**South Dakota Judicial Accountability Committee**
**Bill Stegmeier, Treasure**
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March 3, 2006

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Re: HCR 1004 – Unanimous House & Senate Vote in Favor

Request that YOU Reconsider & Withdraw YOUR Vote on Resolution HCR 1004

Gentlemen:

We write to YOU, because YOU are the leaders of YOUR respective parties, and YOUR respective chambers, and because a matter of utmost importance, leadership and courage about our Liberty confronts South Dakota – the debate, election campaign, and vote on Amendment "E" – and, how that debate, election campaign and vote will be - conducted.

We have learned of your individual and collective (the entire House and Senate, unanimous) vote in favor of the House Concurrent Resolution (HCR) No. 1004, that opposes our Initiative, the ballot measure Amendment "E" to the South Dakota Constitution, that would cut back the destructive doctrine of absolute judicial immunity, that presently covers even malicious and corrupt judicial acts. See *Stump v. Sparkman*, 435 U.S. 349 (1978). We had wanted to expect better of you.

Thus we must hereby inform you and put you on NOTICE that your proposed Resolution, and your subsequent vote on that Resolution, were clearly unlawful acts by **taking sides** in an election contest in an attempt to **control** and **influence** the vote on Amendment "E", in clear violation of South Dakota Constitution, Article VI, section 19 – **Free and Equal Elections-Right of Suffrage** and Article VII, section 1 – **Right to Vote**, as well as South Dakota Attorney General's Official Opinion No. 88-28 - **Expenditure of Public funds on Election Issues**. Further, that your unlawful acts are also violations of fundamental rights secured by the United States Constitution.

A copy of this letter is being sent to each and every member of both the House and Senate. Thus, THEY also will have been informed and put on NOTICE.

We hereby explain and make our case: First, the Preamble to the Constitution of South Dakota starts, "**We the People …"**, not WE the Legislature (or We the Judiciary). Your actions here ignore the foundational premise and fundamental mandate that the People are sovereign and that government is their servant.

Second, Art.VI – Bill of Rights, sec. 26 – Power Inherent in people – Alteration in form of government – Inseparable part of Union, in pertinent part states:

> "All political power is **inherent in the people**, and free government is founded on **their authority**, and is instituted for their equal protection and benefit, and **they have the right** in lawful and constituted methods to alter or **reform their forms of government** in such manner as they may think proper. …"

All political power is inherent in the people? Founded on their authority? Again - the foundational premise and fundamental mandate that the People are sovereign.

They have the right … to alter or reform their forms of government? Exactly what we have done here with Amendment "E". Yet, to the contrary, your actions here not only ignore the People, but are a collective slap in the people's faces. You ignore the South Dakota Constitution's premise and mandate that "All power is inherent in the people… ," and not in you or the legislature, and that an Initiative measure is a direct vote of and by the People. Thus you are not a representative of the People regarding this measure and your legislative/legislator hats are removed, and you become ordinary citizens - just like the rest of us.

You have just one vote on the measure in this general election, equal to that of any other one citizen – and nothing more. It is for the People to decide for themselves on this issue. On an Initiative measure, you and your loaned representative power, must come down a notch, while the People are elevated a notch. We get to vote for oursselves.

Your actions of using your public office and our public funds to oppose **any** Amendment are violations of the South Dakota Constitution and are blatant abuses of your office, public funds, and the rights of the 46,000 plus South Dakotans who signed the petition and put Amendment "E" on the ballot.

Third, Art. VI, sec. 27 – Maintenance of free government – Foundational principles, states:

> "The blessing of a **free** government can **only** be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue by frequent **recurrence to fundamental principles**."

Gentlemen, this is exactly what Amendment "E" and our actions have done here and continue to do. However, to the contrary, your actions fly in the face of Art. VI, sec. 27, show contempt for the People and Constitution of South Dakota, and make a mockery of justice, moderation, temperance, frugality and virtue. Your actions here have irrefutably proven our motto, "**Reform never comes from government, it must always come from the People**."

