

TESTIMONY OF

LIEUTENANT COLONEL MICHELLE HAGEL

NORTH DAKOTA NATIONAL GUARD

BEFORE THE

SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE

7 JANUARY 2021

SENATE BILL 2116

Good morning Mr. Chairman and members of the committee, I am Michelle Hagel, legal counsel for the North Dakota National Guard. I am here to testify in support of Senate Bill 2116. This bill provides a defense for using deadly force, if necessary, to protect nuclear assets.

The 219 Security Forces Squadron (SFS) is part of the North Dakota Air National Guard and is located at Minot AFB. Their mission is to provide support to the 91 Missile Wing Security Forces, by providing daily and surge capacity security to the missile complex in North Dakota. In order to successfully conduct that mission, the 219 members must maintain certification in nuclear security through continually training in the missile complex.

At present, the 219 members when training and serving in the missile complex, have been placed in a Title 10 Active Duty status, so they may respond to a real world emergency under federal Rules for Use of Force. The Air Force may not be able to provide Title 10 funding for the 219 mission in the future, due to budget constraints. If this happens, our 219 members will need to continue to train and provide operational support to the missile complex in a federal training status, under 32 U.S.C. § 502 (Title 32). Members who perform training and operational support in a Title 32 status, though under federal code, fall under the jurisdiction of their State law and their State Rules for Use of Force.

North Dakota State law allows for the use of deadly force to defend self, or others, against imminent death or serious bodily harm. Federal law and Air Force Instruction, provides for use of deadly force, which is more expansive than North Dakota State law, for the protection of particular assets, like nuclear weapons. This presents a tactical and legal concern for the 219 members who may have to protect nuclear assets from a real world threat when in a Title 32 status, under State law.

Minot AFB, therefore, will not allow 219 members to train or provide operational support to the missile complex while in Title 32 status. The reason for this is, while under State jurisdiction, the 219 may be called up to respond to an actual threat. If State law does not provide a defense for the use of deadly force for the 219 member when protecting the nuclear asset, then the Air Force cannot allow our 219 members in the missile complex. This gap in federal and state law when providing security to the nuclear asset will not allow the Air Force to take any risk with our 219 members. If the Air Force does not allow our members to train in the missile complex, the 219 members will lose their certification. As a result, the 219 will not be able to perform their mission.

We are asking for a narrow expansion of authority to use deadly force to protect the nuclear assets, if the situation requires. This authority works in conjunction with Federal law and would allow the 219

members to continue to train and protect these critical national security assets, under the protection State law.

I ask for your support of SB 2116 and will stand for any questions that you may have.