

To: House Committee on Labor and Workplace Standards
From: Ben Straka, Freedom Foundation
Date: March 12, 2025
Re: HB 3789

Chair Grayber and Members of the Committee:

My name is Ben Straka, and I serve as a research and government affairs associate with the Freedom Foundation, a 501(c)(3) nonprofit organization with a mission to advance the principles of individual liberty, free enterprise, and limited, accountable government. Originally founded in 1991 in Olympia, Wash., the Freedom Foundation has maintained an office in Salem, Ore. for the past decade and now operates nationwide with staff and offices around the country, with a focus on holding public-sector unions accountable to their members and taxpayers.

Unfortunately, I was unable to attend the committee's March 10 public hearing to offer in-person testimony on House Bill (HB) 3789 due to personal family responsibilities. Frankly, it also came as a surprise to learn that my organization, the Freedom Foundation, is the singular target of this legislation, since the Freedom Foundation does not in any way "impersonate" unions or union representatives as described in HB 3789 or otherwise.

However, it is now obvious from having watched the testimony given by the bill's proponents, virtually all of whom are union leaders, that the real intent of HB 3789 is not to prevent any actual false impersonation of union representatives by my organization—which does not happen—but rather to give these unions a statutory blessing to wage costly legal attacks against the Freedom Foundation over its legitimate mail and email communications to public employees.

HB 3789 represents an egregious abuse of legislative power. It serves no public policy purpose whatsoever but instead serves only the private interests of one of the state's largest special interest groups, labor unions, by helping them squash a political opponent with lawfare. HB 3789 should go no further.

By way of background, the Freedom Foundation operates a project called Opt Out Today,¹ through which it engages in grassroots outreach to public employees about their constitutional right to opt out of union membership and dues payments as recognized by the U.S. Supreme Court's ruling in *Janus v. AFSCME* (2018).² The Freedom Foundation's various forms of outreach include door-to-door-canvassing, direct mail, and email communications.

Sadly, HB 3789's proponents evidently have no problem outright lying to this committee about the Freedom Foundation's conduct. To put it in no uncertain terms, their claims that Freedom

¹ Opt Out Today. <https://www.optouttoday.com/>

² *Janus v. AFSCME Council 31*, 585 U.S. 878, 138 S. Ct. 2448, 201 L. Ed. 2d 924 (2018)

Foundation staff “impersonate” union representatives in their door-to-door interactions by wearing union merchandise, claiming to work for a union, or engaging in similar trickery are completely false and unsupported by any evidence whatsoever.

Unsurprisingly, those backing HB 3789 have not uploaded any actual evidence to OLIS to support these claims. Likewise, OLIS contains no testimony from public employees claiming to have experienced such behavior. On the contrary, the only testimony uploaded to OLIS thus far by public employees appears to be from those opposing HB 3789 and attesting to the value of the Freedom Foundation’s outreach in helping them exercise their constitutional right to cancel union membership and dues payments.³

The real target of this legislation appears to be the Freedom Foundation’s written outreach communications, which the bill’s proponents also dishonestly claim somehow constitutes the act of “falsely impersonating” their respective unions, but for which they again are incapable of offering any real evidence.

During the March 10 public hearing on HB 3789, Tracy Ann Nelson, the executive director of the Oregon Education Association (OEA), was specifically asked by committee members to upload examples of the Freedom Foundation material that she, and the bill’s other proponents, had repeatedly claimed are intended by the Freedom Foundation to give the false impression of being sent by their respective unions.⁴

To date, the OEA has uploaded only one example of a Freedom Foundation mailer to OLIS,⁵ and has removed—it seems intentionally—the panels from the mailer clearly showing its return address to be that of “Opt Out Today.”⁶ The union also neglected to include a copy of the envelopes in which these mailers are sent, which clearly identify the sender as the Freedom Foundation and uses the return address of the Freedom Foundation’s Olympia, Wash. headquarters.⁷

Simply put, the example provided does not in any way, shape or form impersonate union mail. On the contrary, the simple message clearly expresses the average annual dollar amount, based on data maintained by the U.S. Department of Labor, that public employees can save should they “cancel union dues,” and provides a clearly worded opt-out letter explicitly spelling out that the process by which public employees may choose to exercise this constitutional right is to complete, sign and date a union membership and dues cancellation request pursuant to the U.S. Supreme Court’s decision in *Janus v. AFSCME*. And just as the mail clearly identifies Freedom Foundation as its

³ Written testimony on HB 3789 is available here:

<https://olis.oregonlegislature.gov/liz/2025R1/Measures/Testimony/HB3789>

⁴ Oregon State Legislature. Video recording of the public hearing in the House Committee On Labor and Workplace Standards on 03/10/2025.

