

HB 3789 committee follow-up

*Clarifying and rebutting additional claims about HB 3789 from the 3/31 work session in the House
Committee on Labor and Workplace Standards*

1. Claim: The existing Oregon laws cited by the Freedom Foundation¹ as prohibiting false impersonation and business/individual identity theft somehow “don’t apply” to the impersonation of unions and their representatives because they are criminal laws.

Response: This is incorrect. In fact, the claim² was misleading because, although it was made to sound like the laws we cited—ORS 165.800 and 165.815—were inapplicable to the situations described, what it could only really mean is that such laws *wouldn’t be applicable under HB 3789*, in which a new definition of false impersonation is invented for unions by unions.

However, that misses or deliberately dodges the point. Our assertion that ORS 165.800 and 165.815 do apply—and already protect all individuals and businesses equally from legitimate fraudulent impersonation and identity theft—is correct. In other words, do ORS 165.800 and 165.815 already protect unions and their representatives against *legitimate* false impersonation under the same standard as any other individual or business? Yes. Do ORS 165.800 and 165.815 apply to what HB 3789’s proponents are trying to pass off and redefine as “impersonation” in their bill? Of course not, because the law doesn’t exist yet and they are tailoring it to fit their allegations. The fact that HB 3789 would create a new standard for unions doesn’t mean that the existing one doesn’t apply—it’s just an admission that fraudulent impersonation by the Freedom Foundation, to which ORS 165.800 and 165.815 *can and would* apply, doesn’t actually happen. That’s the entire reason HB 3789 exists—to give its proponents an easier, customized legal standard under which they can claim “false impersonation.”

Further, the explanation given³ that such criminal laws don’t apply because (1) they are criminal in nature (evidently there is some inherently circular reason for this) and (2) such laws equate “injury” to “physical harm” is untrue.

First, the fact that Oregon’s existing protections against fraudulent impersonation and identity theft in ORS 165.800 and 165.815 are criminal laws has no bearing on whether they are applicable or not. As discussed above, they are applicable—and appropriate. If fraudulent impersonation is truly taking place, it *should* be a crime, not a civil matter. This is why such offenses are defined as criminal acts in the first place—with the ability for an injured party to also receive civil damages.⁴

Second, the claim equating the concept of “injury” to “physical harm” is both incorrect and irrelevant to the laws in question. There is nothing about the commonly understood legal definition of “injury” that requires physical harm,⁵ and while it may be specified as “physical injury” in certain *other* criminal

¹ See ORS 165.800 and 165.815.

² Testimony of Sara Drescher, Tedesco Law Group.

<https://olis.oregonlegislature.gov/liz/mediaplayer?clientID=4879615486&eventID=2025031364&startStreamAt=3155&stopStreamAt=3320>.

³ *Id.*

⁴ See ORS 30.863. https://oregon.public.law/statutes/ors_30.863.

⁵ Black’s Law Dictionary (12th ed. 2024). “Injury.” https://www.freedomfoundation.com/wp-content/uploads/2025/04/injury_definition.pdf.

statutes,⁶ the fact is, *neither ORS 165.800 nor 165.815 require physical injury*,⁷ so this cannot possibly be claimed as a reason that they couldn't or shouldn't apply.

Logically, it makes sense that Oregon's existing statutes prohibiting false impersonation and identity theft wouldn't be based upon a standard requiring only physical harm, because such acts are equally if not more likely to result in financial, reputational, or mental or emotional injury. Both statutes *do*, however, specify *intent*, for which comparable language is glaringly absent from HB 3789.

There is no good reason for this, especially considering the fact that HB 3789's drafter(s) evidently modeled parts of the bill's original definition of "falsely impersonate a union representative" after none other than ORS 165.800—namely, that a person "with the intent to deceive or to defraud" "obtains, possesses, transfers, creates, utters or converts to the person's own use [another's identity]"⁸—but as we've previously pointed out, chose not to include the latter's provision specifying "with the intent to deceive or defraud."⁹

