July xx, 2020

The Honorable Wayne Stenehjem

Attorney General

Office of the Attorney General

600 E. Boulevard Ave, Dept 125

Bismarck, ND 58505

RE: Request for Attorney General’s Opinion

Dear Attorney General Stenehjem:

The North Dakota Ethics Commission (Commission) is requesting an Attorney General’s Opinion to address its authority where there appears to be a conflict with Article XIV, §2 (5) and the First Amendment of the United States Constitution.

In 2018 the voters approved Measure 1, establishing under Article XIV of the Constitution of North Dakota the North Dakota Ethics Commission. Article XIV, §2(5) states that “Directors, officers, commissioners, heads, or other executives of agencies shall avoid the appearance of bias, and shall disqualify themselves in any quasi-judicial

proceeding in which monetary or in-kind support related to that person’s election to

any office, or a financial interest not shared by the general public as defined by the

ethics commission.” The effective date of this section is January 5, 2022.

The Commission is reviewing rules to implement Article XIV, §2(5) but has serious reservations about the constitutionality of options in light of Citizens United v. Federal Election Comm'n, 558 U.S. 310 (2010) and Americans for Prosperity Foundation v. Bonta, 594 U.S. \_\_\_ (2021). It would appear from the language in these opinions that any rule that would restrict or prohibit campaign contributions or mandate recusal based solely on a campaign contribution in a quasi-judicial proceeding would violate the First Amendment of the US Constitution.

To avoid unnecessary litigation and associated costs to the state, we ask for an opinion as to whether the Commission can either mandate recusal or, in the alternative, bar or limit campaign contributions in an election from entities appearing before the quasi-judicial body.

Accordingly, we respectfully request an Attorney General’s Opinion. POC for this request is Executive Director Dave Thiele, who can be reached at (701) 328-5322 or [dthiele@nd.gov](mailto:dthiele@nd.gov).

Sincerely;

Ron Goodman

Chair, North Dakota Ethics Commission