag in every classroom and to provide a daily opportunity for a student or teacher to lead the students in the Pledge of Allegiance to the flag. Under current law, schools are required to provide this opportunity once weekly. The ACLU of Oregon has had long standing concerns about this statute, primarily because we believe it is vulnerable to a challenge under the Oregon constitution's religious freedom provision, Article I, section 5. The Pledge of Allegiance includes "One Nation under God" and yet our constitution states in part: "No money shall be drawn from the Treasury for the benefit of any religious (sic), or theological institution…"

Current law allows for students to refrain from reciting the Pledge and, when doing so, they "must maintain a respectful silence during the salute." Numerous students report to our office, however, that in practice students are required to stand for the Pledge or otherwise forced to participate in the Pledge against their beliefs, be they religious or for other reasons. The right to express oneself by not participating in the Pledge includes the right to remain seated while others stand. The famous case of *Tinker v. Des Moines School Dist.* 393 U.S. 503 (1969) upheld the rights of students to silently protest by wearing black armbands. Remaining seated during the Pledge is a form of silent expression just like the black armbands in *Tinker*.

The practical result of HB 3014 was to risk that students would be ostracized when they cannot or choose not to participate in the Pledge for whatever reasons. The ACLU believes it is callous for the government to force schoolchildren of minority faiths to isolate themselves from their classmates to avoid participating in a religious exercise in violation of their conscience. HB 3014 would have forced children to do so not just weekly, but daily. For these reasons, we testified in opposition to HB 3014 and, in response to our concerns, the Senate Committee on Education amended the bill to require only that flags be posted in every classroom but that the requirements to recite the Pledge preserve the status quo: weekly, rather than daily.

Victory! Passed: 42-16-2 (House; Voting No: Bailey, Barnhart, Barton, Dembrow, Frederick, Gallegos, Garrett, Greenlick, Harker, Holvey, Keny-Guyer, Lively, Read, Tomei, Vega Pederson, Williamson; Excused: Buckley, Gomberg), 28-2 (Senate; Voting No: Dingfelder, Shields), 49-8-2 (House concurrence; Voting No: Barker, Frederick, Holvey, Keny-Guyer, Lively, Tomei, Vega Pederson, Williamson; Excused: Barton, Dembrow, Fagan). SCORECARD VOTE.

Amend Oregon Constitution to allow tax credit for religious school tuition (SJR 23): Senator Betsy Close (R-Albany) introduced SJR 23, which would have referred to the November 2014 ballot a measure to amend Article I, section 5 of the Oregon Constitution to allow for tax credits for payments made to religious schools. We provided testimony in opposition to this proposal that we argued to be inconsistent with the strong tradition of separation of church and state that has existed in Oregon since our constitution was written in 1857. The Oregon Constitution contains the strongest provisions for separation of church and state of any state constitution in the United States, directing that "no money shall be drawn from the Treasury for the benefit of any religeous [sic] or theological institution, nor shall any money be appropriated for the payment of any religeous [sic] services in either house of the Legislative Assembly."

RELIGIOUS FREEDOM

When the state provides tuition, through a tax credit, for a private religious school to obtain or retain students, that religious institution has obtained a benefit at taxpayer expense. The Senate Committee on Education and Workforce Development agreed with our argument: adoption of SJR 23 would reverse 154 years of Oregon history and would overturn a principle that has served the state will since it was admitted to the Union in 1859. The Resolution did not make it out of committee.

Died in committee.

Control prison population growth through sentencing reform (HB 3194): For almost two years leading up to the 2013 session, a group of legislators, judges, and criminal justice officials and stakeholders met as the Governor's Commission on Public Safety to examine ways that Oregon can control anticipated growth in prison population and public safety spending. In December 2012 the Commission submitted its report to the Governor, which outlined several options for policy changes to address these issues. This session, the Joint Committee on Public Safety took up consideration of the options in the form of HB 3194.

HB 3194 started out as a package of modest changes to Oregon law that included 1) giving judges more discretion in sentencing certain Measure 11 and Measure 57 (ballot measures that impose mandatory minimum sentences for certain crimes) offenses, 2) incentivizing good behavior in prison through modest earned-time eligibility, 3) providing earned-review (second look) for youth convicted of Measure 11 offenses, and 4) creating earned-discharge for certain offenders on probation or post-prison supervision.

We voiced our strong support for this bill, modest as it may have been, because the proposals had the potential to limit the growth of incarceration in Oregon without sacrificing public safety. And they allowed for reinvestment of prison savings into proven community justice alternatives that can lower recidivism rates. We would certainly advocate for farther-reaching reforms, but we believed that the initial version of HB 3194 was a positive step toward refocusing our public safety resources on policies that encourage rehabilitation, treatment, and evidenced-based rather than "tough on crime" approaches to sentencing.

Unfortunately, late-session amendments turned HB 3194 from an important step forward to a disappointing missed opportunity. The final bill removed any modifications to Measure 11 sentencing, earned time, and second look, among other changes. The product of a closed-door deal between the Governor's office and law enforcement interests (including the District Attorneys, the Chiefs of Police, and the Sheriffs), HB 3194 also prompted written commitments from the Governor and Legislative leadership to refrain from pursuing any further significant changes to public safety policy for at least five years unless law enforcement supports doing so.

HB 3194 made a handful of changes that almost all move Oregon in the right direction, but we moved to a position of neutral on the final bill because of the significance of how far the bill had retreated from its original language and goals.

Passed: 40-18-2 (House; Voting No: Barton, Conger, Davis, Esquivel, Fagan, Freeman, Gorsek, Hanna, Johnson, Kennemer, McLane, Parrish, Richardson, Smith, Sprenger, Thompson, Weidner, Whisnant; Excused: Thatcher, Whitsett), 19-11 (Senate; Voting No: Baertschiger, Bates, Close, George, Girod, Johnson, Knopp, Olsen, Starr, Thomset, Whitsett).

Heighten penalty for endangering welfare of a minor (HB 2408): Several bills were introduced this session at the request of Direct Attorney John Foote to enhance criminal sentences for certain crimes, an effort that was clearly at odds with the ongoing work of the Governor and the Joint Committee on Public Safety to control public safety costs and reinvest in treatment and prevention programs. Introduced at the request of Clackamas County District

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Attorney John Foote, HB 2408 proposed to heighten the penalty for the crime of endangering the welfare of a minor from a Class A misdemeanor to a Class C felony when the offender "permits a [minor] to enter or remain in a place where unlawful activity involving cocaine, heroin or methamphetamine is maintained or conducted." Before some narrowing amendments, the bill did not include any provisions to be sure that the child was actually affected by the substance. We testified in opposition to this bill not because keeping children safe is not an important goal, but because our current laws are adequate to impose criminal sanctions on those who endanger minors and because heightening existing crimes to felony level crimes in such a piecemeal manner will not only fail to serve as a deterrent for those that might engage in the behavior but is an unsustainable way to construct a criminal justice system that takes into account public safety and our state's fiscal realities. We believe that this bill would have only served to erect additional barriers for families affected by drug addiction.

Died in Ways & Means committee.

Include preschools within drug penalty enhancement zones (HB 2409): Clackamas County District Attorney John Foote also introduced HB 2409, to expand the use of drug penalty enhancement zones to include preschools. The ACLU has concerns about the use of enhancement zones, generally, and we were particularly opposed to the expansion of their application to areas near preschools in Oregon. Enhancement zones are sentencing schemes that impose a heightened criminal penalty for already criminal conduct when it occurs within a certain distance (1,000 feet, under Oregon law) of a certain location, usually schools. The assumption of an enhancement zone policy is that the heightened penalty deters criminals from targeting criminal acts toward children. This assumption is faulty because oftentimes a person committing a criminal act may not have any idea that he or she is in the enhancement zone area and, if that is true, it is similarly unreasonable to assume that someone anywhere within 1,000 feet of a school intends to target criminal acts at children. Furthermore, enhancement zones inevitably punish more harshly people living in urban areas over those committing the same offense in a suburban or rural area. Enhancement zones are part of current Oregon law, but HB 2409 proposed to expand their reach to distances around preschools. We objected to this expansion because, even more than schools that are typically clearly marked, preschools are often difficult to identify. The bill did not move out of committee.

Died in committee.

Expand DUI crime (HB 2115): The Governor's Advisory Committee on DUII developed a list of legislative proposals for the 2013, including HB 2115 that would have expanded the definition of driving while under the influence of intoxicants to include "any drug… that adversely affects a person's physical or mental faculties to a noticeable or perceptible degree." Government should have the tools it needs to keep our roads safe from people who are abusing drugs intentionally and getting behind the wheel, putting everyone at risk. We opposed HB 2115, however, because it cast a wide net over the problem, exposing innocent people to the risk of criminal charges. We also opposed the bill because, as a part of the process laid out allowing a defendant to argue that he or she obtained or consumed the drug lawfully and in the correct dose, the defendant would have been required to turn over his or her entire medical record to the court,

raising serious privacy concerns. Representative Andy Olson (R-Albany) worked very hard after the bill was introduced to craft amendments that would narrow the scope of the bill and bring all stakeholders on board. Unfortunately, the bill was not limited enough to alleviate our concerns. We were pleased to see that, though it moved from the House Committee on Judiciary, it did not move out of the Ways & Means Committee because of the estimated additional cost to the state.

Died in Ways & Means committee.

Create crime of criminal gang activity (HB 2679, HB 2851): Representative Jeff Barker (D-Aloha) introduced two proposals this session to specifically target "gang activity." HB 2851 mandated sentencing enhancement for felonies associated with the activities of criminal street gangs and HB 2679 created the new crime of "criminal gang activity," punishing as a Class C felony conduct that is already criminal under existing law when those crimes are committed relating to gang activity. We strongly opposed both of these bills. The definition of what constitutes a gang was vague in both bills, risking that a person might not be on notice as to what conduct would be punished under the law and what conduct would not. Further, the definition seemed so broad as to potentially sweep in a whole host of associations that the law did not intend to target. For example, would a college fraternity that hosts loud and disruptive parties, or a group of activists engaging in civil disobedience, be a "criminal street gang"? We were also concerned that the bills may have imposed harsh penalties on a person based merely on association, a scheme that directly threatens fundamental civil liberties. We advocated, instead, that lawmakers focus not on heightening criminal penalties to combat criminal gang activity but evidence-based prevention and intervention techniques.

Both bills died in committee.

Create crime of robbery with a simulated deadly weapon (HB 2957): HB 2957 would have, in effect, elevated the penalty for robbery in the second degree from a Class B felony to a Class A felony when the person "displays an object that a reasonable person would presume to be a deadly weapon." The Oregon District Attorneys Association voiced support for the bill, arguing that it would enable them to prosecute robbery in the first degree even in instances when they could not prove that the object that was shown was in fact a deadly weapon. At the public hearing on the bill, legislators in favor of the bill framed their support for the bill as in the victim's interest, arguing that the victim's fear is the same regardless of whether a real gun was part of the robbery at issue.

We submitted testimony in opposition to the bill, noting that the purpose of the current legal distinction between displaying a fake gun and a real gun is to punish more severely the act that carries a more significant risk of harm to the perpetrator and the victim. Robberies committed with a real gun are more likely to result in death than robberies committed without a real gun. Conflating the two crimes, we argued, raises concerns under Art I, sec 16 of the Oregon Constitution, which requires that criminal sentences be proportionate to the offense because a person who purports to be armed should not be subject to the same penalty as a person who is actually armed with a deadly weapon. The House Committee on Judiciary agreed with our argument and did not move the bill forward.

Died in committee.

Replace the death penalty with life without parole (HJR 1): For decades the ACLU of Oregon has advocated for replacing the death penalty with life without parole. In issuing reprieve of death row inmate Gary Haugen's execution in November of 2012, Governor Kitzhaber called on the Legislature to begin a discussion about the death penalty in Oregon. Representative Mitch Greenlick (D-Portland) answered that call and introduced HJR 1 to refer to Oregon voters an amendment to our constitution to abolish the death penalty. We testified in support of the Resolution, welcoming the opportunity to have a public conversation about this important topic. It is our belief that the death penalty is broken beyond repair and we cannot guarantee that it achieves real justice. The death penalty risks killing innocent people, it is applied in an unfair and unjust manner, and it does not even achieve one of its primary goals which is to deter people from committing murderous crimes. Ending the death penalty would save millions in taxpayer dollars that could be better spent on solving crimes. Sentences of life in prison without the possibility of parole are a better way to keep communities safe without sacrificing our values. Even though HJR 1 was not approved by the Legislature this session, we continue to work with a strong network of allies including representatives from the faith, law enforcement, victim, and criminal defense communities to work for the time when Oregonians are ready to replace the death penalty with life without parole.

