



North Dakota House of Representatives

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Minority Leader

COMMITTEES:

Industry, Business and Labor

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Good morning Chairman Klemin and members of the House Judiciary Committee,

For the record, my name is Josh Boschee and I serve as a Representative from District 44, which comprises downtown and north Fargo.

HB 1533 was introduced to provide a formal process in which the Courts can evaluate whether an individual is using their access to the Courts to continue to harass, intimidate and abuse someone they have already been found guilty of domestic violence or disorderly conduct against.

Over the past year and a half, I have learned a lot about how an abuser is able to use their Constitutionally protected access to the Courts to not only emotionally and mentally abuse their former partner or spouse, but also financially abuse these individuals as it requires the abused individual to retain legal counsel and respond in a timely manner in order to protect their children, their home and other assets. Following my introduction of HB 1533, you will hear directly from individuals who have had to endure this kind of abuse for five or more years. There is also additional written testimony by those that are able to publicly share their experiences. According to these women's experiences, there are many other North Dakotans that they have met who have faced similar abuse but are unable to speak publicly out of fear of further retaliation and abuse from their former spouses.

Walk through how abusive litigation plays out in the Court.

Mr. Chairman and members of the Committee, the bill draft in front of you is modeled off legislation from another state. I'd like to walk you through it so you can see how the abusive litigation process can help reduce the abuse of the Court's resources and help bring an end to the continued abuse of fellow North Dakotans.

In order for an individual to access abusive litigation, they have to be in or have been in an intimate relationship or a sufficient relationship as defined under [NDCC 14-07.1-02](#), which is our domestic violence protection order statute. The filing party must have been found guilty by a court of domestic violence or disorderly conduct.

Page 3, lines 13 through line 17 on page 4 outlines the hearing procedure which requires an individual to file a motion with the Court asking the Court to review the allegations of abusive litigation. This would allow for a time out so that the facts can be laid out of how the filing party is using court procedures to continue to harass, intimidate or abuse the other individual. The judge

would weigh the facts and make a determination. If the judge finds by a preponderance of the evidence that abusive litigation is occurring, they will enter an order restricting abusive litigation by the filing party for a period of 48 to 72 months. The filing party will be responsible for all costs associated with the abusive litigation, including reasonable attorney's fees for the opposing party.

If the judge finds that abusive litigation is not occurring, the proceedings will continue.

Page 4, line 18 is the integral part of the abusive litigation process. This comes into play if a judge determines an individual has filed abusive litigation. It requires the individual to request permission from the Court to be able to file future filings against the opposing party for the period determined by the judge. This is important because it provides the filing party access to the Court but doesn't require the opposing party to have to respond to every filing, unless the Court determines the filing is appropriate. This is how we can reduce an abuser's ability to use the Court to continue harassing, intimidating and abusing their former partner or spouse.

For those of you familiar with current Court procedures, you may be asking why this wouldn't fall under [Rule 58: Vexatious Litigation](#). There are a few key factors:

- Abusive litigation is specific to individuals who have had an intimate relationship with one party found guilty of domestic violence or disorderly conduct. Vexatious litigation is an option to all individuals, including those that qualify under abusive litigation.
- Vexatious litigation is only an option if the filing party is not represented by an attorney. Abusive litigation is available if either or both parties are represented by an attorney. This helps reduce the amount of money, time, and resources the opposing party has to access to respond to ongoing and continuous filings.
- By having two separate processes, if an individual is found to be an abusive litigant, they can still access other aspects of the Courts without seeking permission from the Court. Whereas a vexatious litigant needs to seek the Court's permission in all other aspects of the Court.

Mr. Chairman, I did visit with a representative from the Courts earlier this week to discuss HB 1533 and their current Rule 58. Based on that conversation, I am confident that the Court will help provide input to make 1533 work for their processes as a new statute, updating their current rules or a combination of the two.

After me, you will hear directly from at least two women who have lived the past five plus years through the type of abuse this legislation will hopefully great reduce for future North Dakotans. As well as others who support this type of process. I request the Committee's support of HB 1533 and happy to answer questions to the best of my ability.