Mark A. Friese

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February 10, 2021

The Honorable Jason Dockter
Chair, ND Political Subdivisions Committee
600 East Boulevard Avenue
Bismarck, ND 58505

Submitted electronically only:

Re: Testimony in Support of HB 1248

Dear Chairman Dockter, House Political Subdivisions Committee members, and HB 1248 Sponsor

I write individually in support of HB1248. I am an attorney in private practice in Fargo. I am a resident of Legislative District 45. I primarily practice in State and Federal courts in North Dakota, I am also admitted to practice in Minnesota state courts and the United States Court of Appeals for the Armed Forces. For the past 20 years, my primary practice has been criminal defense. I retired from the North Dakota Army National Guard after serving twenty four years, the last eight of which were with the Judge Advocate General Corps. Prior to law school, I served as a Bismarck Police officer for more than five years.

House Bill 1248 will unequivocally require political subdivisions to honor and protect the state and federal constitutional rights of its citizens. I understand this bill is largely the product of the City of Fargo's unwillingness to apply existing law, which precludes cities from enacting any ordinance regulating firearms which is more stringent than state law. Through a tortured interpretation of existing statute, Fargo argues the term "any ordinance" means "except Fargo zoning ordinance." Adoption of this bill will avoid the expense and inconvenience of a legal challenge necessitated by that misinterpretation.

More importantly, the bill will hold cities accountable to the rights of its citizens. Currently, under the claimed authority of a city zoning ordinance, Fargo refuses to allow federally-licensed firearm dealers from conducting firearm sales out of their homes. But North Dakota law has long-provided strong constitutional and statutory protections against this type of interference with employment. Article 1, Section 7 of the North Dakota Constitution declares that every citizen "shall be free to obtain employment wherever possible," and those who interfere or hinder such employment are guilty of an offense. Section 34-01-06, N.D.C.C., codifies this constitutional principle.

The United States Supreme Court has declared the Second Amendment right to bear arms is a fundamental individual right. But while the overwhelming majority of North Dakota cities recognize and honor the fundamental rights of citizens, Fargo does not. Under N.D.Const. Art. 1 § 22, "All laws of a general nature shall have a uniform operation." Those who have met the rigorous licensing and inspection standards to maintain a federal firearms license should not be prohibited from practicing their trade from their home just because they live in Fargo.

Additionally, this bill fixes a substantial void of constitutional magnitude. Currently, statute prohibits political subdivisions from enacting regulations contrary to state law with respect to "firearms." This bill would prohibit a city from superseding state law not only regarding firearms, but also "dangerous weapons." Dangerous weapons are broadly defined by N.D.C.C. § 62.1-01-01, and include marital arts weapons, hunting knives if the blade is five inches or longer, pellet guns, air guns, BB guns, and many more. Under present law, in emergencies, cities cannot prohibit possession of firearms, but they can prohibit possession of hunting knives, martial arts weapons, BB guns, or others. Even with existing law, the City of Fargo—through a mayoral "emergency declaration" recently attempted to do what the current law prohibits—stripping citizens of their Second Amendment rights. This proposal will expand protection to avoid similar future efforts resulting from the current statutory void.

Of course, the Second Amendment to the United States Constitution protects the fundamental individual right to "keep and bear Arms." That right includes not only firearms, but also certain arms currently defined as dangerous weapons. In an emergency, under current law, the right to possess a firearm remains protected. In that same emergency, a martial artist who wishes to possess a tonfa—a 15 inch baton similar to those used by police—is not protected. With the modifications proposed by this bill, the Legislature unequivocally and equally would provide all North Dakota citizens the protections bestowed upon them by the Second Amendment to the United States Constitution, regardless of whether the citizen chooses to possess a firearm or hunting knife for protection.

CONCLUSION

I write in support of HB1248. Matters of statewide concern, including the constitutional right to bear arms, should have uniform statewide application. Passionate, well-meaning people have complicated existing law by misinterpreting it. These proposed revisions will negate their misunderstanding, and in the process will clarify protection of the right to bear arms. Further, it will recognize and honor the constitutional and statutory right to seek and maintain employment—a sacrosanct individual right in our State Constitution. I extend my personal appreciation to the bill sponsor, Rep. Koppleman, for his efforts, and I encourage this Committee to recommend passage.

Respectfully submitted,

/s/ Mark A. Friese

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