Fourth, Art. VI, sec. 19 – Free and equal elections – Right of suffrage – Soldier voting, in pertinent part states:

> "Elections shall be **free** and **equal**, and **no power, civil** or military, shall **at any time interfere** to prevent the free exercise of the right of suffrage. …"

Gentlemen, what part of the word "free" don't you understand? What part of the words "no power" don't you understand? What part of the word "civil" don't you understand? What part of the word "interfere" don't you understand? Your HCR 1004 blatantly states in its first and last paragraphs:

> "A CONCURRENT RESOLUTION, **Urging the voters** of South Dakota **to reject** the Judicial Accountability Initiated Law (J.A.I..L.) which will be submitted to South Dakota voters in November 2006, designated Amendment E.
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> * * *
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> "NOW, THERFORE, BE IT RESOLVED, by the House of Representatives Eighty-first Legislature of the State of South Dakota, the Senate concurring therein, that the South Dakota Legislature **strongly urges all South Dakota voters** to protect our citizen boards, to protect our system of justice, to protect economic development, to protect all our citizens from frivolous lawsuits that would be authorized by the Judicial Accountability Initiated Law, and **to vote against Amendment E.**[1]

Urging the voters of South Dakota to reject? Strongly urges all South Dakota Voters … to vote against Amendment E? Your actions fly in the face of Art VI, sec, 19, and thus again you show contempt for the People of South Dakota and the South Dakota Constitution. Equally, Art. VII, sec. 1 – Right to vote, in full states the same as Art. VI, sec.19 above. Gentlemen, why do you fail to show respect for and honor to the People of South Dakota and the sacred right of suffrage, the right to vote?

Gentlemen, your actions also fly directly in the face and authority of our own South Dakota Attorney General's Official Opinion No. 88-28 - **Expenditure of Public Funds on Election Issues**, issued June 29, 1988, which asked this question:

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[1] Our Initiative actually is the Judicial Accountability Initi**ative** Law, and is listed as such on the South Dakota Secretary of State's website, not "Initi**atied**", as your HCR 1004 states – twice.

Can a municipality, county, or school district expend public funds to advocate a position on an election issue?

Attorney General Roger A. Tellinghuisen wrote in his Opinion (bold emphasis added):

> QUESTION NO. 1: Although the courts of this State have **not yet addressed** the question, a review of court decisions in other jurisdictions leads me to **conclude** that municipalities, counties, and school districts **may not** expend public monies for purposes of promoting or advocating a particular position on an election measure.
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> **Almost without exception** the cases disallow the use of public funds for advocacy by governmental institutions in **support of one side** of an issue before the voters. Burt v. Blumenauer, 699 P.2d 168 (Or. 1985); Campbell v. Joint Dist. 28-J 704, Fed.2d 501 (10th Cir. 1983); Anderson v. City of Boston, 380 N.E.2d 628 (Mass. 1978); Stern v. Kramarsky, 375 N.Y.S.2d 235 (Sup.Ct. 1975); and Stanson v. Mott, 551 P.2d 1 (Cal. 1976). **Only rarely** have the courts determined that expenditures for such purpose were sufficiently authorized under state law and even when authorized the expenditures have been declared improper in view of other conflicting statutes and state and **federal constitutional** provisions.
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> **As distinguished from** legislative lobbying efforts or advocacy by elected public officials or employees strictly in their **individual capacities** as private citizens, **advocacy constituting official action of local government for purposes of influencing election results raises serious constitutional questions**. As stated in Stanson v. Mott, 551 P.2d at 9:
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> While public agency lobbying efforts undeniably involve the use of public funds to promote causes which some members of the public may not support, one of the primary functions of elected and appointed executive officials is, of course, to devise legislative proposals to attempt to implement the current administration's policies. Since the legislative process contemplates that interested parties will attend legislative hearings to explain the potential benefits or detriments of proposed legislation, public agency lobbying, within the limits authorized by statute, in no way undermines or distorts the legislative

process. **By contrast, the use of the public treasury to mount an election campaign which attempts to influence the resolution of issues which our constitution leaves to the 'free election' of the people does present a serious threat to the integrity of the electoral process.**

A fundamental goal of the democratic electoral process is to **attain the free and pure expression of the voters**. Basic democratic principles **mandate** that the government must, if possible, **avoid** any activity or feature which might adulterate that free and pure choice. Gould v. Grubb, 536 P.2d 1337, 348 (Cal. 1975**). The government should not " 'take sides'** in election contest or bestow an unfair advantage on one of several competing factions. **A principal danger** feared by our country's founders lay in the possibility that the holders of governmental authority would **use official power improperly to perpetuate themselves**, or their allies, in office ...; the selective use of public funds in election campaigns, of course, raises the specter of just such an improper **distortion of the democratic electoral process**." Stanson, supra at 9.