Died in committee.

Create crime of hindering prosecution in the second degree (SB 340): Matthew Harris, an officer with the Tillamook County Sheriff's Office, brought forth SB 340 after he found that he was able to compel cooperation from friends and family of suspects more easily for felony crimes than misdemeanors. He attributed this difference to the current law prohibiting hindering prosecution of felonies and he brought forth SB 340 to create the new crime of hindering prosecution in the second degree, a crime which would enable him to prosecute friends and family for hindering prosecution of misdemeanors. The new crime would have made concealing, harboring, aiding, or warning a person who is wanted on a warrant for a misdemeanor punishable as a Class A misdemeanor. Before the hearing on SB 340 before the Senate Committee on Judiciary, we expressed our concerns to the proponents of the bill, the most troubling of which was the possibility that a friend or family member could be subject to a higher penalty for hindering prosecution than the suspect him or herself. The proponents agreed to narrow the bill slightly to apply the new crime of hindering prosecution in the second degree only to hindering Class A misdemeanor crimes and lowering the penalty to a Class C misdemeanor only. Despite these changes and though the bill made it through the Senate, the House Committee on Judiciary was not ready to move the concept forward.

Died in House committee. 28-2 (Senate; Voting No: Ferrioli, Whitsett).

Create crime of spitting on a public safety officer (SB 482): SB 482 adds to the list of conduct constituting the crime of aggravated harassment, punishable as a Class C felony, the act of spitting on a public safety officer. Current law includes within the crime of aggravated

harassment propelling any of a list of substances, including saliva, blood, urine, etc., at a corrections officer such as staff at the Department of Corrections. And current law also punishes as aggravated harassment the acts of propelling any of a list of substances, not including saliva, at a public safety officer. Senator Floyd Prozanski (D-Lane County) introduced SB 482 to fill what he believed to be a hole in the law that spitting on a police officer could not be prosecuted as aggravated harassment. In our view, this omission was intentional in Oregon law, rather than an oversight that needed fixing. Imposing this criminal penalty on a person who spits on a corrections officer, as opposed to on a police officer on the street, is more likely to serve as a deterrent for the behavior and can help corrections officers with inmate management. Propelling saliva at a police officer on the street, however, is more likely to occur unintentionally and or by persons with a physical or mental disability.

The ACLU initially raised concerns about SB 482 and our objection led to amendments to narrow the scope of this new crime. As introduced, the bill would have exposed a person who simply propelled saliva at an officer to a Class C felony penalty. It did not matter if the person did not intentionally propel the saliva and it did not matter if the saliva actually came into contact with the officer. The amendments did address both of these issues and, while we did not come out in support of the amended bill, we refrained from raising further objection.

Passed: 29-0-1 (Senate; Excused: Shields), 46-10-4 (House; Voting No: Bailey, Barton, Dembrow, Gelser, Greenlick, Harker, Keny-Guyer, Reardon, Tomei, Vega Pederson; Excused: Garrett, Lively, Olson, Williamson).

Create crime of purchasing sex with a minor (SB 673): At the urging of Shared Hope International, an organization whose mission is "leading a worldwide effort to eradicate sex trafficking," a bipartisan collection of legislators introduced SB 673 (a similar version of the bill was introduced on the House side, HB 2019, and some of that bill's concepts moved forward in SB 673). The bill takes a "tough on crime" approach to the problem, creating new crimes and enhancing criminal penalties for existing crimes addressing prostitution. Specifically, the bill creates a new crime of purchasing sex with a minor. A person convicted of this new crime for his or her first offense is subject to a Class C felony penalty. Second or subsequent offenses subject to Class B felony penalty. While we do not support the imposition of new and elevated criminal penalties, we did not actively oppose this bill because ultimately it attempted what the ACLU believes to be a critical distinction between criminalizing sexual activity between two consenting adults and addressing the very real problem of sex trafficking and involuntary servitude. The final version of the bill contains provisions that allow a defendant to argue that he or she reasonably believed that the person solicited was 18 years or older, thereby providing a defense to the felony level crime of purchasing sex with a minor.

Passed: 30-0 (Senate approval of conference committee report), 56-1-3 (House approval of conference committee report; Voting No: Greenlick; Excused: Bailey, Kotek, Weidner).

Increase penalty for making a false report (SB 834): SB 834 increases the criminal penalty for knowingly making a false report to law enforcement or the fire department from a

Class C misdemeanor to a Class A misdemeanor. The bill requires that any person convicted of this crime also be required to repay the costs to the state for responding to the false report.

Passed: 29-0-1 (Senate; Excused: Johnson), 58-0-2 (House; Excused: Dembrow, Kotek).

Set up work group to study Corrections health care costs (SB 843): As reported in testimony by the Oregon Department of Corrections, health care costs represent 20% of DOC's cost-per-day, the second largest cost component after security and housing (47% of cost-per-day). Adults typically enter DOC facilities in poor health: physically and mentally ten years older than their chronological age. And older adults represent the fastest growing portion of the DOC population. SB 843 sets up the Work Group on Corrections Health Care Costs to examine healthcare delivery at the Department of Corrections and come up with recommendations to reduce costs. While the workgroup is more likely to focus on the streamlining delivery of health care, perhaps by way of consolidating existing programs, we will urge the group to look at mechanisms such as compassionate release to manage the health care of the inmate population. As discussed in the ACLU's report At America's Expense: The Mass Incarceration of the Elderly, released in 2012, lawmakers should consider implementing parole reforms to release those elderly prisoners who no longer pose sufficient safety threats to justify their continued incarceration. This Work Group is a good first step and we look forward to both helping to influence its work and assisting in moving any positive legislative proposals that the group develops.

Passed: 30-0 (Senate), 58-0-2 (House; Excused: Buckley, Kotek).

Expand crime of invasion of personal privacy (SB 855): Senator Tim Knopp (R-Bend) introduced SB 855 in response to an incident of a Springfield man having set up secret video cameras and observed his 10-year-old neighbor for over a year. The victim's mother is advocating for tougher laws for invasion of personal privacy because, under current law, there is no distinction between invading the personal privacy of an adult versus the personal privacy of a minor. SB 855 was introduced too late in the session to move forward, but it started a conversation that is almost sure to continue in the 2014 session. It is important that any such proposal does not create a new trap for young adults who might be exposed to very harsh criminal liability – felony-level crimes, for example – for conduct such as "sexting" amongst peers.

Died in committee.

CRIMINAL JUSTICE: DUE PROCESS

Create new civil commitment authority (SB 421, SB 426, HB 2594): It is critical that strong due process protections be followed ahead of any action by government to deprive a person of his or her fundamental right to liberty. To that end, Oregon has maintained over the years a very limited civil commitment law that is used as a last resort and under very narrow circumstances. One bill in particular this session upset this scheme. SB 421, with SB 426, was introduced by Senator Floyd Prozanski (D-Lane County) in response to a tragic incident in Springfield in 2010, when an officer with the Eugene Police Department was shot and killed by a woman with severe mental illness. Due to her mental state, the woman was found unable to "aid and assist" in her own defense. In such cases under current law, the individual suspected of committing the crime can be held at the Oregon State Hospital for a period of time no longer than would have been imposed had the individual been convicted of the crime. At the end of that period of time, if the individual is still unable to stand trial, civil commitment proceedings must begin, which can commit a person for 180 days at a time.

Proponents of SB 421 asserted to the Legislature that there are some individuals who are so dangerous and so unlikely to ever be able to aid in their own criminal defense that they should be subject to a different standard and different timelines for review than other individuals subject to the current civil commitment process. The current structure, proponents argued, has the effect of too frequently and traumatically re-victimizing the victims because they must endure every 180 days the uncertainty of whether the offender may be released into the community, even though it is highly unlikely that those offenders no longer pose a threat.

In response, and after lengthy negotiations with mental health services advocates that resulted in significant adjustments to the bill, SB 421 was approved by the Legislature to effectively set up a new civil commitment structure for persons deemed to be "extremely dangerous." At the initiation of the District Attorney, these persons may be committed to the jurisdiction of the Psychiatric Security Review Board (PSRB), with an initial hearing within six months and every two years thereafter, if a court finds by clear and convincing evidence that the person suffers from a mental disorder resistant to treatment and because of the mental disorder the person caused one in a list of several criminal acts (for example, causing the death of another person). A professional at the State Hospital can ask the court at any time to hold a hearing if the professional no longer believes the person is "extremely dangerous."

We testified against this bill when it was first introduced because we believed it to be a broad overcorrection to the system in response to a narrow, albeit compelling, set of stories. Ultimately, though, we moved to a neutral position. We would never have introduced a bill like this and would not likely ever support it, but we tempered our opposition because of the significant changes that were made to the original bill that put much better sideboards around how the new commitment scheme would be carried out and whom it would affect. We will be watching closely the implementation of the new law.

A companion bill to SB 421, SB 426 simply made updates to the civil commitment statutes to utilize more "person-friendly" terminology. The phrase "a person with mental illness" will replace "mentally ill or mentally retarded" in various places throughout Oregon statutes. And, finally, like SB 421, HB 2594 sets up a new avenue for law enforcement officers to address

issues of mental health and mental illness in situations when the current civil commitment scheme would not otherwise allow for intervention. HB 2594 permits a court to require a person to participate in assisted outpatient treatment if a number of factors are met, including that the person is "unable to make an informed decision to seek…voluntary treatment" and "is incapable of surviving safely in the community without treatment." The bill does not create new authority for law enforcement to take someone into custody or to force the person to undergo treatment.

SB 421 Passed: 30-0 (Senate), 53-6-1 (House; Voting No: Dembrow, Greenlick, Keny-Guyer, Kotek, Thompson, Tomei, Weidner), 28-0-2 (Senate concurrence; Excused: Burdick, Johnson). SB 426 Passed: 29-0-1 (Senate; Excused: Johnson), 58-0-2 (House; Excused: Kotek, McLane). HB 2594 Passed: 56-0-4 (House; Excused: Barnhart, Buckley, Krieger, Weidner), 30-0 (Senate).

Eliminate statute of limitations for certain sex crimes (HB 3284): Under current law, the statute of limitations for prosecution of sex crimes committed against minors is extended beyond that of prosecution for other crimes: until the victim reaches age 30 or sometimes longer for certain crimes if there is DNA evidence. HB 3284 proposed to eliminate completely the statute of limitations for certain sex-related crimes if the victim was under the age of 18 at the time of the alleged crime. The ACLU appreciates the intention behind such proposal and we acknowledge the highly sensitive nature of the issues involved. That said, we testified in opposition to the bill because of the insurmountable harm that could be imposed upon the accused in these situations. A statute of limitations provides important safeguards designed to permit the prosecution and the defense to present a case before the evidence goes stale. Prosecution within a few years of the crime allows a defendant to confront the accuser, and allows the defendant to call witnesses and prepare a defense. As time elapses between the crime and the trial, it becomes increasingly difficult for the defendant to prepare a meaningful defense. In light of our concerns and those expressed by the Oregon Criminal Defense Lawyers Association, the House Committee on Judiciary chose to refrain from moving the bill forward.

Died in committee.

Restrict access to sexually explicit material in criminal proceedings (SB 409, HB 3048): Two bills this session attempted to address the sensitive issue of how courts should handle sexually explicit material when it is being reviewed as potential evidence in a criminal proceeding. Each of the two bills took a different approach to the problem and, because the various interests involved could not agree on the best compromise, both bills failed. SB 409, a bill that the ACLU supported, would have adopted a method whereby both the prosecution and defense side of the case would receive copies of the material and both sides would be subject to the terms of a mandatory protective order that would require the parties to keep the information secure until it is returned at the conclusion of the case. This approach struck the appropriate balance between protecting the privacy of the victims depicted in the material and ensuring that the attorneys for the accused have the information they need to mount a fair defense. By contrast, HB 3048 (SB 395 was an identical version introduced on the Senate side) would have required the defense in all instances to examine the materials in a government facility, creating expensive and unnecessary burdens to one side of the criminal case to review all of the relevant materials to the case.

