

# MICROFILM DIVIDER

GMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1318

2001 HOUSE POLITICAL SUBDIVISIONS

HB 1318

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1318

House Political Subdivisions Committee

Conference Committee

Hearing Date 2-1-01

Tape Number	Side A	Side B	Meter #
1	xx		60--3070
Committee Clerk Signature <i>Ron Linder</i>			

Minutes: Chair Froseth opened the hearing on HB1318 relating to political party reorganization, election officer appointment, absentee ballot affidavits, corrupt election practices, and filling vacancies; and to repeal sections of ND Code relating to filling vacancies and use of stickers.

Rep. Tieman : I'm here to introduce this bill and support it on behalf of the Secretary of State. There are nine (9) sections to this bill.

Rep. Ekstrom : In line 30, page 4, section 6, why do you want the addition of "similar"?

Rep. Tieman : I will have to let Cory answer that one.

Cory Fong, Sec. of State Office : (288) This bill is a clean up bill and will clarify a number of things for us and the public. **(SEE ATTACHED TESTIMONY)** To explain the word "similar". We had a version of this bill come through in 1999 with similar changes. We added the term "similar" to that bill also. This is intended to make it more exhaustive.

Rep. Ekstrom : (991) When a person running for office has brochures, cards, etc., it sometimes only says paid for by Dist. 12, name of chairman, but does not say Dem-NPL or Rep. Party on it. Will section 6 change this to require the party to be listed on disclaimer?

Cory : If you are paying for it, no, but if the district is paying for it, yes. Generally the district party does all the buying for the campaign. If you have a special committee and it's a separate group who is paying for something, then that is what has to be on the disclaimer. Right now there is broad confusion as to when and what needs to be on the disclaimer. We would like it cleaned and cleared up.

Rep. Ekstrom : Why do you want it included that it must say Republican or Democrat?

Cory : It is being added because it isn't in current law.

Vice-Chair Severson : I want to go back to the word "similar". Does this include any Internet advertising? Will this cover this base as well?

Cory : (1305) A good question. It's a public means. It's limited, however, to only those who have a computer and Internet service.

Chair Froseth : It seems to me in lines 29-31 seems to refer to hard copy materials, not broadcast. Where does electronic come in?

Cory : There are two parts to this section. The first part is referring to print advertisement, like billboards, etc. The second part talks about broadcast. You may be right that Internet is not addressed. There is a question that this particular bill may not be constitutional. It failed in 1999. We require the disclaimer because of correspondence from attorney general's office and their interpretation of the need for party identification.

Rep. Kretschmar : (1574) I have seen ads that just say *paid for by the candidate*.

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Cory : I have seem that and I feel they need to have the name spelled out. Cory went on to read sections 7,8, and 10 of bill.

Rep. Kretschmar : In the last general election, in Missouri, the governor was killed just a few days before the election. His name stayed on the ballot and he was elected, even though he was dead. What would our ND law do in this situation?

Cory : Currently the statute provides a vacancy can be filled up to 18th day before the election. The problem with that is we have absentee ballots going out 40 days before the election. People will be voting on candidates that may die after that fact. Under current statute, if the vacancy occurs before the 18th day, the party could get a new name on the ballot via sticker system.

Rep. Ekstrom : On page 2, line 1,2, and 3 relating to public notice. Now, the Sec. Of State wants to be removed from the responsibility. This is a public notice to all people of the district, regardless of party affiliation. Why remove this?

Cory : (2140) There would still be the requirement for them to put out the notice. It will just have to be the responsibility of the party. It just shifts who will put out the notice. We feel state government should not micro manage so much.

Vice-Chair Severson : Living in a rural area, I'm worried if it is left up to the parties to get a notice in, they may not do it. Then what? This is very important since we will have redistricting.

Cory : This bill request is coming from county auditors as well. They want it cleaned up.

Chair Froseth : Are the local areas monitored at all to see if they comply with notice requirements?

Cory : There are a lot of questions when it comes to redistricting public notifications. We provide guidance to districts and parties. We send out publications on the subject and the

process. Party functions should be party responsibilities. This notice we are talking about here is the map and where people should vote, which may be different than last time.

Vice-Chair Severson : This is the one time when the auditor sends out the new map and tells what the new district looks like. If you leave this up to the parties to announce when they will meet, they may not even publish the map. Would you be opposed to us amending that back in.

Cory : That is the role of this body. If you want me to draft the amendment, I will. I will talk to the secretary of state and some legal people.

Chair Froseth : Could you work on the disclaimer issue? It's not the newspapers responsibility to do this correctly. We do it to keep the candidate legal.

Cory : Sure. I will try to get amendment to clarify. I understand the need.

Rep. Ekstrom : (3070) I think it means more if we see a notice from the Secretary of State's Office, then just from a party.

Chair Froseth : Any more testimony on HB1318? Hearing none, hearing is closed.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1318 b

House Political Subdivisions Committee

Conference Committee

Hearing Date 2-08-01

Tape Number	Side A	Side B	Meter #
1		xx	2220-2235

Committee Clerk Signature

*Ann Owen*

Minutes: Chair Froseth : Has anyone seen any amendments from Cory? We will hold this and see what happened.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1318 c

House Political Subdivisions Committee

Conference Committee

Hearing Date 2-15-01

Tape Number	Side A	Side B	Meter #
1		xx	5590--end
2	xx		1-1100
Committee Clerk Signature <i>Pam Devoe</i>			

Minutes: Chair Froseth : Let's take up HB1318. I believe Rep. Tieman has amendments from Cory.

Tape 1, side B ended, Tape 2, side A begins:

Rep. Tieman : I will go through these amendments line by line. (SEE ATTACHED)

Rep. Ekstrom : We have repeatedly asked for and still not received an opinion from the Attorney General's Office, regarding the language on the top of page 5. It goes back to the U.S.

Constitution dealing with free association. We have not gotten an opinion back on that. I can't support this bill without that.

Rep. Eckre : (488) I started checking around, and there was a Supreme Court decision a few years back that said you can't force that on.

Chair Froseth : Federal laws are different than state laws.

Vice-Chair Severson : I don't have a problem. I still have a problem with the section making the political parties responsible for notification instead of Sec. of State's Office.

