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On behalf of High Plains Fair Housing Center
Testimony in Opposition to SB2193
Senate Agriculture and Veteran's Affairs Committee
January 24, 2025

Mr. Chairman and members of the Committee:

I am here on behalf of High Plains Fair Housing Center. High Plains Fair Housing Center is a private, non-profit fair housing organization that works to eliminate housing discrimination and to ensure equal housing opportunity for all. High Plains advocates for those who have experienced discrimination in housing based on their status in a protected class and provides education about fair housing rights and responsibilities throughout the entire state. We help the many people who contact us with housing issues, and most often they resolve their issues without going to court.

Consistent with nationwide statistics, the number one type of housing discrimination we see in North Dakota is against persons with disabilities. About 25% of our disability cases involve combat veterans who have PTSD and use assistance or companion animals in their homes to alleviate their symptoms. While this is an entirely valid use of the law, we see landlords often resist requests from these vets for assistance animals. These individuals already struggle to overcome that resistance and obtain approval.

High Plains assisted a young father who was unable to leave his apartment because of severe PTSD from his time serving in Afghanistan. He talked about his fear of open spaces and said that he feared snipers on every roof top. He worked with his psychologist who prescribed an assistance dog. He was able to begin leaving the house with the assistance of that dog, taking the dog on walks. After some time he was able to go outside and walk with his wife and baby, and over time, was able to return to normal activities, including work.

While High Plains opposes SB2193 as written, we understand that there are abuses of reasonable accommodations and that some people misrepresent that they have a disability to have their pets in pet-free buildings or to avoid pet fees. Fraudulent claims make our job more difficult. Still, in the 12 years High Plains has been doing this work for people in North Dakota, we have seen many, many people who legitimately needed assistance animals and whose lives improved because of the assistance animals in their homes. We are concerned that this bill will prevent North Dakotans with disabilities from getting assistance animals, with negative consequences for them and for our state as a whole. Therefore, High Plains

requests that if this committee recommends a do pass on this bill, that it be after the following amendments.

First, in Section 2: Requiring the prescribing health care provider to “be actively licensed to practice medicine in the state,” could in fact benefit the fraudulent online providers that exist solely for the purpose of providing ESA letters. Those online providers **are** licensed in the state. Conversely, the many students who attend our universities and out-of-state workers who come here with an assistance animal will be penalized for having long term, established relationships with their out-of-state healthcare providers.

Additionally, “licensed to practice medicine” conflicts with the federal law. Federal law permits documentation to come from a variety of sources (**not just** a physician), without **any** geographic restriction, if the documentation provider is “in a position to know about the individual's disability”. This can include counselors, therapists, psychologists, and social workers who work directly with the disabled person.

In Section 2-5: the bill provides: “any person in violation of this section is guilty of an infraction for the first offense and a class B misdemeanor for a second or subsequent offense.” This addition will have a chilling effect on any legitimate healthcare provider prescribing an emotional support animal.

Next, in Section 3: Regarding the proposed disclosures required of a person providing an assistance animal, since an assistance or emotional support animal does not have to be trained, an assistance animal can come from a pet store, a local farmer, the Humane Society or any other rescue shelters. This first sentence will create an undue burden on the legitimate businesses, organizations, and individuals involved in the sale of animals or even private persons or entities who provide animals for adoption.

Finally, we are concerned that passing this bill without amendments could jeopardize North Dakota’s relationship with The U.S. Department of Housing and Urban Development (HUD). This bill itself recognizes conflict with existing federal housing law. The text says: This section may not be construed to restrict or modify any federal or state laws relating to an individual's rights for reasonable accommodation and equal access to housing, including rights afforded in accordance with the Fair Housing Act [Pub. L. 90-284; 82 Stat. 81; 42 U.S.C. 3601, et seq.] and the Americans with Disabilities Act [Pub. L. 101-336; 104 Stat. 327; 42 U.S.C 12101 et seq.].

State law may not restrict rights granted by federal law and is preempted by federal law. Passing a state law that expressly conflicts with federal law but then acknowledges the supremacy of federal law will create confusion and a basis for potential litigation. HUD has deemed current North Dakota housing law “substantially equivalent” to the Fair Housing

Act, meaning that it offers **at least the same substantive rights, procedures, remedies, and judicial review provisions as the federal Fair Housing Act**. The substantial equivalency status of our state law allows the North Dakota Department of Labor and Human Rights to enter into Cooperative Agreements with HUD. HUD then provides **funding** to the Department for complaint processing, administrative costs, and training. HUD sends an average of about **\$125,000 per year** to the state of North Dakota to investigate fair housing claims. Restrictive laws like this one can impact substantial equivalence **and cause North Dakota to lose HUD funding** to investigate cases. If that were to happen, housing discrimination cases would still need to be investigated at the state level and at the federal level. This outcome would double the administrative burden for both the complainant and respondent. SB 2193 as written could have the unintended effect of opening our landlords to more federal enforcement of housing discrimination claims. When a similar bill was considered in the state of Virginia, the state consulted with federal authorities and then revised its proposals about who can provide reliable documentation, so their state law more closely mirrors federal law.

Therefore, High Plains urges this Committee to recommend a “do not pass” on this bill, or in the alternative, to consider these amendments to better balance the legitimate needs of disabled North Dakotans with those of property owners and managers, and to avoid clashing with federal law and losing HUD funding.