Both bills died in committee.

Authorize forfeiture of car for certain driving crimes (HB 2384): HB 2384 was introduced by Representatives Kim Thatcher (R-Keizer) and Phil Barnhart (D-Central Lane and Linn Counties) in an effort to crack down on chronic violators of laws prohibiting driving with a suspended or revoked license. As introduced, the bill would have authorized seizure through civil or criminal forfeiture of the offender's car and imposed heightened penalties for conviction of these crimes for repeat offenders. We testified in opposition to the bill, raising concerns that the proposal was likely to impose increased collateral consequences upon innocent family members whose car is often being used in the commission of the crime. Furthermore, in the case that the offender is driving his or her own car, current law already provides for the criminal forfeiture process of the vehicle. Hearing these and other concerns, the proponents of the bill significantly scaled back their proposal and the bill was amended to remove the provision heightening penalties for repeat offenses and to apply the civil and criminal forfeiture process only to crimes of criminal driving while suspended or revoked and aggravated driving while suspended or revoked. This version of the bill that moved forward was a much more targeted approach to the problem than the one that was originally brought forth.

Passed: 56-2-2 (House; Voting No: Greenlick, Williamson; Excused: Clem, Lively), 30-0 (Senate).

Create fitness to stand trial standards for juveniles (HB 2836): The Oregon Law Commission was set up by the Legislature in 1997 to assist the Legislature in keeping the law up to date. Practically, it often falls on the Commission to take up complicated issues that require extensive research and deliberation after which the Commission develops bill proposals to send to the Legislature. HB 2836 was the result of one such process. Like adult criminal defendants, juveniles have a constitutional right to raise the issue of fitness to proceed in a criminal trial, but under Oregon law there are no statutory provisions regarding fitness (also called "aid and assist") for juveniles. As a result, juveniles receive inconsistent treatment and many juveniles are not restored to fitness so that they can be properly adjudicated. The Law Commission introduced HB 2836, which set out standards to determine whether a juvenile is fit to proceed and provides procedures to raise the issue of fitness and, if necessary, obtain restorative services. Bills similar to HB 2836 have been introduced in three prior legislative sessions and each time the bill has not passed because the fiscal impact on the system was an insurmountable obstacle. This session, legislators prioritized funding this effort, and the bill passed.

Passed: 57-0-3 (House; Excused: Bailey, Hicks, Weidner), 30-0 (Senate).

Repeal statutory speedy trial rights (HB 2962): Representative Wally Hicks (R-Grants Pass) introduced HB 2962 that would have brought Oregon's speedy trial rules in line with protections provided by the U.S. and Oregon constitutions. Under existing law, Oregon's statutes provide greater protection of the right to a speedy trial than do the constitutions. Oregon statutes allow for the dismissal of a criminal case if there has been an "unreasonable delay" on the part of the

state. Oregon statutes do not require that the defendant show he or she has been prejudiced by such delay, but the constitutions do require such showing.

While HB 2962 would have preserved the constitutional standard for speedy trial, we testified in opposition to the bill because it eroded the additional protections that have been valued in Oregon dating back to the time Oregon was a territory. We acknowledge and lament that the problem of inadequate resources in our criminal justice system is immediate and significant, an issue that proponents of the bill cited as the reason for the bill, but we also do not think that HB 2962 took the right approach because it balanced the hardship on the backs of criminal defendants. We pushed for a more comprehensive discussion about the policy implications of eroding existing speedy trial protections for criminal defendants.

Though HB 2962 passed through the House, the Senate Committee on Judiciary agreed with our position and, as a compromise to passing the bill, amended it to allow for such thorough conversation after the legislative session. The amendment puts a sunset on the current statute so that the speedy trial laws will be repealed on April 1, 2014, thereby forcing the Legislature to take up the issue again in the short February 2014 session.

Victory! Passed: 42-18 (House; Voting No: Bailey, Barnhart, Dembrow, Frederick, Gomberg, Gorsek, Greenlick, Huffman, Komp, Kotek, McKeown, Nathanson, Reardon, Tomei, Vega Pederson, Whitsett, Williamson, Witt), 27-2-1 (Senate; Voting No: Dingfelder, Shields; Excused: Baertschiger), 47-12-1 (House concurrence; Voting No: Bailey, Barnhart, Dembrow, Frederick, Gelser, Greenlick, Kotek, Nathanson, Vega Pederson, Whitsett, Williamson, Witt; Excused: Esquivel). SCORECARD VOTE.

Reestablish commercial bail bonds in Oregon (HB 2548): Bail bond agents, for a fee, post bond for criminal defendants enabling those defendants to be released awaiting trial when they otherwise would not be able to afford to do so. Forty years ago, the Oregon Legislature made the decision to end Oregon’s experiment with commercial bail bonds. The system garnered concerns both of corruption and disproportionately harsh treatment of people of modest means. Under the previous system countless defendants could not afford to make bail at the rates charged by the commercial bail industry. Consequently, despite the fact that many defendants were just as likely, if not more likely, to appear at their trial as those who could afford bail, they remained in jail. Pretrial incarceration frequently led to job loss, even for those eventually acquitted. Moreover, a commercial bail bond system is not in the best interest of public safety because a bail agent’s obligation is to ensure that defendants appear in court, not to supervise the defendant on release. If a defendant commits new crimes or violates release conditions while out on bail, a bail bondsman loses no money.

Despite these and other concerns, HB 2548 was introduced this session at the request of the commercial bail bond industry to re-establish a commercial bail system in Oregon. We testified in opposition to the bill and stood beside a long list of stakeholders joining the opposition: AFSCME Council 75, Association of Oregon Counties, Association of Community Corrections Directors, Attorney General Ellen Rosenblum and the Oregon Department of Justice, Lane County, League of Oregon Cities, Multnomah County, Oregon Association of Chiefs of Police,

Oregon Criminal Defense Lawyers Association, Oregon District Attorneys Association, Oregon State Bar, and Oregon State Sheriffs Association.

Victory! *Died in committee.*

<u>Codify in statute rules for exculpatory evidence (SB 492):</u> *Brady v. Maryland* (373 US 83 (1963)) is a U.S. Supreme Court case that established standards by which criminal prosecutors must hand over evidence to criminal defendants. "The suppression by the prosecution of evidence favorable to and requested by an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution," wrote the court in that case. The Brady rule requires that the prosecution hand over evidence "that would impeach a state's witness, tend to negate the accused's guilt, undermine government's theory of the case, or mitigate the determination of sentence" (*Giglio v. United States* (405 U.S. 150 (1972)); *Kyles v. Whitley* (514 U.S. 419 (1995)). Whereas 29 states incorporate *Brady* rules into their statutes, Oregon relies only on case law to provide guidance to law enforcement and prosecutors on what is required. Arguing that violations of the *Brady* duty to disclose are systemic and statewide, the Oregon Criminal Defense Lawyers Association brought forth SB 492 to codify into the Oregon statutes the duty. The district attorneys, originally in opposition to the bill, argued that it was too confusing to try to write into statute guidance that has been developed through case law over time. Amendments in the Judiciary Committee in each chamber addressed such concerns.

The version of the bill that passed is an important protection for the due process rights of criminal defendants because it clearly references the duties of the state to comply with *Brady* and, at the same time, it clarifies what the bill does *not* intend to do (i.e., expand any obligation already imposed on the state).

Passed: 29-0-1 (Senate; Excused: Johnson), 56-0-4 (House; Excused: Garrett, Lively, Olson, Williamson), 30-0 (Senate concurrence).

<u>Amend Oregon Constitution to allow sobriety check points (SJR 2, SB 94):</u> Senator Rod Monroe (D-Portland) introduced both SJR 2 and SB 94 in order to set up sobriety check points in Oregon. In 1987, the Oregon Supreme Court ruled that the use of police roadblocks without a warrant constituted an unlawful search in violation of Article I, section 9 of the Oregon Constitution (*Nelson v. Lane County*, 304 Or 97, 743 P2d 692 (1987)). With that ruling in place, sobriety check points cannot be used unless the people of Oregon vote to amend our constitution to allow it. SJR 2 would have referred a measure to the ballot to propose such an amendment. The ACLU strongly opposes this effort, which asks us to weaken one of our core provisions of the Oregon constitution for the first time to allow for the police to use roadblocks, or check points. Furthermore, roadblocks divert scarce law enforcement resources by using police officers to stop and question thousands of innocent people, while dangerous drivers might simply avoid the visible and well-advertised roadblocks. We were pleased that this proposal, along with the companion statutory changes proposed in SB 94, did not move forward this session.

Died in committee.

CRIMINAL JUSTICE: DUE PROCESS

Codify right to appeal DNA testing decisions (SB 42): Brought by a criminal defense attorney with the Office of Public Defense Services, SB 42 clarified the right of criminal defendants to appeal a circuit court's decision to grant or deny a post-conviction motion for DNA testing. In the recent case of *State v. Stressla Johnson*, the Oregon Court of Appeals ruled that such decisions cannot be appealed. SB 42 clearly states for courts that defendants to have the right to appeal decisions denying or requesting DNA testing. We supported SB 42 because it promotes fundamental fairness for defendants and encourages consistent application of the DNA testing statute across jurisdictions. In cases across the country, DNA has not only been used to convict the guilty, but also to exonerate the innocent, sometimes decades after conviction and many years of incarceration. In 2009, recognizing the importance of using DNA testing as a criminal justice tool, the Legislature made a commitment to strengthening the practice and procedure of preserving DNA evidence. SB 42 ensures that the right to appeal applies to use of this important tool, just like it does across the criminal justice system.

Passed: 28-0-2 (Senate; Excused: Edwards, Whitsett), 58-0-2 (House; Excused: Read, Whitsett).

CRIMINAL JUSTICE: MARIJUANA

In November 2012, Colorado and Washington became the first states to legalize marijuana for adults 21 and older, while Massachusetts became the 18th state, along with the District of Columbia, to legalize medical marijuana. Meanwhile, other states, including Connecticut and Rhode Island, have recently decriminalized possession of small amounts of marijuana. In short, the tide is turning on this issue in this country and Oregon is ready to join that movement in a way that is safe and fair for all Oregonians. A report issued this June by the National ACLU, based on state crime reports provided to the FBI, shows that Oregon law enforcement agencies increased the rate of citations and arrests for possession of marijuana by 45% between 2001 and 2010. Oregon's increase was the fifth highest in the country during that period. Nationwide, African Americans were 3.7 times more likely to be arrested for possession of marijuana than Whites despite comparable usage rates. The aggressive enforcement of marijuana possession laws needlessly ensnares hundreds of thousands of people into the criminal justice system and wastes billions of taxpayers' dollars. What's more, it's carried out with staggering racial bias. Despite being a priority for police departments nationwide, the War on Marijuana has failed to reduce marijuana use and availability and diverted resources that could be better invested in our communities. It's time to end the War on Marijuana.

Decriminalize, tax, and regulate marijuana (HB 3371): HB 3371 marked a start to the effort to reform marijuana policy in Oregon. The bill would have decriminalized personal use of marijuana for adults and directed the Oregon Liquor Control Commission (OLCC) to oversee the licensure, regulation and taxation of marijuana producers, processors and retailers. After a hearing in the House Committee on Judiciary, the bill moved to the House Committee on Revenue. It did not move any further this session, but it is clear that there is willingness from the Legislature to revisit this issue, perhaps in the February 2014 session. In the meantime, we are collaborating with other marijuana decriminalization advocates to put a measure on the November 2014 ballot as a citizen initiative. Depending on the progress of those efforts, the Legislature may decide to refer a measure in the February session.

Died in committee.

