

North Dakota Ethics Commission Meeting

Minutes of February 23, 2022

Live Stream MS Teams

1. **Call to Order:** The meeting was called to order by Chair Ron Goodman, at 9:00 a.m. The following members of the Ethics Commission were present: Cynthia Lindquist, Paul Richard, Ward Koeser and David Anderson. Also present were Ethics Commission legal counsel Allyson M. Hicks, Executive Director Dave Thiele, and Office Manager Holly Gaugler.
2. **Approval of Agenda:** The agenda was discussed for this meeting. Executive Director Thiele noted that two PSC Commissioners will be speaking at 9:30 am due to their scheduled conflicts.
3. **Approval of Minutes:** The minutes of the 26 January 2022 meeting were discussed with no changes.

Motion: Commissioner Koeser moved to approve the minutes of January 26, 2022 with no corrections. Motion was seconded by Commissioner Lindquist. Chair Goodman called for a voice vote on the motion. The motion was approved by unanimous voice vote.

4. **Budget Update:** Office Manager Holly Gaugler provided a budget update as of January 31, 2022. Gaugler reported January 2022 expenditures of \$24,108 and total expenditures for the biennium of \$157,395 leaving a remaining biennial budget of \$466,589. Gaugler also reported projected expenditures for the remainder of the biennium (February 1, 2022 through June 30, 2023) at an estimated \$442,626 which would leave an approximate ending balance of \$23,963 on June 30, 2023. Gaugler advised the Commission that the ending balance would likely rise as the Commission continues to have MS Teams virtual meetings rather than in-person meetings along with other potential budget savings.
5. **Executive Director Dave Thiele Update:**
 - Thiele briefed the Commission on a recent complaint (#2021-009) which was a complaint against a member of the judiciary. Thiele reported that he had dismissed the complaint as it was against a member of the judiciary which is outside the jurisdiction of the Commission as well as the occurrence being outside the three-year time limitation. Thiele reported that an appeal had not been received and the complaint was closed.

- Thiele discussed the audit of the ND Ethics Commission recently completed by the ND State Auditor’s Office. He reported there were no formal findings and the Ethics Commission website has a copy of the finalized report.
- Thiele and Commissioners discussed having Commissioners’ state emails listed on the website as an option. Currently, the Commission receives emails through a generic email at ethicscommission@nd.gov which also gets forwarded to Thiele’s and Gaugler’s state emails. Thiele asked that Commissioners notify Holly Gaugler at hgaugler@nd.gov if they would like their state emails posted.
- Thiele discussed the upcoming March 7th strategy review meeting with the Governor. A draft presentation has been completed.
- Thiele briefed the Commission on researched options to provide videos and transcripts of meetings to the public. The options for transcript were not a good idea for a meeting of this length and would require significant hours of editing. Thiele recommended to the Commission that a video be available for anyone requesting it for 60 days or when the meeting minutes are approved – whichever is longer.

Motion: Commissioner Anderson moved to approve recommendation made by Executive Director Thiele to provide videos of meetings to requestors for 60 days after the meeting or until the minutes are approved, whichever is longer. Motion was seconded by Chair Goodman. Chair Goodman called for a roll call vote on the motion. The motion was approved unanimously.

- Thiele discussed Commissioner Dave Anderson’s term ending August 31, 2022. He indicated that Commissioner Anderson wishes to renew his term. He also discussed that it would be up to the Governor and the Senate Majority and Senate Minority leaders if it would be opened up to other applicants. Thiele said it would be brought up at the upcoming strategy review meeting with the Governor on March 7th.
- Thiele discussed the term of the Commission’s positions for chair and vice chair. Chair Goodman and other Commissioners were in favor of a three-year term for these positions but Chair Goodman asked that we research the most common practices for other state boards and commissions. Thiele will also talk with individual Commissioners and there will be a follow-up discussion at the next meeting.

6. **Presentation by Public Service Commissioner, Julie Fedorchak:**

- Proposed draft rules create a duplication of existing ND conflict laws for quasi-judicial agencies, campaign finance and disclosure requirements.
- Proposed draft rules create complicated campaign procedures in significant efforts to track donation connections.
- Fund raising becomes more difficult and favors candidates that are able to self-fund campaigns.

- Recommends finding and remedying identifiable gaps in current laws.
- Recommends less ambiguous definitions and inclusion of a bright line.
- In terms of the “Neutral Decisionmaker”, the ultimate “Decision Maker” is the public.
- PSC written comments from John Schuh, attached.

7. **Presentation by Public Service Commissioner, Randy Christmann:**

- Reasonable rules should be created that do no limit campaigns to wealthy candidates.
- Should not have vague rules that allow frivolous complaints which may devastate a campaign.
- PSC is elected by voters in a partisan election process as opposed to the judiciary which are prohibited from partisan affiliation.
- Recommends more clarity in Definitions, 115-04-01-01 for “substantial” and “significant”.
- Recommends revised definition of “immediate family” in Definitions, 115-04-01-01(4) to the “...official, their spouse, and their dependent minor children”.
- Recommends reporting requirements in 115-04-01-02 changed to “known” conflicts of interest.
- Recommends reasonableness and clarity in 115-04-01-04(3) in what is expected for officials to disclose.
- Current law requires disclosure of \$200 for campaign donations. If rules were created to include all donations it would rob donors of their right to political free speech.
- Written testimony from Commissioner Christmann, attached.

8. **Presentation by Vice President NDPI, Ellen Chaffee:**

- Since Citizens United, campaign donations are routinely excluded by state ethics policies.
- Bias of state quasi-judicial decisions in North Dakota is real.
- NDPI does not take a position on general campaign donations only in the case of quasi-judicial bodies.
- NDPI does not believe the draft conflict of interest rules’ “Neutral Decisionmaker” criteria represents neutrality in conflict of interest decisions.
- In addressing Article XIV, Section 2 (5) of the ND Constitution, language from Section 3 (1) “strengthen the confidence of the people of North Dakota in their government, and to support open, ethical, and accountable government...”, should be added to the conflict of interest rule 115-04-01-04(5).
- The Commission needs additional staffing and expertise in applied ethics, communication, and education.
- Recommended adding at least two additional staff members and develop a charter for the Commission outlining roles and responsibilities, prepare a concrete action plan for the next three to five years, prepare a needs assessment, job descriptions, hiring

schedules, ongoing professional development, educational communications for public officials and the public.

- Recommended the Commission proceeds proactively rather than reactively and pursue other opportunities to fulfill its mission.
- Written comments from NDPI, attached.

