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Testimony of Arthur Towers
In Opposition to LC 21
Before the
Joint Interim Committee on the Third Special Session of 2020
December 17, 2020

Co-Chairs Courtney and Kotek and members of the committee, thank you for the opportunity to testify this evening. The Oregon Trial Lawyers Association philosophically opposes limits on Oregonians' 7th Amendment right to trial by jury as described in LC 21. The immunity proposals under consideration place an additional barrier to the fundamental Constitutional right to tell one's story to a jury. Suits would be allowed to be filed, but the opportunity for injured Oregonians to make their case to a jury would be meaningfully limited.

We understand that amendments to LC 21 may be considered that would address medical immunity, and so we testify against those possible amendments as well.

The proponents have failed to demonstrate that the legislation is needed. Ten months into the pandemic and we have yet to see a lawsuit that would be impacted by these proposals. Thousands of children have returned to Oregon schools at various times this fall, and schools have provided in-person instruction without this legislation being in place. The medical industry has treated tens of thousands of Oregon Covid victims, yet there is nary a lawsuit that proponents can point to as a problem.

If the threat of litigation is pushing proponents to operate in a safer manner, then the 7th Amendment is operating as the framers of the Constitution intended. Liability provides an incentive for keeping people safe. Passage of this legislation limits that incentive.

The impact of the school immunity proposal is disproportionate. There is great value for all students to safely receive in-person instruction. English-language learners, students with disabilities, students who rely on school for food, and students whose parents must work outside the home are disproportionately harmed by distance learning. Those students are most likely to risk their safety to attend schools. Those families are reliant on school districts to take the utmost precautions to keep students and workers safe.

For all these reasons, these proposals are unwise, unnecessary, and unfair.

The saving grace of the proposals is that they do not go further in limiting the rights of ordinary Oregonians. As a result of lengthy negotiations, the bills create a dispute resolution process that cushions the blow to victims' 7th Amendment rights.

The school immunity proposal affects Covid-related complaints. A defendant in a suit would have the opportunity to file an affidavit (simply paperwork) with a judge at the onset of a case showing compliance with Covid-related guidelines, and that compliance with the guidelines led to the harm.

If a victim could not show that there is a material dispute of fact that the defendant was out of compliance, the case would be dismissed. The proponents seek a quick resolution of claims and this process provides speedy resolution – but only if they can demonstrate compliance with guidelines. We respect that – unlike the proposal that died in committee in the First Special Session – this is a significantly more measured approach.

The medical immunity proposal affects Covid-related complaints and complaints brought by people denied care during the Covid-related emergency. The defendant in a suit would have the opportunity to file an affidavit with a judge at the onset of a case showing they were in compliance with Covid-related guidelines and that compliance with the guidelines led to the alleged harm.

If this proposal becomes law, there is greater urgency in guarding against any attempt to weaken Covid guidelines and rules. Thanks to community pressure, the state has made significant effort to improve crisis care guidelines for the medical industry.

Despite all the disruption in everyday life and the economic catastrophe facing many Oregonians, our state is at the low end of Covid cases and Covid-related deaths. Thanks to the actions of many segments of the community and to our state's leadership, Oregonians are relatively safe – especially compared to the rest of the nation. There is no need to upset the balance of safety and accountability under current law that has served Oregonians so well to date.