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**Testimony of D. Michael Dale
Before the Senate Workforce Committee
April 4, 2019
SB 750 – Oregon Corporate Accountability Act**

I am the Executive Director of the Northwest Workers' Justice Project. I have been a lawyer since 1975, and have spent most of that time representing migrant and seasonal workers. The Northwest Workers' Justice Project provides legal representation to low wage contingent workers throughout the economy in sectors such as construction, building maintenance, landscaping, hotel and restaurant industry, food processing, agriculture and reforestation. This bill is supported by the Oregon Coalition to Stop Wage Theft, of which NWJJP is a member. The Coalition includes about 40 civic, labor, religious and business organizations.¹

Over the past several years, Oregon has become a national leader in providing reasonable protections for workers, including an enhanced minimum wage, paid sick leave, anti-discrimination laws and fair scheduling provision for workers employed by larger establishments. Unfortunately, our ability to enforce those laws has not kept pace. Traditionally, enforcement of labor laws occurs either through a private lawsuit or by state agency enforcement. Both avenues are currently severely hampered. A law that can't be enforced is of no benefit to the worker, and only creates a competitive disadvantage for good employers who comply with the law.

Increasingly we are encountering employment contracts that contain mandatory arbitration agreements with a bar to participating in class actions. These clauses are often contained in the fine print of job applications or as a click box in hiring software. The worker often has no idea that they have agreed to give up important rights such as the right to go to court to have their claims decided by a jury of their peers, and the right to work collectively with other affected workers. It is estimated that the jobs of more than 50% of all jobs and 70% of low-wage jobs are now covered by arbitration agreements. These provisions come stocked

¹ Adelante Mujeres, AFL/CIO of Oregon, AFT Oregon, American Friends Service Committee, Beyond Toxics, CAUSA, Catholic Office of Life, Justice and Peace, Archdiocese of Portland, Centro Latino Americano of Eugene, Common Cause Oregon, Community Alliance of Lane County, Economic Fairness Oregon, Ecumenical Ministries of Oregon, Family Forward Oregon, Human Dignity Advocates of Crook County, Interfaith Movement for Immigrant Justice (IMiJ), Jewish Federation of Greater Portland, Mainstreet Alliance, Northwest Forest Worker Center, Northwest Workers' Justice Project, Oregon Action, Oregon AFSCME, Oregon School Employees Association, Oregon Center for Christian Voices, Oregon Center for Public Policy, Oregon Strong Voice - Southern OR Chapter, Oregon Thrives, Oregon Trial Lawyers Association (OTLA), Oregon Working Families, PCUN, Portland Jobs with Justice, Project REconomy, Rural Organizing Project, SEIU Local 49, SEIU Local 503, Tax Fairness Oregon, Teamsters Local 26, Unidos Bridging Community, United Food and Commercial Workers Local 555, and VOZ Workers Education Project.

with unfair and burdensome provisions. Some examples from our recent cases: limitations on discovery, nondisclosure agreements, requirement to pay hundreds or even thousands of dollars in arbitration fees, required venue in Minnesota. Since large employers are frequent users of arbitration services, and since most workers will never hire another arbitrator, there is a perverse incentive for the arbitrator to be biased toward the employer.

Most worker claims are for relatively small amounts of money, and since class actions are usually forbidden, it is often difficult to impossible to find a lawyer to represent the worker. The net result is that most legitimate claims are never brought. If the employer loses the arbitration, the results will probably never be known to the public because of confidentiality clauses imposed by the employer. These aspects allow employers who are unscrupulous to continue unlawful practices, treating the occasional arbitration of small sums to be just a cost of doing business.

Unfortunately, Oregon's current ability to step up its public enforcement to pick up the slack is sadly inadequate. The enforcement staff of BOLI was decimated in the late 1980s and then cut again in the 1990s due to budget shortfalls. To restore BOLI's coverage level to 1991 levels (the earliest date for which records can be located) it would require that the budget be doubled from current funding, but even that unlikely restoration of funding would be inadequate since Oregon has since adopted numerous important new worker protections that BOLI must also enforce. (See attached report by OCPP on this point.)

SB 750 starts from the observation that the state simply lacks the resources to achieve an acceptable level of enforcement by paid state workers. Borrowing on a strong western tradition of deputizing members of the public to help with enforcement when resources are inadequate, SB 750 enables the use of whistleblower actions to help fill the gap in enforcement. BOLI would have the first opportunity to enforce, but if it is unable to do so, affected individuals could bring a court action on the State's behalf to collect penalties for violations. This action continues to be supervised by the state agency. If fines are ordered, the lion's share of receipts goes back to the agency, targeted for further enforcement.

NWJP and the Oregon Coalition to Stop Wage Theft strongly recommend the enactment of SB 750.