9. Presentation by Zachary Pelham, Counsel Representing Greater ND Chamber:

- Rules must be in line with the North Dakota Constitution
- Opposed to a “Neutral Decisionmaker” in the current draft rules as the Constitutional language in article XIV, § 2(5) leaves disqualification up to the individual and does not provide for a “Neutral Decisionmaker”.
- The Commission should state if it follows the rulemaking process in N.D.C.C. 28-32 and if not, it should establish a written rulemaking process. This would create transparency and allow citizens wishing to participate, know the rules.
- The Ethics Commission was created to adopt rules related to transparency, corruption, elections, and lobbying. The proposed conflict of interest rule is not included in the language of the North Dakota Constitution.
- Written testimony from Zachary Pelham, attached.

10. Presentation by Vice President & General Counsel ND Petroleum Council, Brady Pelton:

- Opposed to limitations of campaign donations for quasi-judicial state elected officials.
- Most boards and commissions already have conflict of interest policies that work well.
- In favor of public officials’ self-disqualification as opposed to a “Neutral Decisionmaker”.
- Elected officials are held accountable to the North Dakota voters.
- Current draft rules restricting campaign donations is an affront to constitutional rights of citizens.
- Written testimony from Brady Pelton, attached.

11. Commission’s Discussion of the Draft Conflict of Interest Rules:

The Commission addressed the consistent concerns/major issues of the presenters during the meeting.

- The Commission discussed setting bright-line campaign donation amounts for quasi-judicial officials. A bright-line was not added at this time, however, this was followed with a recommendation from legal counsel Allyson Hicks to add to Section 115-04-01-04(2)(c), a sentence “No campaign contribution or in-kind support that is below the reporting threshold set forth in NDCC 16.1-08.1 shall be included in this definition.”

- The Commission discussed public comments regarding the “Neutral Decisionmaker”. After much discussion, the Commission agreed to leave this language in the February 22, 2022 draft conflict of interest rules in place.
- The Commission also discussed public comments regarding terms used in the current conflict of interest draft rule. Those discussed included: “Reasonable Person”, “Significant Financial Interest”, and “Quasi-judicial”. The Commission did not make a final decision and will revise through further review and clarification.

12. **Further Business:** Chair Goodman further requested a follow-up on officer term limits at the March 23, 2022 meeting.

13. **Adjourn:** Commission, having no further business, was adjourned at 1:15 p.m. The next meeting is scheduled for March 23, 2022, at 9:00 a.m. by MS Teams.

Approved on _____

Dave Thiele, Executive Director, North Dakota Ethics Commission

Attachments: (5)

Ms. Hicks:

Thank you for providing a copy of the conflict of interest and quasi-judicial conflict of interest rules. Due to the timing of the request, I have not had the opportunity to have a comprehensive discussion with the Commission. I have had discussions with some of the individual commissioners and agency executive staff (collectively the “PSC” or “Agency”) and, at your request, I have attempted to summarize some of their thoughts and concerns. Please consider these in addition to their concerns that I have already passed along.

The Public Service Commission is a constitutional agency headed by three statewide elected officials, each elected to a six-year term and serving in a full-time capacity. The PSC has varying degrees of jurisdiction over economic regulation of electric and natural gas utilities, telecommunications companies, weights and measures, auctioneers and auction clerks, reclamation of mined lands and permitting, restoration of abandoned mine lands, siting of refinement and generation plants, electrical and pipeline transmission, intrastate pipeline safety enforcement, one-call enforcement, and railroad safety inspection. A single siting proceeding may involve hundreds of miles, thousands of acres, and a wide range of landowners and stakeholders. An economic rate case may impact up to tens of thousands of industrial, commercial, and residential customers. There is PSC regulation at every store, shop, and gas station with a commercial scale and the PSC’s jurisdiction relates to nearly every energy market within the state.

The PSC Commissioners have been subject to existing conflict laws for quasi-judicial agencies, campaign finance and disclosure requirements, and the PSC has had its existing Conflict, Gifts, and Gratuities policy since January 26, 2000. Subject to self-regulation, the Commissioners have disclosed and recused themselves as they have become aware of conflicts that may call into the propriety of their participation in proceedings.

In general, the Agency recommends that the Ethics Commission draft rules that provide substantive certainty while avoiding over-prescribing procedural frameworks that may result in unworkable situations. This ethics framework is overlapping upon layers of existing legal and governmental compliance requirements. While there may be an aspirational goal to capture every possible scenario, unforeseeable legal and regulatory conflicts can impede public business. For this reason, the ability of an agency to retain the flexibility to address the issues while providing transparency in the process may be the best solution.

N.D. Admin. Code § 115-04-01-01. Definitions.

N.D. Admin. Code § 115-04-01-01(4): N.D. Admin Code § 115-04-01-01(4) provides that “Immediate Family” means a Public Official’s parent, sibling, spouse, grandparent, grandchild, or child by blood or adoption or a step-child. As a result, these individuals are considered a “Relationship in Private Capacity.” The rules appear to provide that a public official has a potential conflict of interest when, as part of the public official’s duties, he/she must take action in a matter in which the public official has said relationship in private capacity. N.D. Admin. § 115-04-01-01(2). However, the rules are unclear on how they will be applied.

The rules do not clearly provide what type of arrangement with the “Immediate Family” a public official should be wary of. Does this include ownership, financial interest, employment, as a party, or another type of arrangement? Furthermore, potential conflicts with extended family such as parents, siblings, grandparents, grandchildren, and children were expressed as a concern. The Public Official may or may not have a good relationship with his/her grandparents, parents, brothers and sisters, and children and step-children. Furthermore, family members may be reluctant to share their interests and finances. The ethics rules create a burden on the public official to know, in fact, what arrangements each of these

extended family members have. This burden would exist without legal authority for the Public Official to obtain this information.

Based on the discussions, the Agency's recommendation is to limit the definition to the household.

N.D. Admin. Code § 115-04-01-01(5): N.D. Admin. Code § 115-04-01-01(5) defines "Neutral Decisionmaker." Assuming that (d) does not apply to an interim appointed PSC commissioner, (a) and (e) appear to apply to the PSC's conflict administration. While (a) may work with a larger board or committee, the Agency has already identified at least one circumstance that applying the drafted ethics rules as expressed may not be workable with a three-person commission. There are also a few other ways that this may result in an awkward process. This is likely due to the proposed rule's attempt to set one framework to apply to several very different types of government structures.

