



TESTIMONY IN SUPPORT OF HB 3183

To: House Committee on Rules
From: United Food and Commercial Workers Local 555
5/11/2023

Good afternoon Chair Fahey, Vice Chairs Breese-Iverson and Kropf, and members of the committee,

For the record, my name is Madison Walters. I am the political liaison and a member of United Food and Commercial Workers Local 555, representing front-line workers across Oregon and the Pacific Northwest.

House Bill 3183 is a simple concept addressing a simple premise: Cannabis workers deserve the same organizing rights as other workers regardless of the ambiguities of how federal law interacts with our retail cannabis industry.

It is important that workers have a voice in their workplace. Cannabis workers — and particularly workers of color — face the same harmful practices inflicted on non-unionized workers in other industries: low wages, erratic scheduling, few workplace benefits, and unprotected statuses as contract workers.

We have entered into the record a report from the Economic Policy Institute which details the tremendous positive impact unionization would have on cannabis workers, especially workers of color.

Representative Holvey has posted a Legislative Counsel opinion dated April 13 that raises some questions about this measure, particularly around federal preemption issues. It is my understanding that based on the arguments presented by this memo, the bill in its current form will not move forward. I sincerely hope that the committee will review the arguments presented here and agree that this bill is, in fact, ready to move forward:

First, and most to the point:

Respectfully, Representative Holvey's requested memo is flawed. A substantial section-by-section response has been uploaded to OLIS, but here are a few key points:

- This memo operates on the premise that the state must act as a "market participant" in order to take regulatory action. In truth, it's more complex. While market participation can provide certain protections from preemption, that does NOT guarantee that preemption exists if the state is not a market participant. This is clear in regulation such as requiring drivers to purchase auto insurance or requiring businesses to provide workers compensation insurance. These are both examples of the state requiring regulation to protect Oregonians.

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- This memo also relies heavily on a two-prong market participant test as defined in “Johnson v Rancho Santiago.” But what the memo DOESN’T say is that the Court in that case went on in its ruling to explicitly provide alternative tests that may be used in order to provide immunity from federal preemption. HB 3183 easily satisfies the alternative tests.
- Further, the memo exhibits some confusions between terms, such as describing the effects of a “labor peace agreement” more like that of a “voluntary recognition agreement,” with significantly different legal outcomes.

Secondly, there is a precedent in other states demonstrating that this bill works. Oregon is not the first— a number of other states have already adopted substantially similar legislation, including California, New York, and New Jersey.

Legislative Counsel asserts that “it’s reasonable to expect that the [National Labor Relations] board will assert jurisdiction and bring such employers and employees within the scope of coverage of the NLRA.” However, The fact is that the NLRB has not taken any such steps to assert this authority, nor have there been any substantive challenges to such laws. This is not uncharted water.

Lastly, while Legislative Counsel has offered guidance on such issues in the past, the Oregon Legislature does not always consider such memos to be final words on the subject. For example, several times in recent history the Oregon Legislature has passed legislation to affect public employee pensions despite LC guidance urging caution. We are hoping that the Legislature will exhibit the same boldness in helping workers now.

I also wanted to express our collective alarm that such a memo from Legislative Counsel was posted and discussed before the full implications were vetted. This memo presents legal theories that unnecessarily imperil labor policy. By considering this memo as the final word on the subject, this legislature as good as endorses ideas which put Oregon labor standards at risk. For example, I know that most of the members in front of me supported House Bill 4059 last session, which created labor standards for renewable energy projects. It’s a great bill. However, the State is not a market participant within the meaning of LC’s memo. We are not aware of any concerns around federal preemption that were pursued with such vigor with regard to that bill, but we are concerned this opinion could negatively impact similar policy in the future.

In closing, I must ask: where do we draw the line? Right now, Oregon’s workers are suffering. Many are forced to work in unsafe work environments, some are being denied pay, and some even are losing their jobs when attempting to advocate for themselves and their peers. I am imploring you to take action, for the sake of these workers, and for the businesses who are doing everything right and are getting undercut by these bad actors in the industry.

House Bill 3183, with the dash-3 amendments added, has no stakeholder opposition we are aware of and can drastically help workers in a burgeoning industry, particularly workers of color. I hope that this committee will pursue this policy with the boldness it has shown on other worker-related policies in past sessions, and I hope they will hold the bad actors in the cannabis industry accountable. Thank you for your dedicated work, and thank you for your consideration today. I urge your support for HB 3183 -3.

Madison Walters

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