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House Political Subdivisions Committee  
Bill/Resolution Number HB1318 e  
Hearing Date 2-15-01

Rep. Grosz : The amendment took that off and the parties are not responsible. The Sec. State is still responsible like now.

Rep. Maragos : I move a DO PASS ON AMENDMENTS /

Vice-Chair Severson : I second.

**VOICE VOTE: ALL YES. AMENDMENTS PASSED.**

Vice-Chair Severson : I move a DO PASS AS AMENDED.

Rep. Grosz : I second.

**VOTE: 10 YES and 4 NO with 1 absent. PASSED. Rep. Tieman will carry the bill.**

February 15, 2001

VR  
2/15/01

**HOUSE AMENDMENTS to HB1318 HOUSE POL. SUBS 2-16-01**  
Page 1, line 1, remove "section 16.1-03-17,"

Page 1, line 2, remove "and"

Page 1, line 5, replace "section" with "sections" and after "16.1-12-08" insert "and 46-05-05"

Page 1, line 6, replace "use of stickers" with "rates for political announcements"

Page 1, remove lines 8 through 23

**HOUSE AMENDMENTS to HB1318 HOUSE POL. SUBS. 2-16-01**  
Page 2, remove lines 1 through 6

**HOUSE AMENDMENTS to HB1318 HOUSE POL. SUBS. 2-16-01**  
Page 5, line 2, overstrike "at the bottom of" and insert immediately thereafter "on" and overstrike "or names of the sponsor or sponsors of"

Page 5, line 3, overstrike "the advertisement, and the name"

Page 5, line 13, overstrike "sponsor" and remove the underscored comma

Page 5, line 14, remove the underscored comma

Page 5, line 15, remove "along with the person's title" and after the first period insert "An advertisement paid for by an individual candidate or group of candidates must disclose that the advertisement was paid for by the individual candidate or group of candidates. The first and last name or names of the candidates paying for the advertisement are not required to be disclosed."

**HOUSE AMENDMENTS to HB1318 HOUSE POL. SUBS. 2-16-01**  
Page 8, line 16, replace "Section" with "Sections", after "16.1-12-08" insert "and 46-05-05", and replace "is" with "are"

Re-number accordingly

Date: 2-15-01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1318

House POLITICAL SUBDIVISIONS Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number 18293.0101 0200

Action Taken Do Pass As Amended

Motion Made By Vice Chair Severson Seconded By Rep. Tieman

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	/		Rep. Wayne W. Tieman	/	
Vice-Chair Dale C. Severson	/				
Rep. Lois Delmore		/			
Rep. Rachael Disrud	/				
Rep. Bruce Eckre		/			
Rep. Mary Ekstrom		/			
Rep. April Fairfield	AB				
Rep. Michael Grosz	/				
Rep. Jane Gunter	/				
Rep. Gil Herbel	/				
Rep. Nancy Johnson	/				
Rep. William E. Kretschmar	/				
Rep. Carol A. Niemeier		/			
Rep. Andrew G. Maragos	/				

Total (Yes) 10 No 4

Absent 1 AB

Floor Assignment Rep. Tieman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1318: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (10 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1318 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "section 16.1-03-17,"

Page 1, line 2, remove "and"

Page 1, line 5, replace "section" with "sections" and after "16.1-12-08" insert "and 46-05-05"

Page 1, line 6, replace "use of stickers" with "rates for political announcements"

Page 1, remove lines 8 through 23

Page 2, remove lines 1 through 6

Page 5, line 2, overstrike "at the bottom of" and insert immediately thereafter "on" and overstrike "or names of the sponsor or sponsors of"

Page 5, line 3, overstrike "the advertisement, and the name"

Page 5, line 13, overstrike "sponsor" and remove the underscored comma

Page 5, line 14, remove the underscored comma

Page 5, line 15, remove "along with the person's title" and after the first period insert "An advertisement paid for by an individual candidate or group of candidates must disclose that the advertisement was paid for by the individual candidate or group of candidates. The first and last name or names of the candidates paying for the advertisement are not required to be disclosed."

Page 8, line 16, replace "Section" with "Sections", after "16.1-12-08" insert "and 46-05-05", and replace "is" with "are"

Renumber accordingly

2001 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1318

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1318

Senate Government and Veterans Affairs Committee

Conference Committee

Hearing Date March 16, 2001

Tape Number	Side A	Side B	Meter #
1		X	46.0-End
2	X		0.0-1.8
March 29, 2001 1	X		31.0-End
Committee Clerk Signature <i>James A. Raile</i>			

Minutes: **Chairman Krebsbach** opened the hearing on HB 1318 which relates to political party reorganization, election officer appointment, absentee ballot affidavits, corrupt election practices, and filling vacancies, and repeal of section 16.1-12-08 relating to filling vacancies and use of stickers. Appearing before the committee to introduce the bill was **Representative Wayne Tleman**, District 10, prime sponsor of the bill. A copy of his written testimony is attached. Corey Fong, representing the Secretary of State's Office appeared before the committee. A copy of his written testimony is attached. Senator T. Mathern indicated he wondered why the Secretary of State is interested in political subdivisions. Corey Fong indicated they are often questioned about what can be used for the purpose of political purposes. Chapter 16.1-10 specifically prohibits the use of state property for political purposes. We are simply adding that property and services of political subdivisions are to be included in that because of the many questions they receive on that. Senator Dever inquired about the use of state buildings for photographs for political purposes. He inquired about appointment in writing by the district

chair. His third question was about the 60 day deadline. Corey Fong offered responses to each question. There was nothing further on the bill. No additional testimony was offered in support of, in neutral position on, or in opposition to HB 1318. Chairman Krebsbach closed the hearing on HB 1318. On March 29, 2001 committee discussion was held on HB 1318. Appearing before the committee was **Attorney General Wayne Stenehjem**, former Senator from Grand Forks and a former member of the Government and Veteran's Affairs Committee. He indicated that in the senate, for three sessions in a row, thought to simply repeal that section of North Dakota Election Law that provides for a requirement of some sort for a disclaimer on who is sponsoring various political ads. He thinks three times he carried it on the floor of the Senate only to have the measure defeated over in the House of Representatives and he remembers that last session Corey Fong was up here and he was talking about amending a version of the disclaimer law and Attorney General Stenehjem accused him of bringing this bill in was similar to putting lipstick on a corpse. **Chairman Krebsbach** indicated that she was glad that she had contacted the attorney general relative to this matter because until she had contacted him she was not aware that Representative Boucher had contacted his office for an opinion on this matter. **Attorney General Stenehjem** went on to relate that what happened in North Dakota was that we had a case some years ago where the North Dakota Education Association was promoting or opposing a particular initiated measure that was on the ballot and they published that. They did not put a disclaimer on it, even though it was in their own newsletter. They were prosecuted for their actions. It was eventually worked up to the level of the supreme court. The supreme court said that at least as far as initiated or referred measures, the provision in North Dakota Law that requires a disclaimer on political advertising is unconstitutional. So, we took that ND Supreme Court case and attempted, back in 1981 during a special session, we amended that section of the