Expenditures by municipalities and similar political subdivisions for purposes of campaigning for or against a particular ballot measure is certainly suspect and could be adjudicated a misappropriation of funds exposing government officials to potential civil liability. **Generally the recognized purpose of the initiative and referendum is to measure public feeling with an aim toward effectuating majority will**. Attempts by the government to control or influence the public vote have been considered repugnant not only to the guarantee of a "Republican Form of Government," under Article IV, Section 4 of the **United States Constitution but also to state constitutional provisions akin to Article VI, Section 19 of the South Dakota Constitution which guarantee that elections shall be free and equal**.

Further, the use of public tax dollars for **purposes of influencing election results implicates the rights of those who dissent from the government supported position.** Dissenters who are in effect compelled to finance the expression of views with which they disagree have reason to complain and may assert an **infringement of First Amendment Rights**. Burt v. Blumenauer, supra 699 P.2d at 175. The First Amendment freedom-of-speech

clause protects more than direct individual expression. It also prohibits laws or programs that compel adherence to government-prescribed views. See e.g., Wooley v. Maynard, 430 U.S. 705 (1977).

Aside from the **constitutional considerations**, municipalities, counties, and school districts **are not, in my opinion, statutorily authorized to appropriate and expend public funds for such purpose**. It is well established that municipalities, counties, and school districts are creatures of statute and have no inherent authority but only such powers as are expressly conferred upon them by statute and as may reasonably be implied there from. Sioux Falls Mun., etc. v. City of Sioux Falls, 233 N.W.2d 306 (S.D. 1975); State v. Hansen, 68 N.W.2d 480 (S.D. 1955); and Dahl v. Independent School Dist. No. 2, 187 N.W. 638 (S.D. 1922). **In view of the questionable nature, from a constitutional standpoint**, of the use of public funds for such purpose the courts have generally held that the authority therefore must be explicitly granted. Stanson, supra and, Citizens to Protect Pub. Funds v. Board of Education, 98 A.2d 673 (N.J. 1953). The power to do so must be given to the governing board by "clear and unmistakable language." Stanson, at 8.

Upon review of the South Dakota statutes **I can find no** statutory provisions that may in any manner be construed as explicitly giving a division of local government the authority to expend public monies for purposes of influencing election results. In fact, any claim that the expenditures are impliedly authorized under statute would be unreasonable. Accordingly**, the answer to Question No. 1 is "no."**

Beyond answering the Question of government officials advocating and using governments funds, with a resounding, "No", Attorney General Tellenhusien stated

"…**the recognized purpose of the initiative and referendum is to measure public feeling with an aim toward effectuating majority will.** Attempts by the government to control or influence the public vote have been considered repugnant repugnant not only to the guarantee of a "Republican Form of Government," under Article IV, Section 4 of the **United States Constitution but also to state constitutional provisions akin to Article VI, Section 19 of the South Dakota Constitution which guarantee that elections shall be free and equal**."

A look at the law on the Initiative process is called for here. The People of South Dakota, to their credit were the first – in 1888 - among all states, to recognize the importance of, and thereby implement the Initiative process – a direct vote by the People on certain ballot measures. In 1912 the Supreme Court ruled that the initiative process was complimentary, rather than contradictory, to the republican form of government established under the federal constitution. *Pacific States Tel. & Tel. Co. v. Oregon*, 223 U.S. 118 (1912). Thereafter, the courts have not questioned the legitimacy of the fundamental principle of the Initiative process.

In *Buckley v. American Constitutional Law Foundation*, 525 U.S.182 (1999), the Court struck down several Colorado laws restricting Initiative petition signature gathering. Writing for the Court, Justice Ginsburg stated at page 185:

> "Precedent guides our review. In *Meyer* v. *Grant,* 486 U.S. 414 (1988), we **struck down** Colorado's prohibition of payment for the circulation of ballot-initiative petitions. **Petition circulation, we held, is "core political speech**," because it involves "interactive communication concerning political change." *Id.,* at 422. First Amendment **protection** for such interaction, we agreed, **is "at its zenith."** *Id.,* at 425."

