

Chair Prozanski and members of the Judiciary Committee,

I am Kathryn Clarke, past president of the Oregon Trial Lawyers Association and an appellate lawyer in Oregon for 35 years. I was part of the team representing Myles Bagley in his case against Mt. Bachelor, which has brought us to this discussion today.

As you have all experienced over the last few sessions, immunity bills have become very popular both in Oregon and nationally. We have seen dozens of them just this session. Immunity is the equivalent of a "special pass" or a permanent "stay out of court" card for wrongdoers. It gives them the power to act negligently without regard to public safety or health, with no fear of accountability or being held responsible for their actions. The growing push for immunity via legislation represents a major threat to our system of civil justice and any concept of accountability.

In 1979, the Oregon Legislature passed the Skier Responsibility Law, ORS 30-970-30.990. Drafted and supported by the Oregon ski industry, it provides a layer of protection for ski areas and operators from claims for injuries resulting from "an inherent risk of skiing." It says that skiers accept and assume the inherent risks of skiing insofar as they are reasonably obvious, expected or necessary. But the legislature did not bar a claim for an injury resulting from the ski area's negligent or wrongful act. The measure drew a rational line: a balance between the skier's own responsibility to exercise reasonable care to prevent harm from the inherent risks of skiing, and the operator's responsibility to exercise reasonable care in the management of the ski area – to avoid creating risks by its own unreasonable conduct. The skier assumes the inherent risks of skiing, not the risks created by the operator's negligence.

Myles Bagley, an expert snowboarder, was paralyzed when he came off a constructed jump in a ski area's terrain park; he claims, but hasn't yet had a chance to prove, that the jump was negligently designed and it was that wrongful conduct that put him in a wheelchair at the age of 18. The Supreme Court held in a unanimous opinion that Mt Bachelor's attempt to immunize itself from the harm caused by its own wrongful conduct was unconscionable, and therefore the courts would not enforce it.

The Bagley decision does not change any of the rules or remove any of the protections given the industry by the 1979 legislature. But when a ski area has not exercised reasonable care in the management and operation of the ski area and someone is harmed because of their wrongful conduct, they should be held accountable. I am urging you to let the Supreme Court's unanimous decision stand and hold the ski industry to the same standard we are taught as children to uphold as human beings: if we act unreasonably and hurt someone, we should take responsibility and do our best to right our wrong. This legislation is unnecessary, overbroad and I urge you to Vote NO on SB 849.