

Testimony of Richard LeMay
In Support of HB 1439
Before the House Judiciary Committee
February 10, 2021

Chairman Lawrence Klemin and Committee Members: My name is Richard LeMay. I serve as the Executive Director of Legal Services of North Dakota (LSND). LSND is a 501(c)(3) nonprofit corporation governed by a twelve-member Board of Directors consisting of eight attorneys and four client eligible members. Attorney Wade Enget from Stanley, North Dakota, currently serves as LSND's Board President. LSND provides civil legal services to all 53 counties in North Dakota, as well as the North Dakota Indian communities.

I wish I could tell you about all of LSND's accomplishments in the last thirty years, like establishing the first central intake system in the nation and launching the first online web application in the nation taking thousands of application each year. In 2017, LSND reestablished a law office in Grand Forks to serve low-income residents of Northeastern North Dakota. LSND's was instrumental in establishing the first Medical-Legal Partnership in North Dakota. The work LSND does under their VOCA, STOP and Human Trafficking grants provides critical services to many victims. Unfortunately, our time today does not allow me to.

For the last ten years LSND's Legal Service Corporation (LSC) funding has been reduced by nearly 15%. Since the early years of legal services, staff has been reduced by 48%. Currently, LSND employs twenty-two staff, nineteen full-time, and three part-time. Of the twenty-two staff, ten are attorneys. Four of these ten attorneys are funded through short term grants.

While federal and foundation funds are not increasing, the legal needs of low-income and elderly North Dakotans continue to increase. The number of low-income North Dakotans that

are eligible for LSND's services is 105,000. The number of elderly North Dakotans eligible for LSND's services is 151,000.

The challenge of serving 70,000 square miles from four locations across the state often requires LSND staff or clients to travel hours to obtain services. The ongoing pandemic has made this challenge more difficult. LSND's ability to meet face to face with senior clients is stayed due to concerns of spreading the coronavirus.

LSND has fully embraced technology having created the first central intake system and the first online web application in the nation. Since the onset of the pandemic, LSND continues to provide services through the use of technology protecting both clients needing our services and LSND staff. One service LSND provides primarily to seniors is educating, preparing and executing advance directives and other related documents. Currently, LSND is able to meet with only those clients having a video source of communication. Another hurdle to helping clients is the perfunctory step of having the execution of the document notarized. The current law prevents a notary from completing the notary function simply because the client is not physically sitting across the desk, even though the video meeting with the client is just as if the client was sitting across the desk.

N.D.C.C. § 44-06.1-05 provides: "If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer."

The North Dakota Legislature provided an exception to this rule when enacting, "44-06.1-13.1. Notarial Act performed for remotely located individual." However, the process is cumbersome and would require LSND to incur tens of thousands of dollars in expense to meet

the requirements. Essentially, LSND would have to purchase servers to store all of the recorded video meetings with clients and backup servers to protect the integrity of the data. Obviously, this exception was created for business interests. It must be clearly understood that LSND does not serve clients for monetary gain. The service provided to clients is free.

The exception to the exception would allow LSND to provide free legal services to rural North Dakotans without the requirement found in subsection c. “c. The notary public, or a person acting on behalf of the notary public, creates an audiovisual recording of the performance of the notarial act ...” 44-06.1-13.1.

LSND would still continue to maintain the same proof that it currently does in performing the notary function. “a. The notary public: (1) Has personal knowledge under subsection 1 of section 44-06.1-06 of the identity of the individual; (2) Has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under subsection 2 of section 44-06.1-06 or this section; or (3) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing; ...” 44-06.1-13.1. Also, an important distinction is that LSND’s notaries are notarizing documents that have been created by LSND, for LSND clients. This would not be a function performed for just any member of the public; it would only be done for LSND’s clients.

This problem for North Dakotans was uncovered due to the pandemic, but the benefit of such change would greatly enhance LSND’s ability to serve rural seniors in the future, saving both time and financial resources for both senior clients and LSND. The legislative change

would allow LSND to perform the notary function with reasonable documentation and would not require an ongoing cost to the state.

The provision requiring LSND to capture video and preserve it for ten years makes the current law impractical for LSND and its clients to utilize. To capture video of even the signature portions of executing documents would require large dedicated storage and involve additional procedures to ensure the reliable capture and backup of the video content. This plus maintaining all of the usual documentation kept by LSND is too much. Setting out an exception would benefit many low-income and economically disadvantaged seniors in North Dakota.

In the last ten years, LSND has taken applications from more than 4000 individuals completing advance directives and related documents. Estimating storage needs is dependent on numerous variables and would range from 1.5 gigabytes to 5 gigabytes depending on the resolution. This would require LSND to maintain three separate Terabyte servers to store, backup and replicate data. Given current prices the start up cost to LSND would likely be more than \$20,000. It must also be understood the life of a server is less than ten years.

I would ask for your support for HB 1439. Thank you for your consideration and I will try to answer any questions you have for me.