Create misdemeanor level marijuana penalty (SB 40): Put forward by the Oregon Criminal Defense Lawyers, SB 40 was initially a bill to make a small adjustment to Oregon statutes in order to bring them in line with the felony sentencing classification level for the unlawful possession and unlawful manufacture of marijuana as a Schedule II controlled substance. The bill changed certain marijuana crimes so that manufacturing of marijuana is now a Class B felony instead of an A felony and possession of more than four ounces of marijuana is a Class C felony instead of a B felony. As the bill was moving through the process, it became clear that the Legislature was ready to do a little bit more than this "clean-up" fix. Under current law, possession of less than an ounce of marijuana is an unclassified violation with a presumptive fine of $650 and possession of more than an ounce is a Class B felony. SB 40 created a middle-tiered misdemeanor offense in order to avoid the large disparity between those two crime classifications. Possession of more than an ounce but less than four ounces is a Class B misdemeanor. These changes in SB 40 present the state with projected cost savings to the Department and Corrections and Public Defense Services Commission of millions of dollars. We supported these changes as important steps toward complete decriminalization of marijuana.

Victory! *Passed: 22-7-1 (Senate; Voting No: Close, Girod, Hansell, Knopp, Olsen, Thomsen, Whitsett; Excused: Johnson), 43-16-1 (House; Voting No: Bentz, Freeman, Gallegos, Gilliam, Hicks, Johnson, Kennemer, Parrish, Smith, Sprenger, Thatcher, Thompson, Unger, Weidner, Whisnant, Whitsett; Excused: Hanna), 20-10 (Senate concurrence; Voting No: Boquist, Close, Ferrioli, Girod, Hansell, Johnson, Knopp, Olsen, Thomsen, Whitsett).*

Eliminate suspension of driver license for marijuana violation (SB 82): Oregon law currently treats unlawful possession of less than an ounce of marijuana as a violation, rather than as a misdemeanor or a felony level crime. Consistent with the consequence for this low-priority offense, SB 82 made a small change to the suspension of driving privileges statutes to say that judges have discretion in whether to impose a suspension of driving privileges on a person that commits this violation. The court may suspend the person's license only if the person is under the age of 18 and the court determinates that such suspension is "necessary for the safety of the community."

Passed: 18-11-1 (Senate; Voting No: Close, George, Girod, Hansell, Hass, Knopp, Monroe, Olsen, Thomsen, Whitsett, Winters; Excused: Johnson), 42-13-5 (House; Voting No: Bentz, Conger, Davis, Freeman, Gilliam, Hanna, Johnson, Richardson, Smith, Sprenger, Thompson, Weidner, Whitsett; Excused: Bailey, Buckley, Clem, Huffman, Jenson), 19-11 (Senate concurrence; Voting No: Baertschiger, Ferrioli, George, Girod, Hansell, Hass, Monroe, Olsen, Roblan, Thomsen, Whitsett).

License and regulate medical marijuana dispensaries (HB 3460): Voters approved the Oregon Medical Marijuana Act (OMMA) in 1998, the purpose of which was to permit Oregonians suffering from debilitating medical conditions to be able to use marijuana to relive their symptoms without being in violation of Oregon criminal law. HB 3460 was introduced in order to address two specific issues that have arisen over the years. The first issue is that many patients do not have a grower, do not want to grow themselves, and have difficulty finding safe, reliable and legal access for the medicine that they need. This issue has led to the establishment of some 200 medical marijuana dispensaries operating in Oregon today without any licensure, regulation or oversight. In most jurisdictions, law enforcement is simply allowing them to operate, but there have been some instances when these facilities have been shut down and patients relying on them have been left without safe access. The second issue is a concern that marijuana being grown legally for patients is not finding its way into the hands of patients, but is instead being siphoned off into the black market. HB 3460 establishes a system under the Oregon Medical Marijuana Program to license and regulate the estimated 150 or more medical marijuana facilities operating in Oregon today, allowing patients, growers and medical marijuana facilities to legally work together to ensure that patients have safe access to medicine they need.

Victory! *Passed: 31-27-2 (House; Voting No: Barton, Bentz, Berger, Cameron, Conger, Davis, Esquivel, Freeman, Gilliam, Hicks, Huffman, Jenson, Johnson, Kennemer, Krieger, McKeown, McLane, Olson, Parrish, Richardson, Smith, Sprenger, Thatcher, Thompson, Weidner, Whisnant, Whitsett; Excused: Hanna, Unger), 18-12 (Senate; Voting No: Baertschiger, Boquist, Close, Girod, Hansell, Johnson, Knopp, Kruse, Monroe, Olsen, Thomsen, Whitsett), 31-28-1*

(House concurrence; Voting No: Barton, Bentz, Berger, Cameron, Conger, Davis, Esquivel, Freeman, Gallegos, Gilliam, Hanna, Hicks, Huffman, Jenson, Johnson, Kennemer, Krieger, McLane, Olson, Parrish, Richardson, Smith, Sprenger, Thatcher, Thompson, Unger, Whisnant, Whisett; Excused: Weidner). SCORECARD VOTE.

Include PTSD treatment in medical marijuana program (SB 281): SB 281 expands the definition of "debilitating medical condition" under the Oregon Medical Marijuana Act to include post-traumatic stress disorder. The change provides for patients to obtain authorization from a doctor to obtain medical marijuana pursuant to all other guidelines of the medical marijuana program.

Passed: 19-11 (Senate; Voting No: Close, Girod, Hansell, Hass, Johnson, Kruse, Monroe, Olsen, Starr, Thomsen, Whitsett), 36-21-3 (House; Voting No: Bentz, Berger, Conger, Davis, Esquivel, Freeman, Hanna, Jenson, Johnson, Kennemer, Krieger, McKeown, McLane, Olson, Parrish, Richardson, Smith, Sprenger, Thatcher, Thompson, Whisnant; Excused: Barnhart, Gelser, Whitsett).

Create risk-based categories for sex offender registry (HB 2549): The result of many months of planning and negotiation in a work group in which we participated, HB 2549 moves Oregon from a crime-based to a risk-based system of determining registration and notification requirements for sex offenders returning to the community. Pursuant to Oregon laws first enacted in 1989 (and later modified in 1991 and 1993), persons who have been convicted of certain sex offenses face registration and notification requirements. Currently, the details of such requirements are determined by the crime that the individual committed. Crimes are divided into two categories, "predatory" and "non-predatory," but such designation provides very little information for law enforcement and the community as to how likely it is that such person might reoffend.

HB 2549 creates a three-tiered system whereby individuals will be evaluated based on their risk to reoffend, categorized as high, medium, or low risk, and be subject to registration and notification requirements based on this designation. A long list of stakeholders supported this bill, including the Oregon State Sheriffs' Association, the Oregon Association of Community Corrections Directors, and the Sex Offender Supervision Network. Identification of those individuals that are classified as moderate to high risk will ensure an accurate reflection of those that pose the greatest threat to public safety. Similarly, because the consequences of notification can be so severe, risk assessment also helps to avoid disrupting the stability of low risk offenders in ways that may actually increase their risk. HB 2549 is a smart proposal that keeps Oregon focused on community safety as opposed to punishing individuals for crimes for which they have already served their time.

Victory! Passed: 48-11-1 (House; Voting No: Freeman, Gilliam, Hanna, Hicks, McLane, Parrish, Richardson, Sprenger, Thompson, Whisnant, Whitsett; Excused: Weidner), 16-13-1 (Senate; Voting No: Baertschiger, Bates, Boquist, Close, Ferrioli, George, Girod, Hass, Johnson, Knopp, Olsen, Thomsen, Whitsett; Excused: Starr), 46-12-2 (Freeman, Gilliam, Hanna, Hicks, McLane, Parrish, Richardson, Sprenger, Thatcher, Weidner, Whisnant, Whitsett; Excused: Boone, Keny-Guyer).

Provide relief from sex offender registry for certain juveniles (HB 2552): As a follow-up to SB 408 (2011) that made it easier for some juvenile registrants on the sex offender registry to apply for relief from registration, HB 2552 would have allowed juvenile registrants who move to another state to petition for relief in Oregon, would have allowed someone who committed an act as a youth to apply for relief in the rare and unfortunate circumstance when delayed reporting led to adult prosecution, and would have limited the registration requirement to older youth (those who are 16 or 17 at the time of the offense).

The purpose behind sex offender registries and the reason they have been set up in states across the country is to improve public safety by alerting the public about people who are at risk of committing future offenses. But juveniles who are convicted of committing sex offenses are extremely unlikely to commit a future offense, particularly if they receive counseling or treatment. Unnecessarily putting youth on the registry can have the impact of breaking up families, preventing youth from obtaining employment and becoming successful and

contributing members of their community. HB 2552 would have been a small step to make our juvenile registration laws more consistent with the reality of juveniles who commit sex offenses.

Died in committee.

CRIMINAL JUSTICE: BACKGROUND CHECKS

In part because of ACLU advocacy and opposition at the time, in 2012 the Legislature deferred a handful of proposals relating to criminal background checks for employment to an interim workgroup. The HB 4091 Work Group, named after its enabling legislation from 2012, met numerous times between the 2012 and 2013 sessions and the ACLU of Oregon was invited to participate. A new handful of legislative proposals came from recommendations from the HB 4091 Group and were introduced this session by Representative Nancy Nathanson (D-Eugene). Nathanson's objective in continuing to engage on this issue is to eliminate inefficiency that comes with the administration of the state's criminal background check program, whether those checks are for employment, licensure, or membership on a particular board. Oftentimes, applicants must undergo repeated or duplicative background checks, even if within a short period of time, and that repetition can be time consuming and costly.

Criminal background check issues raise important civil liberties concerns as well, including the need for due process for applicants and the privacy rights of those applicants to share only what is needed to keep communities safe. Four proposals in particular were introduced this session to address inefficiency in employment criminal background check process. We supported one of those proposals, were neutral on one, and were opposed to two of them. The worst of the bills did not pass, but the other three did.

Retain fingerprint records and set up continuous check program (HB 2828): HB 2828 would have repealed the current law in Oregon that requires destruction of fingerprint records upon completion of a criminal background check for employment purposes. In our view, such repeal is shortsighted and risky, and reached beyond the recommendations developed by the HB 4091 Work Group. The government should not be retaining fingerprints of innocent Oregonians. Doing so would expose anyone in the database to risk of misuse of his or her personal biometric data by those with access, would upset the careful balance of rights and interests that were put in place at the outset of the background check program, and is generally a dangerous precedent to set.

Furthermore, we are well aware that the next step after retention of fingerprint records is implementation of a "Rap-Back" program, that carries with it additional concerns about collection and aggregation of innocent people's records. For entities that sign up with the Oregon State Police (OSP), their subscription to Rap-Back would provide notification of any activity on an employee's criminal record – including pre-conviction, arrest information – when that employee has previously been through the criminal background check process through the entity. Rap-Back creates an Oregon where, for certain professions, employment means constant monitoring of even innocent activities that may be wholly unrelated to safe and competent workplace conduct.

At the federal level, as well, Rap-Back is one piece of a much larger FBI project entitled Next Generation Identification (NGI), billed as a "state-of-the-art biometric identification services" system with the goal of amassing detailed profiles of Americans using electronic finger and palm prints, photos with face-recognition technology, iris scans, tattoos, etc., all linked to names, associations, residence history, criminal history, and employment.

We argued in opposition to HB 2828, pointing out that there are a great deal of alternatives to fingerprint retention that would address the problem of duplicity and inefficiency of criminal background checks without bringing Oregon into the complex and uncertain web of highly intrusive data collection and data sharing systems.

Victory! *Died in Ways & Means committee.*

Set up work group to realign categories of background checks (HB 3168): HB 3168 is the best approach to address the problem of duplicative background checks and we testified in support of its passage. The bill directs the Department of Administrative Services to develop categories of background checks that would enable greater portability of checks based upon the area in which an applicant is working, as opposed to based on the entity authorizing the check, as is the current structure. Part of this new "cluster" system, as it is described in the HB 4091 Work Group report, would also facilitate reevaluation of what list of crimes would disqualify an applicant from the area of employment.

Passed: 60-0 (House), 23-7 (Senate; Voting No: Baertschieger, Boquist, Close, Girod, Hansell, Kruse, Olsen).

