

**Testimony of James T. Murphy, AIA  
Regarding Raised Bill 1032  
March 6, 2015**

Senator Coleman, Representative Tong, and Distinguished Members of the Judiciary Committee: I am James Murphy, AIA and I appear before you here today to speak in support of *Raised Bill 1032, An Act Concerning the Applicability of The Statute of Limitations to Construction and Design Actions Brought by the State or a Political Subdivision of the State.*

I reside in the Town of Suffield. I am an Architect licensed to practice in Connecticut and I am a Senior Associate and the Director of Risk Management of JCJ Architecture PC. My entire 25+ year professional career has been spent in the State of Connecticut. I speak today on behalf of our firm and the members of AIA CT, our professional organization. JCJ has been in continuous operation in the City of Hartford since 1936. JCJ is a 100% Employee-Owned Company with approximately 90 professionals providing architectural services to both private and government clients.

Simply put, the decision in *State of Connecticut v. Lombardo Bros. et. al* is unfair to design professionals providing services to the State and bad for business in Connecticut. JCJ is proud to have an over 75 year history of designing numerous buildings for the State of Connecticut and many of its 169 cities and towns. Without the passage of Raised Bill 1032 it is entirely possible that JCJ, and other Connecticut-based firms like ours, will no longer be able to provide architectural services to public clients in our home state. If that happens, the impact on jobs will be profound. The lack of a reasonable statute of limitations for our services places an undue burden of risk on our firm, as well as our colleagues; a risk that may not be underwritten by Professional Liability Insurance carriers. It is our opinion that without a reasonable statute of limitations in place, then those firms that do decide to pursue work with the State will have no choice but to raise their fees to cover the increased risk. Moreover, it is entirely possible that if JCJ and other qualified Connecticut-based firms decide that the risk associated with doing business with the State in the wake of *Lombardo*, then only lesser-qualified firms willing to accept the unreasonable risk would be available and engaged by the State. In either case, the result for the citizens of the State of Connecticut is not favorable.

JCJ has been fortunate to have experienced growth in the last decade but nearly all of it has of necessity been outside of Connecticut. We have opened offices in a number of states including Massachusetts, New York, and California, where the support for professional services providers through government policies is stronger. From the selection of design professionals, to the establishment of fees and providing a contract with reasonable terms, and the provision of a statutory environment with a reasonable statute of limitations, these other states foster a fairer and more equitable climate for our business.

To put the need for a reasonable statute of limitations into perspective, you must understand that the design and construction of institutional and government buildings is not a manufacturing process where prototypes are tested, designs modified, and thousands of identical products rolled off an assembly line. Every building is a unique solution to a unique problem on a unique site and is custom-designed to meet a client's specific needs. The entire design and construction process involves literally tens of thousands of parts combined in a way that they have never been before and all by

hundreds of workers. A project is only deemed complete when all parties agree that it is; including the owner who agrees that they have received the product and services that were contracted. Design and construction are human endeavors and as such will remain imperfect as long as human beings are imperfect. In recognition of this, a well-tested system of checks and balances is in place in our industry to minimize imperfections and equitably distribute risk among the design professional, constructor, and owner. The system, however, can only will work when the enforcement of the terms of agreement have a level of certainty that all parties – owner, design professional and contractor - can rely on.

The doctrine of "nullum tempus" espoused in Lombardo removes this certainty for the design professionals doing business with the State and holds those professional firms and licensed individuals liable for any alleged deficiency forever. The application of the doctrine is patently unfair because many factors come in to play when evaluating the performance of a building over time that are well beyond the control of our profession. Owners may make modifications in conflict with the original design; systems may not be operated properly or even maintained, building and fire codes regularly are changed and updated. As things currently stand, JCJ is still liable for work performed by our predecessors designing buildings for the State all the way back to 1936; 5 years before the start of World War II.

A specific and recent example of the inequitable application of this doctrine is a letter that JCJ received from the University of Connecticut regarding a project designed and completed at the UCONN Law School in the late 1990s. The project was most assuredly checked and approved by a wide variety of professionals and code officials (including those at UCONN) and it was considered code compliant and finished to the satisfaction of the client at the time of completion and occupancy. Now, over 15 years later, JCJ has been forced to pull staff off of current, fee-producing work to research alleged code deficiencies involving architectural issues designed and approved to a previous version of the building code. Records are scarce and memories have faded. We would dare say that all of the project participants involved with the project at the time it was underway, including those from UCONN, have long since moved on and in fact, several of the JCJ-staff involved in the project have retired. In this case the alleged deficiencies are small and isolated but the precedent is frightening. Without a reasonable statute of limitations in place, the unknowns are many and the risk too great for JCJ to assume as I believe would be for any business in any industry.

Thank you for your time and attention today. I urge you to vote in favor of Raised Bill 1032. It is in the best interest of the taxpayers of the State of Connecticut and our business community to provide a reasonable and fair Statute of Limitations for design and construction professionals providing services on public projects.