The Agency recommends, at least for a commission, that the policy or rule for designation of neutral decisionmakers and disclosures remain primarily with the commission. The PSC is better situated to understand the administration of the agency and the situations that arise within its practice and procedure and subject matter. It would also provide flexibility to change a policy as unforeseen situations arise rather than halting public business and operations to wait for the Ethics Commission to take corrective action through additional rulemaking.

N.D. Admin. Code. § 115-04-01-02. Disclosure of Potential Conflict of Interests

N.D. Admin. Code § 115-04-01-02(1): The October 18, 2021 draft of the administrative rules provided that a "known" conflict of interest must be disclosed. This has been removed from the current proposed rules. The Agency recommends that it be reinserted in the current draft.

N.D. Admin. Code § 115-04-01-03: Neutral Decisionmaker(s) Review of Potential Conflict Disclosures, Decision, and Action.

A circumstance or interest may result in a continuing potential conflict of interest. The PSC processes anywhere from 400 to 600 active cases per year, not including over 600 individual licenses and administrative decision-making that occurs outside of evidentiary proceedings. As a practical matter, this may create a tremendous amount of administrative work for the PSC if the expectation is to revisit the potential conflict of interest in every case or administrative decision. The Ethics Commission should allow the PSC to set forth, through policy or rule, the manner in which to address continuing potential conflicts with a neutral decisionmaker. If the Ethics Commission intends to address this issue itself, it should permit a singular decision by the neutral decisionmaker for a continuing potential conflict of interest until there is a request for the potential conflict to be revisited.

N.D. Admin. Code § 115-04-01-03(4): As a recommendation, remove the portion of the ethics rule requiring compliance with open meetings laws. The PSC and its public officials are already subject to open meetings laws, Attorney General opinions, remedies, and criminal and civil liabilities. These requirements for the agencies subject to them remain irrespective of the Ethics Commission and the proposed rules possibly create redundant ethics enforcement in addition to existing open meetings enforcement. Furthermore, this language may also create the false perception that the PSC is not currently obligated to follow open meetings laws.

115-04-01-04 Quasi-Judicial Proceedings.

N.D. Admin. Code § 115-04-01-04(2)(c) and N.D. Admin. Code § 115-04-01-04(3),(4): The proposed rules provide that the public official must disclose any "Potential Conflict of Interest" and "Campaign Monetary or In-Kind Support." Monetary and In-Kind support is defined as contributions of every kind and

type whatsoever, whether in the form of cash, goods, services, or other forms of contribution, whether donated directly to the Public Official's campaign or donated to any other person or entity to support the Public Official's election to any office. The proposed rules require disclosure to the neutral decisionmaker, and the parties involved in the proceeding.

It has been expressed that this is an incredible ask, and it creates a heavy burden for the elected officials and an agency. The State does not provide appointed deputies for PSC Commissioners, and they generally do not have hired campaign staff. This would require each Commissioner to ferret out information about individual donors, donors to groups that support them, and individuals providing ancillary support through participation in normal civic engagement. Regardless of a minimal donation or contribution and privacy of the supporter, a PSC Commissioner would need to disclose the information to parties and the neutral decisionmaker.

Administratively, these requirements may not be cumbersome for small administrative boards or committees. However, given the extent of PSC administrative dockets and the nature of PSC agency actions, the steps necessary to gather and disclose information, decide upon actual bias or conflict, and resulting actions can foreseeably slow down public business, decision-making, and extend administrative litigation. It may also require staff dedicated to monitoring and compliance.

The Agency recommends minimizing the breadth of the definition. Some considerations may be providing a minimum threshold value for disclosure from an individual whose interests are a substantial issue of the case (e.g. \$500 or existing reportable contribution thresholds) and limiting support to direct involvement in the campaign. To ease the administrative burden, the Agency recommends that the Ethics Commission should permit the PSC Commissioners to simply post the threshold donations within the past two years and include a current list of potential conflict of interests decided by a neutral decision-maker. If necessary, the Agency could also provide a general disclosure of where to locate the information in opened quasi-judicial dockets.

N.D. Admin. Code § 115-04-01-04(6) and (7): The PSC has been recognized as an entity that is granted deference by the courts in many of its matters due to its technical nature. To ensure the replacement is a person with attributes to provide quality deliberation in engineering, accounting, and market economics, the Agency submits that the Ethics Commission should ensure that the PSC is the one setting forth the substitute.

It is my understanding that one or more of the PSC Commissioners may attend to provide broader insight as a state-wide candidate. If there are any additional questions regarding agency resources or practices, feel free to contact me. I should be able to gather feedback in short order.

Sincerely,

/s/ John M. Schuh

Thank you for the opportunity to comment on your proposed Title 15 Administrative Rules. I am North Dakota Public Service Commissioner Randy Christmann. My goal is to point out some very significant concerns, with the expectation that another version will ultimately be brought forward for additional, more granular comments. If so, I believe the potential exists to come up with a reasonable set of rules without limiting the candidate pool to independently wealthy people.

My career has included five successful legislative campaigns for District 33 Senate and two successful statewide campaigns for the office of Public Service Commissioner. For those who have never been on a ballot, please understand the importance of clarity with ethics rules. Specific details cannot be left unresolved, assuming they will be clarified as complaints are filed. The “appearance of impropriety” can be enough to devastate a campaign. We cannot have vague ethics rules that allow people to file frivolous complaints shortly before an election leaving candidates who clearly did nothing unethical or illegal under the cloud of an investigation as voters are casting their ballots. Ideally, I believe this process should also include a process that provides consequences for people who file frivolous or unsubstantiated complaints.

I also want to point out a clear legal delineation between positions such as I hold and the Judiciary. I am elected by voters statewide in a partisan election process. The Judiciary is prohibited by NDCC 16.1-11-08 from even proclaiming a partisan affiliation, and are thus insulated from much of the election process.

Jumping to the specifics of the draft, the Definitions, 115-04-01-01, use the terms “substantial” (subsection 1) and “significant” (subsection 2) interest. More clarity is needed. I see no definition for “substantial” and the definition for “significant” in subsection 8 looks to me like it would include even a single dollar. Many people will have widely divergent opinions of the definitions of substantial and significant. Elected officials should not have to guess where the line is. While I find it offensive that anyone suggests that our decisions are for sale at any price, does anyone think we will be swayed by minimal amounts? Current law already requires disclosure of ALL campaign donations of over \$200.