Instead, HB 3789's drafter(s) have found it important to swap out such language (in both the introduced bill and the -2 amendment) with a reference to the far more flexible definition of "fraud or misrepresentation" borrowed from ORS 677.188,¹⁰ a section of Oregon law relating specifically to the unauthorized or unprofessional practice of medicine, podiatry and acupuncture under ORS 677.190.¹¹ It is inexplicable why HB 3789's drafter(s) have chosen to cherry pick and drop this particular language into the bill rather than the far more situationally comparable language that already exists in ORS 165.800, other than the obvious fact that ORS 677.188 provides unions with an easier path to claim "false impersonation" and trigger punishing legal damages without the necessary burden of showing intentionality.¹²

More broadly, since ORS 165.800 does not, in fact, require "injury" (physical or otherwise), only fraud or deceit—which is precisely what has been alleged against the Freedom Foundation, and precisely what was claimed during the work session as the intent of HB 3789's language (in fact, Ms. Drescher literally invoked the words "fraud and deception" multiple times when explaining why HB 3789 borrowed the language from ORS 677.188 rather than ORS 165.800¹³ *despite the fact that ORS 165.800, not ORS 677.188, already includes such terms*)¹⁴—there is really no defensible reason for the patchworked way

⁶ See, for example, ORS 161.015(7). In many other instances, however, Oregon law makes it clear that injuries from criminal acts can include "financial," "psychological," or "social" harm. See, for example, ORS 131.007 and 147.500(13).

⁷ ORS 165.800 does not require "injury" at all (only the intent to deceive or defraud), while ORS 165.815 specifically defines "injury" as including non-physical harm such as intimidation, threats and harassment.

⁸ See page 1, lines 8-10 of the introduced bill.

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

⁹ See ORS 165.800. https://oregon.public.law/statutes/ors_165.800.

¹⁰ See ORS 677.188. https://oregon.public.law/statutes/ors_677.188.

¹¹ See ORS 677.190. https://oregon.public.law/statutes/ors_677.190.

¹² Although Ms. Drescher told the committee that the phrase "fraud or misrepresentation" from ORS 677.188 requires intentionality, this is not true. The definition also includes a separate, broader prong that would allow unions to file suit against the Freedom Foundation claiming that it knowingly gave misinformation or a false impression by "any other means," even if not intentional. See ORS 677.188.

¹³ Testimony of Sara Drescher, Tedesco Law Group.

<https://olis.oregonlegislature.gov/liz/mediaplayer?clientID=4879615486&eventID=2025031364&startStreamAt=3155&stopStreamAt=3320>.

¹⁴ See ORS 165.800 ("to deceive or to defraud"). https://oregon.public.law/statutes/ors_165.800.

