

Testimony of Erik Johnson

February 4, 2021
House Political Subdivision Committee
HB 1323
Rep. Jason Dockter, Chair

Mr. Chairman and Members of the Committee,

My name is Erik Johnson and I am appearing on behalf of the City of Fargo as its City Attorney. There are two main points that I would like to talk about. First, I would like to share with you some of the experience we've had in my city with mask usage by our residents and, in particular the experience with so-called "mandates". Second, I want to share some concerns about the "reach" of this bill and, perhaps, some unintended consequences.

I. **Mask Recommendations vs. Mask Mandates—Fargo's experience in 2020.**

- On April 7th, very early in the COVID-19 pandemic Fargo's Mayor Mahoney issued a "directive" that consisted of various strong recommendations to businesses, individuals and families to follow COVID-safe practices. Residents were "strongly advised" to follow CDC guidance of wearing protective face masks.
- On August 10th, the Fargo City Commissioners approved two motions pertaining to mask-wearing. The first strongly encouraged residents and visitors to maintain healthy handwashing, to disinfect surfaces and, when social distancing couldn't be maintained, to wear face masks within public places, common areas and private businesses. The second motion established required City employees to wear face masks when social distancing could not be maintained and it included exceptions for employees with medical issues preventing the wearing of masks, for single-person occupancy of vehicles among other things.

- On October 19th, Mayor Mahoney issued a “Mask Mandate”. Although the order clearly stated that “...these measures are being mandated with the strongest possible recommendation, there is no penalty for non-compliance....” Nevertheless, the Mayor’s order was expressed in terms “requiring” and “mandating” the wearing of masks.
- City officials observed that mask-compliance improved as a result of the Mayor’s Mask Mandate. Some stores, for the first time since the pandemic “hit” North Dakota in March, posted signs requiring customers, as well as employees, to wear masks. **We observed that the Mayor’s mask “mandate” was strongly-enough worded that his order was taken seriously and we think that the Mayor’s order, combined with actions of mayors and city councils throughout the state, substantially improved healthy practices in our city. We saw the power of leadership in our City—the notion that society will follow the instructions of their elected leaders, if those instructions are expressed in sufficiently urgent terms.**
- To be sure, the Mayor’s October mask mandate did not completely stop the spread of COVID—nobody has argued that it is a panacea. For example, there was a surge that occurred in November and early December and there was great worry that the surge in North Dakota would continue after the Christmas holiday season. Happily, the expected continuation of the surge has not occurred. The numbers for our city and for our state have dropped and we believe that the combination of leadership efforts throughout the state, including the imposing of urgent and forceful orders requiring appropriate mask-wearing, have had a very positive impact in controlling the spread of COVID.
- We observed that while the mask “directives” and “recommendations” created some support in society for mask-wearing, we think there is power in the word “mandate”—even when there is not a criminal penalty for disobedience.

- Our City's experience with mask wearing orders has been shared by many other cities across our state. Mayors of 70% of North Dakota cities enacted a mask mandate in front of the Governor's declaring a mask mandate.
- Studies support benefits of mask-wearing. Scientists and experts have been studying society's response to this COVID crisis while it has been unfolding. Studies reported by Vanderbilt University and in the Journal of Econometrics have indicated that mandating face masks has reduced the spread of Covid-19. Our city's Health Department has supplied these reports to me and I would be happy to supply copies to committee members.
- Local Control. We believe that "local control" should be authorized. First, not every city is alike. Second, each city elects its leaders. What is a sound health-crisis practice in a town with 500 residents may not be sound in a town with 50,000 or more residents. More populated and congested cities—perhaps with larger and more-densely occupied businesses and industries—may have greater challenges in using social distancing as the only COVID-safety measure. This is not to say that an epidemic is not a matter for state-wide measures—a virus does not recognize political boundaries—but we think both state-wide powers and local powers should remain in place.

II. HB 1323 too broadly-worded. My second point will be brief. House Bill 1323 goes too far in its restrictions on state and local government, some that we assume were not intended. This bill's prohibiting of use of a mask as a condition for employment will handcuff a city's ability to protect its workers from the mask-defiant behavior of other workers. Also, this bill would restrict a city's (or the state's) authority, say, from requiring its own employees--medical persons, fire fighters, police officers, hazardous material technicians and others to wear appropriate mask gear as safety equipment during the course of their duties.

SUMMARY. The personal freedom that we enjoy in America is a remarkable thing. We can do and say almost anything that we want. This freedom is not without some limits. We have all heard the aphorism that “my freedom to throw my fist stops at your nose.” In the case of COVID-19, if I cannot keep my distance from you, then my “fist” – the contents of my lungs—should stop before it hits your nose.

CONCLUSION. For the reasons as described, the City of Fargo OPPOSES House Bill 1323 and respectfully urges a DO NOT PASS recommendation on HB 1323 prohibiting mask mandates.