

Mr Chairman and members of the House Government and Veterans Affairs Committee,

My name is Andrew Bornemann. I live on a small farm near Kintyre, ND, with my wife and two young sons. Along with helping on our family farm, and running an agriculture service business, I am also currently serving as the Chairman for the District 28 Republican Party.

I am here today to speak in favor of House Bill 1256. I would like to take this time to address section 2 of this bill specifically, and to share with you why I feel this legislation is necessary.

As I am sure you all know, this last election cycle was a rather bumpy one, to put it mildly. Not only was campaigning more difficult because of the Covid-19 situation, but it was also compounded by the involvement of our sitting Governor in numerous races across the state. It is an established fact that our current Governor expended upwards of \$2 MILLION dollars of his own money in an effort to defeat specific incumbent candidates for the legislature and for statewide office; almost, if not all of whom had in some fashion opposed his pet projects or proposals in the prior election cycle.

In our district, the Governor, through his Political Action Committee, spent a significant sum on mail advertising, banners, billboards, and direct voter contact, in an effort to get his preferred candidate elected to this body. This effort was in direct opposition to the will of the people in our district, expressed through the district endorsing process, in which the candidate the Governor was campaigning against won the endorsement on the first round, and with the most number of votes, and the Governor's candidate did not receive the endorsement of the district at all. Nonetheless, the Governors PAC doubled down and increased their spending in an attempt to beat the district endorsed candidate in the primary election. This action on the part of the Governor cost our district added time and expense in making sure our voters knew who the endorsed candidates of the District Party were, and dispelling much of the misinformation that was being spread. The voters of our district thankfully rejected the Governor's assault on our choice of representatives, and proudly re-elected Senator Erbele, and representatives Brandenburg and Magrum.

But what does this all matter anyway? I submit to you that the Governors actions, being involved to this extent in attempting to influence the people's choices for members of the legislature, and using the influence of his office, and his money, to target specifically persons who were contrary to his agenda in the previous session, amounts to a blatant assault on the Separation of Powers, and is a direct violation of the North Dakota State Constitution. I would like to read to you a portion of Article V, Section 10 of our Constitution:

"A governor who asks, receives, or agrees to receive any bribe upon any understanding that the governor's official opinion, judgment, or action shall be influenced thereby, or who gives or offers, or promises the governor's official influence in consideration that any member of the legislative assembly shall give the member's official vote or influence on any particular side of any question or matter upon which the member may be required to act in the member's official capacity, or who menaces any member by the threatened use of the governor's veto power, or who offers or promises any member that the governor will appoint any particular person or persons to any office created or thereafter to be created, in consideration that any member shall give the member's official vote or influence on any matter pending or thereafter to be introduced into either house of the legislative assembly, or who threatens any member that the governor will remove any person or persons from office or position with intent in any manner to influence the action of that member, must be punished in the manner now, or that may hereafter be, provided by law, and upon conviction thereof forfeits all right to hold or exercise any office of trust or honor in this state."

To me, it would seem that the Governor's use of his influence and money, in a wholesale attempt to unseat the members of the legislature who opposed his positions, constitutes a threat to ALL members of this body with removal from their seats, if they are to oppose any of his interests in the future.

On separation of powers, Gerald VandeWalle, Chief Justice of the North Dakota Supreme Court, in his State of the Judiciary Address to a joint session of the ND Legislature on January 5th, 2011, had this to say:

"We learned early in our civics courses about separation of powers in the United States. The matter was debated by the founding fathers and is enshrined in our form of government at the federal and state level. The opinions of the Supreme Court recognize "that the creation of three branches of government by our constitution operates as an apportionment of the different classes of power whereby there is an implied exclusion of each branch from the exercise of the functions of the others." State ex rel. Spaeth v. Meier, 403 N.W.2d 392, 395 (N.D. 1987). That separation of powers was implied in our State Constitution, but in 1982 the Constitution was amended to provide: "The legislative, executive, and judicial branches are co-equal branches of government." N.D. Const. art. XI, § 26.

For our government to operate as it was intended, it is necessary that each branch respect the powers of the other two branches; but it is also necessary for each branch to defend its own powers against encroachment by the other two branches. The delineation of authority among the branches is not always well defined and may cause grinding and grating among the branches as each branch exercises its powers. That grinding and grating on occasion results in dissension among two or more of the branches, another lesson we learned in our civics courses.

What we did not always appreciate in our studies was that, notwithstanding the necessity of one branch of government to defend its powers against infringement by the other branches, the branches are dependent upon one another in order to fully exercise their powers. Indeed, that is part of the genius of our government and the reason that one branch is unable to govern without the assistance of other branches. In North Dakota this is the time—when the Legislature is in session—these precepts may be most apparent."

It is my opinion that HB 1256 is necessary to the deliniation of the Separation of Powers, and it is in keeping with the intent and text of the ND State Constitution. I would appreciate your support and your recommendation of a "Do Pass" on this bill as written. I would be happy to answer any questions you may have.

Thank you for your time!

Andrew Bornemann.