Integrate electronic fingerprinting into background check process (HB 3330): The work group recommended a move away from paper and ink fingerprint collection toward better integration of electronic capture technology. To the extent that electronic capture – through LiveScan technology or otherwise – preserves the protections against retention of the prints that are embedded in current law, the ACLU is neutral on HB 3330.

Passed: 56-2-2 (House; Voting No: Sprenger, Whitsett; Excused: Hanna, Unger), 27-2-1 (Senate; Voting No: Boquist, George; Excused: Thomsen).

Set up registry of people with a "clean" criminal record (HB 3331): We had concerns about HB 3331 that sets up a Voluntary Central Criminal Records Check Registry, which provides an option for applicants to apply for registration that would certify that the applicant does not have any criminal history. First, a system like this seems to invite discrimination from employment based on membership status in the Registry. At the very least there should be clear and strict guidelines to avoid any relationship between employment decisions and placement in the Registry. Following on our vocalizing this concern, the House Committee on Consumer Protection and Government Efficiency did adopt some protections against discrimination in employment. Second, a central tenant of the current criminal background check program is that the statutory disqualifying crimes have some relation to the employment or role at issue. This principle would seem to suggest that it is irrelevant whether the applicant has a completely "clean" criminal record, but rather that he or she does not have any convictions for disqualifying crimes. The Registry would undermine this principle. Third, it is unclear whether this process would save any money or meaningfully reduce the number of background checks that are conducted on an individual. HB 3331 proposed annual rechecks and those checks would be name-based state record checks, so would not change any requirement to conduct fingerprint-

based checks for records outside of Oregon. The renewal fee every two years would be a burden to the applicant. Over our objection, the Legislature did move forward with HB 3331.

Passed: 58-1-1 (House; Voting No: Whitsett; Excused: Hanna), 27-0-3 (Senate; Excused: Boquist, Dingfelder, Edwards).

Set aside from criminal record certain sex crimes (HB 3327): Speaker of the House Tina Kotek (D-Portland) introduced HB 3327 to make a narrow adjustment to criminal records laws for offenses that involve adolescents who are close in age and engage in consensual behavior that is not recognized as consensual under Oregon law. The bill allows for courts to set aside an adult conviction or expunge a juvenile records when all of the following conditions are met: 1) the person was under 16 years of age at the time of the offense, 2) the person was less than 3 years older than the victim, 3) the victim was at least 12 years of age at the time of the incident, and 4) the victim's lack of consent was solely due to incapacity to consent based on age (i.e., not as a result of force or incapacitation). Having a criminal record that carries a conviction for a sex crime can seriously impair a person's ability to find housing and employment and to be self-sufficient. This bill involves teenage sexual behavior that occurs regularly across the country and a small but very unfortunate percentage of the people who engage in the behavior are arrested and prosecuted for it. HB 3327 recognized that the penalty and consequences for such behavior are too severe under current law, in some cases lasting a lifetime because the records cannot be expunged. HB 3327 took a small step to help people who were already held accountable for their actions to move on with their lives.

Passed: 33-25-2 (House; Voting No: Barton, Bentz, Boone, Conger, Davis, Fagan, Freeman, Gallegos, Gilliam, Gorsek, Jenson, Johnson, Kennemer, Komp, McLane, Parrish, Richardson, Smith, Sprenger, Thatcher, Thompson, Unger, Weidner, Whisnant, Whitsett; Excused: Berger, Hanna), 16-14 (Senate; Voting No: Baertschiger, Bates, Boquist, Ferrioli, George, Girod, Hass, Johnson, Knopp, Monnes Anderson, Olsen, Starr, Thomsen, Whitsett).

Limit consideration of tenant's criminal history in rental application (SB 91): For decades, the General Residential Landlord/Tenant Coalition has negotiated and introduced legislation to amend or update Oregon landlord-tenant law. SB 91, the Coalition bill for the 2013 session, included a range of changes to the law including ones addressing mandatory renter's liability insurance, tenant fees, and foreclosure issues. The Coalition also included in the bill important changes to the tenant application process that will help those with an eviction or criminal history secure housing. Tenants with prior eviction or criminal history often encounter insurmountable barriers when seeking safe, affordable housing, even years after the occurrence. Current law prohibits landlords from considering an applicant's prior eviction history if the prior eviction was dismissed against the applicant/tenant or decided in the tenant's favor, but it allows unlimited use of prior eviction judgments against a tenant no matter how old and of the applicant/tenant's prior history of arrests and convictions.

SB 91 limited the scope of what a landlord may consider in a tenant's application: 1) a landlord may not consider eviction history if the eviction was dismissed or the applicant prevailed (this is current law) or the eviction judgment against the tenant/applicant is 5 or more years old, 2) a

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landlord may not consider arrest history in evaluating an applicant, where the arrest did not result in charges which are still pending or result in a conviction, 3) a landlord may consider a criminal conviction or pending charge for a drug-related crime, person crime, sex offense, crime involving financial fraud, or any other crime if the nature of the criminal conduct would adversely affect the landlord or other tenants' property, health, safety or right to peaceful enjoyment of the premises.

Though arguably overly permissive to landlords, this change is a welcome recognition that public safety is strengthened when people who have an eviction or criminal history are afforded the opportunity to move forward, find housing, and engage in activities as contributing members of society. We were pleased to see that this bill passed.

Passed: 27-1-2 (Senate; Voting No: Whitsett; Excused: Johnson, Winters), 56-1-3 (House; Voting No: Thatcher; Excused: Buckley, Gorsek, Whitsett).

Accountability for police officers' use of deadly force (SB 779, SB 780, SB 781): Longtime advocates for better policing policies, Senator Jackie Dingfelder (D-Portland) and Representative Lew Frederick (D-Portland) introduced three bills in particular this session to increase transparency and accountability in the instances of police officers' use of deadly force. SB 779, to promote objectivity in police accountability, would have directed the Oregon Attorney General to appoint an attorney to lead an investigation when an officer is involved in an incident of deadly force. SB 780 would have required grand jury proceedings involving use of deadly force by police officers to be recorded, transcribed and made available to the public. This measure was meant to increase public trust in the system. When deadly force cases, which can be so devastating for a community, are followed by an investigation and court proceedings that are held in secret, members of the public are not able to see for themselves the way that the system responds to keep others safe and to hold accountable any officers that abused their position. And SB 781 proposed to clarify how courts evaluate whether an officer's use of force was lawful.

We testified in support of this package of bills because of the ACLU's core belief that transparency and accountability are essential components of public trust in police officers and of the ultimate functioning of the public safety system. Unfortunately, it was clear early in the session that this package of bills was unlikely to move forward and, instead, the Senate Committee on Judiciary held a "courtesy hearing" for the purpose of engaging in a public discussion on the issues and the policy proposals in the bills.

All three bills died in committee.

Further shield jail inspection reports from public access (HB 2143): Oregon's Government Efficiency Task Force identified inefficiency in the way that law enforcement agencies conduct inspections of local jails and it developed the concept for HB 2143 to remove the requirement in current law that the Department of Corrections (DOC) perform such audits. Because local governments currently conduct jail inspections on a periodic basis, argued bill sponsor Representative Nancy Nathanson (D-Eugene), the requirement created duplication so that DOC and local inspectors were oftentimes performing the same inspection of the same facility at the same time. In our experience, we have actually seen that in many cases DOC was not performing the audits at all.

We testified in opposition to the bill and asked for amendments because, while the intention of the bill was to eliminate inefficiency, it formalized a government transparency issue. Currently, local governments contract with the Oregon State Sheriffs' Association (OSSA) to conduct jail inspections. The OSSA uses an extensive set of criteria to evaluate jails, however those criteria remain under seal in the OSSA office, unavailable for public review. Regardless of the fact that the OSSA is a private non-profit organization, the group is performing a public function by inspecting public facilities and the public should have the right to know what criteria they are using for the inspections. Instead, the OSSA inspection reports cite and grade by category from the non-public criteria and provide very little, if any, detail on the investigation itself. In the past, the ACLU has requested copies of their inspection reports and the OSSA has refused to provide them to us. The House Committee on Consumer Protection and Government Efficiency amended the bill to address some of our concerns, ensuring that no fewer information would be available

to the public than was otherwise available when DOC was conducting inspections, but this amendment did not completely satisfy our concerns.

When the bill moved to the Senate side and had a hearing before the Senate Committee on Judiciary, we asked the committee to require that *any* entity performing a jail audit be required to make public the criteria used and the full details of the findings. Like the House committee, the Senate committee understood and agreed with our concerns but too was unwilling to push beyond the scope of the original bill, which was only intended to address the duplicity in jail inspections, to address the larger and important transparency issue. Commending the ACLU for raising the issue, Senator Floyd Prozanski (D-Lane County), Chair of the Senate committee, committed to look further into the issue in advance of the February 2014 session to determine whether additional legislation at that time would be appropriate.

Passed: 57-0-3 (House; Excused: Esquivel, Matthews, Whisnant); 24-1-5 (Senate; Voting No: Shields; Excused: Boquist, Burdick, George, Johnson, Whitsett).

Prohibit racial profiling by law enforcement (SB 560): The Center for Intercultural Organizing (CIO), a grassroots immigrant and refugee rights organization based in Portland, requested the introduction of SB 560, which would have created new provisions in statute to state that profiling by law enforcement agencies based on any of a long list of personal traits (for example, age, race, ethnicity, etc.) is prohibited. The bill would have required law enforcement agencies to adopt written policies, training, and compliant procedures, all designed to eliminate any such practice.

We consulted with CIO prior to the session starting to provide some historical context to anti-profiling work in Oregon up and to this point. Since 1997, Oregon law has required that law enforcement agencies develop and adopt policies prohibiting racial and ethnic profiling as well as a process for receiving and acting on complaints of such profiling. The ACLU played a lead role in pushing for this law, and we continue to actively monitor its implementation, primarily through participation on the Law Enforcement Contacts Data and Policy Review Committee (LECC). The LECC includes law enforcement and community representatives and, since 2001 has focused on encouraging police departments to collect traffic stop data in order to better understand where and how biased-policing occurs.

Understanding that SB 560 was one piece of larger and ongoing work in Oregon to track and address profiling, CIO chose to move forward with the bill in order to elevate the discussion before legislators and amongst members of the communities with which they engage. In the late weeks of the session, SB 560 received an "informational hearing" before a joint meeting of the House and Senate Judiciary Committees. Supporters of the bill filled the hearing room to share their stories. We supported CIO's efforts and also advocated this session for renewed funding for the LECC to continue its important work. Unfortunately, the Legislature did not provide the funding needed for LECC to do so and that work group's future is uncertain.

Died in committee.

EQUAL PROTECTION: ANTI-DISCRIMINATION

Allow legislators to request racial impact statements (SB 463): Modeled after the concept of utilizing fiscal and environmental impact statements before pursuing legislation that might affect the state's budget or projects that might affect environmental interests, SB 463 sets up a process for racial impact statements to inform legislative action in Salem. The bill provides for one legislator from each party to request together that the Criminal Justice Commission prepare a racial and ethnic impact statement that describes the effects of specific legislation on the racial and ethnic composition of the criminal offender population or recipients of human services. The overrepresentation of people of color in both the criminal justice and human services systems is a longstanding issue for Oregon and nationwide, and impact statements are one way to try to stave off laws that might have the unintended consequence of exacerbating the problem. SB 463 provides legislators with an important new tool for addressing racial inequality in Oregon.

Victory! Passed: 27-2-1 (Senate; Voting No: Johnson, Whitsett; Excused: Steiner Hayward), 58-1-1 (House; Voting No: Whitsett; Excused: Bailey), 24-6 (Senate concurrence; Voting No: Johnson, Knopp, Olsen, Starr, Thomsen, Whitsett).

Advance disability rights through stronger service animal laws (SB 610): SB 610 was the product of a workgroup to examine Oregon law in regard to assistance animals. The workgroup included Disability Rights Oregon, the Oregon Bureau of Labor and Industry (BOLI), and Walmart. The bill conformed our state laws with the federal Americans with Disabilities Act (ADA), while maintaining Oregon protections when they are stronger, and included restrictions on when a facility or public accommodation can inquire into the nature of a person's disability or the need for a service animal. SB 610 put into Oregon law important protections for people with disabilities, giving business and law enforcement as well clarity around what use of a service animal is and is not lawful.

