



**Testimony of Kimberly McCullough, Legislative Director
In Opposition to HB 2614
House Committee on Judiciary
March 2, 2017**

Chair Barker and Members of the Committee:

The ACLU of Oregon opposes HB 2614, which would categorically authorize nonconsensual blood tests of drivers. The degree of intrusiveness of blood-extraction renders it very different from the relatively non-intrusive nature of a breathalyzer test. It is our position that the compelled taking of blood from a criminal subject is *per se* unreasonable under the Fourth Amendment, and unduly invades the privacy interest of bodily integrity.

In 2013, the United States Supreme Court held that a warrant must be obtained before law enforcement may pierce a person's skin to take a blood test. *Missouri v. McNeely*, 133 S.Ct. 1552. There are several compelling reasons for this constitutional rule. First, "any compelled intrusion into the human body implicates significant, constitutionally protected privacy interests." *Id.* Second, because warrants can be obtained fairly quickly in today's technological world, it is unclear why it would not generally be possible to obtain a warrant before conducting a blood sample to test for the presence and level of an intoxicating substance.

In some exceptional circumstances, an exigency may make obtaining a warrant impractical. In such rare cases, the Court has held that a search may be made without a warrant. But that is the exception, not the rule. HB 2614 creates exactly the type of categorical rule the United States Supreme Court held unconstitutional in *Missouri v. McNeely*. We believe such a statute would be vulnerable to challenge under the Fourth Amendment and Article I, section 9 of the Oregon Bill of Rights.

A warrant standard for blood types is appropriate because it provides some oversight into this type of intrusion which affords people rights when a test is taken improperly. An implied consent law does not require that any standard be met before a blood test is taken. At least with a warrant, some standard must be articulated to a judge, and whether that standard has been met can then later be challenged in court. This means that law enforcement will have a reason to limit their use of blood tests to those circumstances when it is truly justified.

Expanding the implied consent law in this manner is also unnecessary. Obtaining a warrant to take a blood test is not that difficult (when there is a basis for needing to take one). These tests cannot happen on the side of the road, because they must be taken by a medical professional. A warrant can be obtained in the time it would take to transport a person to a location where their blood can be taken by a qualified professional.

For these reasons, we urge your opposition to HB 2614. Please feel free to reach out if you have any questions or concerns.