INSTITUTE FOR FREE SPEECH

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North Dakota Ethics Commission
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RE: Comment on the Draft Conflict of Interest Rules

The Institute for Free Speech[1] submits these comments in response to the Draft Conflict of Interest Rules as of February 22, 2022 (the "Draft Rules").

I. Introduction

On November 6, 2018, North Dakotans approved Measure 1, a ballot initiative designed to amend the North Dakota Constitution by adding a new Article XIV to guarantee "transparency . . . sufficient to enable the people to make informed decisions and give proper weight to different speakers and messages." N.D. Const. art. XIV, § 1(1).[2] Specifically, Article XIV requires North Dakota to collect and publish information about "the source, quantity, timing, and nature of resources used to influence any statewide election, election for the legislative assembly, statewide ballot-issue election, and state government action." *Id.* To achieve these ends, Article XIV, *inter alia*, created the Ethics Commission, *see generally* N.D. Const. art. XIV, § 3, and vested it with authority to "adopt ethics rules related to transparency, corruption, elections, and lobbying to which any lobbyist, public official, or candidate for public office shall be subject," N.D. Const. art. XIV, § 3(2).

Since the U.S. Supreme Court's decision in *Buckley v. Valeo*, campaign contributions have been recognized as forms of political speech and association that are entitled to at least some constitutional protection (*i.e.*, governments may not prohibit all campaign contributions without encroaching on rights of expression and association), but the law also recognizes that governments have compelling interests in preventing both actual and apparent *quid pro quo* ("this for that") corruption of elected officials—thus, campaign contributions may be limited without trampling fundamental rights. *See Buckley*, 424 U.S. 1, 19–22, 25–27 (1976) (*per curiam*). Moreover, in

[1] The Institute for Free Speech is a nonpartisan, nonprofit 501(c)(3) organization that promotes and defends the First Amendment rights to freely speak, assemble, publish, and petition the government.

[2] The Institute for Free Speech previously expressed concerns about certain then-proposed provisions of Article XIV. *See generally* ANALYSIS OF NOVEMBER 2018 NORTH DAKOTA CAMPAIGN FINANCE/LOBBYING INITIATED CONSTITUTIONAL AMENDMENT, INSTITUTE FOR FREE SPEECH (Aug. 2018), https://www.ifs.org/wp-content/uploads/2018/08/2018-08-14_IFS-Analysis_ND_Campaign-Finance-Lobbying-Initiated-Constitutional-Amendment.pdf.

2010, the Court described disclosure as a reasonable regulation of campaign finance that does not run afoul of First Amendment concerns. *See Citizens United v. FEC*, 558 U.S. 310, 356–57, 371 (2010).

But nowhere has the U.S. Constitution permitted states, even in the pursuit of transparency or other so-called good government reforms, to effectively toss out, on a continuing, *ad hoc* basis, the results of a legitimate election in which voters cast their ballots with full knowledge of disclosed contributions—especially not where, as in North Dakota, the state constitution expressly reserves to the people themselves the power to recall elected officials for any reason. Moreover, although governments have compelling interests in regulating actual and apparent *quid pro quo* corruption, courts have repeatedly struck down laws that exceed constitutionally permissible scope. We are concerned that the Draft Rules, as currently written—although they were undoubtedly drafted with good intentions—stray from what federal constitutional law permits.

We have several specific concerns about the Draft Rules.

First, the Draft Rules could be read to require a conflict-of-interest and/or recusal determination for certain public officials if an official receives a campaign contribution from a person who has a stake in the outcome of a given decision. Such a reading would create a substantial number of practical problems and chill the exercise of constitutionally protected rights.

Second, the Draft Rules are too vague and not sufficiently narrowly tailored as to Quasi-Judicial proceedings.

That a person has made a campaign contribution to a candidate who later becomes a public official should not require either recusal or even automatic referral to a neutral decisionmaker for a conflict-of-interest determination. Given North Dakota's existing campaign finance laws, which impose no limits on campaign contributions, North Dakotans are presumptively aware of both the existence and amounts of campaign contributions and nevertheless elect candidates to public office. Presumably, voters would not want that public official to recuse, or someone else's judgment to be substituted, based on a decision by someone whom voters did not necessarily elect.

This is especially true because North Dakota law already provides for recall elections for any reason at all, making the Draft Rules redundant to the extent that they can be read to apply to contributions made in a prior election.