Passed: 29-0-1 (Senate; Excused: Johnson); 59-0-1 (House; Excused: Dembrow), 30-0 (Senate concurrence).

Amend Oregon Constitution with Equal Rights Amendment (HJR 21, HJR 35, SJR 24): Three Equal Rights Amendment bills were introduced this session, asking the Legislature to send to the voters a ballot measure to add an ERA – explicitly calling out rights against discrimination for women – to the Oregon Constitution. HJR 21 and SJR 24, identical bills introduced in each chamber, raised several concerns for the ACLU and we took a position in opposition. The Oregon constitution has a section that the U.S. Constitution and most other states' constitutions do not. Article I, section 20 reads: "No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens."

Article I, section 20 is a universal ERA for all groups subject to invidious discrimination in Oregon. So any amendment to the constitution to add particular anti-discrimination rights for women only is, at best, unnecessary but, in the worst case, could potentially erode current protections. When courts look at amendments to the constitution, they do so with the assumption that the people meant something specific by approving it at the ballot. The risk with an Oregon ERA is that the court could interpret it to say that people were implying that existing protections

under Article I, section 20 are inadequate to ensure the rights of women. And, along these same lines, would a court interpret that the people were implying that the rights of other groups categorized by race, religion, disability, etc., should enjoy less protection? If all groups are already protected together, why call out just one?

We continue to be very proud that Oregon was one of thirty-five states to ratify the federal ERA (that ultimately was not ratified by enough states to take effect) and, if our Oregon courts ever retreat from their expansive interpretation of our constitution's anti-discrimination protections, we will lead the fight to restore and strengthen them. But we believe that any changes to our constitution should be highly thoughtful and each change should be meaningful. The idea of amending our constitution with an Oregon ERA for purely symbolic purposes is at best redundant, but might actually take us back from the well-established rights against discrimination that we enjoy today.

Late in the session, HJR 35 was introduced in an attempt to modify the language of the ERA proposal to address some of our concerns. Those changes brought us to a position of neutral on the bill, but brought in opposition from Oregon Right to Life, an anti-choice organization that advocates for burdensome restrictions on women's access to health and reproductive care. ORTL raised concerns that HJR 35 would advance rights to abortion access. None of the three bills moved out of committee this session, but a citizen proponent of the Oregon ERA has begun the process to collect signatures and put the issue on the November 2014 ballot through the citizen initiative process.

All three bills died in committee.

Prohibit discrimination against Section 8 tenants (HB 2639): In 1995, the Legislature committed to protecting tenants from discrimination by landlords on the basis of a tenant's "source of income," including this category in a list of those protected classes from unlawful discrimination. Despite this long-held value, rent assistance through the Section 8 program (a housing voucher program through the U.S. Department of Housing and Urban Development) has been explicitly exempt from the definition of "source of income." HB 2639 was introduced in order to remove this exemption.

For almost forty years the federal government has operated the Section 8 housing voucher program, meant to provide low-income renters an opportunity to reduce reliance on public housing through integration into the private housing market. But the program can only reach these goals if tenants are able to apply their voucher to available housing. A landlord's refusal to accept the voucher is a significant barrier to the effective operation of the program. Moreover, the Legislature's acquiescence to these denials invites and enables unlawful discrimination that is otherwise hidden by the pretext of decisions based on voucher status. Women-headed households account for 76% of all housing choice vouchers, including Section 8 vouchers. Similarly, people living with disabilities, single female heads of household, families with children, and people of color make up the majority of people who receive rental assistance or other supplemental sources of income from government programs. But of course decisions made

on account of membership in any of these groups is expressly prohibited under the law. We supported HB 2639 because it promotes equality and economic justice.

Passed: 38-20-2 (House; Voting No: Bentz, Berger, Cameron, Conger, Davis, Esquivel, Freeman, Hanna, Hicks, Johnson, Kennemer, McLane, Olson, Parrish, Richardson, Sprenger, Thatcher, Thompson, Whisnant, Whitsett; Excused: Kriger, Weidner), 16-13-1 (Senate; Voting No: Baertschiger, Boquist, Close, Ferrioli, George, Girod, Hansell, Knopp, Kruse, Olsen, Thomsen, Whitsett, Winters; Excused: Starr).

Extend workplace protections to interns (HB 2669): The Oregon Bureau of Labor and Industries (BOLI) brought HB 2669 to make a small but important fix to workplace anti-discrimination laws. While protected under state and federal wage and hour law, interns (persons "performing work for educational purposes, whether or not the individual receives payment…") are not covered under the employment-related anti-discrimination laws of Oregon state law. BOLI argued that because interns are often young and inexperienced they are vulnerable to predatory work environments and in need of statutory protection against discrimination. HB 2669 clarified that existing civil rights workplace protections also apply to interns. The bill passed without opposition.

Passed: 59-0-1 (House; Excused: Fagan), 30-0 (Senate).

Repeal surgery requirement for gender change on birth certificate (HB 2093): After the passage of HB 2093 and taking effect January 1, 2014, transgender people in Oregon will no longer have to show proof of surgery in order to change their birth certificates to accurately reflect their gender. Previously, Oregon law required surgery in order to update a birth certificate gender marker, even for those transgender people who did not need or want it, or were unable to access surgery for financial, medical, or other reasons. The ACLU supported the great work of state agency and LGBT advocate partners to reach this victory.

Gender identity is a person's psychological identification as male or female, which for transgender people may differ from that person's anatomical sex. When an individual transitions his or her gender to better align these two things that individual's transition and treatment aim to permit him or her to participate fully and comfortably in society in the gender role with which he or she identifies. While medical treatments, including surgery, are critical to a healthy transition and medically necessary for many transgender people, medical authorities recognize that each transgender person's specific course of treatment must be determined on an individual basis with the patient's physician. Surgery is not a universally required or prescribed aspect of gender transition. Many public and private insurance carriers have historically refused to cover gender-transition-related surgical procedures, leaving them out of reach even for those patients who do need them. And yet, for decades Oregon law has required that transgender individuals seeking to obtain accurate birth certificates undergo costly surgical procedures without regard for whether they wanted or had any medical need for the surgeries. Long overdue, HB 2093 aligns Oregon law with well-established medical standards. It promotes fairness and equality and makes life easier for transgender people born in Oregon.

EQUAL PROTECTION: ANTI-DISCRIMINATION

Victory! Passed: 60-0 (House), 28-1-1 (Senate; Voting No: Boquist; Excused: Ferrioli), 47-10-3 (House concurrence; Voting No: Cameron, Freeman, Gilliam, Hanna, Olson, Sprenger, Thatcher, Weidner, Whisnant, Whitsett; Excused: Buckley, Hoyle, Kotek).

Require universities to collect LGBT demographic data (HB 2995): Basic Rights Oregon, our allies in advocacy for LGBT rights, led an effort to advance HB 2995, which would have required public universities and colleges in Oregon to add sexual orientation to the list of routine demographic data already collected on existing forms. Without mandating that people provide the information and applying the same privacy protection as other school records data, schools would provide students, faculty and staff the opportunity to self-identify and disclose their sexual orientation. Clear, consistent data collection would allow Oregon institutions of higher education to more accurately assess and appropriately address the experiences of gay and transgender students, faculty and staff. Though the bill moved through the House without opposition and received a hearing in the Senate Committee on Education and Workforce Development, it did not move any further this session.

Died in Senate committee. 41-19 (House; Voting No: Bentz, Cameron, Conger, Esquivel, Freeman, Gilliam, Hanna, Hicks, Kennemer, Krieger, McLane, Olson, Richardson, Smith, Sprenger, Thatcher, Weidner, Whisnant, Whitsett).

Direct OHA and DHS to develop demographic data collection standards (HB 2134): In coalition with partners such as the Center for Intercultural Organizing (CIO) and the Asian Pacific American Network of Oregon (APANO), we supported HB 2134 to require the Oregon Health Authority and the Department of Human Services to adopt by administrative rule uniform standards, based on local, statewide and national best practices, for the collection of data on race, ethnicity, preferred spoken and written languages and disability status. Because of the ACLU's ongoing work to implement similar best practices at the Department of Education, we know that a key prerequisite to addressing inequity in health and human services delivery is the collection and evaluation of accurate demographic data. Best practices for accurate data collection include self-identification by the service recipient of racial and ethnic origin as opposed to identification by an observer/caseworker, and options to identify with more than one race or ethnicity that does not default to a general designation as "multi-racial."

Passed: 55-0-5 (House; Excused: Barton, Freeman, Thatcher, Tomei, Weidner), 28-0-2 (Senate; Excused: Boquist, Starr), 54-4-2 (House concurrence; Voting No: Hicks, Thatcher, Weidner, Whisnant; Absent: Fagan, Jenson).

Reverse ban on Native American mascots in schools (SB 215): In 2012 the State Board of Education voted to ban Indian mascots, imagery and logos in Oregon's public schools. As a response, Senator Jeff Kruse (R-Roseburg) introduced SB 215 to essentially reverse that ban. Twice the bill was amended to narrow the scope of the reversal so that the version that ultimately passed permits a district school board to use a Native American mascot only when it enters into a written agreement with the closest federally recognized Native American tribe in regard to the name and symbol of the mascot, expected behavior of students and spectators at athletic events

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with respect to the mascot, and any required cultural diversity training required of athletic or other school personnel.

Even with these changes, we opposed SB 215. There are many other opportunities than those mandated in the bill for public schools to do outreach and include members of the Native American community in curriculum and public acknowledgement without having mascots that are so closely connected to the oppression of native people in Oregon. We understand that there is a long tradition and history of particular schools having Indian mascots, and that these traditions and history have been cited as justification for continuing to permit this practice. But many practices we now recognize as repugnant were once justified on the basis of tradition – including slavery, lynching and school segregation. We do not believe that the historical mistreatment of Native Americans in Oregon should be cause for pride. In the 19th century, our government actively participated in the forced relocation and extermination of thousands of Native Americans. In the 20th century, many of the remaining tribes were terminated and there was a conscious effort to extinguish Native American cultural traditions and practices by forcing Native American children to leave their homes and attend boarding schools designed to help them “assimilate” into the majority culture. Thankfully, most Oregonians now recognize that these practices, although they are a significant part of Oregon history, are blemishes on that history and should not be held up as positive examples for our youth today. And yet, that is one of the inevitable effects of allowing stereotypical views of Native Americans to flourish in some communities.

Passed: 24-4-2 (Senate; Voting No: Dingfelder, Monnes Anderson, Monroe, Rosenbaum; Excused: Devlin, Steiner Hayward), 41-19 (House; Voting No: Bailey, Barton, Dembrow, Doherty, Frederick, Gallegos, Garrett, Gorsek, Holvey, Keny-Guyer, Matthews, Nathanson, Read, Reardon, Tomei, Unger, Vega Pederson, Williamson, Witt), 25-5 (Senate concurrence; Voting No: Dingfelder, Monnes Anderson, Monroe, Rosenbaum, Steiner Hayward). GOVERNOR VETOED. SCORECARD VOTE.

EQUAL PROTECTION: EDUCATION EQUITY

Require schools to adopt fair school discipline policies (HB 2192): We supported HB 2192, which promotes the types of behavior and discipline practices in schools that focus on keeping students safe and keep students learning. The school-to-prison pipeline (STPP) refers to the policies and practices that push students – especially youth of color – out of schools and into the juvenile and criminal justice systems. In our view, students are funneled into the STPP primarily by a zero-tolerance approach to discipline, characterized by inflexible and excessive use of punitive disciplinary measures (like suspension and expulsion) by schools. In 2010 we published an Oregon School to Prison Pipeline report, which examined date around discipline in Oregon schools, and in 2013 we released an updated report. The 2013 report shows that many students of color in Oregon public schools continue to be more frequently expelled or suspended than their white peers. For example, African-American students represent 2.5% of the student population statewide, but received 6.5% of all out-of-school suspensions.

