

January 11, 2024

Testimony to the House Committee
on Economic Development and Small Business
Presented by Katherine Austin, AIA, Architect



Good afternoon, Chair Bynum, Vice Chair Diehl and members of the Committee, I am Katherine Austin, a practicing architect in Bend. I am honored to testify today on behalf of the American Institute of Architects and as well as all other small business design firms including engineers and land surveyors in support of legislation to ban duty to defend clauses in public agency construction agreements.

I was first licensed in 1991 and formed my own practice in 1995. I have been a sole practitioner since then with a focus on affordable and middle market housing. I've produced approximately 900 units of housing in my career including multi-family housing, senior housing, homeless shelters, cottage clusters, town homes, Habitat for Humanity homes and subdivisions. I have no employees and work with consultants on an as needed basis. I have carried Professional Liability Insurance since 1995.

In my personal experience, I was selected for design and construction documents for a city's homeless shelter several years ago. Because of my good relationship with my insurance broker, I had the indemnity and insurance clause reviewed. Upon understanding that my insurance would not cover such a duty to defend in the clause I refused to sign the contract. Only at the insistence of the Planning Director and because I was the most qualified consultant did the city eventually relent and remove this clause. I doubt many others in my position would have been able to prevail.

I continue to work and carry professional liability insurance. I am in a committed relationship but have chosen not to marry out of fear that if I were sued I could in fact lose my home by signing a contract with the duty to defend clause which is not covered by insurance. By not being married it would be more difficult for my home to be taken, but that is the fear I live with. There is an irony that I have designed homeless shelters and volunteer in homeless shelters that I could myself become homeless because of such contract requirements.

Thank you for allowing me to join this panel to present to you today on this important issue for all design firms. Now is the time to pass this legislation.