



Testimony to the
Senate Committee on Judiciary & Ballot Measure 110 Implementation
In Support of SB 213

March 22, 2021

Good morning Chair Prozanski, Vice Chair Thatcher and members of the Senate Committee on Judiciary and Ballot Measure 110 Implementation. For the record, my name is Kevin Thelin, PE, representing Murraysmith, Inc., an Oregon-based civil engineering firm specializing in public works consulting to cities, counties, special districts and State agencies throughout Oregon and the Pacific Northwest. We established our firm with two people in Portland in 1980 and have grown to over three hundred staff since then, with more than 140 of which are in Oregon. I am writing today to strongly support the -2 amendment to Senate Bill 213.

Senate Bill 213 will bring fairness to professional services contracts by ending the inclusion of duty to defend clauses in public and private agreements. This duty to defend clause is onerous as it requires the design professional be responsible to defend an owner or other party against claims asserted by a third-party even if the design professional is not negligent. This duty to defend clause is not fair, equitable or inclusive.

This requirement in professional services contracts is not fair to design firms of any size, but it is especially damaging to emerging and small businesses that typically don't have the ability to advocate against these contract requirements. We find these duty to defend clauses to be a major deterrent to compete for certain projects, many of which are with governmental agencies.

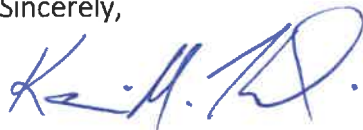
Our firm's experience with duty to defend has been that it is generally an uninsurable clause. When it appears in contract language, we ask our clients to remove it if possible. Some oblige and some refuse. At that point, we have to decide if keeping it in the contract is a "deal breaker" or not. We are absolutely willing to stand behind our work and our professional liability insurance covers negligible acts, errors and omissions.

We respectfully ask this committee to support the -2 amendment to SB 213 and send this bill to the Senate floor. This is good business policy that will assist firms across the state in being able to

engage in construction projects, including many government-funded projects, by removing this onerous duty to defend clause.

Thank you for your service and we are happy to be a resource if you have additional questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Thelin", with a stylized flourish at the end.

MURRAYSMITH
Kevin Thelin, PE
Vice President