Third, although the Ethics Commission's organic statute purports to define "public official" broadly enough to include members of the legislative branch and their staffs, Article XIV vests the legislature and the Ethics Commission with authority to enforce the Disqualification Clause only as to "[d]irectors, officers, commissioners, heads, or other executives of agencies[.]" Yet the Draft Rules purport to disqualify a member of the "legislative branch" in certain circumstances. Thus, provisions that require disqualification or referral to a neutral decisionmaker of any member of the legislative branch appear to exceed the Ethics Commission's constitutional authority.

Finally, the Draft Rules lack standards in terms of, for example, either a nominal dollar amount or the percentage of total campaign contributions from a person with a stake in the outcome of a given

decision, or a Quasi-Judicial proceeding, to a public official. The lack of guiding monetary thresholds invites subjectivity into conflict-of-interest determinations and makes the process ripe for abuse by biased complainants or referees, even though the Draft Rules nominally purport to define a "neutral decisionmaker." More broadly, without a clear threshold, donors will be deterred from giving to any highly qualified and ethical candidate if they think that they might, at some point in the future, have a matter that comes before that person.

For all of these reasons, the Ethics Commission should respect and protect voters' preferences and obviate the risk of abuse by explicitly stating that campaign contributions do not give rise to a potential conflict of interest in any circumstance other than a Quasi-Judicial proceeding in the executive branch.

But even in Quasi-Judicial proceedings, guidance on current election-cycle campaign contributions that may trigger a referral for conflict-of-interest determination and/or recusal must provide bright-line, reasonable, objective standards to avoid chilling the constitutionally protected right to make campaign contributions. We suggest disclosure of a potential conflict of interest in a Quasi-Judicial proceeding to a neutral decisionmaker only when a donor has made total contributions to a public official in excess of one two specified thresholds. We strongly recommend that the rule include a clear standard for contributions. Any fixed dollar amounts in a rule should be adjusted for inflation after any statewide election for any executive office.

Such standards would provide better clarity to donors, voters, public officials, and neutral decisionmakers alike than the Draft Rules currently offer. Clear standards also respect and protect voters' wishes, protect the constitutional right to donate to a candidate for public office, safeguard against abuse by biased decisionmakers, and provide administrative convenience.

Finally, the Draft Rules should also explicitly exclude independent expenditures from provisions that define what gives rise to potential conflicts of interest in Quasi-Judicial proceedings. Simply put, at no point during the last half-century has First Amendment law deemed independent expenditures a form of *quid pro quo* corruption. But, as written, the Draft Rules appear to contemplate that independent expenditures can create a disqualifying conflict of interest, which is not only contrary to the North Dakota Century Code's deliberately distinct definitions of "contribution" and "independent expenditure," but which may also chill constitutionally protected speech about North Dakota politics.

II. Discussion

A. The Draft Rules sweep too broadly and undermine voters' expressions of their preferences in electing a candidate.

The Draft Rules may be read to require conflict-of-interest determinations and/or recusal proceedings where a public official has received a campaign contribution from a person who appears before the public official. Although we commend the Ethics Commission for taking campaign contributions out of the ambit of the definition of "Gift" in the current version of the Draft Rules, *see* Draft Rules § 115-04-01-01.2(a) (cross-referencing, *inter alia*, Chapter 66 of Title 54 of the North Dakota Century Code); *see also* N.D. Cent. Code § 54-66-01(5)(b) (excepting

"campaign contribution" from the definition of "Gift"), the Draft Rules' definition of "Significant Financial Interest" is arguably broad enough to include campaign contributions. *Compare* Draft Rules § 115-04-01-01.8 (defining "Significant Financial Interest" as "an in-kind or monetary interest, or its equivalent, not shared by the general public . . ."), *with, e.g.*, N.D. Cent. Code § 16.1-08.1-01.4 (defining "Contribution").

Since it appears that such an interpretation is not intended, we suggest that campaign contributions be expressly excluded from the definition of "Significant Financial Interest." The definition of that term could instead read as follows (suggested alterations in italics):

> 8. "Significant Financial Interest" means an in-kind or monetary interest, or its equivalent, not shared by the general public, *provided*, however, *that "Significant Financial Interest"* does not include investments in a diversified mutual fund, participation in a public employee benefits plan, *or a campaign contribution*.