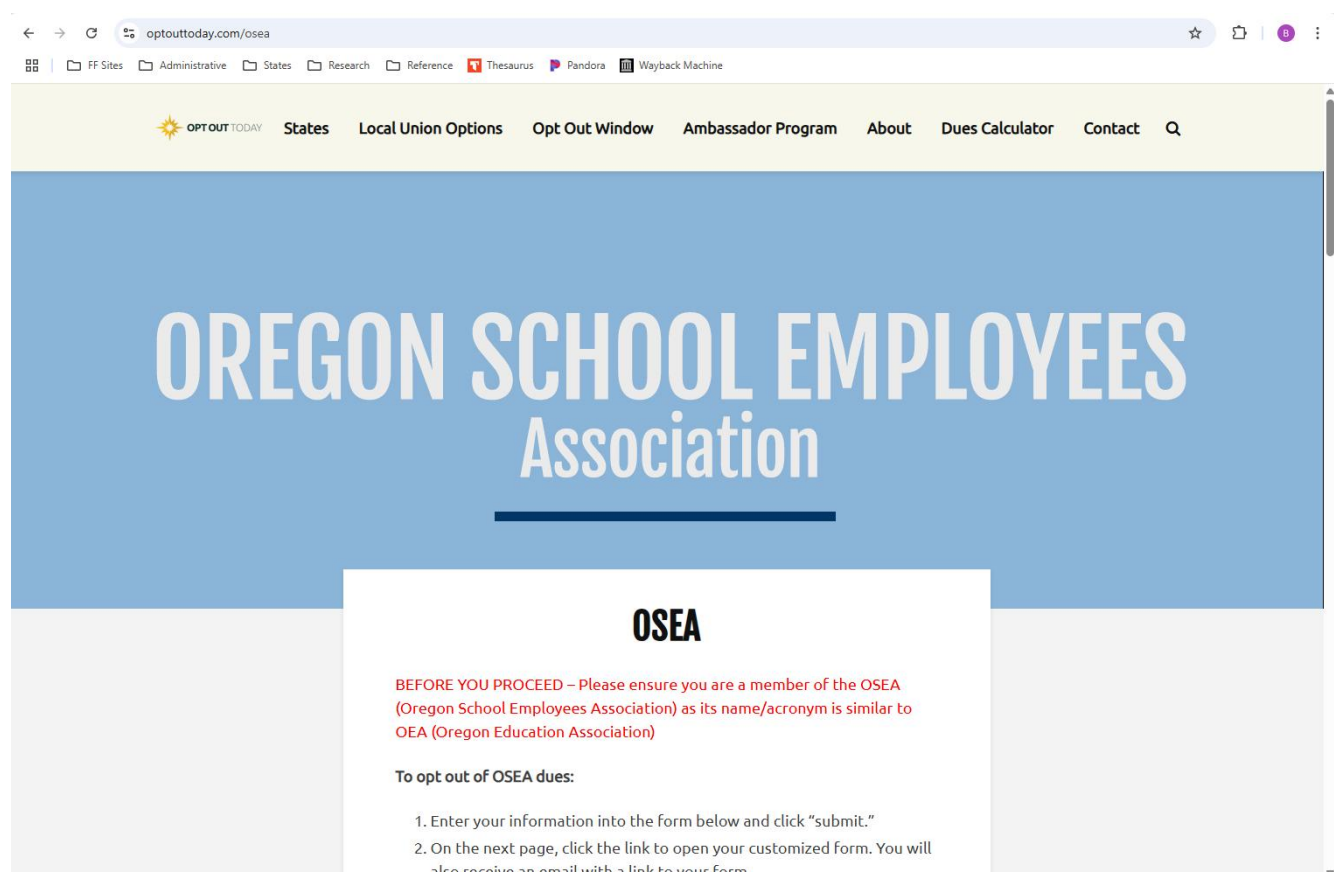
in which HB 3789 has been constructed outside of the existing, and altogether more appropriate, protections of ORS 165.800.

2. Claim: The Freedom Foundation’s outreach website, OptOutToday.com, uses union “logos” and/or otherwise bears a “striking resemblance” to union websites. Specifically, the example given was that of the Oregon School Employees Association (OSEA).¹⁵

Response: The claim that our webpage uses the OSEA’s logo was refuted on the spot.¹⁶ This was a serious accusation and the fact that it was made so flippantly, and without any evidence or subsequent apology, is concerning. As for the assertion that the OptOutToday.com webpage otherwise bears a “striking resemblance” to the OSEA’s website—which, quite frankly, was dumbfounding to hear and impossible to refute without visually comparing the two sites—the committee should see for itself.

Below is a screenshot of the OptOutToday.com webpage in question, followed by a screenshot of the OSEA’s website.

www.OptOutToday.com/OSEA:

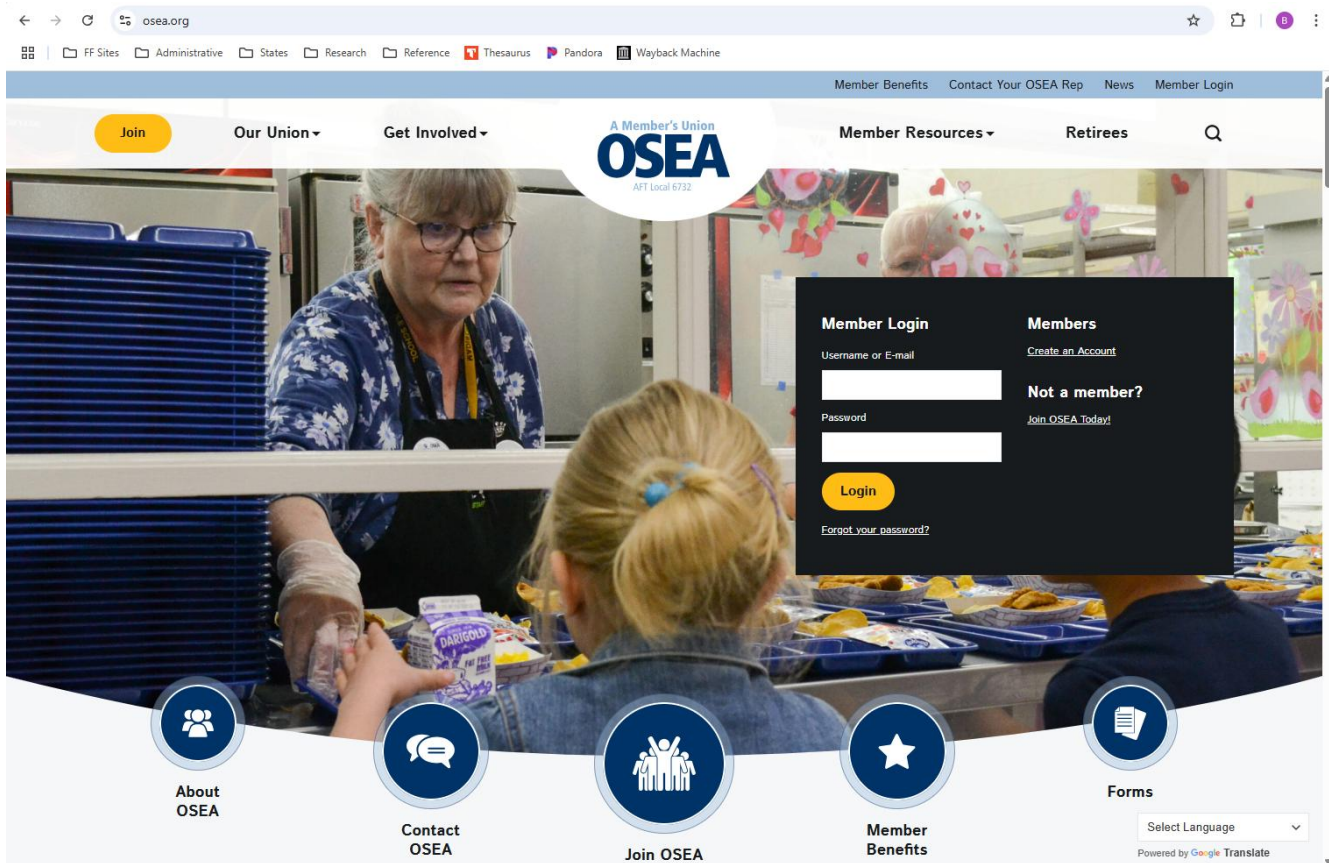


¹⁵ Comments from Chair Grayber.

<https://olis.oregonlegislature.gov/liz/mediaplayer?clientID=4879615486&eventID=2025031364&startStreamAt=2772&stopStreamAt=2895>.

¹⁶ *Id.*

www.OSEA.org:



Clearly, there is no “striking resemblance” whatsoever between the two.

If the implication is that (1) identifying the OSEA as the subject of the OptOutToday.com webpage, and (2) color-coding the page so that public employees may easily identify the applicable union for their opt-out request, should be considered “impersonation” and subjected to litigation under HB 3789, then that only further proves the Freedom Foundation’s point about this legislation.

Lack of visual resemblance aside, the former is on a website called OptOutToday.com, states in bold lettering that its use is “To opt out of OSEA dues,” dedicates the entirety of its content to the subject of public employees’ right to cancel union membership and dues payments under *Janus v. AFSCME*, states that it is a project of the Freedom Foundation, and is also accompanied by an “About” page further explaining this fact.¹⁷

No serious claim can be made that OptOutToday.com, or any of its individual webpages, “impersonates” union websites. Yet apparently this is what some of those supporting HB 3789 would seek to prove, which only serves to show why the legislation is so concerning.

¹⁷ Opt Out Today. “About.” <https://www.optouttoday.com/about>.

