

2021 HOUSE JUDICIARY

HB 1138

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary
Room JW327B, State Capitol

HB 1138
1/20/2021

An Act to provide for a civil action against the state or a political subdivision for a state constitutional free speech violation.

Chairman Klemin called the hearing to order at 3:10 PM. All members present.

Representatives	Attendance
Representative Lawrence R. Klemin	P
Representative Karen Karls	P
Representative Rick Becker	P
Representative Ruth Buffalo	P
Representative Cole Christensen	P
Representative Claire Cory	P
Representative Karla Rose Hanson	P
Representative Terry B. Jones	P
Representative Jeffery J. Magrum	P
Representative Bob Paulson	P
Representative Gary Paur	P
Representative Shannon Roers Jones	P
Representative Bernie Satrom	P
Representative Steve Vetter	P

Discussion Topics:

- First Amendment rights
- Punitive damages

Rep. Kading: Introduced the bill. Testimony # 2000

Doctor Gaylynn Becker Ph.D., Bismarck, ND: Testimony #1735.

Opposition:

Stephanie Dassinger, ND League of Cities: Testimony #1845

Shaun Sipma, Mayor, City of Minot: Testimony #1806; Referenced testimony #1852
3:23

Aaron Birst, Attorney at Law, ND Association of Counties: Oral testimony

Chairman Klemin adjourned at 3:30 PM.

Reopened the hearing: 3:39

Neutral:

Todd Anderson: OMB: oral testimony.

Additional Written Testimony: #1984, #1950, #1942, #1744, #1302

Chairman Klemin closed the hearing at 3:31 PM.

DeLores D. Shimek, Committee Clerk by Donna Whetham

Thank you chairman Klemin. My name is Tom Kading and I am a Representative in District 45. This house bill 1138 today concerns the creation of a cause of action to enforce the North Dakota constitution's free speech clause.

In the North Dakota Constitution Article 1 section 5 states: Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege.

Case law has not established how this is to be interpreted as there is no cause of action enabling the enforcement of it. It would be my legislative intent and hope that it would be interpreted similar to the first amendment.

North Dakota common law provides:

Because no North Dakota court has recognized a direct cause of action for money damages for a violation of art. 1, section 4 (freedom of speech provision), it appears a statute specifically authorizing a cause of action for an alleged violation of that constitutional provision would be required. See Nagel v. City of Jamestown, 326 F.Supp.3d 897 (D.N.D. August 2, 2018).

It is for the legislature to provide for available remedies, including any limitations on the type or amount of a party's remedies. See Larimore Public School Dist. No. 44 v. Aamodt, 2018 ND 71, ¶ 23, 908 N.W.2d 442.

Therefore, in order to enforce this section of the North Dakota constitution, statute is needed to provide for a remedy.

The remedy proposed in this bill allows court to award treble damages for compensatory, consequential, and incidental damages. The court also may award punitive damages.

Free speech is one of the most fundamental rights we have as Americans. I believe it is important for us as a state to one, protect freedom of speech by allowing citizens to enforce the rights instilled in the North Dakota constitution and two, as a state we are sovereign and should not rely solely on the federal government to uphold an important right such as freedom of speech.

Thank you

ND Constitution Free Speech Clause:

Article 1

Section 4. Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and criminal trials for libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictments or informations for libels the jury shall have the right to determine the law and the facts under the direction of the court as in other cases.

Legislative Counsel's Explanation

Article 1

State Cause of Action for Violation of Freedom of Speech

You are correct there is no state cause of action for a violation of free speech.

The Constitution of North Dakota contains a free speech provision which provides, "Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege." (N.D. Const. art. I, § 4). However, there is no statute authorizing the vindication of rights secured by the Constitution of North Dakota, and no North Dakota court has recognized a direct cause of action for money damages for a violation of that constitutional provision. (See Nagel v. City of Jamestown, 326 F.Supp.3d 897 (D.N.D. August 2, 2018)).

