



March 22, 2021

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

Greetings, Chair Prozanski, Vice-Chair Thatcher, and members of the Senate Committee on Judiciary and Ballot Measure 110 Implementation. For the record, my name is Mandy Butler. I am a Principal and Owner at TVA Architects. We are a Portland-based, women-owned firm, doing business in Oregon since 1984 with 32 full-time staff. I am writing today in strong support of amending 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. It places responsibility on the design professional to defend an owner or other party against a third-party's claims even if the design professional is not negligent. This duty to defend clause is not fair, equitable, or inclusive.

Ironically, the projects that include contractual defense obligations are typically public institutional projects with goals to improve diversity, equity, inclusion, and increase MWESB participation. Any firm lacking the resources to engage legal counsel is particularly vulnerable to a negative outcome and the potential of suffering severe financial impacts should they be required to pay up-front legal costs to defend not only themselves but the owner. We find the duty to defend language to be a deterrent to compete for projects, many of which are with governmental agencies.

Our firm's experience has been that the duty to defend provision shifts financial risk and liability disproportionately on a project. Most troublingly, it has the genuine potential to lead to uncovered or uninsured risks. Most professional liability insurance policies have a contractually assumed liability exclusion. Meaning that if the Architect takes on liability by contract that we otherwise would not have by providing the services, it may be outside our insured risk and, therefore, becomes our exposure and responsibility. In some cases, contract language extends a defense clause beyond the proportionate or actual

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responsibility, the liability, and risk we can control and should be responsible for, and seeks to make the Architect an insurer or indemnitor for other issues.

We respectfully ask this committee to support amending SB 213 and send this bill to the Senate floor. These amendments are good business policies that will help firms across the state engage in construction projects, including many government-funded projects, by removing this onerous duty to defend clause.

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

Sincerely,

A handwritten signature in black ink that reads "Mandy Butler". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

Mandy Butler