



February 14, 2024

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Senate Committee on Judiciary
Senator Floyd Prozanski, Chair
900 Court Street NE
Salem, Oregon 97301

Re: Response to OTLA SB 1576-3 Hearing Comments

Chair Prozanski and Members of the Committee:

I believe you are aware that the Bend Park & Recreation District strongly supports the proposed amendments in SB 1576-3 relating to recreational use immunity. During the hearing on February 12, 2024, Mr. Arthur Towers offered testimony on behalf of the Oregon Trial Lawyers Association in which it was suggested that the legislation is "unnecessary" and "the [court] process is not resolved yet".

The Bend Park & Recreation District respectfully disagrees and provides the following comments.

1. The SB 1576-3 legislation is necessary since the decision in *Fields v. City of Newport* (regardless how the case goes at trial) is now binding precedent in the State of Oregon.
2. The now binding precedent unequivocally erodes recreational immunity and does so in a way that is inconsistent with and thwarts the stated intent of the statute. The need for the statute has previously been determined by this body, repeatedly. The *Fields* decision prevents the intended encouragement of property owners, public and private, from opening up or maintaining recreational opportunities for the public at no charge.
3. The intent of the protections in the statute is not simply to "win" at trial; "immunity" for opening up your property for public use means you don't have to stand trial with its significant burdens on time and resources, including litigation expense, the discovery process, disruption, court dockets, far greater likelihood of arm-twisting in pursuit of settlements, etc.

4. This binding precedent puts the injured person's *claimed* intent in control of whether their case gets all the way to a jury (at trial).
5. The principal purpose of the statute is not simply “recreation”; it is intended to encourage property owners to allow use of their property for recreation that might not otherwise be made available.
6. If property owners are more likely to get sued and more likely to not be able to cut off a case at the summary judgment stage, they are less likely to allow free use of their property, whether private or public property, and regardless of whether they still might win at trial. The subjective intent of the user must be irrelevant for the statute to effectively serve its intended purpose.

The SB 1576-3 amendments are crucial to maintaining the integrity of the recreational use immunity statute, and a bare minimum interim step in anticipation of a broader discussion to occur during the next regular session.

Thank you,



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On behalf of the Bend Park
& Recreation District