<https://olis.oregonlegislature.gov/liz/mediaplayer?clientID=4879615486&eventID=2025031142&startStreamAt=4942&stopStreamAt=5018>

⁵ The doctored Freedom Foundation mailer uploaded to OLIS by the OEA (though the mailer itself applies to a different union, the OSEA) is available here:

<https://olis.oregonlegislature.gov/liz/2025R1/Downloads/PublicTestimonyDocument/149896>

⁶ A complete copy of the Freedom Foundation’s mailer and its outgoing envelope is available here:

<https://www.freedomfoundation.com/wp-content/uploads/2025/03/OR-XmasCard-20242.pdf>

⁷ *Id.*

sender, the opt-out letter itself also clearly states that the Freedom Foundation, not the union, is the one furnishing the appropriate written notice and offering to help public employees submit their constitutionally protected opt-out request to the union.⁸

The same is true for all other outreach materials used by the Freedom Foundation. HB 3789's proponents are free to object to the style or form of any one of the Freedom Foundation's mail or email communications, but they are patently dishonest to claim that the Freedom Foundation does not clearly identify itself as the source—and union membership/dues cancellation under *Janus* as the purpose—of all of its outreach to public employees.

The second prong of HB 3789's definition of "falsely impersonate a union representative" includes the following vaguely worded phrase: "...or otherwise hold oneself out to be a union representative."⁹ (Emphasis added).

Such language—an example of poor statutory construction that essentially seeks to use the defined term as its own definition—is without a doubt intended to be the mechanism by which HB 3789 opens the floodgates of bad-faith union litigation against the Freedom Foundation. Since the Freedom Foundation does not even come close to the first prong of what it means to "falsely impersonate a union representative,"¹⁰ the only conclusion is that the proponents of HB 3789 hope to use the vague second prong of the legislation's key definition to argue that any Freedom Foundation communications they can convince a judge somehow give a "false impression"¹¹ of union-related matters automatically constitute the false impersonation of a union representative and are subject to damages of \$6,250 per incident.¹² Assuming, as seems likely, that HB 3789 is written so that each individual piece of disputed material may be labeled an "incident," it's clear that the proponents of HB 3789 seek to use the legal system as a crippling financial weapon against the Freedom Foundation for their own benefit—since they have already testified to this committee that the primary objective of HB 3789 is to give unions, not individual public employees, the ability to bring such lawsuits against the Freedom Foundation.¹³

Let us be perfectly honest about the nature of HB 3789 and the power dynamic at play. During this committee's public hearing on March 10, the bill's proponents painted the Freedom Foundation as a big-moneyed special interest group victimizing public employees. The reality is that labor unions—especially those representing public employees—are one of the largest private special interest groups in the state and provide significant financial support to many of Oregon legislators' electoral campaigns. HB 3789 is nothing short of a request by these unions for legislators to help

⁸ *Id.*

⁹ See page 1, line 10 of HB 3789.

<https://olis.oregonlegislature.gov/liz/2025R1/Downloads/MeasureDocument/HB3789/Introduced>

¹⁰ "...to use fraud or misrepresentation to obtain, possess, transfer, create, utter or convert to a person's own use the identity of a union representative..."

¹¹ See the definition in ORS 677.190

¹² See page 2, line 7 of the

¹³ Oregon State Legislature. Video recording of the public hearing in the House Committee On Labor and Workplace Standards on 03/10/2025.

<https://olis.oregonlegislature.gov/liz/mediaplayer?clientID=4879615486&eventID=2025031142&startStreamAt=3995&stopStreamAt=4115>

them, the bigger player, crush a smaller political opponent, the Freedom Foundation, for exercising its constitutional right to engage in grassroots activism that opposes union interests.

To summarize, HB 3789's proponents have dishonestly claimed, with no actual evidence, that the Freedom Foundation falsely impersonates unions and their representatives. To date, no public employees have offered testimony in support of this bill, though many have uploaded testimony to OLIS opposing HB 3789. It is obvious that part of the central definition in HB 3789 has been left vague as a way to open the floodgates of frivolous union litigation against the Freedom Foundation with no risk of doing so (the bill does not award attorney's fees if the defendant prevails and provides that only the plaintiff, the union, may receive damages). There is absolutely no legitimate reason for the committee to consider HB 3789 any further.

To put it bluntly, HB 3789 is a piece of legislation shamefully based on outright lies and an open-ended invitation for unions to target the Freedom Foundation, suppress my organization's freedom of speech, and by extension, suppress the ability of Oregon's public employees to exercise their First Amendment right to cancel union membership and dues deductions—as thousands have already freely chosen to do with our assistance, often overcoming legal obstacles and other roadblocks intentionally put in place by their very own unions.¹⁴

This bill is not about protecting public employees or union representatives. Neither is HB 2694, a separate piece of legislation referred to this committee which would seek to accomplish a similar result by different means.¹⁵

This committee should do the right thing and immediately reject HB 3789 and HB 2694. Please do not hesitate to contact me should you have any questions.

Respectfully,



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¹⁴ "SEIU 503 refuses to honor opt-out requests." Freedom Foundation. January 11, 2018.
<https://www.freedomfoundation.com/labor/seiu-503-refuses-honor-opt-requests/>

¹⁵ HB 2694 (2025). <https://olis.oregonlegislature.gov/liz/2025R1/Measures/Overview/HB2694>