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Testimony of Arthur Towers

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In opposition to the -5 Amendments to SB 847

Before the Senate Committee on Housing and Development

March 16, 2023

Chair Jama, Vice-Chair Anderson, and members of the committee, thank you for the opportunity to submit testimony regarding SB 847. OTLA is neutral on the base bill, but we are strongly opposed to the -5 Amendments.

OTLA members are lawyers who fight for underdogs. In this instance, the underdogs are Oregonians harmed by their government and its contractors.

In kindergarten, we teach our kids if you do something wrong, make it right. If you hurt someone, take responsibility for your actions.

The -5s do not align with what we teach 5-year-olds because the amendment grants blanket immunity from responsibility for those who cause harm while operating a homeless camp.

The amendment treats all operators the same, regardless of their safety record or their willingness to invest in safe procedures.

A government or a company that trains workers, has high retention rates of trained staff, provides protection to whistleblowers, and spends money on other safety measures gets precisely the same treatment as an entity that takes the low road and cuts corners.

There are reports of harm in these sorts of camps. We should not be attracting out-of-state contractors to Oregon when they have a bad track record on safety.

The balance of power between camp operators and residents has proven to be problematic in other states. Victims are fearful of reporting sexual assaults allegedly perpetrated by staff because of the fear of being removed from the camp.

(Sausalito Homeless Residents Make Serious Allegations Against Urban Alchemy, Pacific Sun, June 1, 2022)

The -5s limit the rights of residents and volunteers. **Why should an Oregonian who volunteers to help the homeless in a small town have fewer rights than a volunteer in Portland?** This is an extraordinarily problematic precedent.

It is also important to understand that not every injury results in a lawsuit, and many lawsuits do not result in compensation for the victim. The -5 amendments limit the rights of individuals to even tell their side of the story to a local jury. We do not believe every plaintiff deserves to win, but we are strong believers in the 7th Amendment right to tell one's story to a jury.

It is impossible for the legislature to foresee all the different situations that may arise in a camp. Our judicial system is set up so that a local jury can hear both sides of the story and can make a decision based on the specific facts of a particular case. The person harmed will very likely bring their case before a jury in the county in which the injury occurred. We trust local juries to make decisions about right and wrong when they hear all the facts. We believe local elected officials should believe in their constituents' ability to make a fair decision based on the specific facts of a case.

It is wrong for the legislature to close the courthouse door in every case with disregard for the specific facts of how a person got hurt.

In discussions with proponents, one of the main arguments in support of the amendment is that the mere filing of a lawsuit is disruptive to small town governments. It is tremendously disappointing that the disruption to the government would outweigh the disruption that an injury causes in the life of an individual.

There are a number of hurdles that an injured person must overcome already in order to bring a suit against the government. These include the strict timelines of the Oregon Tort Claims Act, compensation caps, and the discretionary immunity already enjoyed by government. The contingency fee system also screens out weak cases. A lawyer who brings a particularly weak case faces sanctions and possible loss of license.

For all these reasons we urge the committee to reject the -5 amendments.