Testimony in Opposition to HB 1609

For the record, my name is Naomi Bromke, and I was born and raised in Bismarck, North Dakota. I am a first-year law student at the University of North Dakota School of Law. I am currently in the top 10% of my class and have received multiple academic scholarships for my good standing.

This semester, I am taking Constitutional Law I, as is required of all first-year law students. At the beginning of this semester, we began discussing the checks and balances each branch of government provides to another in addition to the powers delegated to each. When I first read through this bill, immediately my mind went to the class period when we covered this information. The question I raise is whether this law is a potential violation of the North Dakota Constitution or not. The jurisprudence set in North Dakota will tell you it is.

The North Dakota Constitution Article VI states: “The supreme court shall have authority . . ., unless otherwise provided by law, to promulgate rules and regulations for the admission to practice, conduct, disciplining, and disbarment of attorneys at law.” That phrase—"provided by law”—is <u>not</u> limited to statutes. In *Lamb v. State Bd. of Law Exam'rs*, 2010 ND 11, 777 N.W.2d 343, the North Dakota Supreme Court stated, “"[t]he term 'by law' is <u>not</u> limited to statute but <u>includes rules adopted by the Supreme Court pursuant to</u> the court's authority contained in <u>Section 3, Article VI, North Dakota Constitution</u>,” quoting the North Dakota Supreme Court in *Dickinson Newspapers v. Jorgensen*, 338 N.W.2d 72 (N.D. 1983); additionally seen in *Lashkowitz v. Disciplinary Bd. of Supreme Court*, 410 N.W.2d 502 (N.D. 1987).

And, to the extent the “unless otherwise provided by law” exception has been applied, it has been in very limited and narrow ways relating to the “conduct” of attorneys at law (e.g., attorneys fees caps in workers compensation awards, N.D. Cent. Code, § 65-02-08), rather than “admissions to practice” or “disciplining” of attorneys. The N.D. Cent. Code, § 27-11-02 states: “The power to <u>admit</u> persons to practice as attorneys and counselors at law in the courts of this state is vested in the supreme court.” (Emphasis added). Passing HB 1609 would directly conflict with this statute. The Supreme Court of North Dakota decides who can practice law as an attorney. If someone takes the bar exam and passes but is not eligible to sit for it based on the parameters set out by the Supreme Court, they do not have to admit them. The North Dakota Supreme Court has the inherent power to do so.

In re Simpson, 9 N.D. 379, 83 N.W. 541 (1900), a North Dakota Supreme Court case whose ruling *is still binding*, although it is over 100 years old, the Court stated, “Any court having the right to admit attorneys to practice, and <u>in this state that power is vested in this court</u>, has the inherent right in the exercise of a sound judicial discretion to <u>exclude them from practice</u>.” Significantly, the Court concluded that any legislation that purports to create such a disciplinary power in this Court is “merely a legislative affirmance of a power <u>that already existed</u>.” (Emphasis added). This well-established state separation of powers principle in constitutional law—that the judiciary has almost exclusive authority over the regulation of the practice of law in a state—is often referred to as the “inherent powers” doctrine.

You will see this doctrine alluded to in *Lamb v. State Bd. of Law Exam'rs*, which stated: "*In addition* to both constitutional and statutory authority, we have long recognized our *inherent authority* over attorneys in this state."

The American Law Reports states, "Furthermore, the act of admitting attorneys to practice is in most jurisdictions regarded as exclusively for the courts, as is the final determination in regard to the fitness and qualifications of particular persons, and the courts, acting therein, may exercise judicial power to reject an applicant for unfitness, notwithstanding he may have met the terms of existing statutes and under the provisions thereof appears fully entitled to admittance." W. W. Allen, Annotation, *Power of Legislature Respecting Admission to Bar*, 144 A.L.R. 150 (1943; 2009 ed.) (Emphasis added). This principle of exclusivity of state judicial power to regulate the practice of law has been most strongly and consistently applied in reference to admissions and disciplinary rules and procedures.

From a non-legal perspective, I am a law student. I had to take the LSAT, which is a grueling hours-long exam requiring months of studying, to even be considered for law school. From there, I had to get letters of recommendation, write a personal statement, pass a background check, and talk with the school before even being admitted. You are then thrown into a completely new style of school, your grades resting upon generally a 90% final exam at the end of the semester. Students who generally got A averages in their undergrad now face the brutal awakening of C averages in law school. This is how hard law school is. After the first year, if your grades are not in good standing, you are kicked out. Additionally, the bar exam tests the subjects you are taught in law school.

This is the harsh reality of what it takes to **become** an attorney. Being a legislator for two terms, which is not 4 full years, is not a sufficient replacement for legal education. If you have not completed at least a bachelor's degree, you are not qualified or prepared to go to law school or sit for the bar. If the legislature did not need attorneys or their expertise, then there would be no need for the legislative council or the 3rd-year law students that come in and help legislators with bills. I am not against an apprenticeship-type program that supplements or is incorporated into a law school education, but I do not know what that would look like. In recent years, state supreme courts have been experimenting with post-law-school-graduation apprenticeship programs as alternatives to the bar exam; but that is vastly different than attempting to substitute apprenticeship programs—with so many gaps and unknowns as to the quality of the experiences that would occur—for the rigors and accountability for learning and professional development opportunities that are key aspects of a strong law school education.

If we are to keep the high bar and prestige of what it takes to be an attorney instead of creating Kim Kardashian lawyers, a do not pass on HB 1609 is necessary. If you would like to see more court cases regarding this subject matter, I am happy to provide that to you as well. Thank you for your consideration.