Chair Grayber, Vice Chairs Munoz and Scharf and member of the committee,

My name is Liz Joffe. I am a partner in the labor law firm McKanna Bishop Joffe, LLP. We represent labor organizations, including the Oregon Education Association and its local affiliates throughout the state. I have been working with OEA since the mid-1990s.

In 2007, in collaboration with a management-side labor lawyer and an editor from the University of Oregon Labor Education and Research Center (LERC), I co-authored a LERC monograph titled "Public Employees and Oregon's Scope of Bargaining." That monograph is available online, and I encourage those interested in the evolution of the scope of bargaining under Oregon's Public Employee Collective Bargaining Act to review it. *See* https://lerc.uoregon.edu/monograph-series/ (No. 18).

I am testifying in support of HB 4011 with the – 1 amendment because it makes legal and practical sense to include class size and caseload limits and serious safety issues among subjects that are mandatory for bargaining.

Bargaining subjects are either **mandatory**, meaning they must be discussed at the bargaining table if either party raises them, **permissive**, meaning the parties can agree to discuss them, but one party cannot force the other to do so, or **prohibited**, meaning it is unlawful. Defining a subject as mandatory – a matter of "employment relations" in the parlance of the PECBA – does not require either party to agree to any proposal; it merely prevents one party from shutting down discussion about it.

Generally speaking, mandatory subjects involve wages, benefits, working hours, vacation, leaves, workload, and other terms and conditions of employment. Permissive subjects, on the other hand, involve inherent management rights.

The case law, both in the Oregon public sector and the private sector, has long been clear that workload – the amount and type of work one does – is a mandatory subject of bargaining. As the Oregon Employment Relations Board (ERB) held in 1987, "It is only possible to rationally bargain for 'an honest day's pay' if one can also negotiate the boundaries and contents of 'an honest day's work.'"

For this reason, the case law before 1995 held that class size was mandatory for bargaining because it is a workload issue: for each student assigned to a teacher, there is an additional amount of work beyond group instruction, such as grading, preparation, parent-teacher conferences, other parent communications, differentiating instruction, and providing individual assistance.

The 1995 legislature, however, nullified that case law by expressly excluding class size from the definition of "employment relations." Having a law that allows school districts to shut down conversation about that at the bargaining table artificially removes an issue from the bargain that is at the heart of educators' working conditions though. It makes no sense legally or practically.

Likewise, the part of the bill that makes mandatory "the standards and procedures for student discipline that have a direct and substantial effect on the on-the-job safety of school district employees" addresses a clear working condition – on-the-job safety.

Under ORS 243.650(7)(g), “safety issues that have a direct and substantial effect on the on-the-job safety of public employees” is a mandatory subject for non-school employees. Yet school districts can refuse to discuss standards and procedures for student discipline that have a direct and substantial effect on the on-the-job safety of school employees. The bill uses the exact same language that already appears in the statute regarding non-school employees: “direct and substantial effect on the on-the-job safety.” Its relevant to our discussion today to note that this language is already in statute.

It is counterproductive to limit discussion about working conditions, including workload and on-the-job safety. If educators prefer to have some district dollars go toward more educator FTE and lower class sizes and caseloads rather than compensation, that should be part of the discussion. If injuries at the hands of students is a serious concern for school employees, that should be part of the discussion and the district should be aware forcing unions to make only compensation proposals prevents the parties from getting to the nub of their dispute and bridging their distance by addressing legitimate concerns about untenable workload and workplace safety. Again, districts would remain free to reject proposals for class size, case load limits, and safety-related student discipline. This bill only prevents them from removing from the conversation fundamental working conditions for educators.

The 2021 legislature went back to making class size and case load mandatory, but only for Title I schools. The 2026 legislature should return to making class size and case loads mandatory in all schools and should make it clear that student discipline matters that have a direct and substantial effect on on-the-job safety are mandatory so that parties bargain about the working conditions that are important to educators.