NWJP
NORTHWEST **WORKERS' JUSTICE** PROJECT

Testimony in support of HB 4111 (2026)

Chair Prozanski, Vice Chair Thatcher and members of the Senate Judiciary Committee,

My name is Kate Suisman. I am an attorney at the Northwest Workers' Justice Project (NWJP). Thank you for the opportunity to provide testimony on this important bill. We represent workers in low-wage jobs when bad things happen to them at work: when they are not paid, or are discriminated against for being in a protected class or are retaliated against for speaking up. Finally, we engage in policy advocacy and try to bring the important perspectives of workers in low-wage jobs and immigrant workers to these policy discussions.

Section 2: Keeping irrelevant information out of civil court

This section aims to make sure all Oregonians can access the civil court system without undue fear. It will make information about someone's immigration status inadmissible, unless that information is essential to establish a party's claim for relief. This protection is needed now more than ever, when the level of fear immigrant Oregonians are living with is the highest it has been in recent memory. The section aims to protect individuals from being harassed about their immigration status when trying to enforce their rights.

I would like to draw the committee's attention to testimony submitted by Washington State attorney, Joe Morrison, to the House Judiciary Committee on this bill. Mr. Morrison has been practicing there for thirty years and helped write the rule that this bill is based on. That rule has been in place since 2018. To quote from that submission:

"in my opinion, the rule has delivered on its promise to provide clear guidelines for judges and predictability to litigants—both of which were absent prior to the rule…Judges have also used the rule to prevent invasive inquiries during the pre-trial fact investigation (discovery) by issuing protective orders…"

He also points out there have been few changes in the eight years since the rule went into effect.

Many of NWJP's current clients are afraid to go to depositions and hearings because they fear the other side will try to raise issues relating to their immigration status, opening them up to potential scrutiny or detention by immigration enforcement. In terms of NWJP's potential and new clients, I know our firm is not alone in experiencing a decrease in the number of immigrant workers calling our office for legal assistance. This is true for documented and undocumented workers alike due to the general climate of fear created by indiscriminate federal immigration

enforcement. This climate has also emboldened some employers and we are seeing more threats made to workers based on immigration status. If a prospective or current client knew that information about their immigration status could not be brought up in court (and thus is less likely to be a permissible inquiry during the discovery phase of a case), they could access our court system and enforce their rights without such intense fear.

All Oregonians have an interest in people feeling comfortable enforcing their rights - this brings up the floor for everyone, holds bad actors accountable, and protects good employers from unfair competition.

There are limited exceptions based on situations where an individual's available remedies may be impacted by their immigration status in some situations, but please note the bill does *not* include an exception for that information to be allowed in for a defendant to prove a *defense* to a claim. This would add a loophole that swallows the bill. Defendants regularly try to present immigration status as a meritless defense to actions, like by arguing that workers who lack immigration status have "unclean hands" and should not be able to enforce their rights. Even though courts regularly ultimately reject those attempts, the chilling effect of the potential discovery and admissibility of immigration status leaves many immigrant workers afraid to bring legal action to hold defendants accountable for serious violations. In the employment context, this creates a "perverse incentive" for employers to hire undocumented workers, knowing that they are unlikely to speak up in the face of abuses. Rivera v. NIBCO, a 2004 case in our federal circuit (the 9th Circuit,) explains this problematic dynamic:

> *Regrettably, many employers turn a blind eye to immigration status during the hiring process; their aim is to assemble a workforce that is both cheap to employ and that minimizes their risk of being reported for violations of statutory rights. Therefore, employers have a perverse incentive to ignore immigration laws at the time of hiring but insist upon their enforcement when their employees complain.*
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> *Rivera v. NIBCO, Inc.,* 364 F.3d 1057, 1072 (2004)

Washington State's evidence rule, on which this bill is based, does not include proving defenses and has been in effect since 2018. Advocates there have not seen harmful effects from the lack of inclusion of defenses in the bill language. Please note that Washington's rule also applies in *criminal* cases and in that context *does* include defenses, showing it was a carefully considered exclusion in the *civil* context. California changed their law in 2022 to keep status out of open court, however our bill tracks Washington's more closely. Other states have established similar laws, including Pennsylvania and Illinois.

There is a process in the bill for either party to ask a judge to allow information about immigration status into the case. But this would be done confidentially and in the judge's chambers, not open court.

This is a long-overdue change that Oregon should make to its evidence statute as soon as possible.

Section 4: Updating employment documents without fear

This section makes it an unlawful employment practice for an employer to retaliate against a worker who updates or attempts to update their information with their employer based on *lawful changes* to their personal information including their name, social security number, tax identification number or federal employment authorization document.