Gentlemen, our Initiative has been certified by the Secretary of State for the November 2006 ballot as Amendment "E". Amendment "E" addresses the need for political change. Your attacks on us, our supporters, and any other South Dakotans who want a debate or vote on Amendment "E", threaten and besiege "core political speech". Thus your actions, your HCR 1004, have violated our First Amendment rights. As *Meyer v. Grant* and *Buckley v. ACLF* addresses petition signature gathering issues, and mandates constitutional protection "at its zenith", also here with our Initiative **on the ballot,** it calls for even greater constitutional protection.

As such, we hereby formally request that you promptly, individually, and collectively (the entire House and Senate) reconsider your vote, and formally and publicly withdraw HCR 1004. We further formally request, that you publicly (in newspapers, radio, television and on official websites) apologize to the citizens of the State of South Dakota, for using your offices and public funds to – interfere to prevent the free exercise of the PUBLIC's right of suffrage (to vote), either for or against Amendment "E". We request that this action on your part be taken and accomplished promptly, no later than March 10, 2006, so as to quickly stop and mitigate the damage you have wrought to a free and equal election process.

Besides being blatantly in violation of the law and your oaths of office to follow the law, your actions smack of an imperial arrogance, an abuse of your office and power (loaned to you by the People), a fundamental failure to understand that you are servants of the People and of an outright contempt for the People you represent. Should you decide not

to take the above requested action, please explain the basis for your decision in writing, in specific detail.[2]

Further, as the leaders of your respective chambers and parties, WE are formally asking each of YOU, to answer in writing by March 10, 2006, whether you in fact condone or condemn the statements of your colleague, Senator Lee Schoenbeck, that appeared in the February 15, 2006 Aberdeen News article *Senate Panel Calls for Defeat of Ballot Measure on Judges* by AP reporter Chet Brokaw. (Copy of that article is attached here for your convenience.) Senator Schoenbeck's statements in their pertinent context are as follows:

1. "Supporters of the ballot measure argue it is needed to hold judges accountable for intentionally violating people's rights." But Sen. Lee Schoenbeck, R-Watertown, said the proposed constitutional amendment is **"backed by the same kind of people who killed a U.S. marshal in North Dakota years ago because they hate the American system of government."**

2. "Schoenbeck said **Branson and other supporters of the ballot measure apparently want to destroy the American system of government** set up by Thomas Jefferson, John Adams and the nation's other founders."[3]

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[2] You might first want to read *Justice Prosser Admits Campaign Conduct in Assembly*, by Dee J. Hall, February 2, 2006(Copy attached from Wisconsin State Journal)

> "Wisconsin Supreme Court Justice David Prosser is prepared to testify that during his seven years as an Assembly leader, the legislative employees under him routinely worked on private political campaigns, even at the Capital, according to a brief filed Thursday by the Attorney for Pre. Scott Jensen.
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> "Prosser and another former legislative leader, Joseph Strohl, acknowledge in the filing that they used their taxpayer-funded caucus staffs for campaigning-the same type of behavior for which Jensen faces three felonies and a misdemeanor charge. The two said maintaining their party's grip on power in the legislature was a key par of their duties as leaders."

[3] Senator Schoenbeck in citing Thomas Jefferson, clearly demonstrates that he does not remember, or maybe never knew, his history or Jefferson. Clearly Jefferson was not enamored with the judiciary and thought it was dangerous, and, if he was still here with us, it could be argued that he would be out in front leading for the passage of Amendment "E". For example, here are a few quotes from him.

> "The original error [was in] establishing a judiciary independent of the nation, and which, from the citadel of the law, can turn its guns on those they were meant to defend, and control and fashion their proceedings to its own will." (Thomas Jefferson, letter to John W. Eppes, 1807.)
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> "The Constitution is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please." (T. Jefferson letter to Judge Spencer Roane, 1819)
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> "I know of no safe repository of the ultimate power of society but the people themselves, and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take power from them, but to inform them." (T. Jefferson letter to William C. Jarvis, 1820.)

