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Testimony in Opposition of HB 4002

Oregon Farm Bureau Federation
House Business and Labor Committee

February 8, 2022

Chair Holvey and Members of the Committee,

The Oregon Farm Bureau Federation appreciates the opportunity to submit testimony on behalf of our nearly 7,000 family farm and ranch members across the state of Oregon, many of whom would be put out of business if the proposal moves forward as drafted or, alternatively, if the Bureau of Labor & Industries is allowed to capitalize on a 2017 drafting error and move forward with rulemaking mandating overtime at an unworkable threshold.

The Oregon Farm Bureau has been working for months to find a middle ground that would enable Oregon farms and ranches to remain viable and keep workers employed while recognizing the value of our agricultural workforce. However, proponents remain unwilling to move off of their calls for a 40-hour overtime threshold that will put family farms and ranches out of business, reduce agricultural worker income, and eliminate agricultural jobs.

Oregon Farmers and Ranchers are Price Takers

Oregon family farms and ranches compete in a global economy. As prices for inputs in Oregon rise, which they have substantially in the past year, farmers and ranchers cannot raise the price of their commodities, meaning that they are often forced to sell at a loss. If the margins become too thin and they operate at a loss for enough years, they will either move to a different commodity where margins are better or go out of business entirely. For row crops and vegetables, those acres are more likely to transition to non-food crops, while multi-year crops such as tree fruit and blueberries are more likely to be sold to a larger company who can operate with economies of scale and afford a smaller margin for their products. Either way, Oregon's diverse landscape of family farms will be significantly and negatively impacted by HB 4002.

Many of Oregon's most beloved commodities rely heavily on agricultural labor, which has become the driving cost for farmers of those commodities over the past decade as

wages, benefits, and the cost of employing workers has risen. Over the last 6 years, Oregon has adopted policies that increase regulatory and workforce costs well above other states and countries. Our farmers have come to see their margins become increasingly tighter, and many small and medium size farms are leaving the state.¹ Oregon agriculture is unique and diverse – every commodity will face challenges specific to their operations as they try to absorb the financial and operational challenges any overtime proposal creates.

Across all sectors, Oregon farmers and ranchers are increasingly seeing agricultural production leave the state and the nation. Particularly for food crops, we face increasing competition from Central and South America, where the cost of labor is dollars a day and environmental regulations are much less stringent. We hear every day of grocery retailers and other distributors shifting their buying to Central and South America. For many commodities, where you could once count on a local market for most of the summer, Oregon producers are often lucky to get a month where their commodities are being sold locally before purchasing shifts to another state or country. A further increase in costs for Oregon family farms and ranches will only serve to hasten the transition of our food production out of Oregon and the trend toward agricultural land ownership being vested in fewer and fewer businesses.

Oregon Family Farms and Ranches Cannot Afford to Pay Overtime

Most farmers simply cannot afford a year-round 40-hour overtime threshold that fails to recognize the undue hardship our farms face when crops and animals dictate work schedule. Unable to absorb or recoup the cost of overtime wages, our economic study clearly showed that farm employers will be forced to adjust work schedules, mechanize or switch to less labor-intensive crops to control labor costs.² Growers who do not have those options will be forced to downsize or sell their operation to survive.

Farmworkers will bear the consequences. Without some allowance for an increased threshold for overtime, workers will face fewer hours and lower overall wages as farmers adapt to mitigate impacts. California's 40-hour overtime policy, which was phased in this year, has resulted in reduced hours and lost wages for farmworkers.³

The testimony from farm workers in support of ag overtime in the record is largely based on the false promise that workers will not have their hours cut, but will instead receive overtime pay for all hours worked over 40. Labor advocates sat at a table with employers last year, and as a work group, we discussed and came to an understanding that Oregon's agricultural sector cannot afford to pay overtime and will instead cut hours

¹ https://agsci.oregonstate.edu/sites/agscid7/files/main/about/oragecon_report_2021.pdf (showing loss of over 1200 farms between 50-1000 acres between 2012-2017).

² https://oregonfb.org/wp-content/uploads/2020/08/Economic-Effects-of-Proposed-Oregon-Agricultural-Overtime_Final-with-Surveys.pdf

³ https://www.bakersfield.com/news/farmworkers-growers-dissatisfied-after-overtime-change/article_48675756-7562-11ec-b6a6-7300e290a469.html

and reduce their labor force where possible to remain viable. Given that this is broadly understood and agreed to by both sides, it is disingenuous for advocates to promise workers overtime pay that ag employers are not able to provide. Unless the state or labor advocates themselves are going to find a way to pay for the full cost of the increased wages, most workers will have their hours cut and will receive less take-home pay. Many will probably have to get a second job to maintain their income, particularly those who rely on their income to support family both in America and abroad.

