

Thank you chairman Klemin. My name is Tom Kading and I am a Representative in District 45. This house bill 1138 today concerns the creation of a cause of action to enforce the North Dakota constitution's free speech clause.

In the North Dakota Constitution Article 1 section 5 states: Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege.

Case law has not established how this is to be interpreted as there is no cause of action enabling the enforcement of it. It would be my legislative intent and hope that it would be interpreted similar to the first amendment.

North Dakota common law provides:

Because no North Dakota court has recognized a direct cause of action for money damages for a violation of art. 1, section 4 (freedom of speech provision), it appears a statute specifically authorizing a cause of action for an alleged violation of that constitutional provision would be required. See Nagel v. City of Jamestown, 326 F.Supp.3d 897 (D.N.D. August 2, 2018).

It is for the legislature to provide for available remedies, including any limitations on the type or amount of a party's remedies. See Larimore Public School Dist. No. 44 v. Aamodt, 2018 ND 71, ¶ 23, 908 N.W.2d 442.

Therefore, in order to enforce this section of the North Dakota constitution, statute is needed to provide for a remedy.

The remedy proposed in this bill allows court to award treble damages for compensatory, consequential, and incidental damages. The court also may award punitive damages.

Free speech is one of the most fundamental rights we have as Americans. I believe it is important for us as a state to one, protect freedom of speech by allowing citizens to enforce the rights instilled in the North Dakota constitution and two, as a state we are sovereign and should not rely solely on the federal government to uphold an important right such as freedom of speech.

Thank you

## **ND Constitution Free Speech Clause:**

### **Article 1**

Section 4. Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and criminal trials for libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictments or informations for libels the jury shall have the right to determine the law and the facts under the direction of the court as in other cases.

## **Legislative Counsel's Explanation**

### **Article 1**

#### State Cause of Action for Violation of Freedom of Speech

You are correct there is no state cause of action for a violation of free speech.

The Constitution of North Dakota contains a free speech provision which provides, "Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege." (N.D. Const. art. I, § 4). However, there is no statute authorizing the vindication of rights secured by the Constitution of North Dakota, and no North Dakota court has recognized a direct cause of action for money damages for a violation of that constitutional provision. (See Nagel v. City of Jamestown, 326 F.Supp.3d 897 (D.N.D. August 2, 2018)).

#### Chapter 15-10.4 Campus Free Speech Policy

Chapter 15-10.4 requires the state board of higher education and each institution to adopt a policy that protects students' rights to free speech, assembly, and expression (See Section 15-10.4-02). However, there are no damages or remedies expressly outlined in the statute.