Written Testimony in Opposition to SB 2199

Senate Judiciary Committee on Senate Bill 2199

Date of Hearing: January 18, 2023

David Martin, Bismarck, ND

I submit this testimony opposing Senate Bill 2199.

First, the purpose of this amendment is to establish a penalty ("a fee of one thousand five hundred dollars") for the use of "words referring to an individual" when those words are not used "in the context of that person's sex as determined at birth." ***The offense to the First Amendment's guarantee of free speech is glaring and obvious***: this legislation creates a penalty for using an ordinary and unoffensive word like "he", "wife", or "daughter" if it is found to be used not in "in the context of that individual's determined sex at birth".

Second, an alleged offender can seldom be sure of another "individual's determined sex at birth", let alone anything about their "deoxyribonucleic acid". Even a person who desperately wants to comply with this bill has little power over whether they can actually do so.

Third, in replacing Century Code § 1-01-34, this legislation may have enormous unintended consequences. The current § 1-01-34 is simply stated and reads as follows:

> **1-01-34. Gender - Definition.**
> Words of one gender include the other genders.

Thus, this current code section indicates that when the Code uses a word like "he" or "man", it should not be construed to exclude women, children, or "other genders". This is plainly the interpretation that must be used by the legislature in interpreting the State Constitution as well as the Code. For example, the State Constitution, Article I section 9 reads (highlighting added):

> **Section 9.** All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. …

Clearly, the courts are open to "other genders" as well, consistent with § 1-01-34 that SB 2199 seeks to eliminate.

Fourth, the animus in this bill towards trans and non-binary people is downright shocking. Please oppose SB 2199.

David Martin, Bismarck, ND