

# **Designing, Enacting and Defending State and Local Labor Standards Laws**

**OREGON LABOR LAW CONFERENCE 2020**

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# RANGE OF POSSIBILITIES

- General
- Specific
- Labor or non-labor

# PURPOSE

- Why do it?
- How to do it?
  - Legislative
  - Initiative
  - Allies
- Campaign orientation

# ENFORCEMENT

- Private v. Governmental
- Remedies (multiplied damages, consequential damages, forfeitures)
- Presumptions (anti-retaliation)
- Fee-shifting (straight, defendants' fees as lodestar)

# LABOR RELATIONS v. MINIMUM STANDARDS

- Labor-law preemption
- State-law preemption
- Free Speech (neutrality)
- Min. standards effectiveness: CBA opt-out?

# PROPRIETOR: HOW FAR?

- *Boston Harbor/Gould v. Wisconsin/LAWA*
- What is a “proprietary”, market-actor role?
- What will be seen to serve proprietary v. regulatory interest?

# GOVERNMENT LAWYERS

- Knowledge
- Competence
- Attitude

# DEFENSE

- Don't rely on government
- Don't enact without plan to defend
- Do plan and budget for defense



# RED-STATE BACKLASH

- Anti-living wage (AZ, FL, LA, MO)
- Other state preemption
- Repeal of protections
- Prohibition of CBA opt-outs
- Litigation bonds or other barriers to private enforcement
- Us: move in areas of greatest public approval, avoid extremes