Chapter 15-10.4 Campus Free Speech Policy

Chapter 15-10.4 requires the state board of higher education and each institution to adopt a policy that protects students' rights to free speech, assembly, and expression (See Section 15-10.4-02). However, there are no damages or remedies expressly outlined in the statute.

Senate Appropriations Committee

HB 1138

By Gaylynn Becker, Ph.D.

January 20, 2021

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Chairman Klemin and Members of the House Judiciary Committee:

I am Gaylynn Becker of Bismarck, ND. I'm representing myself.
I am here to testify in support of House Bill 1138.

Too often these past few years have the people's First Amendment
right to freedom of speech been trampled on.

I also recommend as soon this bill is passed by the state legislature
and signed into law that it become effective immediately!

I ask that you pass HB 1138.

God bless you.

January 20, 2021
House Judiciary Committee
HB 1138
Rep. Lawrence R. Klemin, Chair

For the record, I am Stephanie Dassinger. I am appearing on behalf of the North Dakota League of Cities. I am the deputy director and attorney for the League.

The North Dakota League of Cities recognizes the crucial rights to free speech protected in both the North Dakota Constitution and the Federal Constitution; however, the League appears in opposition to HB 1138 because individuals already have remedies to address violations of their rights to free speech and strong public policy reasons exist against creating a cause of action that awards treble and punitive damages against a city or a city's employees for conduct done within the scope of employment.

Punitive Damages Based on a Negligence Standard

HB 1138 allows for a court to award punitive damages when an individual prevails in a lawsuit to litigate a violation of the rights to free speech in the North Dakota Constitution. The culpability threshold for awarding punitive damages is mere negligence.

Under North Dakota law, punitive damages are only allowed in limited circumstances and when the defendant is shown to have engaged in conduct of "oppression, fraud, or actual malice." N.D.C.C. § 32-03.2-11. Further, the purpose of punitive damages is to punish the defendant. N.D.C.C. § 32-03.2-11. This bill sets the threshold for awarding punitive damages at negligence. Generally, I think of negligent conduct as conduct based on a mistake or simply a lack of ordinary care under the circumstances.

Currently, the law does not allow for punitive damages against political subdivisions. N.D.C.C. § 32-12.1-03(2). There are strong public policy reasons for not allowing awards of punitive damages against political subdivisions. We must remember that political subdivisions are spending public money. A significant part of most city budgets comes from property tax. Awarding punitive damages against a city could mean that a city would have to raise property taxes to pay a judgment for punitive damages that was based on someone negligently violating Article 1, Section 4 of the North Dakota Constitution.

Treble Damages

The bill provides that "the state or political subdivision is liable for treble damages for compensatory, consequential, and incidental damages." In other words, the court is required to award three times what a plaintiff's provable damages are. There are other instances in the law where a court may award treble damages; however, I have not performed exhaustive research to find all the instances where this may appear. A couple examples I have found that allow for treble damages are when a landlord withholds a security deposit without reasonable

justification (N.D.C.C. § 47-16-07.1) and for improper acts by an attorney that would constitute a Class A misdemeanor such as deceit or collusion (N.D.C.C. § 27-13-08).

The conduct in both of those instances is intentional misconduct. As explained above, providing for an award of treble damages against a political subdivision for conduct that is merely negligent is problematic. It is especially problematic when a political subdivision, like a city, would be forced to raise property taxes to satisfy the judgment.

Submitting City Employees to Personal Liability

As I read HB 1138, it also appears to allow a cause of action against an individual city employee for their actions while acting in their scope of employment. Additionally, that employee is liable if his or her conduct is merely negligent.

North Dakota law generally provides that city employees are not liable for acts or omissions when acting within their scope of employment. (N.D.C.C. § 32-12.1-04(2)). There is an exception to this immunity when an employee's conduct is reckless or grossly negligent or when the conduct is willful or wanton misconduct. (N.D.C.C. § 32-12.1-04(3)). North Dakota case law provides insight on the meaning of these terms stating, willful or wanton misconduct requires proof of conduct that is "reckless, heedless, malicious; characterized by extreme recklessness or fool hardiness; recklessly disregardful of the rights or safety of others or of consequences." Smith ex rel. Smith v. Kulig, 2005 ND 93, ¶12. Similarly, "gross negligence, is all intents and purposes, no care at all." Jones v. Ahlberg, 489 N.W.2d 576, 581 (N.D. 1992). This bill would allow a lawsuit to be pursued against an employee, individually, while acting within his/her scope of employment and where with the employee's conduct was merely negligent.

