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STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

April 28, 2023

Representative Dacia Grayber
900 Court Street NE H492
Salem OR 97301

Re: Question concerning House Bill 2572

Dear Representative Grayber:

You asked whether the -3 amendments to House Bill 2572 would apply to persons engaging in “corking,” or using bicycles in a coordinated manner to restrict or block traffic during a protest, march or demonstration. The answer is, most likely, no.

The -3 amendments to HB 2572 create a civil cause of action against persons who engage in paramilitary activity. A person is subject to the right of action if the person knowingly, “while acting as part of a private paramilitary organization or on behalf or in furtherance of any objective of a private paramilitary organization,” engages in certain specified conduct while armed with a dangerous or deadly weapon.¹ A “private paramilitary organization” is defined as “any group of three or more persons associating under a command structure for the purpose of functioning in public or training to function in public as a combat, combat support, law enforcement or security services unit.”

In order to be subject to a cause of action under the -3 amendments to HB 2572, a person who engages in corking would need to: (1) act as part of, on behalf of or in furtherance of an objective of, a private paramilitary organization; (2) be armed with a dangerous or deadly weapon; and (3) engage in the specific conduct described in the -3 amendments. The conduct that seems most applicable to corking is when a person “[a]ssumes, exercises or asserts, without legal authorization, the functions, powers or duties of” law enforcement or local government officials, or prevents a person “from engaging in conduct in which the other person has a legal right to engage.”

Beginning with the third element described above, it is possible that a court would find that, by blocking traffic, a person engaging in corking is preventing persons from being able to engage in conduct in which they have a legal right to engage (proceeding down the street), or is assuming the function of a law enforcement officer performing traffic control functions. However,

¹ “Dangerous weapon” and “deadly weapon” are, for purposes of the amendments, defined in ORS 161.015.

a person engaging in corking likely would not satisfy the other two elements and therefore would not be subject to the cause of action.

Concerning the first element, absent some additional evidence to the contrary, a group of persons blocking traffic with bicycles is most likely not functioning as a combat, combat support or law enforcement unit. The term “security services” is not defined, but a court seeking to determine the meaning of that term would engage in a structured methodology to discern the intent of the Legislative Assembly that enacted the statute in question.² Under this methodology, a court looks first to the text and context of the statute, considers proffered legislative history and finally weighs general maxims of statutory construction if there is any remaining uncertainty.

In the -3 amendments to HB 2572, the term “security services” is used in conjunction with the terms “combat” and “law enforcement,” and a court may find that the terms share some common meaning. The term “private security services” is defined in an unrelated Oregon law, relating to the licensing of private security professionals, as “reporting unlawful activity,” “[p]reventing or detecting theft,” “[p]rotecting individuals or property . . . from harm,” “[c]ontrolling access to premises being protected,” “[s]ecurely moving prisoners,” detaining or arresting persons or providing certain canine services.³ The only part of that definition that seems relevant to persons engaged in corking is “protecting individuals . . . from harm,” but it seems very unlikely that a court would find that any person engaged in any activity that could hypothetically protect other people from harm is engaging in “security services.” A court would most likely find the meaning of “security services” within the -3 amendments to be closer to conduct that is more analogous to law enforcement activity. We also note that the legislative record of HB 2572 could be clarified in this regard for future courts to use as more definitive evidence of legislative intent.

Turning finally to the second element, a bicycle is not a deadly weapon, as it is not “specifically designed for” causing death or serious physical injury.⁴ A bicycle is also not a dangerous weapon unless the bicycle is “used, attempted to be used or threatened to be used” in a manner that is “readily capable of causing death or serious physical injury.”⁵ A court would almost certainly find that when a person is simply standing with a bicycle, blocking traffic, the bicycle is not a dangerous weapon.

We conclude that, without some additional conduct, a person engaging in corking would not satisfy the elements required for the person to be subject to the cause of action described in the -3 amendments to HB 2572.

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² See *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 610-611 (1993); *State v. Gaines*, 346 Or. 160, 171-172 (2009).

³ ORS 181A.840 (8).

⁴ ORS 161.015 (2).

⁵ ORS 161.015 (1).

the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel

A handwritten signature in black ink, appearing to read "D. Johnson", written in a cursive style.

By

Jessica L. Minifie
Senior Deputy Legislative Counsel