law to do our best to comply with the ruling of the ND Supreme Court in the NDEA. Then, in the meantime there was a case that came out of the state of Ohio. There was a lady who lived in Ohio and there was a measure in her local community which had to do with an increase in the taxes, and she was opposed to that and she sought to oppose it by publishing some fliers that she had Xeroxed off and these were not professional, but she Xeroxed them off and elected not to put her name down at the bottom contrary to Ohio law. Then, the lady died. She'd been fined \$100. Her estate pursued the case and it went up to the United States Supreme Court and they issued an opinion in the case known as McIntire vs Ohio. That case is a very interesting first amendment case. They spent a great deal of time going through the history talking about the importance of anonymous political speech. Going back hundreds of years even before American History. The Federalist Papers which supported passage of the U.S. Constitution were anonymous documents. They were signed under pseudonyms. They overturned the Ohio Statute and stressed the importance of anonymity. In North Dakota as in Ohio we have a statute that prohibits the publication of false information and that prohibits libel or slander. We are already covering in specific statutes the kinds of things, the kinds of evil that these disclaimer statutes are designed to prevent. They also state that if a person is going to lie about a candidate or about a ballot issue they are equally likely to lie about their disclaimer and not put a true name, or true address on, and you see that in the disclaimer too. He will have to say that in observing elections there is often not a real committee that you are putting on, or even a group that exists. These are some of the problems that the bill itself is designed to fix up. He is not satisfied. The committee can certainly do as it wishes. The bill with the amendments is probably better than what the current law is because it does clarify the questionable statutes so that you know what you have to do if you decide that's what you want to comply with it. He has maintained that probably the best

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Senate Government and Veterans Affairs Committee

Bill/Resolution Number HB 1318

Hearing Date March 16, 2001

thing to do is to repeal it. The Senate has repealed it for years, the house has not gone along with it and whether you want to do that again this year is entirely up to you. Because, who knows what the house will do with it. The Attorney General indicated that in the opinion you have before you, he goes as close as he ever will to saying you've got real problems with this law. Questions were offered by **Senators C. Nelson, Krebsbach, T. Mathern** with responses from the Attorney General (Tape 1, Side B, Meter #'s 42.5-51.2). Also providing information to the committee concerning this bill were **Jack McDonald** of the ND Newspaper Association, and **Corey Fong** of the Secretary of States Office. Senators **T. Mathern** and **C. Nelson** offered questions (Tape 1, Side B, Meter #'s 51.2-End and Tape 2, Side A, Meter #'s 0.0-3.3). **Senator Wardner** moved a Do Pass on HB 1318, seconded by **Senator T. Mathern**. Roll Call Vote indicated 6 Yeas, 0 Nays, and 0 Absent or Not Voting. **Senator Wardner** will carry the bill.



**REPORT OF STANDING COMMITTEE (410)**  
March 29, 2001 12:06 p.m.

Module No: SR-55-7121  
Carrier: Wardner  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1318, as engrossed: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1318 was placed on the Fourteenth order on the calendar.**

2001 TESTIMONY

HB 1318

ALVIN A. JAEGER  
SECRETARY OF STATE



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## SECRETARY OF STATE

STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0600

February 1, 2001

**TO:** Representative Glen Froseth & Members of the House Political Subs Committee  
**FR:** Al Jaeger, Secretary of State (presented on his behalf by Cory Fong)  
**RE:** **HB 1318 – Elections Misc Technical Corrections**

House Bill 1318 is intended to clean up and clarify a variety of miscellaneous sections of law pertaining to the conduct and administration of elections.

### Section 1

Section 16.1-03-17 of the North Dakota Century Code (NDCC) requires each county auditor to publish a notice in the official county newspaper after reapportionment and redistricting has occurred to inform the citizens of the county of the newly established legislative district boundaries. This published notice must include the following information:

- A statement that legislative reapportionment has occurred;
- A description and map of the newly established legislative districts and the precincts as established by the governing bodies of the counties and cities in the county; and
- Notice of the date, time, and places of the precinct caucuses and district political party meetings, as determined and set by the Secretary of State and county auditors, where the political parties in the district will reorganize.

The setting of the precinct and district political party re-organizational meetings after redistricting along with the publishing of the notice of those meetings should be left to the political parties. This is a political party function, not a function of county government.

Section 1 of HB 1318 amends section 16.1-03-17 and eliminates the requirement that the county auditor's published redistricting notice must include the re-organizational meeting notices for the district political parties.

### Section 2

According to section 16.1-05-01, election judges and clerks for each precinct are appointed by the district political parties within the legislative district. Currently, the law requires each election judge and clerk to be given a certificate of appointment signed by the district chair who appoints them.

The reality is that this procedure of issuing certificates of appointment is not currently followed, nor is it feasible or practical to follow given the challenges that our county auditors and district parties face when recruiting and appointing election officials.

Section 2 of HB 1318 amends section 16.1-01-05 and eliminates the requirement that election judges and clerks be given a certificate of appointment from their district chair and allows them to be appointed in writing by their district chair.

### Section 3

Section 16.1-07-08 requires each absent voter's ballot to be accompanied by a return envelope for the absentee voter to use when returning an absent voter's ballot. The return envelope must contain an affidavit to be completed by the absentee voter stating that the absentee voter meets the qualifications for voting in the precinct and will only vote once in the election.

Currently, the language prescribed for the return envelope affidavit in section 16.1-07-08 does not adequately reflect the thirty-day residency provision found in section 16.1-01-04. That provision requires a qualified voter to reside in the precinct for at least 30 days next preceding the election.

