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TO: Chairman Larry Klemin and Members of the House Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: HB 1439 – Remote Notarial Acts

Since ancient Roman times, since the nation's first notary public was appointed in 1639, and since 1893 when North Dakota appointed its first notary public, the fundamentals of the notarial act have remained unchanged.

Notarization is not a simple clerical procedure and the notary has a trusted and integral role. The notarial act is vital for many business transactions and is an essential requirement of many personal transactions, such a property transfers and wills.

The notarial act protects the signer and anyone who must rely on its legitimacy. It identifies the signer, and it confirms that the signer is voluntarily and freely affixing his or her signature to a document before a neutral third party. In North Dakota, a notary is a commissioned officer of the state who takes an Oath of Office to uphold the Constitutions of the United States and North Dakota.

Regardless of whether it is in-person notarization, electronic notarization, or remote notarization, the fundamentals of notarization are the same.

The Legislature in 2019 adopted remote notarization with specific requirements – N.D.C.C. § 44-06.1-13.1 (2019 Session Laws, Chapter 376, HB 1110). It was introduced at the request of the North Dakota Commission on Uniform State Laws. One requirement of the North Dakota law is that an audiovisual recording of the remote notarial act must be retained for ten years.

This bill removes critical fundamental elements of the remote notarial act by providing an exception for low income and elderly people. While the integrity of the notarial act is important to everyone, these are two population groups that are especially vulnerable and definitely need the protection without any deviations from the fundamentals of the notarial act.

During the past few years, my office has received several complaints in which it was alleged that a notarial act was executed by a notary and the complainant had expressed concerns about the signer's mental capacity or questioned whether undue influence had been exerted over the signer. These complaints were related to property transfers within a family or in one case, in which a nonprofit organization was the beneficiary.

This bill prompted communication from Pat Fry, a former Professor of Law at the University of North Dakota, who later chaired the Uniform Law Commission's (ULC) drafting committee on the Revised Uniform Law on Notarial Acts. Rep. Klemin was a member of that drafting committee. North Dakota was the first state to adopt it in 2011 and it is the title of Chapter 44-06.1. Pat Fry then chaired the ULC committee on remote notarization that become the basis for HB 1110 in 2019.

Based on the concerns Pat Fry shared about the bill's exceptions, my conversations with Rep. Klemin, and my concerns as the commissioning officer for notaries public, I urge the committee to give this bill a Do Not Pass recommendation. There are other ways to accommodate the fundamentals of notarization for these population groups without compromising the integrity of the process and still protecting them and the people and entities that must rely on it.