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**Testimony of D. Michael Dale
Before the Senate Workforce Committee
March 9, 2015
SB 718 – Fair Wage Recovery Act**

I am the Executive Director of the Northwest Workers' Justice Project. I have been a lawyer in Oregon since 1977, and have spent most of that time representing low wage, marginalized workers. The Northwest Workers' Justice Project provides legal representation to low wage contingent workers throughout the economy in sectors such as construction, building maintenance, landscaping, hotel and restaurant industry, food processing, agriculture and reforestation. I am submitting this testimony on behalf of the Oregon Coalition to Stop Wage Theft, of which NWJP is a member. The Coalition includes more than 35 civic, labor, religious and small business organizations.¹

The Oregon Coalition to Stop Wage Theft strongly recommends adoption of SB 718.

Your committee has received ample evidence about the extent of wage theft in Oregon, especially in low wage industries. This wage theft hurts workers, their families, and our communities. Good employers are forced to compete with those who are cutting corners, and taxes are never reported or paid on wages that are stolen. Workers can't support local economies with the earnings they never receive. I want to focus on why wage theft happens so often and what can be done to stop it.

From our experience representing hundreds of Oregon workers we believe that there are several core reasons why unscrupulous employers are able to continue to gouge workers. First, although employers are theoretically required to maintain accurate wage and hour records and to provide pay stubs to employees, when they fail to do so, it becomes quite difficult to show a wage violation. This rewards bad behavior with immunity from accountability. Second, workers often don't speak up because they are afraid of retaliation.

When workers do complain, they struggle to find assistance in enforcing their rights. Public enforcement resources are limited, and workers face barriers to finding a lawyer willing to help them. At NWJP we are able actively to handle around 100 cases a year involving about

¹ Adelante Mujeres, AFL/CIO of Oregon, American Friends Service Committee, CAUSA, Beyond Toxics, Catholic Office of Life, Justice and Peace, Archdiocese of Portland, Centro Latino Americano of Eugene, Common Cause Oregon, Community Alliance of Lane County, Economic Fairness Oregon, Ecumenical Ministries of Oregon, Family Forward Oregon, Human Dignity Advocates of Crook County, Interfaith Movement for Immigrant Justice (formerly ONSM), Jewish Federation of Greater Portland, Mainstreet Alliance, Northwest Workers' Justice Project, Oregon Action, Oregon AFSCME, Oregon School Employees Association, Oregon Center for Christian Voices, Oregon Center for Public Policy, Oregon Strong Voice - Southern OR Chapter, Oregon Thrives, Oregon Working Families, PCUN, Portland Jobs with Justice, Project REconomy, Rural Organizing Project, SEIU Local 49, SEIU Local 503, Tax Fairness Oregon, Teamsters Local 26, United Food and Commercial Workers Local 555, VOZ Workers Education Project and We Are Oregon.

275 workers. Over the last five years, due to limited resources, we have had to turn away another 280 cases a year. Although we provide advice and referral to many of those individuals who are turned away, unfortunately, it is very difficult to refer wage claim cases of low wage workers, unless a large number of workers is affected and ready to proceed.

From the perspective of the worker, an individual wage theft event is just as serious, devastating, disruptive and humiliating as a case involving many workers. However, when smaller total amounts are at stake, the case is far less attractive to private counsel. If wage and hour records are not readily available, it is too hard to prove liability. To the extent that the employer is not a large, well-known business, it is far too easy for the employer to escape having to pay the judgment even after the worker prevails. Understandably, private attorneys need to anticipate how they can pay the costs of litigating a case they accept. Few workers have the resources to pay, so a contingent fee is required —meaning the lawyer will be paid nothing unless damages are actually recovered. Current minimum wage fee provisions present disincentives to proceeding.

Finally, those who do succeed in securing wage orders or judgments often face difficulty actually collecting their wages. For example, in just the last ten years, NWJP has recovered judgments on behalf of 88 workers in amounts totaling over \$850,000 that we have been unable to collect. Even the state has difficulty collecting; employers failed to pay almost three quarters of money the Bureau of Labor and Industries found they owed workers during a recent three-year period.²

SB 718 does not impose any higher wage standards on Oregon employers. Its focus is simply on providing workers with better tools to be able to enforce the wage laws that are already on the books. It does this by providing remedies for workers to be able to gain access to important information about how they have been paid, what they may be owed and by whom. SB 718 improves workers' ability to challenge retaliatory discharge by making it possible for them to get a clear statement of reasons for discharge. SB 718 will give workers a better chance at obtaining help to navigate the system by making recovery of a valid claim more certain and by removing disincentives to representation in the fee statutes. Finally, workers are afforded enhanced tools to be able to recover a judgment or wage order when they have proved that they have not been paid.

Workers and their families deserve the pay their sweat has earned. Good employers shouldn't have to compete with scofflaws. Oregon's taxpayers shouldn't have to pick up the tax burden caused by wage cheating. All Oregonians deserve the robust economy that flows from enhanced spending.

We urge this committee to forward SB 718 to the Senate floor with a do pass recommendation.

² Oregon Center for Public Policy, "Fact Sheet: Employers pay only a fraction of what they owe in wage theft cases." February 11, 2015, available at <http://www.ocpp.org/2015/02/11/fs20150211-employers-pay-fraction-wage-theft/>