Subsection 4 of the Definitions does provide clarity but in doing so it goes way too far. I recommend that “immediate family” be defined as the official, their spouse, and their dependent minor children. Elected officials cannot be expected to know

the entire investment portfolio of grandparents, grandchildren, and siblings who may have very little or no communications with the official. Even parents and grown children are beyond the control of elected officials and candidates.

I read subsection 5 of the Definitions to allow the remaining members of the PSC to be the Neutral Decisionmakers in the case of a potential conflict or for the agency to designate a Neutral Decisionmaker through rule or policy. This is very important. Unlike an actual court, which prepares for cases knowing exactly who the participants are, we routinely take public testimony as part of our Hearings. If someone that we did not anticipate shows up to testify, and a decision needs to be made regarding an unexpected possible conflict of interest, reaching out to an outside Neutral Decisionmaker such as the Ethics Commission would bring the Hearing to a halt. It would mean scheduling a new Hearing, which is a significant time delay because of notice requirements, and often involves significant travel for the agency and for the public who showed up for the Hearing.

A previous version of 115-04-01-02 required officials to report “known” conflicts of interest, and the most recent version changes that to “potential” conflicts of interest. Especially if the impossibly broad definitions I just talked about are kept, officials should not be held responsible for conflicts they had no way of knowing even existed. Officials cannot possibly know where everyone works. We cannot possibly know where everyone invests. We cannot possibly know who might have had a sign in their yard or window. We cannot possibly know what supporters may have posted on social media during our campaigns. Without more clarity, all of these things could be interpreted as “In-Kind-Support.”

I also have concerns about the Quasi-Judicial Proceedings section, 115-04-01-04. Subsection 3 begins the disclosure requirements. Please clarify exactly what you are expecting officials to disclose. I think we would all agree that contributions directly from a corporation, cooperative, or individual that is a party to a case would need to be disclosed. Do you expect disclosure of donations from a company employee PAC? Do you expect disclosure of donations from trade associations representing those involved in our cases? Do you expect disclosure of personal donations from company management? Do you expect disclosure of personal donations from board members? Do you expect disclosure of personal donations from mid-level employees? Do you expect disclosure of personal

donations from every single employee, investor, or member of entities involved in a case? Reasonableness and clarity are needed.

Over the years I have been blessed to receive financial or in-kind support from people who's respect and support I have earned over a lifetime, going back to school days, and including church, neighborhoods, civic organizations, and myriad other channels. I do not know where each and every one of them work, and I know even less about their investments.

It may be convenient to think of these Quasi-Judicial rules as affecting the actions of officials in cases with just a few large utility companies. But as you contemplate these rules, remember that our cases can also include many others, for example contractors who may be accused of not following "Call Before You Dig" requirements, as well as all the operators of all underground utilities. We have dozens of those cases each year. Our cases with the large utilities also commonly have a "Public Advocacy" side, making the public a party to the case. This would essentially require disclosure of any support we have received from the public at large.

Finally, I want to point out some personal experiences for your consideration. During the course of both Senate and PSC campaigns I have had numerous people offer support, but inquire about reporting because they felt intimidated by their supervisors or even co-workers. I simply explained the disclosure law and many contributed, exercising their right to free speech, but at an amount others would not find out about. I also had one person seeking to help my campaign but asked the same question about disclosure, but in this case it was because of a family member who felt differently and intimidated that potential donor.

Current law requires us to report contributions exceeding \$200, but it seems fundamentally wrong to me to report every single donation. Doing so essentially excludes people who may feel intimidated by someone at their work or by a relative. It excludes them from any participation in the political process except their vote, and frankly it robs them of their right to political free speech guaranteed by the Constitution of the United States of America.



TO: North Dakota Ethics Commission
Ethicscommission@nd.gov

FROM: Dina Butcher, Chair, Board of Directors
North Dakotans for Public Integrity
Dina.wtba@midconetwork.com

DATE: February 15, 2022

RE: Further Comments on the Draft Conflict of Interest Rules 115-04-01

North Dakotans for Public Integrity (NDPI) sponsored Article XIV, which includes Section 2(5) addressing conflict of interest in quasi-judicial decisions. NDPI appreciates that the Commissioners are also addressing general conflict of interest in the draft rules.

NDPI's interest in the work of the Ethics Commission is to ensure that Article XIV is properly implemented and to assist the Commission in doing so. Since Article XIV does not address general conflict, all our comments in that domain are suggestions based on our long-standing interest in public integrity.

Thank you for this opportunity to comment and for defining your questions so that the public can address them directly.

1. Comment on the Commission's Question 2.a: Should campaign contributions be included in the general policy section?

Article XIV Interpretation: The Ethics Amendment addresses campaign contributions in the context of quasi-judicial decisions, not general decisions. The commission's definition of quasi-judicial is appropriate at the policy/rule level, but implementation also requires a procedure to clarify the term with criteria and examples. Article XIV is silent on general conflict of interest.

NDPI suggestion: The general-decision question needs more study. Dealing with quasi-judicial decisions is more urgent. Guidance to public officials on the new rule should provide more information, criteria, and examples to assist them in recognizing quasi-judicial decisions, and it should clearly note that some individual public officials (not just high-profile commissions) make quasi-judicial decisions within their general duties.

2. Comment on the Commission's Question 2.b: Do other states include campaign donations as a basis for disqualification in general?

NDPI suggestion: We are a small nonpartisan, nonprofit group of North Dakotans with extensive state government experience who successfully identified a set of ethics issues that concerned most of our fellow citizens. We do not have the resources to conduct a 50-state policy review.

3. Comment on the Commission's Question 2.c: Do other states include campaign donations as a basis for disqualification in connection with quasi-judicial proceedings?

Article XIV: NDPI wrote this policy for North Dakota without reference any other state's policy. We concur with United States District Court Judge Daniel Hovland, who said that Public Service Commissioners accepting donations from companies they regulate is "ill-advised, devoid of common sense, and raises legitimate questions as to the appearance of impropriety."¹

NDPI suggestion: The Ethics Commission is a constitutional body. You have or should acquire sufficient resources from other state agencies, the legislature, or independent experts to access information and expertise on any matter within your jurisdiction, especially when it comes to implementing the Constitution.

4. Comment on the Commission's Question 2.d: (a) Are there any suggestions regarding the identified factors a Neutral Decisionmaker should consider in 115-04-01-04(5)? (b) Should there be a "bright line" to help standardize evaluations? If so, what is it? (c) What sources address these matters?