Section 4 of HB 1318 amends section 16.1-07-08 and makes the wording of the return envelope affidavit consistent with the thirty-day residency requirement.

### Sections 4 & 5

Sections 16.1-10-01 and 16.1-10-02 of the corrupt practices chapter strictly prohibit the use of state property or services for political purposes. Political purpose is defined by that chapter as "...any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office whether the activity is undertaken by a candidate, political committee, political party, or any other person but does not include activities undertaken in the performance of a duty of state office."

Because there is a distinction between state property or services and the property or services of a political subdivision, the prohibited use of property or services set out in sections 16.1-10-01 and 16.1-10-02 do not apply to political subdivisions.

Without a doubt, the property and services of political subdivisions, public entities supported by tax dollars, should also be prohibited from being used for political purposes, as is the case with state property and services.

Section 4 and 5 of HB 1318 amends sections 16.1-10-01 and 16.1-10-02 to apply the prohibited use of property and services to political subdivisions of the state.

### Section 6

Every election cycle, the Secretary of State's office responds to numerous questions concerning the required components of disclaimers to be included on printed and broadcast political advertisements.

Section 6 of HB 1318 clarifies the language that is required to be included in printed and broadcast political advertising disclaimers, when they are required. According to the changes proposed by HB 1318, a disclaimer would need to include the following:

- The name or names of the sponsor or sponsors of the advertisement;
- The name of the person, as defined in section 16.1-08.1-01, or political party paying for the advertisement. (Person is defined by section 16.1-08.1-01 as an individual, partnership, committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons)
- If the name of a political party, association, or partnership is used, the name of the chairman or responsible person must be included, along with the responsible person's title.

### Sections 7, 8, and 10

Under current law, the 60<sup>th</sup> day before the election is generally the deadline for filing for office, withdrawing as a candidate, or filling a vacancy that may exist in a nomination. The deadline for ballot certification quickly follows on the 55<sup>th</sup> day before the election followed by the deadline for making absentee ballots available on the 40<sup>th</sup> day before the election.

However, provisions exist in election law that allow vacancies in nominations, under certain circumstances, to be filled after the 60<sup>th</sup> day, in some cases up until the 18<sup>th</sup> day before the election as provided for in section 16.1-11-18 and 16.1-12-08, and up until the 56<sup>th</sup> day before the election as provided for in section 16.1-11-19.

Extending the deadline for filling vacancies in nominations past the 60<sup>th</sup> day candidate filing and withdrawal deadline, past the 56-day deadline for ballot preparation, and past the 40-day deadline for making absentee ballots available, creates administrative and logistical problems. The greatest of which is how to accommodate absentee voters who cast absentee ballots before a vacancy in a nomination is declared, filled, and the ballots changed to accommodate the filling of the vacancy.

Sections 7 and 8 along with the repeal of section 16.1-12-08 in section 10 of HB 1318 eliminate this problem by setting an absolute deadline for filling vacancies that coincides with the 60-day deadline for filing for office or withdrawing as a candidate.

### Section 9

According to section 16.1-15-25, after the results of an election are made official by a county canvassing board, the county auditor is required to forward the official results to the Secretary of State in the form of an election abstract for presentation to and certification by the State Canvassing Board. These election abstracts include official statewide party results, statewide no-party results, legislative district results, statewide measure results, and county results.

In addition, the county auditor is required to send the Secretary of State a listing of each person elected to a county office along with their addresses. The information contained on this listing, which is already revealed by the official abstract of results for the county races, is not necessary and only complicates and slows down the state canvassing procedure.

Section 9 of HB 1318 amends section 16.1-15-25 and eliminates this duplication the requirement that the listing of elected county officers be sent to the Secretary of State along with the official abstracts.

For these reasons, the Secretary of State's office urges a due pass on HB 1318.

2001



# NORTH DAKOTA HOUSE OF REPRESENTATIVES



Representative Merle Boucher  
District 9  
Box 7  
Highland Street  
Bismarck, ND 58366-0007

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360

Minority Leader

February 2, 2001

Honorable Wayne Stenehjem  
Attorney General of North Dakota  
Office of the Attorney General  
600 E. Boulevard, 1st Floor  
Bismarck ND 58505

Dear Attorney General Stenehjem:

Section 6 of House Bill 1318 (section 6) requires persons, including political parties, associations and partnerships to identify themselves on political advertisements. I have heard discussions that similar laws have been determined to violate the United States Constitution.

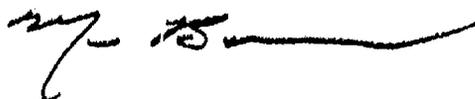
I am aware of your office's prior policy of not taking a position of declaring an existing statute unconstitutional. House Bill 1318 places this statute squarely before this legislature. I hope to avoid enactment of statutes that would violate the constitutional rights of our citizens. I seek your opinion in the hope of dispelling my concerns. If you should find that the statute is of questionable constitutionality, I hope that you will so advise me, and the legislature. Thus we can eliminate the inappropriate language and protect our citizen's constitutional rights.

I have two lines of inquiry concerning section 6. First, are there any cases, attorney general opinions or other legal authorities that have addressed the constitutionality of a statute such as 16.1-10-04.1? If so, would you please analyze those legal authorities and give me your legal opinion as to the likelihood that section 16.1-10-04.1 would be held unconstitutional if it was challenged in court?

Secondly, what is your opinion as to the likelihood that the amendments to section 16.1-10-04.1 proposed in HB 1318 will make it more likely that the statute will be declared unconstitutional?

House Bill 1318 has already had an initial hearing, and therefore time is of the essence. I thank you, and your staff in advance for the effort I know you will exert to make a timely response.

Sincerely,



Merle Boucher, Minority Leader  
North Dakota House of Representatives



**SECRETARY OF STATE**

STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500

February 9, 2001

**TO:** Representative Glen Froseth & Members of the House Political Subs Committee  
**FR:** Cory Fong, Secretary of States office  
**RE:** HB 1318 - Elections Misc Technical Corrections - Proposed Amendments

**Proposed Amendments to House Bill No. 1318**

Page 1, line 1, remove "section 16.1-03-17,"

Page 1, line 5, overstrike "section 16.1-12-08" and immediately insert thereafter "sections 16.1-12-08 and 46-05-05"

Page 1, line 6, after "stickers" insert "and labeling political matter"

Page 1, remove lines 8 through 23

Page 2, remove lines 1 through 6

Page 2, line 7, replace "SECTION 2." with "SECTION 1."