This policy would ensure that those workers who are updating their documents are not punished for attempts to stay in or bring themselves into compliance with US immigration law. This change also clarifies for *employers* that they are doing the right thing by allowing workers to update their employment information.

Industry representatives have said that an employer has to reemploy (start over) or even terminate someone who presents new information about their name, social security number or other employment authorization documents. This is incorrect and inconsistent with what the federal government instructs employers to do. The current US Citizenship and Immigration Services employer handbook for filling out I-9 forms says:

> *"In cases where an employee has worked for you using a false identity but demonstrates current authorization to work in the United States, Form I-9 rules do not require termination of employment."*
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> USCIS Employer I-9 Handbook, Section 6.3 Recording Changes of Name and Other Identity Information for Current Employees

The same section of the employer handbook makes clear that employers need to fill out a new I-9 form, using the *original hire date* of the worker, which shows that even USCIS believes the employer not should treat the worker as a new employee:

> *"You may encounter situations other than a legal name change where an employee informs you (or you have reason to believe) that their identity is different from what they used to complete their Form I-9. For example, an employee may have been working under a false identity, has subsequently obtained work authorization in their true identity, and wishes to regularize their employment records. In that case, you should complete a new Form I-9. Write the original hire date in Section 2 and attach the new Form I-9 to the previously completed Form I-9 and include a written explanation."*

A good corollary is a "No Match Letter," which the Social Security Administration sends out to employers and workers when there is a discrepancy between their records and what is reported to them. These letters say:

> *"You should not use this letter to take any adverse action against an employee, such as laying off, suspending, firing, or discriminating against that individual, just because his or her SSN or name does not match our records. Any of those actions could, in fact, violate State or Federal law and subject you to legal*

consequences."

Industry representatives have also alleged that workers will be able to bring a retaliation or discrimination case based on losing benefits or seniority when they update their documents, even if the employer was unable to transfer over certain benefits due to factors outside of their control. (For example, the employer asks the State to transfer Paid Leave Oregon, unemployment, or other benefits from one name/SSN etc. to another and the State cannot or will not transfer them.) The language in this section makes clear that it is only unlawful for an employer to retaliate or take adverse action *because* the worker updates or tries to update their information. If an employer *takes no action against the worker*, and the only harm the worker suffers is due to the action or inaction of the State, there is no claim under this section of HB 4111.

Regarding benefits and/or seniority under the employer's control, an employer must take steps to ensure that the worker is *internally* treated as the same worker, with no loss of seniority or employer-provided benefits like vacation time or retirement vesting. This should be no different than a worker changing their name because they got married or correcting a social security number because a typo resulted in the incorrect number being used at first.

While there is little case law directly on point, there are analogous cases which shed light on the *lack* of liability an employer would have in this situation. In *Francom v. Costco Wholesale Corp*., the employer was not liable for a worker's allegedly retaliatory change in schedule because a third-party (a medical doctor) had directed which shifts the worker could and could not perform. 991 P.2d 1182 (Wa. Ct. App. 2000)

Another relevant case describes a worker who lost a second job due to changes at their other job. The court found that the loss of that second job was not an adverse employment action since it was "outside the control or domain of the employer and not "job related…" *Lloyd v. City of St. Charles*, No. 4:07CV01935 JCH, 2009 US Dist LEXIS 15053 (ED Mo Feb. 26, 2009)

Please note the bill was amended on the House side to accommodate the concerns of employers and now makes clear that if the adverse action was taken solely and independently by the third-party administrator, then the employer has not committed an unfair labor practice.

Employers can still fire a worker whose work authorization has expired or is invalid; nothing in this law changes the federal laws governing the employment of immigrants, which strike a careful balance by prohibiting employers from continuing to employ individuals if the employer knows they lack work authorization while also placing limits on abusive document verification practices. .

The protection proposed here is nothing new - employees update information regularly for lots of reasons, including winning asylum claims, finally being approved for residency after long waits, or non-immigration reasons like getting married or changing their name. The worker is not a new employee, and the employer knows this. One intent of this bill is to *allow* workers to make

legal changes *without* losing benefits or seniority - that is a design not a flaw in the bill. This law seeks to allow all workers to update their documents for any lawful reason without fear.

Section 6: Enhancing our Racial Profiling Statute

Section 6 addresses racial profiling by local and state law enforcement, and adds a prohibition on profiling people based on real or perceived immigration status. While the most egregious and harmful profiling is obviously being done by federal law enforcement, Oregon should double down on its commitment to not profile people based on any stereotypes or assumptions. An example that may not currently be covered by state law is when a group of individuals of different national origins and races is approached by law enforcement under the suspicion (fueled by current rhetoric by the federal government) that immigrants are more likely to commit crimes.

Thank you.