In summary, this bill appears to allow a city employee, who is at work and makes a mistake, be sued and, if found liable, be required to pay out of pocket treble actual damages and potentially punitive damages. This substantially changes the risk level associated with city employees who wish to serve their community through working for a city.

Remedies Already Exist

HB 1138 appears to create a state cause of action for a violation of an individual's rights under Section 4, Article 1 of the North Dakota Constitution. That Section provides, "[e]very man may freely write, speak and publish his opinions on all subjects." This provision is viewed as the equivalent to the free speech rights protected in the First Amendment to the US Constitution, also known as the right to free speech. An individual who believes his or her free speech rights under the 1st Amendment of the Federal Constitution have been violated, has the right to bring a claim to defend his or her rights under 42 U.S.C. § 1983 which allows a claim to be filed in either federal or state court for violation of the First Amendment of the US Constitution. Thus, a remedy already exists for these situations.

Conclusion

In conclusion, because a remedy already exists and several problems exist with awarding treble damages, for allowing punitive damages, and for allowing personal lawsuits against employees, the North Dakota League of Cities respectfully requests a DO NOT PASS recommendation on HB 1138.

Thank you for your consideration.

House Judiciary
Chairman – Representative Lawrence Klemm
January 20, 2021

Testimony
By: Shaun Sipma
Mayor, City of Minot
shaun.sipma@minotnd.org
701.721.6839

HB 1138

Good afternoon Chairman and committee members. Thank you for the opportunity to testify on HB 1138. My name is Shaun Sipma and I am the Mayor of Minot.

With the broad scope and implications of the proposed House Bill 1138, I'm here to testify in opposition to this proposed legislation.

The language of the bill would provide an open-door policy to civil action against the state, political subdivisions and municipalities. An act of limiting comment time during a hearing could very well be construed as a violation of Section 4 of Article I of the State Constitution.

For that matter if an individual came to testify at a hearing and decided that four hours of testimony was needed to convey his or her message, any limitation would be seen as a violation of free speech. In short it would be easy to filibuster a public hearing, whether be at the State Capital or at City Hall.

Free speech also extends to social media. Local or State Government who have adopted social media pages would also be subject to probable civil action for having policies that remove comments that contain vulgar language, personal attacks, or hate speech. The affects would quickly impact premium rates for the North Dakota Insurance Reserve Fund. As more civil action are filed against government entities, premium rates would rise whether the cases were successful or unsuccessful for the claimant. Legal council would be required in each case to defend and in the event of verdict where punitive damages are awarded, those costs in the end all get passed on to the local taxpayer.

There has been a tremendous amount of sentiment regarding property taxes and we feel very strongly this would be an avenue that would quickly lead to higher taxes due to frivolous claims.

Free speech is at the very foundation of our constitution at the State and Federal level. It is a right that needs to be taken very seriously. So too does the matter of opening up a door to frivolous civil suits which could easily become a revolving door of potential monetary awards.

Thank you for your time and your consideration.

House Judiciary Committee
Representative Lawrence R. Klemin, Chairman
January 20, 2021

By: Kelly Hendershot
City Attorney, City of Minot
kelly.hendershot@minotnd.org
(701) 857-4755

HB 1138

Mr. Chairman and Members of the Committee,

The City of Minot OPPOSES House Bill 1138.

My name is Kelly Hendershot and I am the City Attorney for the City of Minot. The City of Minot OPPOSES House Bill 1138 (HB 1138) and respectfully requests a DO NOT PASS recommendation.