Article XIV interpretation: (a) **NDPI's position is that you are fiduciaries of your mission.** Neutral Decisionmakers must consider criteria that represent the Commission's mission [Section 3(1)] to "strengthen the confidence of the people of North Dakota in their government, and to support open, ethical, and accountable government...."

Regarding (b) and (c), NDPI suggests the Commission develop a clear, specific rationale for whatever decision it makes on bright lines after researching and considering their impact on ethical decisions and outcomes. Potential sources include the US Office of Government Ethics, the Markkula Center for Applied Ethics at Santa Clara University, and the Council on Government Ethics Laws.

5. Comment on the Commission's Question 3: Does 115-04-01-01(5) appropriately identify who can be the neutral decisionmaker in a general or quasi-judicial matter?

¹ Dacotah Chapter of Sierra Club and Dakota Resource Council v. Secretary of the Interior and North Dakota Public Service Commission, USDC, North Dakota, Case No. 1:12-cv-00065, Order of October 22, 2013. page 20, footnote .

In a word, no.

Article XIV: The draft policy's manner of designating Neutral Decisionmakers for quasi-judicial decisions is fraught with risk, including inconsistent application, undisclosed sources of bias, and fear of reprisal. NDPI urges the Commission to focus on objectivity, independence, and the following key points in Article XIV:

1. What approach will best fulfill your fiduciary responsibility as defined in Section 3(1)?
2. Neutral Decisionmakers must focus their decisions on the "appearance of bias" (Section 2(5)). The appearance of bias is far across the spectrum from the more familiar evidencebased quid pro quo, which state law requires for bribery. Neutral Decisionmakers will need standards for that.

Citizen confidence and the absence of an appearance of bias are essential principles for properly implementing all elements of Section 2(5). We have several ideas about ways to ensure that these significant, legally vulnerable decisions start with a proper decisionmaker, but for the time being the best course might be to name the Commission itself or Administrative Law Judges.

Finally, NDPI recognizes that Commissioners and staff have worked long and hard to establish the Commission and address its constitutional requirements. We believe that the current effort is showing all of us that the Commission needs additional staffing and expertise in applied ethics, communication, and education. Your budget is far less than the Governor's 2019 request, which itself was much less than our estimated needs-based budget. NDPI will support your efforts to secure a proper budget any way we can. The increasing public interest and support for the Commission could be helpful in that regard.

As the [U.S. Office of Government Ethics](#) points out:

Well-trained ethics officials help agency leaders and employees manage risks every day. Ethics officials must have the knowledge, skills, and abilities necessary to provide expert counsel, identify and resolve conflicts of interest, deliver quality training, and manage effective programs, making their ongoing professional development vital to the strength of the ethics program. OGE [read "the North Dakota Ethics Commission"] has a responsibility to support this important effort.

Again, thank you for your commitment and hard work to ensure ethical state government.

Pearce Durick PLLC

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February 21, 2022

North Dakota Ethics Commission
Attn: Hon. Ronald Goodman, Chair
101 Slate Dr., Suite 4 Bismarck,
ND 58503
ethicscommission@nd.gov

RE: Greater North Dakota Chamber Written Opposition to Proposed Conflict of Interest
Rule 115-04

Dear Chair Goodman:

I am writing on behalf of the Greater North Dakota Chamber of Commerce (“GNDC”) as to the proposed rules for article 115-04—Conflict of Interest. To be clear, it is not lost on GNDC that the creation of rules is a process that includes many varying views and positions being presented to the Commission. While the GNDC is critical of the draft rules, its criticisms are made in good faith with the intent of ensuring our state’s constitution is upheld. It is not the role of GNDC, the Commission, the Legislative Assembly, or anyone to add, subtract, or presume that which is clearly stated in article XIV of our constitution. While the courts may one day interpret article XIV, it is the duty of the Commission to ensure any such rules adopted are consistent with the Commission’s authority that is provided for in our constitution.

Article XIV explicitly provides what “[d]irectors, officers, commissioners, heads, or other executives of agencies shall” do to “avoid the appearance of bias”: they “shall disqualify themselves in any quasi-judicial proceeding in which monetary or in-kind support related to the person’s election to any office, or a financial interest not shared by the general public as defined by the ethics commission,” which “creates an appearance of bias to a reasonable person.” N.D. CONST. art. XIV, § 2(5). Our state constitution provides that our “legislative assembly *and* the ethics commission shall *enforce* this provision by appropriate legislation and rules, respectively.” *Id.* (emphasis added). Our state constitution does not provide that our Legislative Assembly and Ethics Commission shall re-define “this provision” by adopting legislation and rules to follow the subjective, and varying, “spirit” of the black letter words contained in our constitution. Indeed, if the proponents of article XIV had wanted “this provision” stated differently, they could have crafted it in such a way: they did not. What has been proposed in the draft rules is beyond that which the citizens of this state

approved when article XIV was enacted. Specifically, the following proposed rules are contrary to article XIV as a matter of law:

- Creation of a “Neutral Decisionmaker” paradigm in the proposed rules is contrary to our constitution. Our state constitution plainly puts any decision of disqualification from a “quasi-judicial proceeding” on the public official and the public official alone. Our constitution explicitly provides “[d]irectors, 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, creates an appearance of bias to a reasonable person.” N.D. CONST. art. XIV, § 2(5) (emphasis added). There is no “neutral decisionmaker” who supplants public officials from disqualifying “themselves” from statutorily or constitutionally created duties—duties upon which they have been duly elected to administer. Plain constitutional construction applies here. While the Commission (and Legislative Assembly) are charged with *enforcing* the provision with appropriate legislation and rules, our constitution does not permit the Commission (or Legislative Assembly) from usurping public officials’ constitutional rights to determine for themselves whether to disqualify from a “quasi-judicial proceeding.”

The Commission can provide rules for enforcement, but our constitution puts the ultimate decision of disqualification on the individual. Indeed, such is consistent with the judicial canons—it is the judge that decides to recuse and not some “neutral.” See N.D.CODE.JUDICIAL.CONDUCT Canon 2. The draft rules overstep the Commission’s authority by going beyond that which our constitution provides for the Ethics Commission and Legislative Assembly to do. Again, the ultimate decision to disqualify is for the public official. The goal of the Commission with respect to a decision on whether public officials should disqualify themselves from a “quasi-judicial proceeding” should be to highlight the fact our constitution provides for the public official to decide and not a “neutral” thirdperson, which is found nowhere in our constitution. If the drafters of our constitution had seen it fit to include provisions for third-parties to make decisions for elected officials presiding over a “quasi-judicial proceeding” they would have done so.² All references in the proposed rules related to a neutral decisionmaker should be removed.

