

# OREGON TRIAL LAWYERS ASSOCIATION

812 SW Washington Street, #900

Portland, OR 97205

[www.oregontriallawyers.org](http://www.oregontriallawyers.org)

503-799-1017

Testimony of Arthur Towers

OTLA Political Director

**In Opposition to the -3 Amendments to SB 1576**

Before the Senate Committee on Judiciary

February 14, 2024

Chair Prozanski, Vice-Chair Thatcher, members of the committee, thank you for the opportunity to testify in opposition to the -3 amendments to SB 1576.

Current law shields landowners from liability if someone is injured while recreating on their land (unless the landowner charges admission). The -3 amendments dramatically limit the rights of injured people and needlessly expand the immunity of landowners.

1. The -3 amendments are an unnecessary response to a court case that is yet to be decided in Lincoln County. The City of Newport (the landowner) has stated in court that existing law provides them the protection they need to win the case.

## Background

Nicole Fields was walking home on a city trail from a picnic. The footbridge on the city trail was extremely slippery. Ms. Fields badly broke her leg. The City of Newport says that she was engaged in recreational activity, and therefore the city is immune from responsibility. Ms. Fields claims that walking home from a picnic is using the footbridge for transportation purposes, and therefore she should be allowed to try to convince a jury that the city was negligent in the maintenance of the footbridge.

The city sought to get the case dismissed, but the Court of Appeals instead said that a jury should decide if her activity was recreational.

That case is still pending. No judge or jury has decided that walking home from a picnic is recreational or not.

The City of Newport, on January 25<sup>th</sup>, even after the Court of Appeals ruling, believes the case should be dismissed and never go to a jury BECAUSE OF EXISTING LAW.

**The City of Newport's attorneys' words from Defendant's Second Motion for Summary Judgement in Fields v Oregon**

*The legal bind Plaintiff [Ms. Fields] finds herself in is one of legislative creation. If her "principal purpose" was to recreate on the land, the City's immunity would unquestionably have rested in ORS 105.682(1). But where Plaintiff claims her "principal purpose" was simply for transportation purposes, the City's immunity is instead found in ORS 105.668. The City of Newport respectfully requests this Court grant its Second Motion for Summary Judgment and dismiss this case.*

DATED this 25th day of January, 2024.  
s/Elizabeth A. Jones Aaron P. Hisel, OSB #161265  
Elizabeth A. Jones, OSB #201184 Attorneys for  
Defendant

**There is a real possibility the judge could agree with the city and Ms. Fields would lose.**

**If the judge disagrees, then the city can still win at trial by laying out their case to 12 Lincoln County residents who can recognize what recreating on the coast is when they see it.**

**The -3 amendments expand the immunity from liability in two ways.**

- A. Currently, improved rights of way (paved paths, roads) are places where the immunity does not apply. The -3 expands the immunity to cover improved paths (Page 5, line 1). This means that places where families who expect to be able to walk, run or bicycle safely (e.g. Portland Esplanade, paved walking paths) would have their rights taken away. The financial incentive to properly maintain these facilities or to notify users of unsafe conditions is eliminated.
- B. The definition of recreation is expanded to ALWAYS INCLUDE WALKING RUNNING AND BICYCLING (Page 4, line 7).

**This combination is dangerous to the public.** Oregonians who are encouraged to use paved trails, and who expect those improved trails to be properly maintained, have their ability to be compensated for serious injury limited. People who use public property for commuting, transportation, or just walking onto public property to conduct business will

no longer have the opportunity to hold government accountable for unsafe, poorly maintained conditions.

### **Government already has special protection from liability**

If a person is harmed by the government, in this case by poorly maintained paths and trails, the injured person has a limited amount of time to file their claim and cannot be fully compensated if their injuries exceed the Oregon Tort Claims cap.

### **Governments should not be scared of their own residents**

In the case that prompted the insurance industry to scare local government into closing trails, the City of Newport believes existing law will allow them to win without a jury trial.

Even if the case goes to a jury, 12 local residents can hear both sides and make a fair decision. They can determine if their own government obeyed the law. They can certainly ascertain if someone was involved in recreation.

The entire impetus behind this amendment is an alarmist memo from an insurance company that neither wants to pay nor defend claims. That should not be the basis for legislative action. Let a judge and jury decide the case before you change the law.

We urge you to not adopt the -3 amendments to SB 1576.