The intent of HB 1138 may be good, however, it is not clear if the intent of HB 1138 is to address a specific issue or prevent a particular type of free speech violation by state, political subdivision, or employee of the state or a political subdivision, or if it purposefully open-ended. Beyond that, HB 1138 provides that “[t]he state or political subdivision is liable for treble damages for compensatory, consequential, and incidental damages.” While actual damages may be difficult to prove, HB 1138 also includes that the court can award punitive damages with “mere negligence.”

The adoption of HB 1138 may result in more litigation against the state, political subdivisions, and employees of the state or a political subdivision over free speech issues, however minor, because of the possibility of treble damages and punitive damages. Additionally, I believe the adoption of HB 1138 could result in frivolous claims against the state, political subdivisions, and state or political subdivision employees which will result in additional costs for those entities

(i.e., costs to defend; settlement to avoid litigation expenses; increased insurance premiums). Members of the public routinely allege free speech violations against governmental entities and employees (e.g., speaking at public meetings; confrontations with law enforcement; etc.), regardless of actual legal assessment and analysis, and permitting treble damages and punitive damages for these types of claims may encourage litigation for the mere possibility of a settlement (whether due to reducing risk or avoiding cost to defend) or award of damages.

CONCLUSION. The City of Minot OPPOSES House Bill 1138 and respectfully requests a DO NOT PASS recommendation.

**NDSBA****NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION**

P.O. Box 7128
Bismarck ND 58507-7128
1-800-932-8791 • (701)255-4127
www.ndsba.org

HB 1138
Testimony of Amy DeKok
House Judiciary
January 20, 2021

Chairman and members of the House Judiciary Committee, my name is Amy DeKok. I am in-house Legal Counsel for the North Dakota School Boards Association. NDSBA represents all 178 North Dakota public school districts and their boards. I am here today in opposition to HB 1138.

HB 1138 creates a civil cause of action against the state, political subdivisions, and their employees for a violation of section 4 of article I of the North Dakota Constitution. It also provides that the state or political subdivision is liable for treble damages for compensatory, consequential, and incidental damages. Finally, it provides that a court may also award punitive damages and the standard to award such damages is mere negligence.

We oppose HB 1138 for a few reasons. First, there is no indication in the bill where the proposed provision would be placed in the ND Century Code. It is important to know where this will fit within the Code to understand the potential impact on other chapters and sections of the Code. And this goes directly to my second reason that this bill is problematic.

Second, the bill conflicts with several existing provisions of the Code, specifically within chapter 32-12.1. This chapter relates to liability of political subdivisions and their employees. This chapter would come into play with this bill because it addresses claims brought against a political subdivision or an employee of the political subdivision acting within the scope of the employee's employment or office. There are several inconsistencies between the bill as proposed and this chapter. For example, the bill calls for payment of treble damages for any compensatory, consequential or incidental damages for violation of free speech rights. However, chapter 32-12.1 contains liability caps of \$250,000 per person and \$1 million for any single occurrence. It goes on to say that any payments to persons under these liability cap provisions constitute payment in full. HB 1138 makes no reference as to how to reconcile this. By way of further example, chapter 32-12.1 provides that a political subdivision may not be held liable, or ordered to indemnify an employee held liable, for punitive or exemplary damages. The bill is in direct contradiction to this provision.

Another reason we oppose this bill is that it is inconsistent with the standard for award of punitive damages. Punitive damages are awarded as a penalty to punish the wrongdoing party in order to deter that party and others from repetition of wrongful conduct. Courts typically require an element of malicious intent or motive or egregious conduct in awarding punitive damages. The bill proposes a standard for award of punitive damages as "mere negligence." Mere negligence is not defined in the bill nor used in Century Code. The sponsor may mean ordinary negligence and if so, this would be inconsistent with the typical standard for awarding of punitive damages. Moreover, the bill already calls for the award of treble damages, which is itself punitive. To allow for an additional award of punitive damages on top of treble damages would be an unfair duplication of punitives which our courts have deemed inappropriate. Therefore, the provision awarding additional punitive damages should be eliminated. The bill also mentions incidental and consequential damages. These are special damages that may be awarded in a breach of contract action. The cause of action created by this bill is not a breach of contract action.