That a person who comes before a public official has made a campaign contribution to that official's prior campaign should not require either recusal or even automatic disclosure to a neutral decisionmaker for a conflict-of-interest determination. Our concern here is animated by the fact that North Dakotans regularly cast their ballots fully aware of the campaign contributions made to public officials. *See* N.D. Cent. Code. § 16.1-08.1-02.3 (requiring the filing of contributions reports at certain intervals); *see also North Dakota Campaign Finance Online*, N.D. SEC'Y OF STATE, https://cf.sos.nd.gov/search/cfsearch.aspx (last visited Feb. 21, 2022). With and notwithstanding voters' knowledge of disclosed campaign contributions, which are not limited by statute in North Dakota, voters regularly decide to put candidates into office to do particular jobs. Presumably, voters would not want that public official to recuse, or someone else's judgment to be substituted, based on a decision by someone whom voters did *not* necessarily elect. *See* Draft Rules § 115-04-01-01.5(a)–(e) (broadly defining "Neutral Decisionmaker").

Our concerns are augmented where, as here, North Dakota law already provides for recall elections, making the Draft Rules redundant if not directly contradictory to existing provisions of the law. To wit, the North Dakota Constitution expressly provides that "the people"—not a neutral decisionmaker as defined by the Ethics Commission—"reserve the power to . . . recall certain elected officials," including "[a]ny elected official of the state, of any county or of any legislative or county commissioner district." N.D. Const. art. III, §§ 1, 10; *see also generally* N.D. Cent. Code. §§ 16.1-01-09.1 (governing recall petitions and elections), 44-08-21 (same).

Therefore, we urge the Ethics Commission to consider expressly clarifying that campaign contributions do *not* give rise to a potential conflict of interest anywhere but in a Quasi-Judicial proceeding, which would better respect and protect voters' informed preferences than the current draft language.

B. The Draft Rules' provisions regarding whether or when members of the legislative branch must disclose a potential conflict of interest and/or recuse appear to exceed the Ethics Commission's constitutional authority under Article XIV's Disqualification Clause.

The Draft Rules appear to require that members of the legislative branch or their staff must, in some cases, disclose potential conflicts of interest to a neutral decisionmaker for a conflict-of-interest determination. *See, e.g.*, Draft Rules § 115-04-01-01(5)(a) ("If a Public Official with a Potential Conflict of Interest is *a member of a legislative body* . . . ."); *see also* Draft Rules § 115-04-01-01(5)(b) ("If a Public Official with a Potential Conflict of Interest is *an employee of the legislature* . . . ."); Draft Rules § 115-04-01-01(6) (defining a "Public Official" as, *inter alia*, "any elected . . . official of the North Dakota . . . legislative branch[] . . . and employees of the legislative branch"). But these provisions of the Draft Rules appear to exceed the Ethics Commission's permissible constitutional scope under Article XIV's Disqualification Clause.

The legislature enacted the Ethics Commission's organic statute in 2019 and defined "Public Official" to include "an elected . . . official of the state's . . . legislative branch . . . and employees of the legislative branch." *See generally* 2019 N.D. Laws 472, § 25 (codified at N.D. Cent. Code § 54-66-01(9)). But the Disqualification Clause, which vests the "legislative assembly and the ethics commission" with authority—indeed, provides a mandate—to "enforce this provision by appropriate legislation and rules, respectively," addresses only "[d]irectors, officers, commissioners, heads, or other executives of agencies[.]" N.D. Const. art. XIV, § 2(5). Thus, the Draft Rules appear to exceed the Disqualification Clause's authority.

Since it appears that the Ethics Commission has no authority to require disqualification of an elected member of the legislative branch, Draft Rules § 115-04-01-02(1) could instead read as follows (suggested alterations in italics):

> 1. When a matter comes before a Public Official, *other than a Public Official who is an elected member of the legislative branch or an employee of the legislative branch*, and the Public Official has a Potential Conflict of Interest, the Public Official must disclose the Potential Conflict of Interest to the appropriate Neutral Decisionmaker. The disclosure of Potential Conflict of Interest must be made prior to the Public Official taking any action or making any decision in the matter.

Furthermore, the Ethics Commission could excise members of the legislative assembly and their staff from the definitional provisions of the Draft Rules.

