

March 16, 2021

RE: Testimony to the

**Senate Committee on Judiciary & Ballot Measure 110 Implementation
In Support of SB 213**

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 John Howorth representing 3J Consulting, Inc, civil engineering company based in Oregon providing services for both public agencies and private sector developers. We have been in business in Oregon since 2009 and employ thirty-six Oregonians. 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 reasonable, equitable or inclusive.

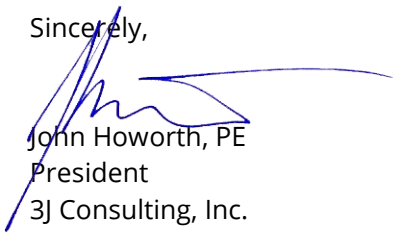
This requirement in professional services contracts is not reasonable to design firms of any size, but it is especially damaging to emerging and small businesses that typically don't have the ability or knowledge to advocate against these contract requirements. We find these duty to defend clauses to 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 a drain on our resources in educating clients on the issues this clause creates for our firm and for their ability to get maximum coverage through our insurance. We have also recently not provided proposals for contracts with these clauses, decreasing the competitiveness. When 3J was an emerging small business, the clause was not challenged, and the risk imposed onto the company in the early years was enormous. This basic change will help all firms and result in less costly fees moving forward.

We respectfully ask this committee to support the -2 amendment to SB 213 and send this bill to the Senate floor.

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

Sincerely,



John Howorth, PE
President
3J Consulting, Inc.

