



Ivan Maluski, Policy Director
Friends of Family Farmers
249 Liberty St. NE, Suite 212
Salem, OR 97301
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Testimony in Opposition to HB 2509

Senate Committee on Environment and Natural Resources

Chair Edwards, and Members of the Committee:

Friends of Family Farmers submits this testimony in opposition to HB 2509, a bill relating to the use of the Oregon Department of Agriculture's mediation program for disputes between farmers over growing practices, including those involving genetically engineered crops.

When this legislation first presented itself in the House, we were neutral because we believe that in general, mediation can be a constructive way to resolve disputes without going to court. However, we also believe that mediation should be a choice farmers make, not a mandate, and as we have looked more deeply at the implications of this bill and its potential cost for farmers, we are now opposed to this legislation.

While mediation can be a good choice for some farmers based on their particular circumstances, HB 2509 would take away this choice by compelling farmers to engage in potentially costly and time-consuming mediation, under the risk of potentially high court costs and attorney's fees.

Of significant concern for us is the lack of cost containment or requirements for speedy resolution of the mediation process either in HB 2509 or in the Oregon Department of Agriculture's existing mediation program. Compounding this concern is the Legislature's recent passage of HB 2444, which updated ODA's mediation statute and removed long-standing statutory caps on costs. Previously, mediation costs were capped at \$30/hour per party. Now, mediation fees will be set by rule by the Director of ODA at some point in the future, creating significant uncertainty about the potential costs involved for farmers should HB 2509 pass.

Given that ODA will be refining their mediation program and its costs through rule and that fees for mediation are unknown, we believe it would be inappropriate to set a requirement for mediation in case of disputes over farming practices as outlined in HB 2509. Such costs could disproportionately burden smaller farmers or those without access to significant economic resources. For example, the going rate for professional mediation services can be in excess of \$100/hour per party, and even more for mediators specialized in a particular field, such as agriculture. Additionally, in cases of disputes over farming practices including genetic engineering, a farmer may need to retain an attorney or law firm to help them through the mediation process given the potential legal complexities, significantly increasing costs. While some farmers may have legal firms willing to represent them for free, others

may bear significant costs in a forced process that is open-ended in both time and financial commitment.

Further, the requirement in Section 2(2) that parties in a court action engage in mediation could also lead to situations in which ODA intervenes to force mediation during time-sensitive court actions. This could derail speedy resolution to time sensitive issues, and lead to financial harm or lost markets for farmers whose efforts at resolving their issues and seeking justice are delayed. While HB 2509 has been billed as a way to reduce costs to parties in a dispute, upon deeper review, we believe it could in fact present higher costs and lead to delays in resolution of issues that are highly time sensitive.

Lastly, it is unclear what problem this bill is attempting to solve. ODA's mediation services are already an option for farmers in rare cases where disputes over farming practices lead farmers to consider suing each other. The compulsory nature of mediation as outlined in HB 2509 could ultimately lead to abuse of the program in order to compel farmers to change practices out of fear of lengthy on costly mediation processes they would be required to engage in. One example might be an organic farmer who is compelled to participate in a costly and time-consuming mediation process because a nearby grower believes that the other farmer's organic practices are leading to increased disease or insect pressure. HB 2509 appears to open an opportunity in which a farmer feels compelled to change their farming practices out of the desire to avoid significant costs accrued during a lengthy mediation forced upon them by another farmer, regardless of the ultimate legal merits of their position.

Let's continue to allow ODA's mediation program to be used by farmers voluntarily as they see fit. We respectfully urge your opposition to HB 2509.