Page 3, line 5, replace "SECTION 3." with "SECTION 2."

Page 3, line 28, replace "SECTION 4." with "SECTION 3."

Page 4, line 1, replace "SECTION 5." with "SECTION 4."

Page 4, line 26, replace "SECTION 6." with "SECTION 5."

Page 5, line 2, overstrike "at the bottom of" and insert immediately thereafter "on"

Page 5, line 2, overstrike "or names of the sponsor or sponsors of"

Page 5, line 3, overstrike "the advertisement, and the name"

Page 5, line 13, overstrike "sponsor"

Page 5, line 13, remove "1"

Page 5, line 14, remove "1"

Page 5, line 15, remove "along with the person's title"

Page 5, line 15, after "person's title." insert "An advertisement paid for by an individual candidate or group of candidates must disclose that it was paid for by the individual candidate or group of candidates. The first and last name or names of the candidates paying for the advertisement are not required to be disclosed."

Page 5, line 16, replace "SECTION 7." with "SECTION 6."

Page 7, line 8, replace "SECTION 8." with "SECTION 7."

Page 8, line 1, replace "SECTION 9." with "SECTION 8."

Page 8, line 16, replace "SECTION 10." with "SECTION 9."

Page 8, line 17, after "repealed." insert:

"SECTION 10. REPEAL. Section 46-05-05 of the North Dakota Century Code is repealed."

Renumber accordingly

2-15-01

1318

**CHAPTER 46-05  
NEWSPAPERS**

**46-05-01. Newspapers qualified to do legal printing - File copies with historical society - Publishing notices in adjoining county.** Before any newspaper in this state is qualified to publish any legal notice or any matter required by law to be printed or published in some newspaper in the state, or any public notice for any political subdivision within this state, the newspaper must:

1. Have been established in a regular and continuous circulation of at least one year, with a bona fide subscription list of at least one hundred fifty regular subscribers;
2. Be nonsectarian and printed at least three-fourths in English; and
3. Have been admitted to the United States mails and have complied with the requirements of the federal laws governing periodicals mailing privileges for at least one year.

In the county where no newspaper having the above-prescribed qualifications is published, any newspaper at the county seat of that county is entitled to publish the legal notices even though it may not have been established one year. The owner or publisher of each legal newspaper shall send to the state historical board, to the address designated by the secretary, two copies of each issue of the newspaper. In a county in which no newspaper is published, any notice required by law to be published may be published in a newspaper published in an adjoining county and having a general circulation in the county.

**46-05-02. Publisher to file affidavit with county auditor.** The owner or manager of any newspaper in this state, before such newspaper can be awarded any contract for public printing of any nature, and before it may publish any legal notice of any kind, shall file with the county auditor of the county in which such newspaper is published a verified statement setting forth the number of regular and continuous subscribers and the length of time such newspaper has been established and in general circulation.

**46-05-03. Legal notices - Fees.** To effect uniformity, the office of management and budget may compute a standard price on those legal notices which are widely published such as ballots, insurance statements, and official proclamations. All newspapers must use the rates, type size, and column width as shown on its legal notice rate certification issued by the office of management and budget. Certifications must be issued within fifteen days after samples are submitted.

The office of management and budget shall annually review and adjust rates to reflect changes in economic conditions within the newspaper industry and the general economy, and those adjustments become effective on each July first following the review. These annual changes may be percentage increases or decreases in the base rates, and they may incorporate revisions in the base rate structure. Whenever the office of management and budget considers an adjustment in the legal publication rates contained herein, it shall consult with representatives of the daily and weekly newspaper industry of the state and with representatives of state and local units of government.

**46-05-04. Rates and methods of computation applicable to legal notices and publications generally.** The rates or compensation and the method of calculating the same provided for in section 46-05-03 apply in all cases where publication of legal notices of any kind, proceedings of the board of county commissioners, reports, election returns, and other publications and reports are required and allowed by law.

**46-05-05. Rates for political announcements - Labeling political matter - Penalty for violation.** For the publication of political announcements of candidates before any primary or general election, no newspaper in this state may charge more than the legal rates for the

publication of legal notices. All paid political matter and political announcements must be labeled "political advertisement". Any person violating the provisions of this section is guilty of an infraction.

**46-05-06. Legal notices - Penalty for violations in printing.** Any person, association, corporation, or limited liability company publishing any legal notice or doing any public printing, contrary to the provisions of this chapter, shall be liable to a fine of not less than twenty-five dollars nor more than two hundred dollars, and to a forfeiture of all pay for any such printing.

**46-05-07. Publications of county meetings and notices.** In any county in which two or more newspapers having the qualifications prescribed in section 46-05-01 are published, the board of county commissioners, by resolution, may provide for publication of proceedings of the board of county commissioners and of notices and publications required by law to be published by any county officer in one or more of such newspapers in addition to the official publication in the official newspaper of the county. The provisions of section 46-05-03 do not apply to such additional publications.

**46-05-08. Contents of real property notices.** Repealed by S.L. 1975, ch. 420, § 1.



Wayne Stenehjem  
ATTORNEY GENERAL

STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL  
600 E BOULEVARD AVE DEPT 125  
BISMARCK, ND 58505-0040  
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45-02

February 26, 2001

Honorable Merle Boucher  
Minority Leader  
House of Representatives  
600 East Boulevard Avenue  
Bismarck, ND 58505

Dear Representative Boucher:

Thank you for your letter raising questions about section 6 of House Bill 1318 and the underlying statute, N.D.C.C. § 16.1-10-04.1. Since you submitted your letter, additional amendments were added to the bill including amendments to what was originally numbered section 6 and which is now section 5. What is now section 5 would amend N.D.C.C. § 16.1-10-04.1 which generally requires certain political advertisements to disclose the names of sponsors or persons paying for the ads. For the most part, the amendments appear to make minor language clarifications, but also explicitly add political parties to the list of those subject to the disclosure requirements. The additional amendments deleted reference to sponsors of ads and would require that ads paid for by candidates disclose that fact, but would not require listing the candidates' first and last names.

