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February 24, 2021

TO: Chair Power
Vice Chair Wallan
Members of the House Subcommittee on Civil Law

FROM: Elliot Levin, PROTEC17 Research Director and Legislative Advocate

RE: PROTEC17 Opposition to HB 2638

On behalf of the nearly 900 PROTEC17 represented employees of City of Portland, I write today in opposition to HB 2638. PROTEC17 represents a wide variety of professional and technical employees including engineers, planners, information technology specialists, and technicians who live and work in the Portland area. Additionally, we represent approximately 8,000 public sector employees across Washington State.

Based on our experience negotiating COVID-19 workplace safety measures with a wide range of employers, we have significant concerns with HB 2638, which affords blanket immunity for any business, public entity or individual during the pandemic. HB 2638 would shield these entities for any acts or omissions taken during the COVID-19 pandemic so long as they can demonstrate “reasonable compliance with guidance.” Guidance includes executive orders, federal guidelines, state rules, local rules and state informational materials.

Our values tell us that it is wrong to leave workers and average Oregonians bearing more of the brunt of this global pandemic than they already have. Essential workers have been lauded as “heroes” and yet left without appropriate protective equipment, without long-term care when they contract COVID at work and without baseline safety standards and practices at the start of the pandemic. Black, Indigenous and Latinx Americans are disproportionately impacted by negative health outcomes and job losses. And women and mothers have been forced out of the labor pool at unprecedented levels with over 4.5 million payroll jobs lost by women since the pandemic began.

We have sympathy for the unique stressors this pandemic has had on everyone in Oregon -- employers and workers alike. And we know that many entities are doing everything they can to comply with state guidance and labor laws. However, removing all liability to be able to hold bad actors accountable when they have violated laws and COVID guidance is simply not the answer.

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Our current system allows employers to be held liable in order to prevent them from exposing their staff and customers to undue risk. If all legal remedy is taken away from workers, it gives employers the right to expose their workers and patrons to fatal risks with no consequences, and the grounds to fire an employee for expressing concern over unsafe working conditions.

HB 2638 could create an atmosphere where unlawful discrimination or other violations of state law would be immune from liability as long as the entity could point to a single State or County guidance document. Further, the bill makes no mention of immunity for events related to a COVID-19 infection, leaving the door far too open to shield against liability for anything that happened during the pandemic, whether or not it was related to COVID protections at all.

Finally, there is no data to support the claims that entities need carte blanche immunity. Employers already have immunity with the only exceptions for intentional or grossly negligent actions by an employer.

Average Oregonians deserve the ability to hold employers accountable when they have willfully or repeatedly put their workers, patients, or consumers at risk. Without this tool, it is those Oregonians who have already been most disproportionately impacted by COVID who would be left with even fewer resources to get by.

Ultimately, this bill would limit the rights of workers facing retaliation for expressing concerns about COVID safety issues on the job. A critical piece of reopening our economy fully is dependent on Oregon workers and consumers feeling safe. However, we believe that HB 2368 will functionally accomplish just the opposite. We ask that this bill and concept not move forward, and instead we focus on how to safely and effectively limit the spread of COVID-19 in order to reopen our economy.

We thank you for your consideration, and respectfully ask that you join PROTEC17 in opposing HB 2638.

Respectfully,

A handwritten signature in black ink, appearing to read 'Elliot Levin', with a long horizontal line extending to the right.

Elliot Levin
Research Director and Legislative Advocate
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