

Chair Luick, Vice Chair Myrdal, and members of the Committee:

The American Civil Liberties Union strives for a North Dakota free of discrimination against people with disabilities and where people with disabilities are valued, integrated members of society who have full access to education, homes, health care, jobs, families, voting, and civic engagement. To that end, I submit testimony on behalf of the ACLU of North Dakota in opposition to Senate Bill 2222 as written without amendments.

We recognize that SB 2222 is aimed at clarifying emotional support animal requirements and preventing common fraud or scams perpetrated by businesses selling bogus emotional support animal credentials. However, by appearing to establish firmer requirements than those associated with the Americans with Disabilities Act (ADA) and Fair Housing Act (FHA) as well as seeking to provide clarity over the difference between an emotional support animal and a service animal, this bill creates concern for potential discrimination of people with disabilities with legitimate need for, and possession of, emotional support animals.

Attempting to address concerns regarding potential fraud cannot be allowed to infringe on citizens' rights and accommodations for possessing an animal for medical and therapeutic purposes. Judiciously consider the potential harm to the rights of citizens with disabilities against the issues the bill sponsors seek to address.

In addition, we draw your attention to Section 2.6 that states: "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.]." Simply codifying a statement that a state law is not in conflict with a federal law does not necessarily make it so. Rather, we suggest due diligence to create state law that is not only in compliance with the FHA and ADA, but that also strengthens the rights of North Dakotans with disabilities.

Furthermore, the ACLU cautions the committee that passing SB 2193 may jeopardize federal funding and North Dakota's standing with the U.S. Department of Housing and Urban Development (HUD). North Dakota housing law has been deemed "substantially equivalent" to the FHA by HUD in that it offers at least the same substantive rights, procedures, remedies, and judicial review provisions as the federal law. Under this, the North Dakota Department of Labor and Human Rights is in a Cooperative Agreements with HUD which is accompanied by funding for the department for complaint processing, administrative costs, and training. If state law becomes more restrictive than federal law, substantial equivalency may be in jeopardy leading to a loss of funding, increased burden on citizens with disabilities as well as housing providers and the Department of Labor itself. Additionally, this could bring increased federal enforcement that may also be duplicative of required state enforcement responsibilities under both state and federal law.

In the best interest of North Dakotans with disabilities, housing providers, and state government officials, the ACLU of North Dakota urges the committee to not move SB222 forward without the adoption of amendments, specifically those offered by High Plains Fair Housing Center.

Submitted by:
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