

# Police 'unlawful assembly' powers come under fire

ACLU says Portland police use law for BLM but not on white supremacists gatherings

By **ANDREW SELSKY**  
Associated Press

SALEM — As racial injustice protesters swarmed the streets of Portland day after day last year, a voice would come over a police loudspeaker, announcing they had assembled unlawfully and would be arrested or face tear gas and rubber bullets if they didn't disperse.

Law enforcement agencies can respond that way under an arcane Oregon law that critics say allows them to violate people's First Amendment rights to free speech and peaceful assembly. Now, state Rep. Janelle Bynum, a Black Democratic lawmaker, is seeking to repeal the law in this predominantly white state.

The push comes after Portland saw more than 100 straight days of sometimes violent protests following the police killing of George Floyd in Minneapolis in late May.

Other states have dealt with the issue. In 1971, the Virginia Supreme Court invalidated Virginia's unlawful assembly statute on First Amendment grounds, the ACLU of Oregon said. The court said the law was too broad in banning demonstrators' intent to use force and violence, even if they did not pose a threat.

Law enforcement has already begun lining up against the Oregon bill sponsored by Bynum, who



Noah Berger/AP Photo, File

Black Lives Matter protesters on Aug. 2, 2020, march through Portland. A lawmaker in Oregon is trying to repeal a statute that allows police to declare an unlawful assembly, which critics say enables authorities to restrict free speech and the right to assemble.

chairs the House subcommittee on equitable policing and held a public hearing Monday.

"Repealing this statute will eliminate a valuable tool that law enforcement uses to disperse unlawful gatherings and deescalate tensions when violence and threats to community safety become likely," said Chris Skinner, police chief of the college town of Eugene who testified on behalf of associations of police chiefs and sheriffs.

He said that without the law, "law enforcement would be forced to wait to respond until violence and criminal activity escalates."

Supporters of the measure say it shouldn't be up to police to decide if a protest has the potential to become violent. The law also gives officers

the power to arrest people before there's a crime. The American Civil Liberties Union of Oregon says that because unlawful assembly is not a crime in Oregon, the vast majority of protesters who were arrested were charged with interfering with a peace officer.

A version of the law has existed since before Oregon became a state. Before the 1980s, the law was even more draconian, critics say, allowing law enforcement to order bystanders to disperse an unlawful assembly and that failure to do so could result in arrest.

Sheriff's deputies used that provision in 1984 during protests by environmentalists against logging in the Willamette National Forest. Protesters blocked a logging road to protest the cutting of trees that they

felt should have been preserved as wilderness.

A Linn County deputy sheriff ordered a freelance photographer to arrest the demonstrators or face prosecution for a felony. The photographer told the protesters they were under arrest. They refused to move, the ACLU of Oregon recalled in 1987 testimony to the Legislature.

"The deputy then ordered the photographer to carry the demonstrators to the sheriff's van. He refused, and he was arrested," the group said. Two other people also were arrested after refusing to arrest the demonstrators.

A prosecutor later dropped charges against the three. In a lawsuit against the county, a federal judge ruled in 1986 the law's provision compelling bystanders to assist in arrests was unconstitutional. The Legislature in 1987 repealed the provision.

The Oregon law still is unconstitutional because it gives police outsized power to silence dissent, said Kelly Simon, the ACLU of Oregon's interim legal director.

"Ironically, or maybe not so ironically in Oregon, unlawful assembly declarations too often are precursors to police violence against those asking for the government to recognize their right to be safe," Simon told Bynum's subcommittee.

# State says it is close to catching up on benefits for jobless

By **PETER WONG**  
Oregon Capital Bureau

SALEM — All benefits pending to self-employed and gig workers will be paid by the Oregon Employment Department within the next few days.

The agency said in a statement last week that retroactive payments should be entered in its computer system as "paid" by Thursday, Feb. 11.

"Once that happens, they will have ... benefits within a few days," agency officials said.