Farmers and ranchers value their employees, and pay them as much as they can afford. We recognize farm work is hard; the hours are long; and the work is physically demanding – our farmers are working out in the fields right alongside farmworkers. Because we cannot afford to pay overtime, other benefits are commonly available to farm employees. These benefits may have to shift if farms have to hire an entire second shift of workers. For example, many farmers in Oregon provide free housing and transportation to their workforce. However, if they have to cap hours and try to find workers for a whole second shift, they will not have adequate housing to cover their whole workforce. Similarly, if their employees are working a second job to make ends meet, employers may not be able to provide housing free of charge under Oregon law anymore.

It's important to know that this policy will impact Oregon's full range of farm employees. Our farms employ migrant workers who return to the same farm year after year because they pay well and provide safe housing, high schoolers trying to earn money for college or their first car, teachers earning extra summer income, and long-term employees who have worked their whole lives for a single farm or ranch. The lack of overtime pay will impact each of them differently – for some, it may result in them finding employment somewhere where they are able to work more hours, for others a move to a different state, and for others needing to pick up a second job to make ends meet.

Labor Advocates Have Not Acted in Good Faith

Throughout the process, we have grown discouraged and frustrated by the labor advocates who have engaged in this conversation seemingly with a singular desire to see a 40-hour threshold at all costs, even if it makes farmworkers lives worse, results in the reduction of agricultural production in the state or decreases available jobs over time.

We came to the table this fall in good faith, with family farmers willing to share personal business information with advocates in order to find a threshold that would work for both sides – that would provide some possibility of overtime pay for farmworkers without destroying Oregon's family farm economy. Unbeknownst to us, while those conversations were ongoing, labor advocates, including one of the groups who sat at the negotiating table, were planning to file a lawsuit to attempt to force the Courts to declare Oregon's agricultural exemption unconstitutional and force the Bureau of Labor & Industries to undertake a rulemaking. This strategy capitalizes on a drafting error that occurred in the 2017 manufacturing overtime bill, House Bill 3458, that seemingly left

the ag exemption intact, but then removed it in a later section of the bill. All those who negotiated and voted for manufacturing overtime have indicated that elimination of the ag overtime exemption was not discussed or contemplated by the proponents of the bill, and the record is clear on that.

However, labor advocates are not only seeking to capitalize on that drafting error, but are using it to force the legislature's hand, threatening to pursue a 40-hour threshold at BOLI through their litigation if the legislature does not pass a 40-hour threshold this session. We ask you not to fall for their duplicity. The legislature can and must continue to push for a solution that will work for farmers and farmworkers, regardless of threats of future BOLI action or pursuit of a lawsuit.

If You Want Food Crop Production to Remain in Oregon, You Must Find and Oregon Solution

If we value Oregon's family farms and ranches, and the many jobs they provide, the legislature must craft a workable solution that balances opportunities for workers while mitigating the reduction in income for the entire ag workforce.

Oregon farmers and ranchers are willing to compromise to create an Oregon solution that preserves farmworker jobs, recognizes Oregon's family farm economy and treats farmworkers and farmers fairly. We call on labor advocates to compromise to protect the farmworkers that they purport to represent. Other states have identified workable solutions that recognize that farms and farmworkers both stand to lose when the overtime threshold is set at 40-hours.

An Oregon solution must account for these factors:

- Cows, sheep and other livestock rely on 24-hour supervision and unpredictable hours response, requiring flexible hourly thresholds;
- Overtime requirements should allow a seasonality provision when weather, harvest windows, and the needs of animals and crops dictate longer or unpredictable hours;
- Employers who pay workers a fair salary and provide other compensation like insurance costs, housing and other benefits should be given an exemption from hourly thresholds;
- 96% of Oregon's farms are family owned and operated - family members should be exempt from any overtime proposal;
- Given the known and unknown consequences to those in agriculture, the state should partner with industry to mitigate financial impacts specific to expenditures on overtime costs; and
- Any solution must incorporate monitoring of impacts on farms and workers at each stage of implementation with appropriate off ramps to address market decline or unanticipated challenges that threaten the viability of a sector.

We're asking legislators to work with us to find a reasonable solution. A legislative compromise should ensure that family farms aren't forced to mechanize or downsize

due to out-of-control costs and give workers who want to the opportunity to work overtime hours under the existing compensation methodologies that option, especially when seasonal dynamics create undue hardships for farms.

OFB asks for your support in finding a workable compromise on agricultural overtime.

Please email MaryAnneCooper@oregonfb.org with any questions related to these comments.