- “Quasi-judicial” does not mean “quasi-legislative.” Our constitution includes the term “quasi-judicial,” but does not define it. The draft rules provide that “quasi-judicial” “means the Public Official is called upon to perform a judicial act when the Public Official is not a member of the North Dakota judiciary. This includes administrative hearings, generally,

² The Commission has already received guidance from the North Dakota Office of Attorney General, which issued an opinion replete with references to public officials disqualifying *themselves*. N.D.O.A.G. Letter Op. 2021-L-04. The Letter Opinion cited *State v. Stockert*, 2004 ND 146, 684 N.W.2d 605, for the proposition of using it to set rules (standards) for selfdisqualification. Such can be done, so long as the framework developed by the Commission allows public officials to make the decision to disqualify themselves and is consistent with our constitution. Stated plainly: the Commission can develop the parameters (as Judicial Canon 2 does), but our constitution places the ultimate decision to disqualify with the public official alone (just as Judicial Canon 2 does for judges).

and administrative hearings conducted pursuant to N.D.C.C. Chapter 28-32 where the final decisionmaker is the Public Official.” 115-04-01-04(5)(d).³ But rules implemented by boards, commissions, or agencies, presided over by whom our laws prescribe, and pursuant to N.D.C.C. Ch. 28-32, are not “quasi-judicial” functions; neither are they a “judicial act.” Instead, the implementation of administrative rules is naturally a quasi-*legislative* proceeding. *See, e.g.*, N.D.C.C. § 28-32-02(1) (noting the authority to “adopt administrative rules is authority delegated by the legislative assembly.”). Article XIV does not limit the duties of elected officials to participate in the rulemaking process under N.D.C.C. Ch. 28-32 because it is not a “quasi-judicial proceeding.” The current draft definition of “quasi-judicial” should be refined to reflect it pertains only to adjudicative proceedings, as defined at N.D.C.C. § 28-32-01, and not rulemaking proceedings, which are a quasi-*legislative* function.

Moreover, how can it even be possible for anyone not a “member of the North Dakota judiciary” to “perform a judicial act?” It goes without saying that *anyone* not elected as a judge, or hired by the judiciary as a judicial referee, cannot perform judicial acts. Officials elected to perform government functions under our constitution and laws perform constitutionally and legislatively authorized acts—not “judicial acts.” While it is fair to describe administrative hearings of agencies conducted under N.D.C.C. ch. 28-32 as “quasi-judicial proceedings,” or adjudicative proceedings, the authority to perform these duties is found in the legislative and executive branches of government, not the judicial branch of government. But the proposed rules confuse the branches of government—tying a phrase in our constitution—“quasi-judicial proceeding”—to a completely separate concept in our American system of government. A “judicial act” is necessarily an act performed by a member of the judicial branch. Executive and legislative branch elected individuals are not members of the judicial branch and the Commission should not confuse the roles our constitution provides for each branch of government. Members of the executive and legislative branch may perform quasi-judicial acts when their duties as a public official is to oversee a board, commission, or agency. But they do not perform judicial acts as this is something reserved for elected judges. Our constitution does not support a rule requiring “[d]irectors, officers, commissioners, heads, or other executives of agencies” to “disqualify themselves in any” quasi-*legislative* proceeding. *See* N.D. CONST. art. XIV, § 2(5). Of course, nothing prevents such individuals from deciding for themselves to disqualify—it is just that this Commission has no authority under our constitution to enforce quasi-*legislative* proceedings and its proposed rule is contrary to the constitution.

- The determination of what “appearance of bias to a reasonable person” is not for the Commission to decide. Our constitution provides that a “campaign contribution” is not a

“gift” and it does not “prohibit any person from making a campaign contribution or from encouraging others to make a campaign contribution or to otherwise support or oppose a

³ “Public Official” is defined in the draft rules at 115-04-01-01(6). The Commission is reminded that the constitution set forth who is governed by “this provision” as to a “quasi-judicial proceeding”: “[d]irectors, officers, commissioners, heads, or other executives of agencies” are those subject to art. XIV, § 2(5) and no one else. The proposed definition of “Public Official” as the term is used for a “quasi-judicial proceeding” is contrary to our constitution.

candidate.” N.D. CONST. art. XIV, § 2(1)-(2). It logically flows that receipt of a “campaign contribution,” permitted under our constitution, does not necessarily create an appearance of bias to a reasonable person that would require public officials to disqualify themselves from a quasi-judicial proceeding. Our constitution sets the “reasonable person” standard as the parameter for the “monetary or in-kind support” to a person’s election to any office. *Id.* at § 2(5). While the drafters of the constitutional amendment could have defined the term, the “reasonable person” standard is not defined by our constitution. *See, e.g., Teegarden v. N.D. Workmen’s Comp. Bur.*, 313 N.W.2d 716, 718 (N.D. 1981) (noting “[t]he expression, ‘a reasonable person’ is not defined by statute and accordingly it is to be understood in its ordinary sense. NDCC § 1-02-02. The word ‘reasonable’ as defined in Webster’s dictionary means ‘being in agreement with like thinking or right judgment, not conflicting with reason, not absurd, not ridiculous,’ etc.”). “Reasonable person” is defined as “[a] hypothetical person used as a legal standard, especially to determine whether someone acted with negligence. The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions.” BLACK’S LAW DICTIONARY 584 (2d Pocket Ed. 2001). And because our constitution specifically adopts the “reasonable person” standard, this is the standard the Commission must apply in providing guidance to those officials who decide whether to disqualify “themselves” from a “quasijudicial proceeding.”

It is for the Commission to provide guidance, based upon our constitution, as to what the parameters are under our constitution—nothing more, nothing less. And if the Commission goes beyond this, as the draft rules do, the Commission has stepped beyond the authority granted by our constitution. Neutral decisionmakers do not determine reasonableness. The Ethics Commission does not determine reasonableness. The Legislative Assembly does not determine reasonableness. The decision of reasonableness, at least at the outset, rests with the “[d]irectors, officers, commissioners, heads, or other executives of agencies” who “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, creates an appearance of bias to a reasonable person.” N.D. CONST. art. XIV, § 2(5) (emphasis added).