3. "Schoenbeck said Branson has challenged him to debate the issue, and he is ready to do that anytime, anywhere. '**I don't think we've ever called you for help in this state,**' Schoenbeck said in remarks toward Branson. '**We don't need your trash here.**'"

Clearly, these statements by Senator Schoenbeck are fundamentally disrespectful and demonstrate an arrogance of power. Even worse, they are caustic and inflammatory, and a demonstration of hate rhetoric. His statements are contrary to decent, effective and good leadership, and the public trust loaned to him. His allegations provide an example of bad citizenship, leadership, and government for South Dakota's youth. They also are defamatory. Last but not least – Senator Schoenbeck's statements are simply false and not based in fact.[4] Clearly they demonstrate that Senator Schoenbeck (and YOU collectively) must desperately resort to name calling and character assassination, because you simply have no meritorious arguments against Amendment "E". Although Senator Schoenbeck is entitled to his own opinion, he is not entitled to his own facts and prejudice. Let me explain.

By putting Amendment "E" forward, we are following in the best traditions of the First Amendment's rights of free speech and petition. As stated in pertinent part in *Landmark Communications, Inc. v. Virginia,* 435 U.S. 829 (1978), a case similar to YOUR conduct here in South Dakota. In *Landmark,* the three (3) branches of Virginia government acted in concert against the interest of the People of Virginia, by passing, executing (prosecuting) and upholding a criminal law that prohibited and punished (up to $1,000 fine and one year in prison) anyone who spoke publicly about a misconduct complaint being filed against a Virginia judge. Holding the Virginia law violated the First

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"To consider the judges as the ultimate arbiters of all constitutional questions [is] a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men and not more so. They have with others the same passions for party, for power, and the privilege of their corps. Their maxim is *boni judicis est ampliare jurisdictionem* [good justice is broad jurisdiction], and their power the more dangerous as they are in office for life and not responsible, as the other functionaries are, to the elective control. The Constitution has erected no such single tribunal, knowing that to whatever hands confided, with the corruptions of time and party, its members would become despots. (T. Jefferson letter to William C. Jarvis, 1820.)

"The germ of destruction is in the power of the judiciary, an irresponsible body - working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief over the field of jurisdiction, until all shall render powerless the checks of one branch over the other and will become as venal and oppressive as the government from which we separated." (T. Jefferson letter to Charles Hammond, 1821.)

[4] They are also ironic and the height of hypocricy, as Official Opinion 88-28 cites and relies upon as its authority several out-of-state, non-South Dakota cases, two (2) amazingly from guess where? California. *Stanson v. Mott* (1976) 17 Cal.3d 206; 551 P.2d 1 and *Gould v. Grubb,* 536 p.2D 1337, 348 (Cal. 1975) authority would use official power improperly to perpetuate themselves, or their allies, in office; the selective use of public funds in election campaigns, of course, raises the specter of just such an improper distortion of the democratic electoral process.' Stanson, supra at 9."

Amendment, and overturning the conviction (that was affirmed by the Virginia Supreme Court), Chief Justice Warren Burger wrote for the Court at page 839:

> "The operations of the courts and the judicial conduct of judges are matters of the **utmost public concern**."

In a similar fashion, years earlier Justice Louis Brandies stated::

> "The most important political office is that of **private citizen**."

Just as the citizens of Virginia fought to improve and establish integrity in their judiciary, "We the People of South Dakota", are attempting to do the same here with the South Dakota judiciary by way of Amendment "E".

Senator Schoenbeck's statement "the proposed constitutional amendment is **backed by the same kind of people who killed a U.S. marshal in North Dakota years ago because they hate the American system of government."** – in a word, is simply - intolerable. There is no basis or reason to link our Initiative, or those who back our Initiative, to the killing of a U.S. marshal in North Dakota. **This is hate speech.** Likewise there is no basis or reason to claim our Initiative backers hate the American system of government. This is also hate speech.[5]

I, Bill Stegmeier am the sole sponsor of the Initiative, Amendment "E". I have lived in South Dakota since 1968 - that's over 35 years. Further, I am a South Dakota private businessman and I take personal umbrage with Senator Schoenbeck's statements.