3. Claim: Union membership forms give “instructions” to public employees on how and when to opt out.¹⁸

Response: What was meant by “instructions” was that union membership applications obviously contain terms and conditions that control their execution and revocation. In many cases, however, including for multiple of HB 3789’s proponents, this exclusively takes the form of convoluted irrevocability clauses, which have historically been buried in the fine print of their membership forms and serve only one purpose—to restrict when public employees may cancel their union dues deductions. Such clauses are hardly “instructions.” To illustrate this, below are screenshots of the relevant portions of SEIU Local 503 and Oregon AFSCME Council 75 membership applications from recent years:

SEIU Local 503:

The screenshot shows the SEIU Local 503 Membership Application form. At the top left is the SEIU Local 503 logo with the tagline "Stronger Together". To the right of the logo is the title "Membership Application" in large purple font, followed by "SEIU Local 503, OPEU PO Box 12159 Salem OR 97309-0159" and the instruction "(Please print or type clearly.)".

The form contains several sections for personal and contact information:

- NAME:** _____ **DATE OF BIRTH:** ____/____/____ (MONTH DAY YEAR) **ETHNICITY:** _____ (OPTIONAL)
- HOME PHONE:** _____ **CELL:** _____ **HOME EMAIL:** _____
- ☐ **I WOULD LIKE TO RECEIVE TEXT MESSAGES REGARDING MY UNION.** SEIU will never charge you for text message alerts, but carrier message and data rates may apply. Text STOP to 787753 to unsubscribe, and HELP for more info. Periodic updates, up to 5 per month.
- RESIDENCE ADDRESS:** _____ (REQUIRED) STREET CITY STATE ZIP
- MAILING ADDRESS:** _____ (IF DIFFERENT FROM RESIDENCE) STREET CITY STATE ZIP

Below these is a section titled "PROVIDE ONE" with two boxes:

- ☐ **SOCIAL SECURITY NUMBER:** _____
- ☐ **EMPLOYEE I.D.#:** _____

Further down are sections for employment details:

- EMPLOYER/AGENCY:** _____ **JOB TITLE:** _____
- WORK ADDRESS:** _____ STREET CITY STATE ZIP
- WORK EMAIL:** _____ **WORK PHONE & EXT:** _____
- WORKSITE/DEPARTMENT:** _____ **SHIFT:** _____ (AM/PM) START TIME END TIME
- HIRE DATE:** ____/____/____ (MONTH DAY YEAR) **DAYS OFF:** ☐ M ☐ TU ☐ W ☐ TH ☐ F ☐ SAT ☐ SUN

A large purple-bordered box contains a detailed authorization statement in white text:


I hereby designate SEIU Local 503, OPEU (or any successor Union entity) as my desired collective bargaining agent. I also hereby authorize my employer to deduct from my wages, commencing with the next payroll period, all Union dues and other fees or assessments as shall be certified by SEIU Local 503, OPEU (or any successor Union entity) and to remit those amounts to such Union. This authorization/delegation is unconditional, made in consideration for the cost of representation and other actions in my behalf by the Union and is made irrespective of my membership in the Union. This authorization is irrevocable for a period of one year from the date of execution and from year to year thereafter unless not less than thirty (30) and not more than forty-five (45) days prior to the end of any annual period or the termination of the contract between my employer and the Union, whichever occurs first, I notify the Union and my employer in writing, with my valid signature, of my desire to revoke this authorization. The SEIU Local 503, OPEU Bylaws provide for a contribution as determined from time to time by the member-elected General Council for the benefit of the Union's political action program. You may opt to have this contribution go to the SEIU Local 503, OPEU Scholarship Fund instead of the political action program by checking the box at the right. ☐

Below this statement is a line: *Union dues may be tax deductible as a work related expense subject to Federal and/or State tax rules.*

At the bottom, there is a purple box with a white arrow pointing to the right, labeled "SIGN HERE TO JOIN". To the right of the arrow is a line for the **SIGNATURE:** _____ and another line for the **DATE:** _____.

¹⁸ Testimony of Sara Drescher, Tedesco Law Group.

Oregon AFSCME Council 75:



Oregon AFSCME Council 75/AFL-CIO
Union Membership Card/Payroll Deduction Authorization

YES! I choose to be a union member. I support quality services and good jobs. I understand that by becoming a union member I will make our union stronger to protect jobs, public service employees and the services we provide.