Your letter raises questions about the constitutionality of the underlying statute and what is now section 5 of the bill. However, as you acknowledge in your letter:

Traditionally, this office has been very reluctant to question the constitutionality of a statutory enactment. E.g., 1980 N.D. Op. Att'y Gen. 1. This is due, in part, to the fact that in North Dakota the usual role of the Attorney General is to defend statutory enactments from constitutional attack and because "[a] statute is presumptively correct and valid, enjoying a conclusive presumption of constitutionality unless clearly shown to contravene the state or federal constitution." Traynor v. Leclerc, 561 N.W.2d 644, 647 (N.D. 1997) (quoting State v. Ertelt, 548 N.W.2d 775, 776 (N.D. 1996)). Further, Article VI, Section 4 of the North Dakota Constitution provides that "the supreme court shall not declare a legislative enactment unconstitutional unless at least four of the members of the court so decide."

1998 N.D. Op. Att'y Gen. L-197 (Nov. 24).

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For these reasons, I, too, am reluctant to issue opinions questioning the constitutionality of current statutory enactments. Nevertheless, I do offer the following discussion for your information.

N.D.C.C. § 16.1-10-04.1 provides as follows:

Every political advertisement by newspaper, pamphlet or folder, display card, sign, poster, or billboard, or by any other public means, on behalf of or in opposition to any candidate for public office, designed to assist, injure, or defeat the candidate by reflecting upon the candidate's personal character or political action, must disclose at the bottom of the advertisement the name or names of the sponsor or sponsors of the advertisement, and the name or names of the person, persons, associations, or partnerships paying for the advertisement. If the name of an association or partnership is used, the disclaimer must also include the name of the chairman or other responsible person from the association or partnership. The name or names of the person, persons, associations, or partnerships paying for any radio or television broadcast containing any advertising announcement for or against any candidate for public office must be announced at the close of the broadcast. If the name of an association or partnership is used, the disclaimer must also include the name of the chairman or other responsible person from the association or partnership. In every political advertisement in which the name of the sponsor or person, association, or partnership paying for the advertisement is disclosed, the first and last name of any named person must be disclosed. This section does not apply to campaign buttons.

A brief historical review of the statute and the case law is instructive. The predecessor to this statute, N.D.C.C. § 16-20-17.1, was declared unconstitutional by the North Dakota Supreme Court in State v. North Dakota Educ. Ass'n, 262 N.W.2d 731 (N.D. 1978), citing Talley v. California, 362 U.S. 60 (1960). The United States Supreme Court had ruled in Talley that a city ordinance prohibiting any distribution of any handbills without the name and address of the person who printed and distributed them was an unconstitutional violation of the free speech clause of the First Amendment to the United States Constitution. 362 U.S. at 64. The North Dakota Supreme Court noted that the state statute was not narrowly tailored to address those ads designed to injure or defeat by reflecting upon personal character or political action. 262 N.W.2d at 736.

In 1981, the statute was amended and recodified as N.D.C.C. § 16.1-10-04.1. See memorandum from Attorney General Nicholas J. Spaeth to Ben Meier (Oct. 13, 1986). In that memorandum, former Attorney General Spaeth, in explaining the recodified statute,

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stated that "[t]he conclusion to be drawn from the current political advertisement disclosure statute is that political advertisements by themselves do not require disclaimer statements. Instead, only those advertisements which are on behalf of or in opposition to any candidate for public office which are further designed to assist, injure, or defeat the candidate by reflecting upon the candidate's personal character or political action must contain the disclaimers." Thus, the revised statute met the North Dakota Supreme Court's objection raised in State v. North Dakota Educ. Ass'n.

In 1995, a United States Supreme Court decision again cast serious doubt upon statutes regulating anonymous political pamphlets or campaign literature. In McIntyre v. Ohio Elections Comm'n, 514 U.S. 334 (1995), the Supreme Court examined an Ohio statute that prohibited the distribution of anonymous campaign literature and whether the statute violated the First Amendment free speech clause. The Ohio statute in question was somewhat similar to N.D.C.C. § 16.1-10-04.1 but did not include electronic or radio or television ads. The Court, thus, limited its opinion to written communications and particularly the anonymous leaflets of the type involved in that particular case which were distributed by an individual citizen. 514 U.S. 334, n.3. The Ohio statute provided, in part, that

No person shall write, print, post, or distribute, or cause to be written, printed, posted, or distributed, a notice, placard, dodger, advertisement, sample ballot, or any other form of general publication which is designed to promote the nomination or election or defeat of a candidate, or to promote the adoption or defeat of any issue, or to influence the voters in any election . . . through newspapers, magazines, outdoor advertising facilities, direct mailings, or other similar types of general public political advertising, or through flyers, handbills, or other nonperiodical printed matter, unless there appears on such form of publication in a conspicuous place or is contained within said statement the name and residence or business address of the chairman, treasurer, or secretary of the organization issuing the same, or the person who issues, makes, or is responsible therefor.

514 U.S. at 338 & n.3.

The Court described some of the historical background and need for anonymous political publishing:

The freedom to publish anonymously extends beyond the literary realm. In Talley, the Court held that the First Amendment protects the distribution of unsigned handbills urging readers to boycott certain Los Angeles merchants who were allegedly engaging in discriminatory employment practices. 362

U.S. 60, 80 S.Ct. 536. Writing for the Court, Justice Black noted that "[p]ersecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all." *Id.*, at 64, 80 S.Ct., at 538. Justice Black recalled England's abusive press licensing laws and seditious libel prosecutions, and he reminded us that even the arguments favoring the ratification of the Constitution advanced in the Federalist Papers were published under fictitious names. *Id.*, at 64-65, 80 S.Ct., at 538-539. On occasion, quite apart from any threat of persecution, an advocate may believe her ideas will be more persuasive if her readers are unaware of her identity. Anonymity thereby provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent. Thus, even in the field of political rhetoric, where "the identity of the speaker is an important component of many attempts to persuade," *City of Ladue v. Gilleo*, 512 U.S. 43, 56, 114 S.Ct. 2038, 2046, 129 L.Ed.2d 36 (1994) (footnote omitted), the most effective advocates have sometimes opted for anonymity. The specific holding in *Talley* related to advocacy of an economic boycott, but the Court's reasoning embraced a respected tradition of anonymity in the advocacy of political causes. This tradition is perhaps best exemplified by the secret ballot, the hard-won right to vote one's conscience without fear of retaliation.