These suggested modifications would bring the current iteration of the Draft Rules within the proper scope of the Ethics Commission's constitutional mandate.

C. The Draft Rules lack standards by which a neutral decisionmaker could objectively evaluate potential *quid pro quo* corruption in a Quasi-Judicial proceeding, *i.e.*, the Draft Rules fail to specify a threshold contribution amount, expressed in either nominal dollars or as a percentage of a public official's overall contributions accepted, and thus invite subjectivity into conflict-of-interest determinations.

We applaud the Ethics Commission for outlining factors that a neutral decisionmaker must consider when determining whether a public official's potential conflict of interest rises to the level of a disqualifying conflict of interest. *See* Draft Rules § 115-04-01-03.5(a)–(d).[3] Conspicuously absent from this list of factors, however, is any overt reference to money, the influence of which Article XIV was designed to regulate. *See* N.D. Const. art. I, § 1(1) (requiring "transparency sufficient to enable the people . . . to know in a timely manner the source, quantity, timing, and nature of *resources used to influence* any statewide election, election for the legislative assembly, statewide ballot-issue election, and state government action" (emphasis added)).

Although North Dakota laudably does not limit campaign contributions, North Dakota law imposes standards on contribution thresholds in other ways. Indeed, Article XIV itself contains such a provision. *See* N.D. Const. art. I, § 1(2) (requiring the Legislative Assembly to enact statutes "that require prompt, electronically accessible, plainly comprehensible, public disclosure of the ultimate and true source of funds spent in any medium, *in an amount greater than two hundred dollars, adjusted for inflation*, to influence . . ." (emphasis added)). Similarly, the Legislative Assembly has directed candidates to make campaign finance disclosures over $200 and has further directed the Secretary of State to make annual inflation-based adjustments to campaign contribution reporting thresholds. *See* N.D. Cent. Code §§ 16.1-08.1-02.3, 16.1-08.1-06.2. Thus, we are concerned that the Ethics Commission has not yet chosen to adopt clear monetary threshold standards.

The absence of clear standards is a recipe for abuse. To wit, although a neutral decisionmaker may be nominally "neutral" in the sense with which the Draft Rules employ that term, *see* Draft Rules § 115-04-01-01(5), the absence of a defined "potential conflict of interest" in a "neutral decisionmaker" does not mean that the decisionmaker will render a decision from a neutral (in the ordinary sense of that word) posture. Indeed, governmental actors often vie for partisan control of certain processes that are neutral by design to weaponize the law against political opponents. *Cf. generally, e.g.*, *Analysis: H.R. 1 Would Create a Speech Czar and Enable Partisan Enforcement of Campaign Finance Laws*, INST. FOR FREE SPEECH (Jan. 31, 2019) (critiquing federal legislation that would transform the Federal Election Commission from a six-member bipartisan body to five-member body that could be controlled by a single party and its president), https://www.ifs.org/news/analysis-h-r-1-would-create-a-speech-czar-and-enable-partisan-

[3] This is not to say, however, that the espoused standards are free of any infirmities. For example, the first standard, requiring that a neutral decisionmaker give "[a]ppropriate weight and proper deference" to requirements that a public official actually do the job that voters elected him or her to do, is so vague as to be meaningless. *See* Draft Rules § 115-04-01-03.5(a). In North Dakota, "[a] law is void for vagueness if it . . . requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *City of Fargo v. Salsman*, 760 N.W.2d 123, 129 (N.D. 2009) (internal quotation marks and citation omitted). The Institute for Free Speech wonders whether any person of common intelligence would know—or would have to guess—what "[a]ppropriate weight and proper deference" means in this context.

enforcement-of-campaign-finance-laws/. Although North Dakotans adopted Article XIV to pursue government reform, the Draft Rules, as written, risk inviting biased actors to besmirch or tie the hands of their political opponents in potentially time-consuming and expensive ancillary proceedings for reasons that have nothing to do with preventing *quid pro quo* corruption.

In addition, without clear standards, donors may be deterred from giving to highly qualified and ethical candidates if the donors think that they may have a matter come before a public official in the future. Without financial support going to these highly qualified and ethical candidates, less qualified and less ethical candidates may enjoy more electoral parity than they deserve, and some may take office.