Local No. _____

NAME: Last: _____ First: _____ MI: _____

Home Address: _____ City: _____

State: _____ Zip: _____ Job Class/Title: _____

PHONE: Cell: _____ Home: _____ Work: _____

☐ Yes, you may text my cell phone number with information about my workplace, my job and my union

Gender: _____ Birth date: _____ Home email: _____

Employer: _____ Worksite: _____



Date Hired into Position: _____ Employee ID No.: _____ Shift: _____

MEMBER SIGNATURE _____ **DATE** _____

I hereby apply for membership in Local _____, Oregon AFSCME Council 75 and I agree to abide by its Constitution and Bylaws. By this application, I authorize Oregon AFSCME Council 75 and its successor or assign to act as my exclusive bargaining representative for purposes of collective bargaining with respect to wages, hours and other terms and conditions of employment with my Employer.

Effective immediately, I hereby voluntarily authorize and direct my Employer to deduct from my pay each pay period, regardless of whether I am or remain a member of the Union, the amount of dues certified by Oregon AFSCME Council 75, and as they may be adjusted periodically by the Union. I further authorize my Employer to remit such amount monthly to Oregon AFSCME Council 75. This voluntary authorization and assignment is revocable by providing the Union and my Employer written notice of revocation not less than ten (10) days and not more than twenty (20) days before the yearly anniversary of the signing of this membership card, unless an applicable collective bargaining agreement imposes other limitations. The applicable collective bargaining agreement (if there is one) is available for review upon request. This card supersedes any prior check-off authorization card I signed.

I recognize that my authorization of dues deductions, and the continuation of such authorization from one year to the next, is voluntary and not a condition of my employment. Payments to the Union are not deductible as charitable donations for federal income tax purposes. However, they may be tax deductible as ordinary and necessary business expenses.

Connect: www.oregonafscme.org  

In each case, the highlighted language does not give “instructions.” The relevant language contained in SEIU Local 503’s membership application states:

“This authorization is irrevocable for a period of one year from the date of execution and from year to year thereafter unless not less than thirty (30) and not more than forty-five (45) days prior to the end of any annual period or the termination of the contract between my employer and the Union, whichever occurs first, I notify the Union and my employer in writing, with my valid signature, of my desire to revoke this authorization.”

Meanwhile, Oregon AFSCME Council 75 employs converse but similarly confusing language to limit public employees’ ability to cancel dues deductions except during a 10-day window period that comes around only once per year:

“This voluntary authorization and assignment is revocable by providing the Union and my Employer written notice of revocation not less than ten (10) days and not more than twenty (20) days before the yearly anniversary of the signing of this membership card, unless an applicable collective bargaining agreement imposes other limitations.”

For non-lawyers, such language is confusing (and thus often overlooked) upon signing up, and difficult to navigate when trying to opt out. To make matter worse, both examples are purposefully designed to prevent public employees from cancelling dues payments even after the union agrees to drop their

membership¹⁹—something that is entirely within the unions’ control and is intended only to create more confusion about their opt-out rights under the *Janus* ruling, and ultimately apply pressure on public employees to rejoin the union (since the union is forcing them to keep paying dues anyway).

Ironically, HB 3789’s proponents have, without evidence, accused the Freedom Foundation of tricking public employees into opting out using deceptive tactics such as fine print. However, there is no fine print whatsoever on the opt-out letters provided by the Freedom Foundation²⁰ and the record shows that the unions backing HB 3789, not the Freedom Foundation, are the only ones with a documented track record of deceiving public employees in such ways. Over the past several years, Freedom Foundation attorneys have represented numerous Oregon public employees in lawsuits against these unions over their use of irrevocability clauses to unreasonably and repeatedly deny opt-out requests,²¹ their outright refusal to process or acknowledge others,²² their lack of disclosure about certain political contributions taken from membership dues,²³ and even the apparent forgery of public employees’ signatures on membership applications by their union representatives.²⁴

In short, the terms and conditions found in union membership applications, many of which function only as ways to restrict public employees’ ability to freely exercise their right to opt out of union dues under *Janus v. AFSCME*, can hardly be characterized as “instructions.”

