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

Hearing Scheduled for 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 Scott Schlechter, representing GRI, a small engineering business based in Beaverton, Oregon. We have been in business in Oregon since 1984 and now employ 50 full-time employees. 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 cover the legal costs to defend an owner or other party against claims asserted by a third party, even if the design professional is not negligent.

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 do not have the ability to advocate against these contract requirements or turn down work based on unfair contracts when trying to start and maintain a business. 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 spends many hours per week trying to negotiate these terms out of contracts. In many cases, we are pressured into either accepting the language or turning down both master service agreements and contracts in order to not risk the unfair liability associated with these contracts. As a small company, turning down a contract due to unfair terms is a significant impediment to staying in business, particularly after investing resources to pursue the work. Similarly, if we accept the contract and the project results in litigation, the requirement to pay for the project litigation costs, regardless of negligence, could force our firm to close.

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.

Thank you.

Sincerely,



Scott Schlechter, PE, GE
President