



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Josh Boschee

District 44
517 First Street North
Fargo, ND 58102-4540
jboschee@ndlegis.gov

Minority Leader

COMMITTEES:

Industry, Business and Labor

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Good morning Chair Larson and members of the Senate Judiciary Committee,

For the record, my name is Josh Boschee and I serve as a Representative from District 44, which comprises downtown and north Fargo.

HB 1533 was introduced to provide a formal process in which the Courts can evaluate if an individual is using their access to the Courts to continue to harass, intimidate and abuse someone they have been found guilty of domestic violence or disorderly conduct against.

Over the past year and a half, I have learned a lot about how an abuser is able to use their Constitutionally protected access to the Courts to not only emotionally and mentally abuse their former partner or spouse, but also financially abuse these individuals as it requires the abused individual to retain legal counsel and respond in a timely manner in order to protect their children, their home and other assets. Following my introduction of HB 1533, you will hear directly from individuals who have had to endure this kind of abuse for five or more years. There is also additional written testimony by those that are able to publicly share their experiences. According to these women's experiences, there are many other North Dakotans that they have met who have faced similar abuse but are unable to speak publicly out of fear of further retaliation and abuse from their former spouses.

Walk through how abusive litigation plays out in the Court.

The originally introduced version of 1533 was modeled off other state's legislation and was amended by the House Judiciary Committee in partnership with the state Supreme Court. The committee, with my support, removed the specific procedures from statute and are deferring to the Courts to establish a procedure that best works for their processes. As I understand it, they will most likely propose to amend their Rule 58, which is specific to Vexation Litigation, to be inclusive of the individuals who qualify under Abusive Litigation.

In order for an individual to access abusive litigation, they have to be in or have been in an intimate relationship or a sufficient relationship as defined under NDCC 14-07.1-02, which is our domestic violence protection order statute. The filing party must have been found guilty by a court of domestic violence or disorderly conduct.

As you look at the bill draft in front of you, Page 2, lines 19 through line 3 on page 3 outlines the hearing procedure which requires an individual to file a motion with the Court asking the Court to

review the allegations of abusive litigation. This would allow for a time out so that the facts can be demonstrated of how the filing party is using court procedures to continue to harass, intimidate or abuse the other individual. The judge would weigh the facts and make a determination. If the judge finds by a preponderance of the evidence that abusive litigation is occurring, they will enter an order restricting abusive litigation. The filing party will be responsible for all costs associated with the abusive litigation, including reasonable attorney's fees for the opposing party.

If the judge finds that abusive litigation is not occurring, the proceedings will continue.

For those of you familiar with current Court procedures, you may be asking why this wouldn't already fall under Rule 58: Vexatious Litigation. There are a few key factors:

- Abusive litigation is specific to individuals who have had an intimate relationship with one party found guilty of domestic violence or disorderly conduct. Vexatious litigation is an option to all individuals, including those that qualify under abusive litigation.
- Vexatious litigation is only an option if the filing party is not represented by an attorney. Abusive litigation is available if either or both parties are represented by an attorney. This helps reduce the amount of money, time, and resources the opposing party has to access to respond to ongoing and continuous filings.

Some may ask, if the Court is willing to address Abusive Litigation, why don't they just do so without legislation.

As someone who hasn't spent a lot of time on court proceedings, I've learned a lot about the Courts' processes throughout the drafting, introduction and discussion on 1533. They take their role of ensuring access to the Courts very seriously, which is important. So having something in statute to back judges up in addressing Abusive Litigation will be helpful in not only ensuring victims of domestic violence experience less abuse, harassment and/or intimidation through judicial proceedings, but also that the resources of the Courts aren't abused.

After me, you will hear directly from at least two women who have lived the past five plus years of their life through the type of abuse this legislation will hopefully reduce for future North Dakotans.

I request the Committee's support of HB 1533 and am happy to answer questions to the best of my ability.