Also, the Initiative is backed and endorsed by several career law enforcement officers, among them, Sheriff John Eggers (Retired), Meade County, Sturgis, South Dakota, Mr. David Estes (long time South Dakota resident & retired Washington state policeman) currently residing in Vashon, Washington. Senator Schoenbeck slanders them.

Further, Mr. Branson, the author of the Judicial Accountability Initiative Law (J.A.I.L.), served in the U.S. Army and received an Honorable Discharge. Similarly, Mr. Zerman, a co-author of J.A.I.L, also served in the U.S.A.F as a Law Enforcement Specialist and also received an Honorable Discharge; and also is a licensed attorney in California and Arizona and has spent a limited time as a prosecutor. Both served in tours in Southeast-Asia. Senator Schoenbeck slanders them.

And Senator Schoenbeck slanders the 48,600 plus South Dakotans who signed the Initiative petition and put Amendment "E" on the ballot. But that's just what his hate

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[5] Although reporter Brokaw, and his editors/publishers, each have a right to report such, they also had an attendant duty to ask Schoenbeck what his statements "… backed by the same kind of people who **killed a U.S. marshal in North Dakota** years ago because they **hate the American system of government**' – were based on, and what, if any, connection there was/is between his statements, with Amendment "E" and Branson, myself, and our (or any other) backer or supporters of Amendment "E". Brokaw's (their) failure to ask, obtain and print Schoenbeck's answers is simply irresponsible journalism and simply republishing and spreading - the hate. What is the proof? Where is their proof?

statements were intended to do, as well as to slander the proponents of Amendment "E", in an effort to dissuade the voters from objectively considering the merits of the Amendment.

Gentlemen, just who is it and how is it, that any of us or our supporters - "**hate the American system of government**?" The same above arguments and questions apply equally to Senator Schoenbeck's statement "**… Branson and other supporters of the ballot measure apparently want to destroy the American system of government."** Where is the proof?

Regarding Senator Schoenbeck's last statements '**I don't think we've ever called you for help in this state,**' Schoenbeck said in remarks toward Branson. '**We don't need your trash here.**'" – apparently Senator Schoenbeck has no appreciation that America is supposed to be a free country, but believes he is some sort of king and that one would have to ask for his permission to communicate with South Dakota residents or to enter **OUR** state.

Apparently Senator Schoenbeck does not understand that I, Bill Stegmeier – a long time resident of South Dakota - am the sole sponsor of the Initiative and that 46,800 citizen voters signed the Initiative – putting Amendment "E" on the ballot for November 2006. Clearly, they at least have shown a desire to want a debate on this issue. We have always had every right to attempt to improve our government and to attempt to hold judges accountable for deliberate violations of law. And South Dakotans possess every right to associate with Mr. Branson and his J.A.I.L. organization. It's called the First Amendment.

Senator Schoenbeck's last statement "**We don't need your trash here."** – is more hate speech. It's also frankly an insult. An insult to me, Mr. Branson and members of his organization., Sheriff Egger, Mr. Estes, and not to mention the 46,800 South Dakota citizen voters who signed the Initiative.

As Justice Robert Jackson stated in pertinent part:

> "It is not the function of Government to keep the citizen from falling into error, it is the **function of the citizen to keep the Government from falling into error.**"

And that is exactly what Amendment "E" is attempting to do re absolute judicial immunity (that elevates the judiciary over, above, and beyond the sovereignty of the People), and therefore our requests to you are to reconsider your illicit actions in regards to your resolution.

We demand that each of you, as leaders of your respective chambers and parties, immediately condemn these statements, and that you demand Senator Schoenbeck retract and apologize for making them. Alternatively, should you elect to stand by your colleague, we demand that you explain and prove the basis for these statements. We are

sending a separate letter to Senator Schoenbeck and making the same demand – personally – on him, because he has chose to disrespect the proponents of this Amendment and irresponsibility issued his defamatory statements.[6]

Senators Bogue and Moore: I am still awaiting your questions about Amendment "E", which I informed you at your February 10, 2006 hearing, that I was not prepared to answer at that time, due to extremely short notice to me and the fact that Mr. Zerman, the main spokesperson for the Initiative, had to attend the funeral service for a family member on February 10, 2006. (It is my understanding that Mr. Zerman advised Mr. Barnett-South Dakota State Bar Lobbyist, who was working with your committee, of such on February 8, 2006.) Again, should you have some questions about the Initiative, please send them to me and I will promptly answer them for you.

