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February 10, 2025

The Honorable Lawrence R. Klemin  
State Capitol Building  
600 E. Boulevard Ave.  
Bismarck, ND 58505

RE: House Bill 1242

Dear Chairman Klemin:

My name is Sydney Bata. I reside in Adams, North Dakota with my husband and our three children. I am an attorney in Grafton, North Dakota. I practice primarily family law. I also work as a Parenting Investigator, a third-party neutral, hired to investigate and report to the Court what I feel is in a child's best interests. In addition to these roles, I have been a certified Family Law Mediator since May 2016 and am on the roster of mediators for the North Dakota Family Mediation Program which provides six hours of time with a trained mediator for all cases filed in North Dakota that involve parenting time disputes. I write to address my concerns with House Bill 1242.

I would like to first point out, I went to law school with the intention of practicing family law—a rare goal as attorneys often go running when family law comes up in conversation. When I was fifteen years old, my parents made the (wise) decision to get divorced after twenty-four (24) years of marriage. As a child of divorced parents, I felt strongly that parents often lose sight of the bigger picture—what is best for the child—when immersed in the trauma that exists in any divorce. I wanted to be a voice for the children. I remind myself of that goal daily. Some days that means helping mediation clients find tools for their homes that will help their two year old adjust to transitions between homes. Some days it means submitting testimony against bills that do not protect children's best interests.

HB1242 would create a presumption that equal residential responsibility (otherwise known as 50/50 parenting) is best for children. In some cases, this is true. In those cases, the parents live near each other, communicate well, do not expose their children to conflict, and do not delegate parenting responsibilities to their children. The reality is, many couples, at least at the point of an initial determination being made, are far from the point where they can manage a 50/50 schedule well.

In family law cases, once a case is filed, it is referred to the Family Mediation Program. This happens early on in the case as a way to sort of “stop the bleeding” and try to resolve the pending issues prior to the parties getting wrapped up in the adversarial nature of court proceedings. This program is the envy of Bar Associations across the country. It is *extraordinarily* effective at helping families settle their case. In 2023, the Program reported more than 45% of cases settled their whole case through this program and more than 20% of the remaining cases settled part of their case. This is especially impressive when you think of the wide range of cases that we see come through the Program. I have performed mediations with parents in residential treatment facilities, in jail, in different states, and more. This Program allows us to sit together and come up with a creative solution that will fit their children’s unique needs. Because mediation itself is voluntary and confidential, most participants feel empowered to make decisions and agreements. I always tell my clients it is the only time you have complete control over the outcome of your case. Nearly everyone I meet in this Program tells me “I just know we aren’t going to settle anything” in their orientation, and yet most of them settle most, if not all, of the issues in their case during their joint mediation session.

For the remaining cases that do not settle in the Program, they continue on through the civil litigation process, some settling through negotiating attorneys and some going to trial. Family law trials are generally bench trials, meaning the Judge assigned to the case makes the decision at the end, not a jury, based on the Best Interest Factors that include things like a parent’s ability to provide basic necessities (food, clothing, and shelter), the mental and physical health of the parents, the desires of a mature child, and so on. In some areas of the state, you are lucky to get a trial date within one year of when your case is filed. Luckily, my area is not quite that backlogged. We usually see trials six to nine months out from when the case is filed. Even then, if parties cannot come to an agreement on what is best for their children in nine months with the help of many professionals, they likely cannot communicate well enough to make 50/50 schedules the best-case scenario for their children.

I would like to take a moment to address the issue of child support. In North Dakota, whomever has Primary Residential Responsibility, or more than 50% of the overnights in a year with the children, receives child support from the other parent. In situations where there is Equal Residential Responsibility (50/50), both parents pay child support to each other, offsetting the amounts so only the higher earning spouse pays the other the difference in obligations. While I do not intend to dive into this can of worms for our purposes today, I do want to point out that this process is often viewed as an easy way to escape financial responsibility for your children. It is unfortunately extremely common for parents who have little to nothing to do with their children to suggest they should be awarded Equal Residential Responsibility of their children or even Primary because they don’t want to pay child support. One of my concerns with this bill is that many parents will view it as a way to get out of supporting their children. On more than one occasion, I have had to kick a potential client out of my office for insisting they should be the primary parent of a child for this purpose but could not even spell the child’s name or identify their birthdate.

There is a narrative that, in going through a divorce or custody action, 50/50 is fair. It is a fair way to divide property, so it must be a fair way to divide kids, right? But we cannot divide kids, and they are not property. Moreso, we need to be focused on what is fair to the kids. Is it fair to never be home more than 50% of your time? Is it fair to never be home for more than seven days at a time?

The reality of the situation is that parents do not generally parent equal amounts of time even when they are in a relationship. I urge you to consider how many couples you know, married or otherwise, who spend an exactly equal amount of time parenting over the course of the year. Consider who among you spent an exactly equal amount of time with each of your parents while growing up. Keep in mind, a farmer parenting equally all year except during planting and harvest, is not parenting equally all year. We need to shift our thinking to ensuring children get *quality* time with each parent instead of requiring they have the same quantity of time.

Moreover, please remember that this bill does not just relate to parents who were married and are getting divorced. This bill would apply to the dad who never wanted to meet his child until he was served with a child support case by the State when his child's mother applied for Temporary Assistance for Needy Families. This bill would apply to the breastfeeding mother of a newborn. This bill would apply to the alcoholic parent whose former partner can no longer prove how much they drink because they do not live together. This bill would apply to everyone, without consideration for the unique needs of each child.

In short, some families will excel with 50/50 schedules. Most of them are already doing that or agreed to it early in their case. They've worked together to ensure their kids get the best situation possible. They've made peace with the fact that even though they don't work well in a romantic relationship, they can put that aside and be in a great coparenting relationship. Those families do not need this bill. In all other circumstances, this bill makes things worse for kids and will grossly inflate the amount of litigation occurring in family law cases throughout the state.

For these reasons and the many others I do not have time to address today, I urge you to vote DO NOT PASS on HB 1242. Thank you for your time and consideration. I am happy to answer any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Sydney Einarson Bata". The signature is written in a cursive, flowing style.

Sydney Einarson Bata  
Attorney at Law