The latest 11-week extension of benefits is scheduled to end March 13, though some benefits will continue to be paid through April 10.

Acting Director David Gerstenfeld advises people to continue to file their claims with the state agency each week, because the U.S. Department of Labor has said all are eligible for the full 11 weeks of benefits.

Benefits paid to some 70,000 self-employed and gig workers under the program, known as Pandemic Unemployment Assistance, ended abruptly because the Employment Department's computer system is programmed to end benefits after one year.

Those benefits were approved originally under

the federal coronavirus relief act, which was signed March 27, 2020. They expired Dec. 26, but Congress extended some benefits for 11 weeks in legislation signed Dec. 27. The extension itself is not retroactive.

About 1,400 people filed recently for benefits under Pandemic Unemployment Assistance, but the state computer system may have rejected their claims because of the one-year barrier. Agency officials said they would shift some of them over to the 11-week extension known as Pandemic Emergency Unemployment Compensation.

President Joe Biden has proposed another extension of all unemployment benefits through Sept. 30, the end of the federal budget year. The money is part of Biden's \$1.9 trillion economic recovery plan pending in Congress, where Democratic majorities in both chambers have approved a budget resolution. That approval is a preliminary step toward House and Senate votes on the plan as part of budget reconciliation, which requires only simple majorities for passage.

Democratic congressional leaders say they hope to complete action by the end of February.

# 'Hateful, racist' emails prompted state to close vaccine meetings to public

By **FEDOR ZARKIMIN**  
The Oregonian/OregonLive

SALEM — Two members of an Oregon group charged with deciding who gets coronavirus vaccines next received racist, hateful and upsetting messages, prompting state officials to close public access to the group's last two meetings, state officials revealed Friday, Feb. 5.

The Vaccine Advisory Committee's explicit focus has been to bring equity to the vaccine equation, speaking for underserved communities and helping combat the racism ingrained in Oregon's health care system.

But the group appeared to be the victim of some of what it was fighting, with one member receiving "multiple hateful, racist emails" and another getting "upsetting communications," a spokesman for the Oregon Health Authority said.

"It was just so disheartening. These are folks who volunteered their time," Rachael Banks, the public health director, told The Oregonian/OregonLive. "They're there advocating on behalf of their communities."

The 27-member committee made its final recommendations Jan. 28 as part of its eighth meeting open

to the public. State officials said they learned about the emails the following day, prompting them to close access to meetings Tuesday and Thursday in the interests of the members' comfort and safety, and because the formal recommendations had already been finalized.

Banks said she believes members were more comfortable speaking openly during the closed meetings. But the lack of transparency prevented the public from hearing members' concerns about the process, including the little time they had to come up with recommendations and what one member said was a desire for some form of oversight of how vaccines are allocated locally.

Members did not ask the health authority to close the meeting to the public, Banks said, but people on the committee were concerned when they learned about the racist emails.

The agency acknowledged the fine line it has to walk when choosing to close public access to meetings, which previously had been live streamed or recorded for online viewing.

State officials opted not to even take notes from Thursday's meeting.

"There is a transparency

and community impact when that kind of violent and intimidating speech makes it difficult for volunteers to serve and advocate for the broader community," spokesman Robb Cowie said. "We're always navigating these kinds of tensions and dilemmas about, 'How do we protect volunteers?' 'How do we also ensure an open forum and a transparent forum?'"

As part of the committee's official work, members at one point said they wanted communities of Black, Indigenous and people of color to be vaccinated after the governor's priority groups, which include health care workers, teachers and seniors. But in the group's final decision-making meeting last week, state officials said that would be impossible for legal reasons.

Banks acknowledged the equity group's timeline was "fast" and explained that the legal analysis wasn't provided until the last meeting because the group only proposed prioritizing BIPOC communities later in the process.

"At that point, we began having conversations and understanding the legal implications of that," Banks said. "But I'm sure that it didn't feel like enough time for people."