Another reason for our opposition is that there are already mechanisms in place to assert violations of free speech rights by state and its officials acting under the color of law and therefore, the bill is unnecessary. The protections of the First Amendment of the U.S. Constitution apply to the states, their political subdivisions, and officials through the 14th Amendment of the Constitution. Individuals may assert violations of these rights under Section 1983 of the Civil Rights Act. There is well-established and well-developed jurisprudence addressing such claims. In additions, individuals may bring a writ of mandamus or writ of prohibition against a political subdivision in response to an alleged failure to adhere to the ND Constitution.

For these reasons, NDSBA stands in opposition to HB 1138 and encourages this committee to give it a do not pass recommendation. I would be happy to answer any questions the committee may have.

To Whom It May Concern:

I write this in support of HB 1138 and, as a veteran, I served to protect and defend the rights of the people that includes the right to petition government that is done through the use of rights as free speech and freedom of expression in hopes of also receiving equal treatment and equal protection that should not be denied without due process.

In recent years, whether out of complacency or corruption, rights of the people have been chipped away at and eroded to the point of having so little value that the role of the people in government has been limited to voting and paying taxes as if the people are no longer the reason that government exists but just to help government persist.

Beliefs of “We the People” and that of a “government of the people by the people for the people” are no longer considered meaningful by government but as catch phrases or words of appeasement instead of words defining principles and a purpose for why government exists when it exists to serve the people.

Words can become just words on paper and words that lose their value when a value is not assigned to them, much the way free speech has come under attack in so many ways as the struggle for power at the expense of the people continues. This country is so often at war or in military conflicts that the sacrifices made to protect the rights of the people have been diminished.

The purpose of, and need for, HB 1138 is to remind government not only of rights of the people like free speech but that there surely must be a cost for violating that right after others paid the ultimate cost, by sacrificing their lives, to protect such a right. It is now that the good should act to not only protect free speech but to ensure that when any part of government seeks to violate that right that there will be a price to pay.

Sincerely,

S. Paul Jordan

255 N. 4th St.
PO Box 5200
Grand Forks, ND 58206-5200



Mayor Brandon Bochenski
(701) 746-4636

TESTIMONY ON HOUSE BILL 1138

House Judiciary Committee

January 20, 2021

Daniel L. Gaustad, City Attorney, City of Grand Forks, ND

Chairman Klemin and members of the House Judiciary Committee, my name is Daniel L. Gaustad and I am the City Attorney for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express the City of Grand Forks' opposition for HB 1138.

I note the North Dakota League of Cities, by Stephanie Dassinger, its deputy director and attorney, submitted written testimony in opposition to HB 1138. The reasons outlined by Ms. Dassinger in this written testimony to request a DO NOT PASS for HB 1138 are wholly consistent with those of the City of Grand Forks. Therefore, to avoid unnecessary duplication of written testimony, the City of Grand Forks endorses the reasoning set forth by the North Dakota League of Cities' written testimony. The City of Grand Forks has submitted this written testimony so that the record reflects its opposition to the HB 1138.

However, it does bear repeating that this proposed legislation, particularly those provisions relating to punitive damages against a City employee – personally – and the City itself for negligent conduct – a mistake - is not consistent with already existing state law. Indeed, under N.D.C.C. § 32-03.2-11(5), to obtain punitive damages, a jury is required find, by clear and convincing evidence, that the amount of punitive damages is consistent with specified principles and factors, including “the degree of reprehensibility of the defendant’s conduct,” the awareness or concealment by the acting party, the profit obtained from the wrongful conduct and whether criminal sanctions have been imposed against the acting party. Yet, this legislation would expose a City employee and the City to punitive damage liability solely on a possible mistake or negligent conduct.

Certainly, free speech rights are at the core of our society as evidenced by the existence of such right being in both the U.S. and North Dakota Constitutions. This is a right that the City takes seriously. However, despite all of the good intentions and every effort in protecting such rights by a City and its employees, punishment, triple damage liability and potentially crippling litigation would be the environment to which they would operate by this legislation.

