Parvey, Larson, and McLean

Licensed in ND and MN

Shannon E. Parvey | shannon@plmfamilylaw.com
Kimberlie Larson | kim@plmfamilylaw.com
Jason W. McLean | jason@plmfamilylaw.com

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The Honorable Diane Larson
State Capital Building
600 E. Boulevard Ave.
Bismarck, ND 58505

**RE: Senate Bill 2383**

Dear Senator Larson:

My name is Jason McLean. I am a family law attorney with Parvey, Larson, and McLean, PLLC, in West Fargo, North Dakota. I have practiced exclusively in the area of family law since becoming licensed in 2004. Prior to that time, I clerked for a family law attorney in Grand Forks. I have also practiced family law in Minnesota since 2003. I am a mediator in what I consider one of the most successful family law programs created, not only in our state, but perhaps in the whole of America: the Family Law Mediation Program. I chaired the Family Law Section of SBAND, co-chaired the SBAND Family Law Task Force, both of which explored these very issues. It is with this background that I appear today and provide my testimony, as a private citizen, in unequivocal opposition to Senate Bill 2383.

As I read through this Bill, I am drawn to the fact that its focus is on the parents and not the children that it claims to protect. Beginning with the "Presumption of Fitness Language" found at Section 3, this Bill takes what is in the children's best interests and sidelines it for a legal presumption. Senators, a presumption creates one thing and one thing only: litigation. That is because the nature of a legal presumption requires a court, a judge who knows these parties for a short period and sees them at the worst, to make a decision as to whether or not the needs and best interests of the children will even be considered by the court. That fact alone, that we make the needs of an innocent child subservient to a parent's wishes and desires, should be disqualifying. However, there are several more reasons to reject this bill.

Continuing in Section 3, the list of areas a court may look at to determine "fitness" will require evidentiary hearings, with clear and convincing evidence standards, to rebut these factors. For example, what is a "history of alienation" and how can there be such a thing when there is no order for a court to enforce (Section 3 (2)(c))? What constitutes an

"immediate family member interfering in a relationship" (Section 3 (2(b))? If a grandparent wishes to see their grandchild overnight and the other parent feels slighted, will that be considered interference? The only way to answer these questions will be to ask an already overworked and overcrowded judiciary to do so.

As Chief Justice Jensen noted in his 2025 State of the Judiciary Message, our district courts handle approximately 160,000 new filings and 20,000 reopened cases each year—180,000 cases. While not all of the civil docket involves domestic law cases, close to majority of the civil filings in the past have been family law related. The continuing nature of child-related issues in family law also causes most of the reopened cases to fall within this area as well. Currently, our system is struggling to handle the volume of cases. For example, one of my clients was required to wait for nearly four months for an interim motion hearing in Stutsman County. Our Rules require a hearing to be held in 30 days, but there was no room on the docket. Now imagine that every single contested residential responsibility case needs to be heard by a judge to answer the questions I posed a few moments ago. The backlog for families—for children—in our state would be disastrous. That backlog means a need for more judges, more clerks, more staff, more everything just to handle the increases in our family law courts that would not exist otherwise.

Moreover, this Bill would essentially neuter one our State's greatest success stories: the Family Law Mediation Program. I would encourage each of you to contact Cathy Ferderer's office and look at the statistics of cases that avoid court because of this Program. I would also encourage you find someone in your district that has been through that Program before you consider this Bill. I would hazard a guess that you will find that the people that use that program, that approach it with an open mind, would not need this Bill, nor do the families in our State.

However, if there is a presumption of equal time until a court says otherwise, the Program loses its ability to help families. As a mediator, I cannot force anyone to make an agreement they do not want to make and I cannot advise them of a position to take. The end result is less attempts at compromise and more litigation for all of the families involved. That should not be our goal. Our goal in family law should be the opposite.

Which brings me to something else that should be clear in this Bill and should honestly raise some questions for you. I have just told you that this Bill will increase litigation and create the need for evidentiary hearings in nearly every case that comes along. That raises the logical question: why would a family law attorney oppose something that will make him more money? Senators , I'm not going to sit here and try to tell you that money isn't important, it is; but it is also not the driving factor for most of us in this profession. If we wanted to make money there are far less stressful areas of law to pursue. That said, if you want to increase my billable hours, this Bill is the perfect vehicle for you to do so. Yet here I am telling you **not** to do so. No amount of money is worth the amount of harm this Bill will cause to families in our State.

Lastly, and perhaps most importantly, if you take nothing else away from my testimony as to why this Bill should receive a “Do Not Pass” recommendation, I want to draw your attention to the language related to domestic violence. Domestic violence is a significant problem throughout our state and our country. The majority of violent crimes, including homicides, can be traced to domestic violence. However, this bill, at Sections 3 (2) (d) and in the rewording of the current domestic violence best interest factor, seeks to limit what a court may consider when determining if a parent is “fit.” It seeks to make it harder for abuse victims to be heard and for courts to protect children in those circumstances. This Bill does not even allow a court to consider a validly entered protection order for domestic violence as evidence of that violence. These clauses make no sense and are designed to protect the abuser, not the child.

Senators, I could spend hours dissecting and parsing each and every problem with this Bill, as I have not even discussed the myriads of problems in the “abuse and neglect” section of Section 3 or the fact that this premise has been roundly rejected by the voters and this body for over 15 years. I understand we have limited time and I cannot do that with you today. I would invite you to reach out to me, and to other people who practice in this area of law, to those that serve as mediators in the Program, and to families where one parent has been the repeated victim of domestic violence. I would encourage you to listen to those perspectives, and not just to parents who think they have been wronged by the other parent or the system. Our system in North Dakota is not perfect, but it works more often than it fails. This bill is a looking for a “problem” to solve that simply does not exist in our State.

That said, if you are looking for a problem to address, perhaps the place to start addressing the number of family law cases that are left to languish because we do not have a dedicated family law court system in our State. North Dakota families, all of them, would be better served if the energies that came with this bill—and HB 1242—were channeled at the addressing problem of access, backlogs, and a need for family court system, not a presumption that does not treat families as the unique entitles they are. That will be the way to help families. This Bill does not help families.

For these reasons, and the many more I do not have time to state here today, I respectfully submit that this Committee should vote Do Not Pass on SB 2383. I thank the Committee for its time and consideration and am happy to answer any questions you may have.

Sincerely,

Jason W. McLean

730 13th Ave E | West Fargo, ND 58078
Phone 701.532.0702 | Fax 701.403.8609
www.plmfamilylaw.com