In the spirit of fair play gentlemen, I would formally request that you answer in writing in seven (7) days the following questions from us.

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[6] A somewhat analogous case of official irresponsibility is Buckley v. Fitzsimmons, 509 U.S. 259 (1993), where the Supreme Court unanimously ruled that a prosecutor's statements at a press conference were not protected by absolute immunity. Justice Stevens writing for the court stated in pertinent part at page 262:

> "The theory of petitioner's case is that, in order to obtain an indictment in a case that had engendered 'extensive publicity' and 'intense emotions in the community,' the prosecutors fabricated false evidence, and that, in order to gain votes, Fitzsimmons made false statements about petitioner in a press conference announcing his arrest and indictment 12 days before the primary election. Petitioner claims that respondents' misconduct created a 'highly prejudicial and inflamed atmosphere' that seriously impaired the fairness of the judicial proceedings against an innocent man, and caused him to suffer a serious loss of freedom, mental anguish, and humiliation.
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> [at 277] "Fitzsimmons' statements to the media are not entitled to absolute immunity. Fitzsimmons does not suggest that, in 1871, there existed a common law immunity for a prosecutor's, or attorney's, out-of-court statement to the press. The Court of Appeals agreed that no such historical precedent exists. 952 F.2d, at 967. Indeed, while prosecutors, like all attorneys, were entitled to absolute immunity from defamation liability for statements made [during the course of judicial proceedings and relevant to them, see Burns, 500 U.S., at 489 -490; Imbler, 424 U.S., at 426 , n. 23; id., at 439 …
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> "The functional approach of Imbler, which conforms to the common law theory, leads us to the same conclusion. Comments to the media have no functional tie to the judicial process just because they are made by a prosecutor. At the press conference, Fitzsimmons did not act in '"his role as advocate for the State,"' Burns v. Reed, supra, 500 U.S., at 500 U.S., 491, quoting Imbler v. Pachtman, 424 U.S., at 431 , n. 33. The conduct of a press conference does not involve the initiation of a prosecution, the presentation of the state's case in court, or actions preparatory for these functions. Statements to the press may be an integral part of a prosecutor's job, see National District Attorneys Assn., National Prosecution Standards 107, 110 (2d ed. 1991), and they may serve a vital public function. But in these respects, a prosecutor is in no different position than other executive officials who deal with the press, and, as noted above, supra, at 268, 277, qualified immunity is the norm for them."

1. Where in the United States Constitution (what Article, section, clause - what spot) is the basis/authority for the doctrine of absolute judicial immunity found?

2. Why is it that none of the United States Supreme Court decisions on the doctrine of absolute judicial immunity (Randall v. Brigham, Bradley v. Fisher, Pierson v. Ray, Pulliam v. Allen, Stump v. Sparkman, Mireles v. Waco, etc.) ever cite, reference or provide a Constitutional basis/authority for the immunity?

3. Our Constitution starts out "WE THE PEOPLE" (not We the Government or We The Judges) and the first purpose stated is "To Establish Justice"; that said, how can the sovereignty of We The People get inverted, turned on its head, by allowing judges, our public servants, by way of the doctrine of absolute judicial immunity, to be placed over, above and beyond, the rights of We the People?

4. How and why will YOU continue to uphold and support - absolute immunity for those like Judge Stump, who in violation of due process and tenets of good judging, signed an order to sterilize a young 15-year-old girl, who was lied to and falsely told she was having an appendectomy and who never had an attorney, never appeared in court and never was represented in court?

5. How can the doctrine of absolute judicial immunity – where judges usurp immunity to themselves, not be in total violation of the doctrine of separation of powers – the so-called checks & balances – this subterfuge is repugnant to the Constitution and therefore absolutely VOID?

6. In you HCR 1004, at paragraph 12, it states ".WHEREAS, If approved, Amendment E would violate the federal Constitution, thereby subjecting South Dakota taxpayers to millions of dollars in damages and attorney fees;"; What is the basis, authority of reasoning, that Amendment "E", "would violate the federal constitution? Further, if their was a or is any memorandums or papers prepared in support of that statement, prior to the vote on HCR 104, could you please provide it?

