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To: Oregon House Committee on Rules

Re: Support SB 1593 to save Oregon jobs and recreation. If you support SB 1517A, then make amendments to protect all Oregon recreation jobs.

Dear Chairman Bowman, Vice-Chairs Elmer and Pham, and members of the Committee:

I am a longtime Oregon resident, attorney, and outdoor sports enthusiast, and I write to you in support of SB 1593, to undo the harm caused by the Oregon Supreme Court's decision in *Bagley v. Mt. Bachelor, Inc.* (356 Or 543, 2014). Oregon legislators must normalize the state's liability waiver law, or the state will lose a massive number of jobs and recreation opportunities. Although ski resort jobs are the tip of the spear, without some change, job losses will affect Oregonians in numerous and diverse areas of recreation. SB 1517A as passed with the -7 amendment does not achieve the necessary measures that SB 1593 does, as demonstrated by the near universal opposition to it among stakeholders (other than trial lawyers). However, if you support SB 1517A, then you must amend it with the -A11 or -A15 amendments to protect all Oregon recreational activities—or else you put Oregonians' jobs and recreational activities at risk.

With all due respect to Mr. Bagley, and with no intention of downplaying the gravity of the injuries he suffered, we must recognize that the case of *Bagley* was poorly decided. The Justices erred when writing that “simply put, plaintiff [Bagley] had no meaningful alternative to defendant's take-it-or-leave-it terms if he wanted to participate in downhill snowboarding.” (356 Or 543 at 562.) Mr. Bagley was an “advanced expert,” by his own estimation; he could have hiked up any other location with a split board and snowboarded down, or he could have gone to a different resort. Moreover, the Oregon Supreme Court incorrectly compared ski resorts to places of public accommodation like inns and public warehouses, where the facility operator is best situated to ensure the accommodation's safety. (356 Or 543 at 568.) Again, with respect to Mr. Bagley and with no intention to downplay the severity of his injuries, he had ridden the lifts 119 times in the 26 days before his injury, and he had ridden the terrain feature where he suffered his injury multiple times before becoming injured. He, like all skiers and snowboarders, knew or should have known

that conditions on a mountain can change with a moment's notice, and a ski resort cannot ensure safety at every instant; the rider is responsible for evaluating conditions.

More importantly, the events since *Bagley* have shown that this decision was not in the interest of Oregon residents, and it poses risk of harm to all who engage in, and make their livelihoods from, sports in Oregon. With insurers pulling out of Oregon, ski resorts—and other sports or outdoor activity providers—face the risk of becoming uninsurable and thus unable to do business in our state. Oregon sports enthusiasts will be forced to go for recreation in neighboring states that lack such a backwards law. And the multitude of Oregon residents whose livelihoods rely on sports, from ski lift operators to snowboarding instructors to fishing captains and river rafting guides, to mountain bike park operators and rock climbing instructors...the list goes on and on...they will all suffer. This is why SB 1593 is so important. Alternatively, if you support SB 1517A, then do so only after amending it to allow waivers in all recreational activities (-A11 or -A15 amendments), so that you protect the jobs of all Oregonians who thrive off of our state's diverse sports and activities.

The bottom line is this: whether it is through SB 1593 or an amended SB 1517A, a balanced liability policy, allowing for lawsuits over gross negligence while allowing for waivers of ordinary negligence, is in Oregon residents' best interests—and the current situation is rapidly becoming untenable. You, Oregon representatives, must act fast in this short legislative session. You must support aligning Oregon with other western states and federal policy: waivers are a very normal and widely accepted part of sports and of life. I support SB 1593, and I could support an adequately amended SB 1517A. One or the other is in Oregon's best interests—and would help normalize waivers used in a broad range of activities. Please ensure that one or the other passes, during this short legislative session. Failure to do so dooms Oregonians' recreational activities—and jobs!

Respectfully,

David Kayes

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Concerned Oregon resident