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Chair Prozanski and Members of the Judiciary Committee:

I am Gretchen Mandekor; I am a lawyer who has been trying cases in the state and federal courts of Oregon for 23 years. I represented Gabe Owens at trial in his case against Ski Bowl last March. Before I started representing victims like Gabe, I spent the first 20 years of my career defending insurance companies and businesses, so I have good insight into how they operate and when they can and cannot be held liable for their actions.

SB 754 is blanket release of ordinary negligence. I present three important points below to explain why SB 754 should not become law in Oregon.

I. POINT 1 – ORDINARY NEGLIGENCE

The law in virtually every state in this nation requires every person to use reasonable care to avoid harming others. This is the standard of ordinary negligence that every person and business is held to.

SB 754 would give businesses a "free pass" to allow them to act negligently with no regard for public safety. It would allow businesses to put profits before the safety of their paying customers with no fear of accountability. Our civil justice system levels the playing field for people like Gabe Owens to take on big corporations who put profits over the safety of their customers. Corporations simply must face liability for their wrongful actions. The law must encourage corporate responsibility, not give a "free pass" to act as Ski Bowl did in the Gabe Owens case, discussed below.

II. POINT 2 – INHERENT RISK V. NEGLIGENCE

Many of the proponents of the bill have loosely thrown around the term "inherent risk" – they imply that victims are currently not required to accept the risks of the sport in the absence of a waiver. This is wrong. What they fail to understand is that recreational facilities in Oregon are already immune when it comes to inherent risk. They do not face liability for risks inherent in sporting activities. Injured people cannot sue and recover damages when the cause of their injury

was an inherent risk of the sport. They can only sue and recover damages when a business was negligent.

The proponents confound inherent risk with risks created by the business' own negligence. These are two different things. Businesses only face liability for risks created by their own negligence, i.e. their failure to operate their facilities safely. Inherent risk generally involves natural conditions or the person's failure to participate within their own ability. Risks created by the business' negligence generally involve man made conditions or hazards that are allowed to exist despite risks they present to the safety of the public. What the proponents are seeking to do is immunize themselves from liability for their own negligence, which is unconscionable and against public policy, as the Supreme Court held in the Bagley decision.

III. POINT 3 – SKI BOWL EXAMPLE

There is inaccurate testimony before you from proponents of SB 754. The Vice President of Ski Bowl Mike Quinn makes the same argument he made at the Owens trial last March: He asserts that Ski Bowl has had a 32-year run without injuries – which he phrases now as *claims*. This statement is false. In the course of discovery during the Owens lawsuit, we found hundreds of mountain biking injury reports, including three very serious injuries at the same man-made water ditch, two of them resulting in life flights. The ditch was a known hazard that multiple customers and even Ski Bowl's own trail manager had complained about. It would have cost it a few hundred dollars to fix but Ski Bowl intentionally turned a blind eye and did nothing about it until Gabe Owens filed suit. Now Ski Bowl complains about increased liability insurance rates. Ski Bowl's insurance rates did not go up because Gabe Owens filed suit and won. Ski Bowl's insurance rates went up because it turned a blind eye to known hazards and operated an unsafe facility.

When a recreational facility has not exercised reasonable care in the design, management and operation of its facility and someone is harmed as a result of that wrongful conduct, the facility should be held accountable. If not, they can just cut corners to save money with no regard for public safety.

Do not allow recreational facilities a "free pass" to operate unsafe facilities and put the general public at risk of serious injury with no recourse. Blanket releases of ordinary negligence are unconscionable and against public policy.

Vote NO on SB 754.