For those who still may have any doubt, about how grave the problem of judicial misconduct and the lack of judicial accountability is, we bring to your attention, the October 4, 2005 article ***9th Circuit's Kozinski Blasts L.A. Judge, Majority in Discipline Case***, printed in *The Recorder*, by reporter Justin Scheck. (Copy provided with this letter )

> **"Can federal judges be trusted to police themselves? Alex Kozinski isn't so sure."**

That is the first sentence of Mr. Scheck's article. It continues:

> "In a withering 39-page dissent last week, the 9th U.S. Circuit Court of Appeals judge [Kozinski] **ripped into his colleagues for going soft** on a Los Angeles federal judge accused of misconduct." [*In re Complaint of Judicial Misconduct,* No 03-89037, Judicial Council, 9th Circuit, September 29, 2005.]

Why was Justice Kozinski so upset? Because it's the third (3rd) time the complaint was dismissed – this time final – but without any discipline being imposed, via an 8/2 vote, despite findings that the subject judge – U.S.D.C. Judge Manuel Real, who's name is totally absent from the 58-page dismissal order (and the entire case) – had improperly seized a bankruptcy case and without any legal basis or authority and issued an injunction that unjustly cost an innocent party over $50,000. Justice Kozinski wrote in pertinent part in his dissent:

> "…The district judge's injunction was, thus not merely unauthorized, **it was unlawful**. … A federal courtroom is not Sherwood Forest; a judge may not take property from one party and give it to another, except by following procedure. … Congress has not made us the **most powerful judges in the world** so we can bestow thousands of dollars of bounties on **our favorites** whenever we feel like it . … **It does not inspire confidence in the federal judiciary when we treat our own so much better than everybody else**."

**Treat our own so much better than everybody else?** Gentlemen, Justice Kozinski pulled the curtain back, gave us a look inside the federal judiciary, and showed us how it actually operates – how it treats one of their own.[7]

Now that's the federal system, the so-called gold standard. If federal judges can't be trusted to police themselves and the federal judiciary is not held accountable, why would South Dakota be any different? Your blatant illegal acts to shut down debate and a fair election on Amendment "E", clearly shows that YOU can't be trusted either. You have treated the issue, debate, and vote on Amendment "E", as if you own it.

A final quote, by Justice Brandies:

> "If we desire **respect** for the law, we must first make the law respectful."

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[7] See also *Self-Policing Federal Judges Rarely Impose Penalties*, August 7, 2002 AP-Washington article by Anne Gearan reporting that in 2001 the were 766 misconduct complaints against federal judges – but only 1 resulted in discipline being imposed. That's correct only 1/766, that's .0013%. And see *Judge May Face Sanctions-Federal Jurist* [Manuel Real] *Improperly Took Bankruptcy Case, Judicial Panel Says*, January 18, 2004 LA Times article by reporter Henry Weinstein reporting that dismissal of misconduct complaints is a routine practice, as year-in year-out, countrywide over 99% are dismissed out of hand. State judicial discipline agencies/commissions do not fare much better, as where they can be found, statistics show over 88% of the complaints against state judges end up without discipline, and where and when imposed it usually amounts to a slap on the wrist. See *California Commission on Judicial Performance,* 2004 Cases, 10-Year Statistics, http://cjp.ca.gov/ and note the grossly inordinate amount of tallies with "<1%" or "0".

Very profound words – that apply equally to all of government. Unfortunately, your actions and those of your colleagues here regarding Amendment "E" have not displayed leadership that would warrant respect regarding South Dakota government and you have certainly shown that you have no respect for the People of South Dakota or a free and fair election. In fact, you have provided a stark example of the quote "Liberty requires constant vigilance."

Gentlemen, we hope that you will show true leadership in representing the State of South Dakota, and reconsider you illicit actions, withdraw your resolution, apologize to the citizens of South Dakota, and work with us in achieving a better and accountable judiciary in South Dakota.

Cordially,

Bill Stegmeier, Treasurer
South Dakota Judicial Accountability Committee

BS/EH