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January 21, 2021

TO: Chairman Kasper and Members of the House Government and Veterans Affairs Committee
FR: Jim Silrum, Deputy Secretary of State on behalf of Secretary of State Al Jaeger
RE: HB 1256 – Prohibition on the use of private funds for elections and restrictions on Governor

Section 1 of this bill adds a new section to Chapter 16.1-01 of the North Dakota Century Code prohibiting state and political subdivisions from soliciting, accepting, or using money from private persons for the administration of elections. This bill may have been prompted because the owner of Facebook offered \$350,000,000 in election administration grants to states and counties before the 2020 general election.

The Secretary of State's office did not apply for a grant because we thought it proper to only fund the state's elections with appropriated state and federal funds approved by the legislature. We also did not apply for the grant because we were informed that if we used the grant money for a social media campaign, Facebook would reserve the right to control the state's messaging to educate the voters of North Dakota through their social media platform.

It is our understanding that 47 of the state's 53 counties did apply and accept the offered grants. The Secretary of State and election team members were not asked, nor did we advise whether they should accept the funds. It was solely a county decision.

Generally speaking, we think private funds should not be used to administer elections. However, there might be exceptions. During the 2020 election cycle, Anheuser-Busch, working with the National Association of Secretaries of State, offered hand sanitizer to each state. Ultimately we did not accept the offer because of the added cost and logistics necessary to ship the correct amounts to the 53 counties.

Section 2 prohibits a governor from endorsing or making contributions to a legislative candidate. This is contrary to the First Amendment of the United States Constitution, which guarantees the right of free speech to everyone. The United States Supreme Court has also ruled that the use of money to support or oppose an individual's bid for election is a form of free speech. The most famous case was Citizens United.

On behalf of the Secretary of State and his election team, I request the committee to give this bill in its current form a do not pass recommendation.