¹⁹ Union-supported legislation (HB 2016) passed in 2019, following the *Janus* ruling, also codified this practice into Oregon law. See ORS 243.806(4)(b). https://oregon.public.law/statutes/ors_243.806.

²⁰ Copy of Freedom Foundation mailer with accompanying opt-out letter. <https://www.freedomfoundation.com/wp-content/uploads/2025/03/OR-XmasCard-20242.pdf>.

²¹ Freedom Foundation. “Federal Lawsuit Accuses Oregon, SEIU 503 of Violating Caregivers’ Rights to Opt Out.” November 3, 2016. <https://www.freedomfoundation.com/press-release/federal-lawsuit-accuses-oregon-seiu-503-of-violating-caregivers-rights-to-opt-out/>.

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²² Freedom Foundation. “AFSCME finally ceases worker’s dues payments after months of buck-passing.” May 3, 2019. <https://www.freedomfoundation.com/oregon/afscme-finally-ceases-workers-dues-payments-after-months-of-buck-passing/>.

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²³ Freedom Foundation. “Freedom Foundation Takes Stand Against SEIU 503’s Political Assessment.” December 2, 2020. <https://www.freedomfoundation.com/labor/freedom-foundation-takes-stand-against-seiu-503s-political-assessment/>.

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²⁴ Freedom Foundation. “Oregon Union Claims Fake Signature Binds Employee to Pay Dues.” January 31, 2020. <https://www.freedomfoundation.com/litigation/oregon-union-claims-fake-signature-binds-employee-to-pay-dues/>.

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Freedom Foundation. “SEIU sues Oregon employee for exposing forgery.” July 14, 2022. <https://www.freedomfoundation.com/litigation/seiu-sues-oregon-employee-for-exposing-forgery/>.

4. Claim: Public employees in Oregon may go to their employer’s HR or payroll departments to effectuate their opt-out request, and this is the most common way that public employees opt out of union dues deductions.²⁵

Response: This is false. In fact, Oregon’s collective bargaining laws were amended by a union-supported bill during the 2019 legislative session,²⁶ following the *Janus* ruling, to specifically prevent this by ensuring that public employees’ dues cancellation requests are controlled entirely by their union, *not* the public employer.

Namely, the 2019 legislation enshrined into Oregon law the requirement that dues deductions may *only* be cancelled in accordance with the terms of the union’s membership application—which often contain the irrevocability restrictions discussed above—and if the application does not specify such terms, by sending a cancellation request to the union.²⁷ Furthermore, Oregon law now requires that public employers must rely on a mere list provided by the union (*not* an employee’s actual authorization) to identify which public employees are subject to the deductions.²⁸

In other words, public employers in Oregon are prohibited from cancelling dues deductions at an employee’s request and do not have direct knowledge or possession of an employee’s dues deduction authorization. Rather, they must rely exclusively on a union-provided list to determine whether to make or stop the deductions, and because the law requires that dues cancellation requests can only be processed in accordance with the terms of the union membership application/dues authorization form (which, again, the public employer does not actually possess), the public employer must defer entirely to the union for any dues cancellation requests made by public employees.

Not only does this arrangement prevent public employers from offering any meaningful assistance to employees with their dues cancellation requests, but it also demonstrates that there is no possible mechanism by which the Freedom Foundation or any other organization—let alone a public employer—can make any public employee “automatically” or “inadvertently” cancel their union membership and dues payments, despite what HB 3789’s proponents have claimed. Unions are entirely responsible for processing (or denying) a public employee’s opt-out request once received, and there is nothing in the Freedom Foundation’s power to automatically or deceitfully effectuate an employee’s membership or dues cancellation.

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²⁵ Testimony of Sara Drescher, Tedesco Law Group.

<https://olis.oregonlegislature.gov/liz/mediaplayer?clientID=4879615486&eventID=2025031364&startStreamAt=3757&stopStreamAt=3809>.

²⁶ HB 2016 (2019). <https://olis.oregonlegislature.gov/liz/2019R1/Measures/Overview/HB2016>.

²⁷ See ORS 243.806. https://oregon.public.law/statutes/ors_243.806.

²⁸ *Id.*