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To: Representative Lawrence Klemm
Chairman, North Dakota House of Representative
Committee on the Judiciary
From: Larry Richards, Attorney at Law

RE: Testimony Regarding House Bill No. 1363—Ante-Mortem Probate of Wills

Mr. Chairman and members of the committee I am writing you today to give my full endorsement on this proposed legislation and request a DO PASS recommendation.

As you might be aware, I am the attorney who represented the Kruger family in their attempt to void a Last Will and Testament executed by their mother which disinherited two of her three children. The strong medical evidence, including statements made by a neuropsychologist, clearly demonstrates that their mother was not competent at the time the Will was executed and almost certainly made under undue influence. The District Court found it was powerless to act because current North Dakota law does not allow for the voiding of the will until after death.

Besides my involvement in this case, I have further reason to strongly encourage the enactment of this legislation. As an attorney, a great deal of my practice has been dedicated to serving vulnerable adults in our state. I have worked on dozens of guardianship cases, including assisting Adult Protective Services in obtaining guardians for our vulnerable elderly. In addition, I have served as a Guardian Ad Litem who advocates for the best interest of these vulnerable individuals in hundreds of cases. The pain and cruelty I have seen our elderly endure at the hands of their own relatives who have exploited them is heartbreaking. The simple and sad fact is that this type of victimization of our elderly continues to be a crisis in our state. While there are various economic and cultural reasons for this trend which are too lengthy for me to discuss here, we have tools available to stop it, including the legislation before you.

In fact, I wish I could say that the Kruger family is the first time I have heard of Wills being executed in this manner. The truth is I receive frequent calls from other families who face similar dilemmas, but due to one circumstance or another most find themselves powerless to stop it. In reality, the current state law is such that a nefarious individual can spirit away a vulnerable adult and unduly influence them to execute a will while the victim's family--and even the victim's court-appointed guardian--is powerless to invalidate it while they are alive. When the victim dies, the rightful heirs are stuck fighting the wrongdoer in court to fulfill the testator's real intent while the wrongdoer may even have access to the victim's estate as the Personal Representative and utilize the victim's own financial resources to fight them off. This may very well be what is in store for the future of the Kruger family.

I would also like to note that as a result of my research in the area I learned that the current trend in the law, and the courts nationwide, is for the expansion of the consideration of pre-mortem probate disputes. In fact, North Dakota's passage of Chapter 30.1-08 which allowed pre-mortem validation of wills is an example of such a trend. I would further point out that what is requested here is merely a logical extension of the progressive legislation that North Dakota has already passed.

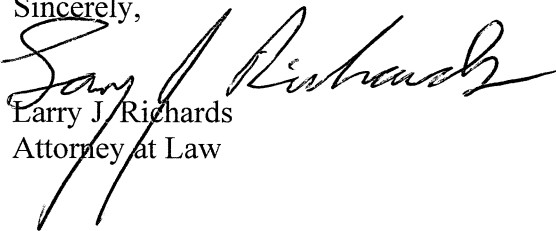
By permitting pre-mortem will contests, there are several advantages in the furtherance of justice: 1.) to avoid spurious will contests in the future, 2.) to avoid evidentiary problems that are present when a will is offered to probate after death (i.e. when the testator or other witnesses are no longer available to testify), and 3.) to prevent the frustration of the testator's intent. See Leopold & Beyer, Ante-Mortem Probate, 43 Ark. Law Rev. 131, 159 (1990). For instance, in the case of the Kruger family, one of the medical providers who has relevant testimony has already moved out of state which will pose a difficulty for them in the future.

Simply put, North Dakota has a long tradition of coming to the aid of a neighbor in need. We strive to do the right thing, protect the innocent and punish the wrongdoers. I would ask that you assist families of our elderly in combating continued exploitation by giving them yet another tool to do so. Please make a DO PASS recommendation.

Finally, please note that, while I represented the Kruger family in the past, I presently do not and my testimony is made in my individual capacity. I do not present this testimony on behalf of them or any other individual, corporation or other entity. I have not and will not receive any compensation for the presentation of this testimony.

Thank you for your time and consideration as well as your service to the State of North Dakota

Sincerely,

A handwritten signature in black ink, appearing to read "Larry J. Richards". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Larry J. Richards
Attorney at Law