

TESTIMONY ON HOUSE BILL 1138

House Judiciary Committee

January 20, 2021

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Chairman Klemin and members of the House Judiciary Committee, my name is Daniel L. Gaustad and I am the City Attorney for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express the City of Grand Forks' opposition for HB 1138.

I note the North Dakota League of Cities, by Stephanie Dassinger, its deputy director and attorney, submitted written testimony in opposition to HB 1138. The reasons outlined by Ms. Dassinger in this written testimony to request a DO NOT PASS for HB 1138 are wholly consistent with those of the City of Grand Forks. Therefore, to avoid unnecessary duplication of written testimony, the City of Grand Forks endorses the reasoning set forth by the North Dakota League of Cities' written testimony. The City of Grand Forks has submitted this written testimony so that the record reflects its opposition to the HB 1138.

However, it does bear repeating that this proposed legislation, particularly those provisions relating to punitive damages against a City employee – personally – and the City itself for negligent conduct – a mistake - is not consistent with already existing state law. Indeed, under N.D.C.C. § 32-03.2-11(5), to obtain punitive damages, a jury is required find, by clear and convincing evidence, that the amount of punitive damages is consistent with specified principles and factors, including “the degree of reprehensibility of the defendant’s conduct,” the awareness or concealment by the acting party, the profit obtained from the wrongful conduct and whether criminal sanctions have been imposed against the acting party. Yet, this legislation would expose a City employee and the City to punitive damage liability solely on a possible mistake or negligent conduct.

Certainly, free speech rights are at the core of our society as evidenced by the existence of such right being in both the U.S. and North Dakota Constitutions. This is a right that the City takes seriously. However, despite all of the good intentions and every effort in protecting such rights by a City and its employees, punishment, triple damage liability and potentially crippling litigation would be the environment to which they would operate by this legislation.

Accordingly, the City of Grand Forks respectfully asks for a DO NOT PASS for HB 1138.