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**Testimony of D. Michael Dale
Before the Senate Workforce Committee
March 9, 2015
SB 19 – “Aid and Abet” Liability**

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 19.

SB 19 closes an important gap in Oregon's wage protection legislation. A critical difficulty under current law is that, even after winning a judgment or BOLI wage order, it is often extremely difficult to actually collect the wages that have been found to be owing. One of the circumstances in which this comes up frequently is when the employer is a small, undercapitalized corporation run by the corporation's primary owner. Often, the primary asset of the corporation is the knowledge and business connections of the owner. In such cases, we often see that whatever assets the corporation has are moved from, e.g., ABC, Inc. to a new entity, ABC, LLC, or to a sole proprietorship run by the former owner of ABC, Inc. The workers are left with a useless judgment against the asset-less shell of ABC, Inc., and the business continues as before, free of any liability to former workers.

Actually, wage and hour law has long been an exception to the general proposition that agents of a corporation are not liable for their actions on behalf of a corporation unless the “corporate veil” is pierced.² For employers who are large enough to be covered by the federal Fair Labor Standards Act, corporate actors are covered by 29 U.S.C. 203(d): “Employer”

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.

² This means that it can be proved that the formalities of a corporation have not been followed by the owners of the business.

includes any person acting directly or indirectly in the interest of an employer in relation to an employee . . ." Such persons are jointly and severally liable with the corporation for wage violations under the FLSA under current law.

The gap in Oregon's law is threefold. First, BOLI is only authorized to enforce Oregon's wage law, it cannot use the broader provision of federal law. Second, for very small employers, federal law does not apply, and in such circumstance the individual actors who caused the wage theft would not be subject to any accountability. Finally, since Oregon's minimum wage is higher than the federal wage, only the federally mandated law can be sought from individual malefactors who work for corporations.

Oregon should conform its law to the federal standard in order to apply equally to everyone. After all, corporations don't act abstractly on their own to steal wages. Corporations act through their employees. It is those employees who would be called to account for deliberately skirting the law. This is not an unfair result. Why should Oregon public policy protect deliberate corporate lawbreakers from responsibility for their actions?

For these reasons, we urge passage of SB 19.