To cure these concerns, the Ethics Commission should respect and protect voters' preferences and obviate the risk of abuse by explicitly stating that campaign contributions do not give rise to a potential conflict of interest in any circumstance other than a Quasi-Judicial proceeding. But even in Quasi-Judicial proceedings, guidance on current-election-cycle campaign contributions that may trigger a referral for conflict-of-interest determination and/or recusal must provide bright-line, reasonable, objective standards to avoid chilling the exercise of the constitutionally protected right to make campaign contributions.

We suggest the rule include a safe harbor provision so that there would be no disqualification requirement in a Quasi-Judicial proceeding (or disclosure of a potential conflict of interest) if a donor who is a party in a Quasi-Judicial proceeding has made total contributions to a public official who is a candidate for any public office at or below the following two thresholds:

- the greater of $10,000 or 25% of the total campaign contributions received as of the date of the contribution; or

- $1,000 from a party to a Quasi-Judicial proceeding to a Public Official who is involved in the Quasi-Judicial proceeding for all contributions made between the date when the matter first comes before the Public Official until the conclusion of the proceeding. However, a Public Official may refuse or refund any contribution over $1,000 from a party within 15 calendar days of the contribution and prior to any further involvement or taking any further action at a Quasi-Judicial proceeding by the Public Official and still qualify for the safe harbor provision.

We suggest a different and more liberal rule for campaign contributions made during the immediately preceding election for a public official. Such contributions are much less likely to result in corruption or its appearance, as these contributions were disclosed to the voters in the prior election, and the voters chose the candidate most suitable for the office. We recommend the following threshold, for example:

- the greater of $25,000 or 25% of the total campaign contributions received by the public official in the most recent election to that office.

Any fixed dollar amounts in a rule should be adjusted for inflation after any statewide election for any executive office.

Depending on other facts and circumstances, amounts donated over these thresholds would not necessarily trigger disqualification from a Quasi-Judicial proceeding.

Such standards would provide better clarity to donors, voters, public officials, and neutral decisionmakers alike than the Draft Rules currently offer. Clear standards also respect and protect voters' wishes, protect the constitutional right to donate to a candidate for public office, safeguard against abuse by biased (nominally "neutral") decisionmakers, and provide administrative convenience.

D. The Draft Rules appear to require conflict-of-interest determinations where a party to a Quasi-Judicial proceeding has made an independent expenditure, but, under the First Amendment, independent expenditures do not trigger concerns about *quid pro quo* corruption.

The Draft Rules' definition of "Campaign Monetary or In-Kind Support" is so broad that it can be read to encompass independent expenditures in support of a public official's candidacy or against a public official's former opponent. *See* Draft Rules § 115-04-01-04(2)(c) ("all campaign contributions of every kind and type whatsoever . . . and whether donated directly to the Public Official's campaign *or donated to any other person or entity for the purpose of supporting the Public Official's election to any office* . . ." (emphasis added)). In defining "Campaign Monetary or In-Kind Support" in this way, we are concerned that the Draft Rules run afoul of longstanding First Amendment law in exceeding the parameters of the *Buckley* framework.

Although it espoused the prevailing framework for regulating actual and apparent *quid pro quo* corruption, the *Buckley* Court expressly excepted independent expenditures from its concerns. In a *per curiam* opinion, seven of the eight Justices who participated in the case agreed that concerns over "this for that" corruption do not exist when it comes to independent expenditures:

> . . . [Q]uite apart from the shortcomings of [the Federal Election Campaign Act of 1971 as amended in 1974 ("FECA")] in preventing any abuses generated by large independent expenditures, the independent advocacy restricted by [FECA] does not presently appear to pose real or apparent corruption comparable to those identified with large campaign contributions. The parties defending [FECA] contend that it is necessary to prevent would-be contributors from avoiding the contribution limitations by the simple expedient of paying directly for media advertisements or for other portions of the candidate's campaign activities. They argue that expenditures controlled by or coordinated with the candidate and his campaign might well have virtually the same value to the candidate as a contribution and would pose similar dangers of abuse. Yet such controlled or coordinated expenditures are treated as contributions rather than expenditures under the Act. [FECA's] contribution ceilings rather than [its] independent expenditure limitation prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions. By contrast, [FECA's other provisions] limit[] expenditures for express advocacy of candidates *made totally independently of the candidate and his campaign*. Unlike contributions, such independent expenditures may well provide little assistance to the candidate's

> campaign and indeed may prove counterproductive. *The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate*.