The drafters of the amendment chose the reasonable person standard—which is a legal standard that is most often determined on a case-by-case basis and often by a fact-finder (jury). Indeed, a set framework of what actually “creates an appearance of bias” could have been inserted had the drafters wanted. A choice was made not to. While article XIV provides for the “legislative assembly *and* the ethics commission” to “enforce this provision by appropriate legislation *and* rules, respectively[,]” it does not define “reasonable person” and explicitly allows officials to “disqualify themselves” when a scenario creating an “appearance of bias to a reasonable person” occurs. *Id.* (emphasis added). Different scenarios would likely mean different conclusions for a reasonable person. Again, the Commission and Legislative Assembly *enforce* the constitutional provisions—they do not change, alter, increase, amend, or decrease from our constitution.

As to a “gift”—the ultimate decisionmaker on whether the “reasonable person” standard is initially met are the “[d]irectors, officers, commissioners, heads, or other executives of agencies” who “shall disqualify *themselves*. . . .” *Id.* (emphasis added). Ultimately, for

example, if a director accepted a campaign contribution of, say \$1,000,000, from a donor who later appeared before a “quasi-judicial proceeding” where the director was a member and the director did not disqualify himself, enforcement of the constitutional provision is ripe for consideration of whether the “appearance of bias to a reasonable person” has occurred or not for this hypothetical elected official. This is the area of law that the Commission and Legislative Assembly need to develop rules for enforcement. The subject is enforcement—not implementation. Because our constitution has *already* implemented the requirements for a “quasi-judicial proceeding” involving “[d]irectors, officers, commissioners, heads, or other executives of agencies” who “shall disqualify *themselves*” under the constitutionally provided standards. *Id.* (emphasis added). Rather than focusing on “neutral decisionmakers” to step on the constitutional and statutory duties of officials in deciding whether to disqualify themselves in a “quasi-judicial proceeding,” the Commission (and Legislative Assembly) are charged with enforcing “this provision by appropriate legislation and rules. . . .” *Id.*⁴

- Quorum authority is not implicated in article XIV. Article XIV does not authorize the Commission to interfere with established quorum requirements—whether they are set by our constitution or the Century Code or not set at all. While the Commission (and Legislative Assembly) is instructed to “enforce” article XIV, § 2(5), the “provision” in that subsection speaks for itself and cannot be expanded to conflate the intrusion of the Commission on the constitutional and/or statutory duties of public officials unrelated to the “provision.” For example, if a member of the North Dakota Industrial Commission disqualified himself from a matter, article XIV does not permit the Commission to dictate by rule what the Industrial Commission should do. Any rules related to purported quorum authority of the Commission are inappropriate and should not be adopted because our constitution does not allow such to be done.

Public officials should make the decisions they were elected to do within the confines of the law. Article XIV places specific duties upon public officials while performing the people’s work. This

should be encouraged at all levels. At the same time, expanding article XIV to pursue its “spirit” is contrary to law. Instead of setting up a matrix of processes and required subjective considerations, the Commission should simply require elected officials to err on the side of disclosure and transparency—consistent with North Dakota’s heritage of open and transparent government. The Commission should adopt appropriate rules to enforce the constitutional provision that “[d]irectors, officers, commissioners, heads, or other executives of agencies shall avoid the appearance of bias,

⁴ A real constitutional crisis will arise *if* the Commission and Legislative Assembly develop countering views on enforcement of this provision—as our constitution provides *both* “shall enforce this provision. . . .” N.D. CONST. art. XIV, § 2(5). Unless the Commission and Legislative Assembly work together on developing a framework that is consistent with enforcement of this provision, as well as the roles of both the Commission and Legislative Assembly as provided in this provision, the North Dakota Supreme Court very well may conclude any conflicting rules or laws developed for “this provision” are ineffectual altogether (which would put us back to what is actually written in our constitution). And this is not a result that would be good for anyone—as uncertainty in law erodes the public trust even further. The Commission owes it to itself, the constitution, and the people of North Dakota to ensure consistency prevails over inconsistency. And, *like it or not*, this *requires* coordination with the Legislative Assembly to ensure consistency prevails.

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, creates an appearance of bias to a reasonable person." N.D. CONST. art. XIV, § 2(5).

The Commission must reject the notion it is a sort of "ethics legislature" authorized to enact laws relating to transparency, corruption, elections, and lobbying. Our constitution authorized the Commission to "adopt ethics rules" related to transparency, corruption, elections, and lobbying. N.D. CONST. art. XIV, § III(2). "Laws may be enacted to facilitate, safeguard, or expand, but not to hamper, restrict, or impair, this article." *Id.* at § 4(1). The Commission does not enact laws—that is our Legislative Assembly's role. *See id.*, at art. IV, § 13. The Commission's role is limited to implementing ethics rules consistent with, and within the confines of, article XIV.

The Commission owes it to itself to adopt a rulemaking process. It is not apparent from the Commission's website what procedural process it is following—or whether this is a hearing on a proposed rule or a "discussion" of the proposed rule. Objections to the process cannot even be made—there is no written process to object to (and if that is the objection to be made, then it is made). The rulemaking process for state administrative agencies has long been performed by adherence to our state's Administrative Agencies Practices Act, N.D.C.C. Ch. 28-32 (particularly N.D.C.C. §§ 28-32-10 to 28-32-20). Indeed, it would seem an Ethics Commission would have established rules to ensure its proposed rules receive proper review. Procedurally, the Commission owes it to itself, and the citizens who enacted article XIV (as well as those citizens who opposed it), to establish a set rulemaking process to ensure due process is achieved at the rule making stage—or in the very least, a process that is available for all to see (transparency) so those citizen wishing to participate will at least know the rules. Has the Commission accepted that it will follow the rulemaking process set out at N.D.C.C. ch. 28-32? If so, it should state that. And, if not, it should establish a written rulemaking process. From the standpoint of a Commission that will potentially have whatever rules it adopts challenged, maybe from all sides, providing how its rulemaking process actually works must be established. A playing field, with established rules on how the rules are to be made, must be established before substantive rules are adopted.

Much debate will occur on the *intent* or the *spirit* of article XIV. Yet article XIV speaks for itself. There is no ability of the Commission to make article XIV "stronger." It is not the role of the Commission to do anything outside the confines of our constitution. Such would be contrary to our constitution. The phrase "conflict of interest" does not even appear in article XIV. This was intentional. Because if the drafters of the article had wanted it included, they would have. They chose not to. And the voters of our state voted to adopt a constitutional amendment that did not contain the phrase "conflict of interest." Now, the Commission seeks to enact an entire section of its rules on a phrase that is not contained in article XIV. The Commission has overstepped its constitutional authority by proposing rules that are inconsistent with the article the voters of our state adopted. Transparency for public officials? Always. Oversight of public officials? Of course. Usurping duties of elected public officials? This is not permitted by article XIV. For it is the electorate of this state that ultimately decides the fate of our elected officials. Our established way of government, with three branches equally providing balance to the others, works. The citizens of our state created the Ethics Commission to "adopt ethics rules related to transparency, corruption,

elections, and lobbying” as stated in our constitution. The conflict of interest proposed rules overstep what article XIV provides.

