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House Committee on Judiciary
Oregon State Legislature
900 Court Street NE
Salem, OR 97301

Re: In opposition to HB 2479

Dear Chair Reynolds, Vice Chairs Nguyen and Sharf, and members of the House Committee on Judiciary:

I write in opposition to HB 2479 and the proposal to provide broad statutory immunity to children's advocacy centers and their designated agents. I do not do so lightly. As a former prosecutor, I am as pro-law enforcement and pro-prosecution as anyone. As someone who regularly represents victims of abuse and survivors of sexual assault and human trafficking, I fully understand and very much appreciate the work of children's advocacy centers and the crucial support that they provide.

However, as someone who also represents parents and children of families that have been torn apart as a result of misdiagnoses and careless investigation, and members of our community who have been wrongfully convicted and subsequently exonerated, I have witnessed first-hand the tragic consequences that can and do result when employees or agents of children's advocacy centers are poorly trained, misunderstand their roles, are affected by confirmation bias or other biases, or otherwise exercise poor judgment.

I am also well-versed in the concept of immunity and the various forms of statutory and judicially created immunity that currently exist, and I think it is important to correct some of the suggestions made at the recent public hearing on HB 2479 regarding immunity in child abuse investigation. Contrary to some of the testimony provided, other people and entities involved in the investigation of child abuse do not enjoy blanket immunity for their actions. For example, none of the entities listed in the proponents' PowerPoint submission (*e.g.*, DHS) is entitled to immunity at common law, and every public body in Oregon is subject to civil liability for its torts and those of its employees pursuant to ORS 30.265 (Oregon Tort Claims Act).

All mandatory reporters are entitled to immunity under ORS 419B.025, but that immunity does not extend beyond the initial reporting of suspected child abuse. Prosecutors are entitled to absolute immunity in the performance of quasi-judicial functions, but only qualified immunity—the same immunity provided to police officers—when acting in the role of investigator. And

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even qualified immunity does not shield prosecutors or police officers from liability for the violation of clearly-established constitutional rights.

I also think it is important to correct the suggestion that other states are moving quickly to offer the kind of immunity proposed in HB 2479. Even a cursory review of the statutes of both red- and blue-colored states on the proponents' "19 Other States" PowerPoint slide reveals that the statutes enacted in those states either provide the limited immunity already provided under ORS 419B.025, or include exceptions to investigative immunity that are not included in HB 2479. For example, Utah's immunity statute expressly excludes immunity for governmental employees, and expressly addresses a broad variety of other circumstances in which immunity does not apply. In addition, states like Texas and Arkansas are currently working on legislation intended to curtail the reach and influence of children's advocacy centers in order to protect the constitutional rights of their citizens.

Finally, the suggestion that disgruntled abusers bent on retaliation are the only people who file actions against children's advocacy centers and their agents is simply not true. A mere thirty minutes of legal research reveals many cases in which the rights of children and parents harmed by children's advocacy centers and their agents have been vindicated. These cases are not brought by retaliatory abusers, but in the name of the children and innocent parents who have been harmed through the carelessness or poor judgment of overzealous child abuse investigators. See, e.g., *Wallis ex rel. Wallis v. Spencer*, 202 F.3d 1126 (9th Cir. 1999); *Ying Li v. City of New York*, 246 F. Supp. 3d 578 (2017).

There is no evidence that immunity, qualified or otherwise, increases the competence or reliability of child abuse or other criminal investigations. To the contrary, there is a growing body of evidence suggesting otherwise, that is, that immunity actually inspires carelessness and impunity. The decisions made by employees and agents of children's advocacy centers have very broad implications and sometimes catastrophic consequences, and I urge the committee to consider the impact that HB 2479 would have on members of our communities who would be left without recourse or remedy when decisions are made in haste, or corners are cut, or rules are bent or broken.

Very truly yours,



Andrew C. Lauersdorf