Accordingly, the City of Grand Forks respectfully asks for a DO NOT PASS for HB 1138.

Testimony of
Erik Johnson, City Attorney
City of Fargo

January 20, 2021
House Judiciary Committee
HB 1138
Rep. Lawrence R. Klemin, Chair

Mr. Chairman and Members of the Committee,

My name is Erik Johnson. I am appearing on behalf of the City of Fargo, having represented the City of Fargo for 35 years and having been Fargo's City Attorney since 2007.

The City of Fargo OPPOSES House Bill 1138 and respectfully requests a DO NOT PASS recommendation.

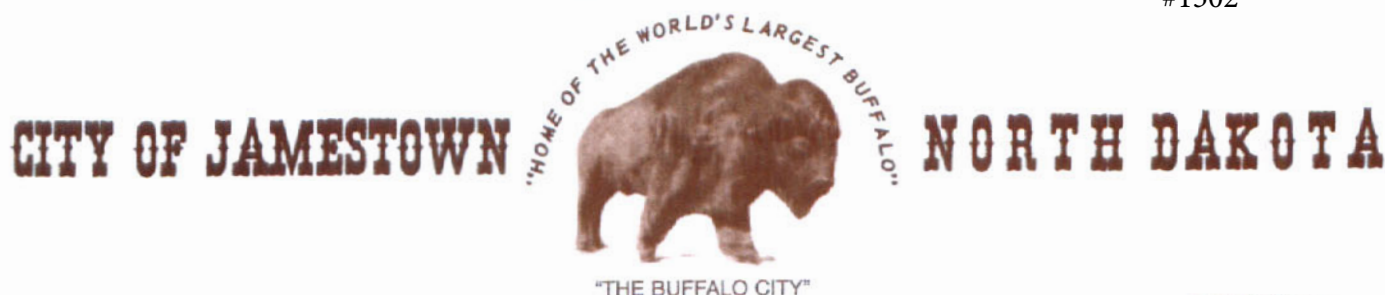
Examples that Raise Questions. I do not know the intent behind this proposed bill; however, I can imagine a number of problems attempting to advise my city if this bill were enacted. Will this bill establish a "pass go/get of jail free" card that would allow every individual or group to either file or threaten to file a lawsuit any time they feel their "free expression" is being impeded in some way, no matter how small? Should the police officer be worried about getting sued every time she comes upon a disruptive individual (or group) arguing and yelling on a downtown sidewalk or street? Can the city street worker remove handbills that have been posted on city right-of-way? May the librarian no longer "sush" the library patrons? What rules can a city council or planning commission establish for running their public meetings and, once those rules are fairly established, can they be enforced without fear of having to defend a lawsuit? Must a municipal judge (a city employee) be worried about entering a judgment of conviction whenever the case focuses upon a defendant expressing himself in some way and he claims "free speech"?

Treble and Punitive Damages. The bill requires the tripling of "actual damages" (including consequential and incidental damages); however, the right to free speech has such intangible value that actual damages would frequently be speculative at best. There is no market price that can be used to place a value of "actual damages" for the alleged loss of free speech. What's more, the bill authorizes the

imposition of “punitive damages”--damages intended to punish the wrongdoer. North Dakota law rarely authorizes the award punitive damages. The situation must involve fraud or maybe a handful of other situations involving extreme and conscious indifference to one’s obligation to another. House Bill 1138 urges punitive damages to be awarded upon proof of merely careless behavior (the “...standard ... is mere negligence.” H.B. 1138). In other words, the State or a city may be required to pay “punishment damages” for a mere mistake in judgment or lack of “due care” even when many decisions are made in the heat of the moment or the circumstances that were known at the time. [I might add that liability insurance policies (including perhaps the North Dakota Insurance Reserve Fund coverage) frequently exclude punitive damage awards from insurance coverage.]

The right to freedom of speech is a fundamental value embodied in our Federal and State Constitutions—with this, no reasonable person disagrees—however House Bill 1138 converts the free-speech right from a shield to a spear. The right to be free of governmental interference with one’s free expression was a shield established by the founders to protect the people from an overly intrusive government. Caution should be used before turning the free speech right into a spear.