HB 2192 takes an important step in the direction of addressing these disparities, mandating that each school district adopt written policies for the discipline, suspension or expulsion of students. Recognizing that zero tolerance discipline policies tend to have a disparate impact on minority achievement, HB 2192 limits the use of expulsion to situations when the student's conduct poses a threat to the health or safety of students or school employees, or only as a last resort after other strategies to change student conduct have been ineffective. The bill also directs school districts to develop a code of conduct sets out expectations for student behavior, helps create a learning environment that students respect and lays out a clear system of consequences for misbehavior. This bill makes positive changes to school discipline policies.

Victory! Passed: 60-0 (House), 28-0-2 (Senate; Excused: Boquist, Starr), 60-0 (House concurrence).

Improve regulations on restraint and seclusion of students in school (HB 2585): In the 2009 legislative session, HB 2939 was passed with the aim of promoting safety of all students and personnel in schools and of ensuring a positive school culture and climate by limiting and regulating the use of seclusion and restraint of students. This session, HB 2585 built upon this law. It directs the State Board of Education to set up a process for complaints regarding use of physical restraint or seclusion in public education programs and to develop, as well, minimum standards for rooms used for seclusion. HB 2585 also requires annual reporting from public schools detailing the use of physical restraint and seclusion during the school year. In our view, these policies and the improvements brought by HB 2585 will lead to an increase in the use of positive behavior intervention techniques in schools, which will eventually render the practice of seclusion and restraint unnecessary. We join Disability Rights Oregon in support of this bill.

Passed: 44-1-15 (House; Voting No: Hicks; Excused: Barker, Buckley, Frederick, Freeman, Hanna, Huffman, Jenson, Komp, McLane, Nathanson, Read, Richardson, Smith, Tomei, Williamson), 29-0-1 (Senate; Excused: Devlin).

Directs ODE to study effect of poverty on education (HB 2665): Representative Lew Frederick (D-Portland) introduced HB 2665 to better facilitate the connection between Oregon schools and addressing poverty. As the Representative suggested in testimony before the Senate

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Committee on Education and Workforce Development, we know that poverty is a handicapping factor in education, but there is not a coordinated program through our education system to address it. HB 2665 directs the Department of Education to study this issue, evaluating the means by which the impact of poverty on educational attainment is addressed by state law. The study will focus on an analysis of distributions of the State School Fund, standards for equivalency in opportunities to learn across neighborhoods and economic circumstances, and efforts to mitigate disparities in opportunities that are provided outside of the school day or the school year. The bill requires that a report on this study be submitted to the Legislature no later than July 1, 2014. Our support for this bill is consistent with our ongoing work to study and address achievement gap in education, whether it be defined by racial inequity or income disparity.

Passed: 60-0 (House); 28-0-2 (Senate; Excused: Boquist, Starr).

Add parent member to Achievement Compact Advisory Committees (SB 297): As a founding member of the Oregon Alliance for Education Equity (OAEE), a new coalition of groups convened around eliminating the minority achievement gap in education, we supported SB 297. The bill would have required that parents be included as members of Achievement Compact Advisory Committees that are responsible for helping to develop the goals and measuring the progress of achievement compacts for Oregon school districts. Particularly important for low-income students and students of color, the link between parental involvement and improved student achievement is a key component of education equity work and SB 297 would have institutionalized this relationship. Unfortunately, facing opposition from teachers unions, the bill did not move out of the Senate Committee on Education and Workforce Development.

Died in committee.

Update Oregon Minority Teacher Act (SB 755): In addition to the importance to education equity of parental involvement, workforce diversity is also a key component of this work. SB 755 made changes to the Oregon Minority Teacher Act, first passed in 1991, to update the benchmarks for numbers of minority teachers and administrators in Oregon schools and students enrolled in teacher preparation programs. As the number of students of color increases, a diverse workforce will continue to be an important part of the comprehensive strategy to meet the needs of all students. SB 755 represents a renewed commitment on the part of the Legislature to cultivate and retain such workforce.

Passed: 29-0-1 (Senate), 59-1 (House; Voting No: Weidner).

PUBLIC RECORDS AND PUBLIC MEETINGS

Clarify what constitutes a public meeting (HB 3513, SB 41, SB 85, SB 86): In the wake of a judicial opinion issued by the Lane County Circuit Court, Senator Floyd Prozanski (D-South Lane and North Douglas Counties) introduced a bill in the 2012 session seeking to better define the meaning of "deliberations" in public meetings laws. Because of the complexity of the issues, that bill did not move forward and Sen. Prozanski set up a work group in the interim to come up with a new proposal. We participated in that work group and ultimately agreed with others that a legislative solution may not be the best answer. Nevertheless, Sen. Prozanski introduced SB 41, SB 85, and SB 86 to try to amend public meetings laws and, later in the session, Representative Val Hoyle (D-West Eugene and Junction City) introduced HB 3513 to do the same.

The stated purpose of Oregon's public meetings laws is to ensure that the public is aware of the deliberations and decisions of their governing bodies and that these decisions be arrived at in a transparent and open way. To that end, all meetings of a public body must be available and open to the public to attend – a meeting defined as "the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision…" The Lane County decision, *Dumdi v. Handy* (2011), muddled an already fuzzy line between what does and does not constitute a public meeting. In particular, *Dumdi* made two assertions that, arguably, were counter to common understanding and practice for many public bodies. The first was that communication over email is subject to public meetings law restrictions. The second was that a quorum of members of the public body need not be assembled at the same time and in the same place. These serial interactions amongst pairs of officials may amount to a quorum and, if the officials are also engaging in decision making or deliberation, would constitute a public meeting.

Though we did not necessarily view either bill as advancing clarity on these issues, we ultimately supported SB 41 and HB 3513, which were very similar proposals to better define when a governing body is conducting a public meeting. The bills would have limited the scope of a public meeting to those deliberations amongst a quorum of the governing body that are on "a budget, fiscal or policy matter." With this language, the bills were attempting to alleviate angst on the part of smaller governing bodies that a casual conversation between two people (could amount to a quorum for small boards) about their weekends would need to follow public meetings protocol. SB 85 would have clarified that whether or not an issue had yet been posted to a governing body agenda has no effect on whether deliberations rise to the level of public meetings and SB 86 would have exempted meetings conducted over email from public meetings law. We believed SB 85 to be an unnecessary and potentially confusing clarification, and we believed that SB 86 would erode transparency and oversight of our public bodies, and therefore we opposed both bills.

All four bills died in committee.

Exempt from public record bed bug reports from exterminators (HB 2131): HB 2131 was brought by the Multnomah County Health Department to shield from public record reports of bedbug infestations only when those reports come from pest management companies (exterminators). The County argued that exterminators were not reporting bed bug infestations to the County public health officers because, as long as those reports were public, hotels, landlords,

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or any other entity with a bed bug outbreak would not call the exterminator if they knew the exterminator would report their business as having bed bugs. The objective in shielding the reports from public disclosure was to incentivize greater reporting by exterminators in order for the County to get better data on the scope and severity of the bed bug problem.

Because, with amendments, HB 2131 was a narrow change to the law, we took a position of neutral on the bill. The bill did not shield reports by any other entity (for example, hotel inspections reports), only those submitted by exterminators. And the bill still provided for public disclosure of aggregate compilations of data that did not individually identify an individual or business reported as having bed bugs. In written testimony to the Health Care Committee in each chamber, we presented the issue as finding the correct balance between the public's right to access public agencies' records and the public health interest of shielding the data from disclosure. While the ACLU prioritized the public's right to know in this instance, the Legislature did not and the bill moved quickly through the process with an emergency clause, effective upon the Governor's signature on April 2, 2013.

Passed: 55-1-4 (House; Voting No: Barton; Excused: Gallegos, Gelser, Hanna, Jenson), 20-9-1 (Senate; Voting No: Bates, Boquist, Burdick, Ferrioli, Girod, Hass, Olsen, Whitsett, Winters; Excused: Steiner Hayward).

REPRODUCTIVE FREEDOM

Reaffirm Oregon's commitment to reproductive freedom (HCR 6): The ACLU of Oregon is a proud member of the Oregon Pro-Choice Coalition and we have collaborated with partners Planned Parenthood Columbia Willamette, Planned Parenthood Southwestern Oregon, and NARAL Pro-Choice Oregon over decades of struggle to protect reproductive freedom in Oregon. We stood with our coalition partners this session in support of HCR 6, a resolution to reaffirm a woman's right to make reproductive decisions. At an informational hearing before the House Committee on Human Services and Housing we testified that personal privacy and reproductive rights are among our most important constitutional liberties. So much depends on our ability to decide – in consultation with our doctor and our family, free from government interference – whether and when to become a parent. This hearing was an important opportunity to discuss these issues in a public forum and with our legislators, to reaffirm these rights and ACLU's commitment to defeating any effort to undermine them.

Died in committee.

Impose burdensome regulations on certain women's health care facilities (SB 752): Following the lead of a host of anti-choice legislators across the country, Senator Tim Knopp (R-Bend) and Representative Sherrie Sprenger (R-Scio) introduced SB 752. With the ultimate goal of closing down women's health clinics and reducing medical services available at physician's offices for women across the state, these legislators wrote SB 752 to impose excessive and unnecessary regulations on women's health care facilities that provide abortion.

Died in committee.

VOTING RIGHTS

Urge Congress to eliminate barriers to voting (HJM 8): Representative Michael Dembrow (D-Portland) introduced HJM 8, a symbolic gesture urging Congress to "pass legislation requiring all states to eliminate barriers to voter participation in the electoral process." We testified in support of the memorial. Nothing is more fundamental to our democracy than the right to vote; indeed is protected by more constitutional amendments – the 1st, 14th, 15th, 19th, 24th, and 26th – than any other right we enjoy as Americans. But across the country we are seeing hundreds of bills introduced in recent session to burden voters: requiring government-issued photo ID to vote, requiring documentary proof of citizenship when registering to vote, reducing early voting periods, and more. Supporters of these regressive laws claim that such restrictions are necessary to prevent voter fraud, even though virtually no credible threat exists. Furthermore, these suppressive measures disproportionately affect low-income, minority, elderly, disabled, and young voters. HJM 8 was a positive statement about the importance of voting rights in our country. Though it did not move to the floor for a vote this session, members of the public had the opportunity to discuss important issues of voting rights when the memorial received a public hearing in the House Committee on Rules.

Died in committee.

Make online voter registration easier (HB 2017, HB 2988, HB 3521): In 2009, the Legislature passed HB 2386, which directed the Secretary of State to adopt an online voter registration system. Beginning in March 2010, eligible electors have been able to register to vote for the first time or update an existing registration record electronically. Currently, if a person wants to register or update a registration record, that person must provide the number of their valid Oregon driver license, Oregon driver permit, or state identification to allow the Secretary of State to access a digital copy of the license, permit, or ID. HB 2017 would have allowed a voter to supply the last four digits of his or her Social Security number in place of their license, permit, or ID, only when updating an existing voter registration but not when registering for the first time. Making this small change to the process could have the effect of enfranchising a great number of Oregon voters. Voters who have already proven their eligibility and taken the initiative to register should not face unnecessary barriers after they change their address simply because they do not possess a state-issued ID. Though it did not move forward this session, HB 2017 should return in a future session and we will support this small but important fix when it does.

Two other bills were introduced to make it easier to register to vote, but did not pass. HB 2988, with chief sponsors Representatives Ben Unger (D-Hillsboro), Bob Jenson (R-Pendleton), and Greg Matthews (D-Gresham), would have allowed for 16-year-olds to register to vote and HB 3521, in an effort led by Secretary of State Kate Brown, would have created a system of automatic voter registration for persons receiving a driver license through the Oregon Department of Motor Vehicles and otherwise eligible to vote.

All three bills died in committee.

Require documentary proof of citizenship for voter registration (HB 2364, HB 3428): Representative Kim Thatcher (R-Keizer) and, later in session, together Representative Jim

Weidner (R-Yamhill) and Senator Tim Knopp (R-Bend), introduced separate but identical bills (HB 2364 and HB 3428, respectively) to require specified forms of documentary proof of citizenship in order to register to vote for the first time in Oregon. While voting rights advocates across the country continue to fight battles against these and other types of bills that disenfranchise large segments of the electorate, it provides some comfort that the current makeup of the Legislature in Oregon does not take such proposals seriously. Incidents of voter fraud or voting by people in the U.S. without authorization are virtually nonexistent problems, but the advancement of bills such as these creates very real problems to great numbers of eligible voters who cannot easily produce documentary proof of citizenship. Though these bills were certain to not advance this session anyway, the U.S. Supreme Court blocked other states from doing so with its decision in *Arizona v. The Inter Tribal Council of Arizona* that was issued in June, ruling that such laws conflict with the federal National Voter Registration Act and are unconstitutional.

