

TESTIMONY
Senate Judiciary Committee
SB 2236
January 25, 2023
Sandi Marshall

Chair Larson and Members of the Judiciary Committee, for the record my name is Sandi Marshall. I am the retired CEO of Development Homes, Inc. (DHI) in Grand Forks, a charitable nonprofit organization serving people with developmental and intellectual disabilities, also known as a DD Provider agency. Earlier in my career, I worked as a state employee for 18 years, including serving as the DD Director for the Department of Human Services in the 1990's. In that capacity, I worked to successfully end the ARC lawsuit against ND by bringing services up to a level of excellence that was recognized nationally. I later served for several years as a member and as President of the DD provider association, NDACP. I have committed my life to the betterment of the lives of people with disabilities in North Dakota, and to those who selflessly care for them.

My interest in Senate bill 2236 stems from my personal experience with a very contentious civil lawsuit filed against my former agency that was finally resolved in early 2021, after over 4 years of litigation. In addition to the agency being named as a defendant, I and three of my staff were individually named as co-defendants. The litigation included a gut-wrenching 2-week trial in 2019, which ultimately resulted in a jury determination that found no liability attributable to us as individuals. On appeal, the ND Supreme Court further found no liability on the part of individual employees as well, and in addition, effectively dismissed the most egregious claims against the agency.

My desire at this juncture is to try to ensure that no employees of DD Provider agencies, or other similar nonprofit charities, have to go through such a devastating scenario when they are simply doing their jobs in an honest and lawful manner. I will never forget sitting with my employees in the courtroom at the end of the trial, waiting in excruciating anticipation of the jury's verdict, not knowing if a runaway jury could destroy our careers and lives.

As you are no doubt acutely aware, North Dakota is experiencing a significant workforce shortage, especially in direct care-giving roles. These are difficult and very responsible jobs. Imagine the increased difficulty inherent in hiring for these crucial positions in an environment where a person's future could be potentially destroyed by false allegations of intentional wrongdoing, allegations that may be entirely malicious and motivated by greed and the promise of "deep pockets".

Of primary importance to me is that employees of such charities are treated on a level playing field as similar state employees in relation to the law. DD Provider agencies offer services that are identical to those provided also by the State. In this case, the Life Skills and Training Center provides residential and vocational training services to persons with Intellectual and Developmental Disabilities that are identically licensed and certified by the same state agencies as those of private DD providers. Additionally, these private agencies perform functions that are otherwise the responsibility of the state government and are funded almost entirely by the state under contractual arrangements. It is an issue of absolute fairness that these employees be treated with the same liability protections as their state-employed counterparts.

The proposed amendments to Chapter 32-03.3 Charitable Organization Immunity add language that would serve to protect the personal liability of such nonprofit employees. It mirrors protections already in place for both state agencies and political subdivisions, such as "Public nonprofit corporations", as defined in existing statutes, notably NDCC Chapter 32-12.1 Governmental Liability.

I would urge you to consider adopting this bill into law. It will benefit the thousands of everyday constituents living and working in communities of all sizes throughout the state who do this important care-giving work for our most vulnerable populations, often for wages far below the state average, and hopefully will aid in recruitment and retention for the affected agencies.

Thank you for your consideration.