Buckley, 424 U.S. at 45–47 (emphasis added). In addition, the Supreme Court has repeatedly reaffirmed the principle that truly independent expenditures are, as a matter of law, inherently *not* corrupting. *See generally, e.g.*, *Citizens United*, 558 U.S. at 345–66 (discussing, *inter alia*, *Buckley*'s anti-corruption rationale and ruling that the Bipartisan Campaign Reform Act of 2002's provisions prohibiting corporation-funded independent expenditures failed strict scrutiny); *see also, e.g.*, *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 613–19 (1996) (concluding that there is no risk of *quid pro quo* corruption when a political party makes an independent expenditure against one of its members' election opponents); *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 251–63 (1986); *FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 497 (1985) ("The hallmark of corruption is the financial *quid pro quo*: dollars for political favors. But here the conduct proscribed is not contributions to the candidate, but independent expenditures in support of the candidate."); *cf. also Speechnow.org v. FEC*, 599 F.3d 686, 695 (D.C. Cir. 2010) (*en banc*) ("the government has no anti-corruption interest in limiting contributions to an independent expenditure group such as SpeechNow"), *cert. denied sub. nom. Keating v. FEC*, 562 U.S. 1003.

It is a fundamental tenet of our federal republican system of government that, although states may provide their citizens with *more* protections of civil liberties than the United States Constitution offers, the federal Constitution provides a floor beneath which States may not wander. In this respect, the Draft Rules' treatment of independent expenditures as a basis for triggering disclosure of a potential conflict of interest in a Quasi-Judicial proceeding, which could lead to the recusal of a duly elected public official, gives rise to strong First Amendment concerns.

In addition, North Dakota law distinguishes between a "contribution" and an "independent expenditure." *Compare* N.D. Cent. Code § 16.1-08.1-01(4) (defining "contribution"); *with* N.D. Cent. Code § 16.1-08.1-01(7) (defining "independent expenditure"). After North Dakotans adopted Article XIV in 2018, the North Dakota legislature had two opportunities to reconsider the definitions of these terms, both times leaving undisturbed these distinct categories. *See generally* 2021 N.D. Laws 164, § 45; 2019 N.D. Laws 472, § 1. For the Ethics Commission to now conflate the two when Article XIV does not require it, *see* N.D. Const. art. XIV, § 5, brings the Ethics Commission and the Draft Rules into intragovernmental conflict with the legislature and longstanding campaign-finance laws that North Dakotans have declined to alter.

Therefore, to ameliorate First Amendment concerns and harmonize the Draft Rules with existing North Dakotan campaign-finance law, we suggest that independent expenditures be specifically excluded from the definition of the term "Campaign Monetary or In-Kind Support." The definition could instead read (suggested alterations in italics):

> c. "Campaign Monetary or In-Kind Support" means all campaign contributions of every kind and type whatsoever, whether in the form of cash, goods, services, or other form of

contribution, and whether donated directly to the Public Official's campaign or donated to any other person or entity for the purpose of supporting the Public Official's election to any office within the current or immediately preceding election cycle. No campaign contribution of any kind received prior to January 5, 2022, *nor any independent expenditure as defined in N.D. Cent. Code § 16.1-08.1-01(7)*, shall be included in this definition.

This suggested revision would bring the Draft Rules into compliance with current federal constitutional law regarding independent expenditures as well as avoid conflict with longstanding current North Dakota statutes that voters and their legislative representatives have left undisturbed since 2018.

III. Conclusion

North Dakotans, in their wisdom, adopted Article XIV by ballot initiative in 2018 to guarantee themselves and their posterity a certain level of transparency about funding for candidate campaigns, measures, and a whole host of state governmental actions and proceedings. These provisions reflect the constitutionally permissible purposes of preventing *quid pro quo* corruption through disclosure under current law.

However, not every law designed with these purposes in mind is a good one, albeit well-intentioned. We sincerely appreciate the opportunity to provide this commentary on behalf of the Institute for Free Speech, and we encourage the Ethics Commission to reconsider and modify the February 22, 2022 version of the Draft Rules with our comments in mind. We also welcome any questions you may have about our specific concerns and proposals.

Respectfully submitted,

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