

**House Judiciary Committee
Representative Lawrence R. Klemin, Chairman
January 20, 2021**

**By: Kelly Hendershot
City Attorney, City of Minot
kelly.hendershot@minotnd.org
(701) 857-4755**

HB 1138

Mr. Chairman and Members of the Committee,

The City of Minot OPPOSES House Bill 1138.

My name is Kelly Hendershot and I am the City Attorney for the City of Minot. The City of Minot OPPOSES House Bill 1138 (HB 1138) and respectfully requests a DO NOT PASS recommendation.

The intent of HB 1138 may be good, however, it is not clear if the intent of HB 1138 is to address a specific issue or prevent a particular type of free speech violation by state, political subdivision, or employee of the state or a political subdivision, or if it purposefully open-ended. Beyond that, HB 1138 provides that “[t]he state or political subdivision is liable for treble damages for compensatory, consequential, and incidental damages.” While actual damages may be difficult to prove, HB 1138 also includes that the court can award punitive damages with “mere negligence.”

The adoption of HB 1138 may result in more litigation against the state, political subdivisions, and employees of the state or a political subdivision over free speech issues, however minor, because of the possibility of treble damages and punitive damages. Additionally, I believe the adoption of HB 1138 could result in frivolous claims against the state, political subdivisions, and state or political subdivision employees which will result in additional costs for those entities

(i.e., costs to defend; settlement to avoid litigation expenses; increased insurance premiums). Members of the public routinely allege free speech violations against governmental entities and employees (e.g., speaking at public meetings; confrontations with law enforcement; etc.), regardless of actual legal assessment and analysis, and permitting treble damages and punitive damages for these types of claims may encourage litigation for the mere possibility of a settlement (whether due to reducing risk or avoiding cost to defend) or award of damages.

CONCLUSION. The City of Minot OPPOSES House Bill 1138 and respectfully requests a DO NOT PASS recommendation.