514 U.S. at 342-43 (footnotes omitted).

Although the statute was defended, in part, on the basis that it was attempting to identify those responsible for fraud, false advertising, and libel, it contained no language limiting its application to fraudulent, false, or libelous statements. It was also justified by the state on the basis of the state's interest "in providing the electorate with relevant information." 514 U.S. at 348.

North Dakota's statute also does not limit its application to fraudulent, false, or libelous statements. The United States Supreme Court in *McIntyre* viewed the Ohio statute as regulating core political speech and applied "exacting scrutiny" to it and would only uphold the regulation if narrowly tailored to serve an overriding state interest. 514 U.S. at 345-47. The Court reiterated that the category of speech regulated by the Ohio statute goes to the core of the First Amendment protections:

"Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order to assure [the] unfettered interchange of ideas

for the bringing about of political and social changes desired by the people.' Roth v. United States, 354 U.S. 476, 484 [77 S.Ct. 1304, 1308, 1 L.Ed.2d 1498] (1957). Although First Amendment protections are not confined to 'the exposition of ideas,' Winters v. New York, 333 U.S. 507, 510 [68 S.Ct. 665, 667, 92 L.Ed. 840] (1948), 'there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs, . . . of course includ[ing] discussions of candidates. . . .' Mills v. Alabama, 384 U.S. 214, 218 [86 S.Ct. 1434, 1437, 16 L.Ed.2d 484] (1966). This no more than reflects our 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.' New York Times Co. v. Sullivan, 376 U.S. 254, 270 [84 S.Ct. 710, 721, 11 L.Ed.2d 686] (1964). In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation. As the Court observed in Monitor Patriot Co. v. Roy, 401 U.S. 265, 272 [91 S.Ct. 621, 625, 28 L.Ed.2d 35] (1971), 'it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office.'" Buckley v. Valeo, 424 U.S. 1, 14-15, 96 S.Ct. 612, 632, 46 L.Ed.2d 659 (1976) (per curiam).

Id. at 346-47.

The Court noted that "the speech in which Mrs. McIntyre engaged -- handing out leaflets in the advocacy of a politically controversial viewpoint -- is the essence of First Amendment expression." Id. at 347. In striking down the Ohio statute, the Court noted that "[u]nder our Constitution, anonymous pamphleteering is not pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority. . . . [P]olitical speech by its nature will sometimes have unpalatable consequences, and, in general, our society accords greater weight to the value of free speech than to the dangers of its misuse. . . . The State may, and does, punish fraud directly. But it cannot seek to punish fraud indirectly by indiscriminately outlawing a category of speech, based on its content, with no necessary relationship to the danger sought to be prevented." Id. at 357.

The Court further explained:

As this case demonstrates, the prohibition encompasses documents that are not even arguably false or misleading. It applies not only to the activities of candidates and their organized supporters, but also to individuals acting independently and using only their own modest resources. It applies not

Honorable Merle Boucher  
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only to elections of public officers, but also to ballot issues that present neither a substantial risk of libel nor any potential appearance of corrupt advantage. It applies not only to leaflets distributed on the eve of an election, when the opportunity for reply is limited, but also to those distributed months in advance. It applies no matter what the character or strength of the author's interest in anonymity. Moreover, as this case also demonstrates, the absence of the author's name on a document does not necessarily protect either that person or a distributor of a forbidden document from being held responsible for compliance with the Election Code. Nor has the State explained why it can more easily enforce the direct bans on disseminating false documents against anonymous authors and distributors than against wrongdoers who might use false names and addresses in an attempt to avoid detection. We recognize that a State's enforcement interest might justify a more limited identification requirement, but Ohio has shown scant cause for inhibiting the leafletting at issue here.

Id. at 351-53 (footnotes omitted).

The Court likewise disposed of the state's other justification of the statute:

The simple interest in providing voters with additional relevant information does not justify a state requirement that a writer make statements or disclosures she would otherwise omit. Moreover, in the case of a handbill written by a private citizen who is not known to the recipient, the name and address of the author add little, if anything, to the reader's ability to evaluate the document's message.

Id. at 348-49.

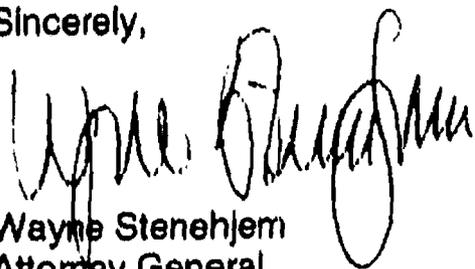
As such, I am very concerned about the serious constitutional questions raised by N.D.C.C. § 16.1-10-04.1, particularly as they relate to the ability of individual North Dakota citizens to distribute anonymous campaign literature and pamphlets, if not false or fraudulent. These questions based on the circumstances in the McIntyre case could be minimized, for example, by limiting the statute's application to false, misleading, or fraudulent ads, although it should be noted that North Dakota already has a statute prohibiting false information in political ads. See N.D.C.C. § 16.1-10-04. Alternatively, there could be an exception carved into the statute for distribution of anonymous campaign literature or pamphlets by individuals which are not false or libelous, or possibly by deleting references in the statute to the type of campaign literature involved in the McIntyre case, i.e., pamphlets, folders, and the like.

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In response to your last question, I do not believe that either the original amendments or the additional amendments to N.D.C.C. § 16.1-10-04.1 contained in what is now section 5 of House Bill 1318 necessarily raise any additional constitutional questions about the statute.

I trust this discussion is helpful to you.

Sincerely,



Wayne Stenehjem  
Attorney General

Jjf/pg

**Testimony on House Bill 1318  
Representative Wayne Tieman  
March 16, 2001**

**Madam Chair and Members of the Committee:**

For the record, I am Representative Wayne Tieman of District 10, and I am here to introduce House Bill 1318.

The purpose of House Bill 1318 is to clean up and clarify a variety of miscellaneous sections of law pertaining to the conduct and administration of elections.

Section 1 of the bill provides that election judges and clerks must be appointed in writing by their district political parties, instead of being issued certificates of nomination. Currently, none of them are being issued certificates of nomination.

Section 2 makes the language contained on the return absentee voting envelope pertaining to voter qualifications consistent with the actual provisions governing the qualifications of voting.

