

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 Havlin Kemp representing VLMK Engineering + Design, an Oregon Engineering company providing Civil and Structural Engineering services to our clients, here in Oregon and throughout the United States. We have been in business in Oregon since 1971 and employ 40 people here at our Portland office. I am writing today to strongly support Senate Bill 213 and the -2 amendment.

**Fair, Equitable and Inclusive Contracts** 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 and 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. Duty to defend clauses are not fair, equitable nor inclusive.

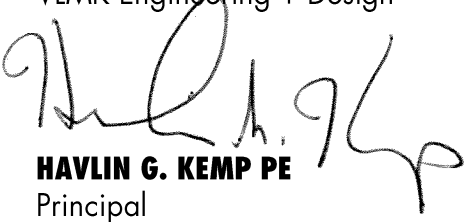
**Support Emerging and Small Businesses** This requirement in professional services contracts is especially damaging to emerging and small businesses that typically do not have the ability nor resources to advocate against these contract requirements. Additionally, the duty to defend a client without proof of negligence is not insurable under most Professional Liability Insurance policies. Thus, the cost of defense under a blanket duty to defend clause goes directly against an Engineer and is not insurable. We find these duty to defend clauses to be a major deterrent accepting many public and private projects.

**Experience shows the unfair and onerous nature** Our firm has experienced the negative effects of duty to defend clauses on both public and private projects. We have passed on providing Building Inspection services for the State of Oregon because we were unable to negotiate the duty to defend clause out of the contract. We have also been involved in a private project where we were drawn into a suit over water intrusion into a building. Our client, the Architect, used the duty to defend clause to compel VLMK to defend their firm. Negligence on VLMK's part was never asserted but we were required to paying the defense costs for the Architect.

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 ensure fair contracts between Engineers and clients, allowing Engineers to successfully engage in government and private 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,  
VLMK Engineering + Design



**HAVLIN G. KEMP PE**  
Principal