

To The North Dakota Supreme Court,

My name is Garrett Fitzgerald. I am writing to oppose The Petition to Terminate the Special Provision of Legal Services by Qualified Attorneys from Outside North Dakota. I am a legal worker who spent several months in North Dakota last fall and winter. I can say with certainty that this provision is and has been, crucial to protect the constitutional rights of criminal defendants. It is still of utmost importance. Revoking this provision would infringe on the 5th, 6th, and 14th amendments and cost taxpayer money. This petition is submitted by the same justices that opposed the provision back in January of 2017 and is filled with incorrect numbers.

The need for this program remains immense. Paragraph 3 of the petition utilizes a double negative in saying that there is "*no indication* that local attorneys are *unavailable* to provide representation." To flip this statement, there is no proof in the Petition to Terminate that local attorneys are *available* to provide representation. As of September 11, 2017, there were still 159 cases without representation or any appointed counsel. This vast need is indicative that Pro Hac Vice attorneys are necessary to supplement capacity of the local bar. These Pro Hac attorneys do not supplant North Dakota attorneys, but rather fill gaps and unmet needs. From August to December, there were nearly 20 cases that went ahead without any representation in court. This is an egregious violation of fundamental rights that this provision seeks to alleviate.

This program saves North Dakota taxpayer money because the state does not have to provide indigent defense for those who have out of state attorneys. These cases are extremely time consuming with terabytes of discovery. Pro Hac attorneys can provide the constitutionally required adequate representation without consuming local resources.

The Supreme Court of North Dakota originally granted this provision to ensure access to counsel and ensure fundamental fairness in their criminal cases and said "We nevertheless recognize the potential for delay or inconvenience for litigants due to the relatively large number of arrests and finite resources to handle the judicial proceedings related to those arrests." These concerns remain true.

The nature of these mass arrests is unlike anything local counsel has dealt with in court, while Pro Hac attorneys have decades of experience with similar cases. These attorneys have provided their logistical, legal, and research resources to local attorneys by skill sharing and co-counseling on cases. Water Protectors have repeatedly communicated that local counsel has been hard to reach and data from 10/22 and 10/27 mass arrest dates indicate that criminal defendants represented by local attorneys were more likely to take pleas of cases even when co-defendants' cases were getting dismissed on the exact same facts. There were 13 guilty pleas to 10/22 cases and all but one had North Dakota court appointed lawyers. These people plead guilty to charges where people with exact facts were getting dismissed or acquitted. For 10/27 arrests there have been 7 guilty pleas, all of which were represented by local counsel, while the rest of the cases were dismissed.

This widespread inability for the North Dakota bar to sufficiently represent Water Protectors creates a serious constitutional violation if not addressed. Revoking the current provision allowing out of state attorneys to represent these defendants would interfere with the right to speedy trial, adequate representation, and due process. For that reason I write to oppose.

Respectfully,
Garrett Fitzgerald
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