Died in committee.

ACLU OF OREGON - 2013 LEGISLATIVE SCORECARD

We like to make sure that legislators know the ACLU's position on important civil liberties bills prior to voting. By the time a bill reaches the floor for a vote, only those legislators who were in the corresponding policy committee are aware of our position. To be sure that all legislators know our position before the vote, we distribute floor statements to all members in the appropriate chamber explaining our position and urging either a Yes or a No vote. When the legislative session is over, we review the key civil liberties floor votes and we strive to include in the scorecard a sample of votes that best represents the full range of civil liberties issues voted on by either the House or the Senate. The scorecard tracks votes by all 90 legislators and tallies an ACLU Percentage Rating.

A GUIDE TO SCORECARD BILLS

BILL	SUBJECT
SB 215	Repeals ban on Native American mascots in Oregon schools that was passed by the Oregon Board of Education in 2012. Perpetuates discriminatory stereotyping by our public institutions. Schools should engage in alternative methods of outreach to Native American communities without having mascots that are so closely connected to the oppression of native people. Passed Senate (25-5) and House (41-19), but was vetoed by the Governor.
SB 344	Prohibits universities from demanding students' social media passwords. Protects in the online world students' personal information that would never be available to schools in the offline world. Passed Senate (28-0) and House (57-1), and signed by the Governor. Takes effect January 1, 2014.
SB 470	Expands collection of and access to Oregonians' prescription drug record data through the Prescription Drug Monitoring Program (PDMP). Amendments on the House side removed provisions posing the greatest risk to medical privacy, but still did not move ACLU to a position of supporting the bill. Passed Senate (22-8) and House (56-2), and signed by the Governor. Takes effect January 1, 2014.
SB 833	Restores access to driver licenses for immigrants in Oregon. Promotes fairness, equality, and road safety. Passed Senate (20-7) and House (38-20), and signed by the Governor. Expected to take effect January 1, 2014.
HB 2654	Prohibits employers from demanding employees' social media passwords. Protects digital privacy of employees from employer snooping. Passed House (56-3) and Senate (28-1), and signed by the Governor. Takes effect January 1, 2014.
HB 2710	Limits and regulates use of surveillance drones by law enforcement agencies, including a requirement that law enforcement get a warrant before invading Oregons' privacy with a drone. Passed House (56-3) and Senate (24-6), and signed by the Governor. Took effect July 29, 2013.
HB 2787	Provides access to in-state tuition to Oregon universities for otherwise eligible immigrant youth in Oregon. Promotes fairness and equality and makes Oregon a more welcoming place for immigrants. Passed House (38-18) and Senate (19-11), and signed by the Governor. Took effect July 1, 2013.
HB 2962	Repeals Oregon statutes protecting criminal defendant's right to a speedy trial above and beyond protections in the Constitution. Amendments in the Senate moved the date of repeal to 2014 so that stakeholders could negotiate a different solution to be proposed in the February 2014 legislative session. Passed House (42-18) and Senate (27-2), and signed by the Governor.
HB 3014	Requires schools to lead students in daily Pledge of Allegiance. Current law requires Pledge once weekly and is a statute we believe to be vulnerable to a constitutional challenge under the Oregon Constitution's religious freedom provision, as the Pledge includes "under God." This bill would have increased the burden on school age children to set themselves apart from their peers by refraining from reciting the Pledge because of religious, political, or other beliefs. Amendments in the Senate addressed ACLU concerns. Passed House (42-16) and Senate (28-2), and signed by the Governor. Took effect July 1, 2013.
HB 3460	Licenses and regulates medical marijuana dispensaries. Improves safe access to medical care for patients in the Oregon Medical Marijuana Program. Passed House (31-28) and Senate (18-12).

LEGISLATIVE SCORECARD - SENATE

SENATOR	SB 215	SB 344	SB 470	SB 833	HB 2654	HB 2710	HB 2787	HB 3460	ACLU %
ACLU Position	**No**	**Yes**	**No**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	
OUTCOME	**Vetoed**	**Passed**	Passed	**Passed**	**Passed**	**Passed**	**Passed**	**Passed**	
Baertschiger, Herman (R)		Y		Y	Y				37.5
Bates, Alan (D)		Y		Y	Y	Y	Y	Y	75
Beyer, Lee (D)		Y		Y	Y		Y	Y	62.5
Boquist, Brian (R)		Y	N	Y	Y				50
Burdick, Ginny (D)		Y	N	Y	Y	Y	Y	Y	87.5
Close, Betsy (R)		Y			Y	Y			37.5
Courtney, Peter (D)		Y		Y	Y	Y	Y	Y	75
Devlin, Richard (D)		Y		Y	Y	Y	Y	Y	75
Dingfelder, Jackie (D)	N	Y	N	Y	Y	Y	Y	Y	100
Edwards, Chris (D)		Y	N	Y	Y	Y	Y	Y	87.5
Ferrioli, Ted (R)		Y		Y	Y	Y		Y	62.5
George, Larry (R)		Y	N	Y	Y	Y		Y	75
Girod, Fred (R)		Y			Y	Y			37.5
Hansell, Bill (R)		Y		Y	Y	Y	Y		62.5
Hass, Mark (D)		Y		Y	Y	Y	Y	Y	75
Johnson, Betsy (D)		*E*		*E*	*E*		Y		20
Knopp, Tim (R)		Y			Y	Y			37.5
Kruse, Jeff (R)		Y			Y	Y			37.5
Monnes Anderson, Laurie (D)	N	Y		Y	Y	Y	Y	Y	87.5
Monroe, Rod (D)	N	Y		Y	Y	Y	Y		75
Olsen, Alan (R)		Y			Y				25
Prozanski, Floyd (D)		Y	N	Y	Y	Y	Y	Y	87.5
Roblan, Arnie (D)		Y		Y	Y	Y	Y	Y	75
Rosenbaum, Diane (D)	N	Y	N	Y	Y	Y	Y	Y	100
Shields, Chip (D)		Y	N	*E*	Y	Y	Y	Y	85.7
Starr, Bruce (R)		Y			Y	Y	Y	Y	62.5
Steiner Hayward, Elizabeth (D)	N	Y		Y	Y	Y	Y	Y	87.5
Thomsen, Chuck (R)		Y		Y	Y	Y	Y		62.5
Whitsett, Doug (R)		Y							12.5
Winters, Jackie (R)		*E*		*E*	Y	Y		Y	50

Votes marked with an "*E*" indicate legislator was Excused; ACLU eliminates those instances when calculating a legislator's ACLU score.

LEGISLATIVE SCORECARD - HOUSE

REPRESENTATIVE	SB 215	SB 344	SB 833	HB 2654	HB 2710	HB 2787	HB 2962	HB 3014	ACLU %
ACLU Position	**No**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**No**	**No**	
Outcome	Passed	**Passed**	**Passed**	**Passed**	**Passed**	**Passed**	**Passed**. Amendments in Senate fixed ACLU concerns.		
Bailey, Jules (D)	N	Y	Y	*E*	Y	Y	N	N	100
Barker, Jeff (D)		Y	Y	Y	Y	Y		N	75
Barnhart, Phil (D)		Y	Y	Y	Y	Y	N		75
Barton, Brent (D)	N	Y	Y	Y		Y		N	75
Bentz, Cliff (R)		Y		Y	Y	Y			50
Berger, Vicki (R)		Y		Y	Y	Y			50
Boone, Deborah (D)		Y	Y	Y	Y	Y			62.5
Buckley, Peter (D)		Y	Y	Y	Y	Y		*E*	71.5
Cameron, Kevin (R)		Y		Y	Y				37.5
Clem, Brian (D)		Y	Y	Y	Y	Y			62.5
Conger, Jason (R)		Y		Y	Y				37.5
Davis, John (R)		Y	Y	Y	Y				50
Dembrow, Michael (D)	N	Y	Y	Y	Y	Y	N	N	100
Doherty, Margaret (D)	N	Y	Y	Y	Y	Y			75
Esquivel, Sal (R)		Y		Y	Y				37.5
Fagan, Shemia (D)		Y	Y	Y	Y	Y			62.5
Frederick, Lew (D)	N	Y	Y	Y	Y	Y	N	N	100
Freeman, Tim (R)		Y		Y	Y				37.5
Gallegos, Joe (D)	N	Y	Y	Y	Y	Y		N	87.5
Garrett, Chris (D)	N	Y	Y	Y	Y	Y		N	87.5
Gelser, Sara (D)		Y	Y	Y	Y	Y			62.5
Gilliam, Vic (R)		Y	Y						25
Gomberg, David (D)		Y	Y	Y	Y	Y	N	*E*	86
Gorsek, Chris (D)	N	Y	Y	Y	Y	Y	N		87.5
Greenlick, Mitch (D)		Y	Y	Y	Y	Y	N	N	87.5
Hanna, Bruce (R)		Y	*E*	Y	Y				43
Harker, Chris (D)		Y	Y	Y	Y	Y		N	75
Hicks, Wally (R)					*E*				0
Holvey, Paul (D)	N	Y	Y	Y		Y		N	75
Hoyle, Val (D)		Y	Y	Y	Y	Y			62.5
Huffman, John (R)		Y		Y	Y	Y	N		62.5
Jenson, Bob (R)		Y	Y	Y	Y	*E*			57
Johnson, Mark (R)		Y	Y	Y	Y	Y			62.5
Kennemer, Bill (R)		Y		Y	Y				37.5

Votes marked with an "*E*" indicate legislator was Excused; ACLU eliminates those instances when calculating a legislator's ACLU score.

LEGISLATIVE SCORECARD - HOUSE

REPRESENTATIVE	SB 215	SB 344	SB 833	HB 2654	HB 2710	HB 2787	HB 2962	HB 3014	ACLU %
Keny-Guyer, Alissa (D)	N	Y	Y	Y	Y	Y		N	87.5
Komp, Betty (D)		Y	Y	Y	Y	Y	N		75
Kotek, Tina (D)		*E*	Y	Y	Y	Y	N		71.5
Krieger, Wayne (R)		Y		Y	Y				37.5
Lively, John (D)		Y	*E*	Y	Y	Y		N	71.5
Matthews, Greg (D)	N	Y	Y	Y	Y	Y			75
McKeown, Caddy (D)		Y	Y	Y	Y	Y	N		75
McLane, Mike (R)		*E*		Y	Y				28.5
Nathanson, Nancy (D)	N	Y	Y	Y	Y	Y	N		87.5
Olson, Andy (R)		Y		Y	Y				37.5
Parrish, Julie (R)		Y		Y	Y	Y			50
Read, Tobias (D)	N	Y	Y	Y	Y	Y		N	87.5
Reardon, Jeff (D)	N	Y	Y	Y	Y	Y	N		87.5
Richardson, Dennis (R)		Y		Y	Y				37.5
Smith, Greg (R)		Y	Y	Y	Y	*E*			57
Sprenger, Sherrie (R)		Y		Y	Y				37.5
Thatcher, Kim (R)		Y		Y	Y	*E*			43
Thompson, Jim (R)		Y		Y	Y				37.5
Tomei, Carolyn (D)	N	Y	Y	Y	Y	*E*	N	N	100
Unger, Ben (D)	N	Y	Y	Y	Y	Y			75
Vega Pederson, Jessica (D)	N	Y	Y	Y	Y	Y	N	N	100
Weidner, Jim (R)		Y		Y	Y				37.5
Whisnant, Gene (R)		Y		Y	Y				37.5
Whitsett, Gail (R)		Y			Y		N		37.5
Williamson, Jennifer (D)	N	Y	Y	Y	Y	Y	N	N	100
Witt, Brad (D)	N	Y	Y	Y	Y	Y	N		87.5

Votes marked with an “*E*” indicate legislator was Excused; ACLU eliminates those instances when calculating a legislator’s ACLU score.