Sections 3 and 4 clarify that property of a political subdivision is prohibited from being used for political purposes, as is state property.

Section 5 clarifies and simplifies the requirements of political advertisement disclaimers.

Sections 6 and 7 make the deadline for filing a vacancy existing on a ballot consistent with the deadline for filing for office, that is 60 days before the election.

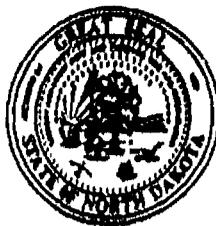
Section 8 eliminates the need for county auditors to certify the names of those persons elected to county office, in addition to forwarding the county officer election returns to the Secretary of State.

Section 16.1-12-08 establishes a date for filling a vacancy existing on the ballot later than 60 days before the date of the election. Section 46-05-05

requires published political advertisements to disclose that they are "political advertisements." Section 9 contains the repealers of both of these sections.

The House Political Subdivisions Committee had a good hearing on this bill, asked a lot of good questions, and, after being amended, the committee decided to support this bill. We hope you will concur.

Thank you for the opportunity to appear before the Senate Government and Veterans Committee today.



**SECRETARY OF STATE**

STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500

March 16, 2001

**TO:** Senator Karen Krebsbach & Members of the Senate Government & Veterans Affairs Committee  
**FR:** Cory Fong, Secretary of State's office  
**RE:** HB 1318 - Elections Misc Technical Corrections

House Bill 1318 is intended to clean up and clarify a variety of miscellaneous sections of law pertaining to the conduct and administration of elections.

**Section 1**

According to section 16.1-05-01, election judges and clerks for each precinct are appointed by the district political parties within the legislative district. Currently, the law requires each election judge and clerk to be given a certificate of appointment signed by the district chair who appoints them.

The reality is that this procedure of issuing certificates of appointment is not currently followed, nor is it feasible or practical to follow given the challenges that our county auditors and district parties face when recruiting and appointing election officials.

Section 1 of HB 1318 amends section 16.1-01-05 and eliminates the requirement that election judges and clerks be given a certificate of appointment and allows them to be appointed in writing by their district chair.

**Section 2**

Section 16.1-07-08 requires each absent voter's ballot to be accompanied by a return envelope. The return envelope must contain an affidavit to be completed by the absentee voter stating that the absentee voter meets the qualifications for voting in the precinct and will only vote once in the election.

Currently, the language prescribed for the return envelope affidavit in section 16.1-07-08 does not adequately reflect the thirty-day residency provision found in section 16.1-01-04. That provision requires a qualified voter to reside in the precinct for at least 30 days next preceding the election.

Section 2 of HB 1318 amends section 16.1-07-08 and makes the wording of the return envelope affidavit consistent with the thirty-day residency requirement.

**Sections 3 & 4**

Sections 16.1-10-01 and 16.1-10-02 of the corrupt practices chapter strictly prohibit the use of state property or services for political purposes. Political purpose is defined by

that chapter as "...any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office whether the activity is undertaken by a candidate, political committee, political party, or any other person but does not include activities undertaken in the performance of a duty of state office."

Because there is a distinction between state property or services and the property or services of a political subdivision, the prohibited use of property or services set out in sections 16.1-10-01 and 16.1-10-02 does not apply to political subdivisions.

Without a doubt, the property and services of political subdivisions, public entities supported by tax dollars, should also be prohibited from being used for political purposes, as is the case with state property and services.

Sections 3 and 4 of HB 1318 amends sections 16.1-10-01 and 16.1-10-02 to apply the prohibited use of property and services to political subdivisions of the state.

#### Section 5

Every election cycle, the Secretary of State's office responds to numerous questions concerning the required components of disclaimers to be included on printed and broadcast political advertisements.

Section 5 of HB 1318 clarifies the language that is required to be included in printed and broadcast political advertising disclaimers when they are required. According to the changes proposed by HB 1318, a disclaimer would need to include the following:

- The name of the person, as defined in section 16.1-08.1-01, or political party paying for the advertisement. (Person is defined by section 16.1-08.1-01 as an individual, partnership, committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons)
- If the name of a political party, association, or partnership is used, the name of the chairman or responsible person must be included.

Section 5 also specifies that if an advertisement is paid for by an individual candidate or group of candidates, as so often occurs, the advertisement must disclose that the advertisement was paid for by the individual candidate or group of candidates.

#### Sections 6, 7, and 9

Under current law, the 60<sup>th</sup> day before the election is generally the deadline for filing for office, withdrawing as a candidate, or filling a vacancy that may exist in a nomination. The deadline for ballot certification quickly follows on the 55<sup>th</sup> day before the election followed by the deadline for making absentee ballots available on the 40<sup>th</sup> day before the election.

However, provisions exist in election law that allow vacancies in nominations, under certain circumstances, to be filled after the 60<sup>th</sup> day and up until the 66<sup>th</sup> day before the election as provided for in section 16.1-11-19, and in some cases up until the 18<sup>th</sup> day before the election as provided for in section 16.1-11-18 and 16.1-12-08.

Extending the deadline for filling vacancies in nominations past the 60-day candidate filing and withdrawal deadline, past the 66-day deadline for ballot preparation, and past the 40-day deadline for making absentee ballots available, creates administrative and logistical problems. The greatest of which is how to accommodate absentee voters who cast absentee ballots before a vacancy in a nomination is declared, filled, and the ballots changed to accommodate the filling of the vacancy.

Sections 6 and 7 along with the repeal of section 16.1-12-08 in section 9 of HB 1318 eliminate this problem by setting an absolute deadline for filling vacancies that coincides with the 60-day deadline for filing for office or withdrawing as a candidate.

#### **Section 8**

After the results of an election are made official by a county canvassing board, the county auditor is required to forward the official results to the Secretary of State in the form of an election abstract for presentation to and certification by the State Canvassing Board. These election abstracts include official statewide party results, statewide no-party results, legislative district results, statewide measure results, and county results.

In addition, the county auditor is required to send the Secretary of State a listing of each person elected to a county office along with their addresses. The information contained on this listing, which is already revealed by the official abstract of results for the county races, is not necessary and only complicates and slows down the state canvassing procedure.

Section 8 of HB 1318 amends section 16.1-15-25 and eliminates this duplicate reporting.

For these reasons, the Secretary of State's office urges a do pass on HB 1318.