While GNDC has limited this testimony to the draft rules on Conflicts of Interest, GNDC certainly reserves the right to make additional arguments both within the confines of the proposed rules as well as article XIV.

Thank you.

Sincerely,

PEARCE DURICK PLLC

/s/ Zachary E. Pelham

ZACHARY E. PELHAM

February 23, 2022

North Dakota Ethics Commission
Attn: Hon. Ronald Goodman, Chair
101 Slate Drive, Suite 4
Bismarck, ND 58503
ethicscommission@nd.gov

VIA E-MAIL

RE: North Dakota Petroleum Council Written Comments to Proposed Conflict of Interest
Rule 115-04

Dear Chair Goodman:

The North Dakota Petroleum Council (NDPC) appreciates the opportunity to submit comments as the North Dakota Ethics Commission (Commission) considers the proposed rules for N.D.A.C. Article 115-04 – Conflict of Interest. Established in 1952, the NDPC is a trade association that represents more than 600 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota, South Dakota, and the Rocky Mountain Region.

As the trade association representing the public policy interests of one of the largest industries within North Dakota, NDPC has taken a significant interest in Commission rulemaking. The draft rules proposed for Article 115-04 concerning conflicts of interest are of particular importance due to the dramatic potential impact enforcement of the proposed rules may have on the policy and decision-making process. NDPC appreciates the efforts members of the Commission and Commission staff have put forth in fulfilling the Commission’s constitutional mandate to “strengthen the confidence of the people of North Dakota in their government, and to support open, ethical, and accountable government [. . .].” N.D. CONST. art. XIV, § 3(1). However, NDPC has significant concern regarding the extent the proposed Article 115-04 rules go in attempting to fulfill that obligation.

NDPC stands strongly opposed to proposed rule language that attempts to alter what is explicitly provided for in the North Dakota constitution. Among the many provisions in the proposed rules are stipulations on how general conflicts of interest are identified, disclosed, and reviewed. However, the phrase “conflict of interest” is not to be found anywhere in the article of our state constitution that gives the Commission its authority. NDPC encourages the Commission to center its conflict of interest rulemaking solely on the language that *is* found in the constitution, particularly on the requirements specified in our constitution. Our constitution explicitly provides “[d]irectors, 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, creates an appearance of bias to a reasonable person.” N.D. CONST. art. XIV, § 2(5). We urge the Commission to keep to the black letter of the language contained in our constitution.

Regarding the proposed rules related to a “neutral decisionmaker,” NDPC likewise stands strongly opposed. Public officials elected or appointed to positions where constitutionally or statutorily created duties involve participating in quasi-judicial proceedings should have the discretion and authority to disqualify themselves from those proceedings in the event an appearance of bias is created by any situation. As proposed, the rules before you effectively strip public officials of that authority and place it instead on a “neutral” third party. Our state elected leaders are accountable to the people of North Dakota who elected them. Allowing elected officials to independently determine when a potential conflict of interest they have identified may present an appearance of bias not only preserves the integrity of the duties they have been called to perform, but is also in their own best interests. NDPC therefore strongly recommends the removal of all references in the proposed rules related to a “neutral decisionmaker.”

NDPC also has a strong interest in preserving the ability of members of the public to participate in their government. Commission consideration of including campaign contributions as a factor in determining whether recusal of a public official involved in quasi-judicial proceedings is a direct assault on this important ability and right. Discussion on the rules as proposed also seems to indicate the potential for limiting participation by either capping campaign contributions with a “bright line” rule or otherwise stifling campaign assistance to elected public officials. NDPC views advancing any rule with such a chilling effect on public participation in government to be a grave attack on the freedoms guaranteed by our U.S. Constitution.

Furthermore, if transparency is a true goal of this rulemaking, tools and accountability mechanisms do exist for that goal to be realized as it relates to campaign contributions. Campaign contributions are defined and regulated under N.D.C.C. ch. 16.1-08.1. Under this chapter, campaign contribution statements indicating contributions received and expenditures made are required of all state candidates, candidate committees, multicandidate committees, political parties, and political committees. These are public records preserved by the Secretary of State for ten (10) years and are required to be open to public inspection. As a practical matter, any person wishing to view a list of contributors to an elected official’s campaign and the amounts contributed has every opportunity to do so. The same is true of contributions received and expenditures made of political action committees.

NDPC takes special exception to the potential of the proposed rules discouraging campaign contributions in any way. NDPC itself operates a political action committee (PAC), the ND Oil PAC. The PAC serves as a useful vessel with which those interested in supporting business-friendly and oil and gas industry-friendly candidates to office may channel financial support. Contributors to the ND Oil PAC come from all walks of life, though the majority have some connection to the oil and gas industry and are North Dakota citizens. One in five people within North Dakota are employed

either directly or indirectly to the oil and gas industry, and this does not include the vast array of mineral royalty owners that can number as high as 1,500 per spacing unit. With this many interested in fair and consistent regulation on and general wellbeing of the oil and gas industry, it follows logically that a high interest in supporting industry-friendly candidates exists. Chilling the impact of individuals wishing to independently support those candidates is an affront to their rights as citizens. Further, the ND Oil PAC allows those individuals to participate in their government by leveraging their contributions toward supporting candidates who reflect their values, and ND Oil PAC contributors are provided the opportunity to determine those candidates themselves by participating in regular PAC director meetings. Restricting in any way the ability of elected public officials from making decisions on the very issues that are important to those who support them in their campaigns should not be condoned and rules to that effect have no place in the N.D.A.C.

Again, NDPC appreciates the work of the Commission and its staff in working to promote transparency in state government. We believe the tools to achieve that end already exist, and urge the Commission to remain cognizant of the potential and likely negative impacts the proposed rules may present should they be enacted as drafted.

We thank you for your time and consideration of these comments. Any questions may be directed to me via email at bpelton@ndoil.org or you may contact me via telephone at (701) 223-6380.

Sincerely,

Brady Pelton
Vice President & General Counsel
North Dakota Petroleum Council