



May 23, 2023

Chair Rep. Julie Fahey
House Committee on Rules
Oregon State Capitol
Salem, OR 97301

Re: Response to Holvey Memo dated May 15, 2023

To Chair Fahey,

Yesterday, the House Rules Committee posted a letter from Legislative Counsel to Representative Paul Holvey, dated May 15, that responds directly and explicitly to United Food and Commercial Workers 555's letter of April 20, which itself was a response to an earlier Opinion from Legislative Counsel.

In light of the inclusion of that new information into the Legislative record for House Bill 3183, we ask that you include this response in the record as well.

We do not intend to draft a new analysis; we see no value in continuing to litigate this matter by an exchange of memoranda. Instead, it suffices to say — for the record — that after consultation with our attorneys we continue to disagree with Legislative Counsel's conclusions for several reasons.

Notably, despite substantially similar laws existing and having been enforced in California, New York, and New Jersey for several years, the types of challenges envisioned in the May 15 memo have failed to materialize in any substantial form.

But most fundamentally, we point to the opening discussion paragraph in the LC letter:

“At the outset, we clarify that the preemption concerns raised in our previous opinion are to advise you that, if enacted, certain provisions of HB 3183 **may be susceptible** to a federal preemption challenge and to **highlight the arguments that could be raised** as basis for such a challenge. ... absent judicial guidance on this issue, **we cannot predict with certainty how the NLRB or a court would ultimately decide.**” (Emphasis added)

While we cordially disagree with Legislative Counsel in terms of our respective conclusions, it appears that we have a strong agreement as to the nature of advisory opinions: they are

advisory. The posted letter is clear in that it outlines potential challenges that “could be raised” in a future challenge. We have no doubt that Legislative Counsel could just as ably outline potential arguments that could be used in defense of such a policy if so challenged.

Neither our organization nor Legislative Counsel is a judicial instrument, and therefore can merely prognosticate as to the disposition of such laws in court (although in this case we even have the foreshadowing of a number of states having successfully implemented such laws!). It is for you, as elected officials, to determine how to move forward; you may not subrogate that authority — nor should you subrogate the blame — to your able but unelected staff.

We ask that lawmakers refrain from mischaracterizing Legislative Counsel’s memos on this matter as a final determination on legality.

Thank you,

A handwritten signature in blue ink, appearing to read "Mif Selvaggio". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael Selvaggio
United Food and Commercial Workers Local 555