



March 31, 2023

Senate Committee on Housing and Development
Oregon State Legislature
900 Court St. NE
Salem, OR 97301

RE: Testimony Against -5 Amendment of SB 847

Dear Chair Jama, Vice-Chair Anderson, and members of the Senate Committee on Housing and Development:

Thank you for the opportunity to provide testimony on behalf of the American Civil Liberties Union of Oregon (ACLU of Oregon). The ACLU of Oregon is a nonpartisan, nonprofit organization dedicated to preserving and enhancing civil liberties and civil rights, with more than 28,000 supporters statewide.

The ACLU of Oregon opposes the -5 amendment to SB 847, which would create a separate legal regime for houseless individuals in rural communities. Please review our March 17 testimony for the ACLU's overall concerns on the -5 amendment, which would create a system that would deprive Oregonians of essential rights and protections based on their housing status and geography.

Our testimony today responds more narrowly to comments made on the record during the March 29 public hearing. We write to dispel the notion that the -5 amendment would not strip individuals of essential protections because houseless individuals already legal protections are already constrained by "recreational use immunity." ORS § 105.682.

This assessment of recreational use immunity is mistaken. While "camping" as an outdoor activity is listed as a "recreational purpose"¹ under Oregon statute, recreational activity is a wholly different classification from an individual's forced existence without shelter. Individuals who live outside because they have no home are not "camping" as a recreational purpose.

This is not a contested subject. The website for the League of Oregon Cities and Association of Oregon Counties public interest insurance trust specifically disclaims on its website that recreational immunity does not apply to homeless camps.²

In any case, the -5 proponents draw a false parallel between the -5 amendment and recreational use immunity. Recreational use immunity is significantly narrower than the expansive immunity provided under the -5 amendment. The -5 amendment would create immunity for cities and counties, their officials, employees, other agents and third-party entities maintaining and operating the campground. Recreational use liability, on the other hand, creates a limited

¹ ORS 105.672(5)

² Recreational Immunity, Citycounty Insurance Services (CIS), <https://www.cisoregon.org/RecImmunity>.

immunity solely for landowners—including cities and counties—but does not extend to their agents and employees.³

But even for landowners, recreational use immunity offers a narrower immunity than the -5 amendment. There is no recreational use immunity for intentional torts, but -5 would leave those operating camps immune from civil liability even if they have committed intentional torts. This is an egregious gap in protections for this vulnerable group. Recreational use immunity also only applies to recreational activity that landowners have permitted on their property; illicit recreation does not apply.

Rural counties and towns of Oregon have expressed real and understandable economic concerns, but lawmakers must find a better way to support rural communities and their houseless populations. Stripping our society's most vulnerable of essential protections is not the way forward.

Please, oppose the -5 Amendment.

Respectfully,

Emily Hawley
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ACLU of Oregon

³ *Johnson v. Gibson*, 358 Or. 624, 638 (2015).