CONCLUSION. For the reasons as described, the City of Fargo respectfully requests a DO NOT PASS recommendation on HB 1138.



OFFICE OF MAYOR
102 THIRD AVENUE SOUTHEAST
JAMESTOWN, NORTH DAKOTA 58401

PHONE (701) 252-5900
FAX (701) 252-5903

January 18, 2021

Honorable Lawrence R. Klemin, Chair
Judiciary Committee
North Dakota House of Representatives

RE: House Bill 1138

Dear Chairman Klemin and Members of the Committee:

I am writing to you today to voice my opposition to House Bill 1138. I have not asked our City Council to take an official position on this matter, so I am speaking on my own behalf.

It has been my experience that one is often better using valuable time and energy engaged in efforts where a problem exists rather than to create a solution to a non-existent problem. Article I, Section 4 of the North Dakota Constitution states "Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and criminal trials of libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictments or informations for libels the jury shall have the right to determine the law and the facts under the direction of the court as in other cases."

In simple words, the last part of this section says "we don't know what was just said, so it will be up to the jury to determine what this is supposed to mean."

So does this mean that if a North Dakota resident appears before a committee of the North Dakota Legislature and wants to testify for two hours and the committee has limited his presentation to five or ten minutes that his constitutional right to freely write and speak has been violated and he has the right to sue the State and demand treble damages and punitive damages? Does this mean there are no rules or regulations for the proper conduct of the State or political subdivisions that can be enforced? Where is the problem? Is it real or imagined?

For example, at the beginning of our monthly Jamestown City Council meetings we have a public hearing entitled "Hearing from the Audience." We allot 15 minutes for this hearing and we offer individuals an opportunity to come to the City Council and speak to us about anything on their mind that is not on the agenda. This has worked well and we have so far had no abuse of this public hearing. So does this bill mean if it becomes law that someone could appear at that public hearing and demand to speak for three hours and keep the City Council from doing its proper business?

Why has this bill been introduced? Where is the problem and has it been identified? On the face of this language it appears to be a bullying tactic. One to be used not for what would appear to be the stated purpose guaranteeing free speech, but rather the opposite one stifling free speech by threats of frivolous legal action and financial ruin to the political subdivisions. This bill as written is simply a bad idea, one whose time has not come and hopefully never will.

Thank you for your consideration.

Yours Truly,

A handwritten signature in dark ink, appearing to read "Dwaine Heinrich". The signature is written in a cursive, flowing style.

Dwaine Heinrich, Mayor
City of Jamestown, North Dakota

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

HB 1138

2/2/2021

An Act to provide for a civil action against the state or a political subdivision for a state constitutional free speech violation.

Chairman Klemin called the meeting to order at 2:46 PM

Representatives	Attendance
Representative Lawrence R. Klemin	P
Representative Karen Karls	P
Representative Rick Becker	P
Representative Ruth Buffalo	P
Representative Cole Christensen	P
Representative Claire Cory	P
Representative Karla Rose Hanson	P
Representative Terry B. Jones	P
Representative Jeffery J. Magrum	P
Representative Bob Paulson	P
Representative Gary Paur	P
Representative Shannon Roers Jones	P
Representative Bernie Satrom	P
Representative Steve Vetter	P

Discussion Topics:

- Lawsuit against political subdivision
- Status update on the bill

Rep. Roers Jones: discussed the issues with the bill.

Do Not pass motion made by **Rep. Roers Jones**. Seconded by **Rep. Satrom**

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	Y
Rep. Christensen	N
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	Y
Rep Paulson	A
Rep Paur	Y

Rep Roers Jones	Y
Rep B. Satrom	Y
Rep Vetter	Y
Rep Buffalo	Y
Rep K. Hanson	Y

Motion carried for Do not pass. 12-1-1

Rep. Satrom: Carrier.

DeLores D. Shimek by Donna Whetham
Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1138: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO NOT PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1138 was placed on the Eleventh order on the calendar.