

**2023 HOUSE JUDICIARY**

**HB 1500**

# 2023 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Room JW327B, State Capitol

HB 1500  
1/30/2023

Relating to identifying the ultimate and true source of funds; and to provide a penalty.

Chairman Klemin opened the hearing on HB 1500 at 10:43 AM. Members present: Chairmane Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, Rep. Vetter

## **Discussion Topics:**

- Public information
- Contribution sources
- Targeting candidates
- Pack definition

Rep. Schatz: Introduced the bill. Testimony #17691

Douglas Kellogg, Americans for Tax Reform: Testimony #17690

Michael Howe, ND Secretary of State: Testimony #17822

Shane Goettle, Brighter Future Alliance: Testimony #17719

Hearing closed at 11:26 AM.

Delores Shimek, Committee Clerk

# 2023 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Room JW327B, State Capitol

HB 1500  
1/30/2023

Relating to identifying the ultimate and true source of funds; and to provide a penalty.

Chairman Klemin opened the meeting on HB 1500 at 4:28 PM. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, Rep. Vetter

### Discussion Topics:

- Committee Action

Rep. Shannon Roers Jones moved a Do Not Pass;  
Seconded by Vice Chairman Karls

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	N
Representative Cole Christensen	N
Representative Claire Cory	Y
Representative Donna Henderson	A
Representative SuAnn Olson	N
Representative Nico Rios	N
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	N
Representative Lori VanWinkle	N
Representative Steve Vetter	Y

Roll Call Vote 6 Yes 6 No 1 Absent Failed

Meeting closed at 4:38 PM.

Delores Shimek, Committee Clerk

# 2023 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Room JW327B, State Capitol

HB 1500  
2/13/2023

Relating to identifying the ultimate and true source of funds; and to provide a penalty.

Chairman Klemin opened the meeting on HB 1500 9:48 AM. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, Rep. Vetter

## Discussion Topics:

- Proposed amendment.
- Transparency of Article 2 of the Constitution.
- Constitutional issues.
- Discussed a study.
- US Supreme Court decision.

Rep. Henderson moved the amendment 23.1069.01002; Testimony #20603  
Seconded by Rep. VanWinkle

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll Call Vote: 13 Yes 0 No 0 Absent

Rep. VanWinkle moved a Do Pass as Amended;  
Seconded by Rep. Henderson

<b>Representatives</b>	<b>Vote</b>
Representative Lawrence R. Klemin	N
Representative Karen Karls	N
Representative Landon Bahl	Y
Representative Cole Christensen	N
Representative Claire Cory	N
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	N
Representative Bernie Satrom	N
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	N

6 Yes 7 No 0 Absent Failed

Rep. Cory moved a Do Not Pass as Amended;  
Seconded by Vice Chairman Karls

<b>Representatives</b>	<b>Vote</b>
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	N
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	A
Representative SuAnn Olson	N
Representative Nico Rios	N
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	N
Representative Lori VanWinkle	N
Representative Steve Vetter	Y

Roll Call Vote: 7 Yes 5 No 1 Absent Carrier: Rep. Shannon Roers Jones

Meeting closed at 10:19 AM.

Delores Shimek, Committee Clerk

at  
2-13-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1500

Page 3, line 25, remove "and"

Page 3, line 26, after "committee" insert : and

d. A nonprofit organization exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)]"

Page 4, line 18, replace the first underscored comma with "and"

Page 4, line 18, remove ", occupation, and employer"

Page 4, line 27, replace "Wages" with "Money earned from employment, self-employment"

Page 7, line 3, remove "For each person identified under subdivision a, the amount of the original funds"

Page 7, remove lines 4 and 5

Page 7, line 6, remove "c."

Page 7, line 9, replace "d." with "c."

Page 7, line 11, replace "e." with "d."

Page 7, line 24, remove "The covered person may"

Page 7, remove lines 25 through 29

Page 8, line 10, replace "five" with "ten"

Page 8, line 14, remove "and the individual who determines the expenditures for which"

Page 8, line 15, remove "the traceable funds are used"

Page 9, line 16, remove "A lawsuit regarding"

Page 9, remove lines 17 through 22

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1500: Judiciary Committee (Rep. Klemin, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (7 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1500 was placed on the Sixth order on the calendar.

Page 3, line 25, remove "and"

Page 3, line 26, after "committee" insert : and

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Renumber accordingly

**TESTIMONY**

**HB 1500**





# AMERICANS *for* TAX REFORM

January 30, 2023

To: Members of the North Dakota House Judiciary Committee  
From: Americans for Tax Reform  
Re: Testimony in opposition to H.B. 1500 of ATR State Projects Director Doug Kellogg

Dear Chair Klemin, Vice Chair Karls, and Members of the Committee,

**On behalf of Americans for Tax Reform (ATR) and our supporters across North Dakota I urge you to oppose and reject House Bill 1500. This legislation would place the privacy of North Dakotans who contribute to causes they believe in at risk, while making it more difficult for all non-profit advocacy organizations to exist.**

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[www.ATR.org](http://www.ATR.org)

HB 1500 would inflict a number of damaging, unconstitutional consequences on North Dakotans. It would force the disclosure of the “original source of funds” for any contributors giving just \$200 to an organization, require the names, addresses, and employers for these contributors to be posted publicly online, and allow anyone to sue or lodge complaints over a group’s activities, all under the threat of criminal penalty and fine.

This bill would literally criminalize the constitutionally protected free speech and free association rights of North Dakotans, exposing those who give to non-profit 501(c)4 or (c)3 groups to harassment and intimidation in perpetuity. Further, the “original source of funds” standard would be the most invasive version of this unconstitutional disclosure policy, the only hope for enforcing such a requirement would be giving more power to government to invade our privacy.

While the bill mentions political activity, it clearly applies its aggressive disclosure and reporting standards to any entity that contributes a small amount of resources to make the public aware of legislation or a politician’s record.

It would also swamp the Secretary of State and/or ethics commission with complaints from various policy opponents designed to cause each other harm regardless of their merit.

While it is understandable that an organization that abuses its non-profit charter could draw the attention of legislators, there are existing legal consequences for such abuse – including losing its tax status and ability to raise funds.

Privacy is required to protect the rights of North Dakotans, and all Americans, to speak freely and petition their government. These principles are what allow Americans to support their favorite charities, government watchdogs, community and religious organizations, without fear that those in power who disagree will punish or intimidate them – or that an online mob will try to get them fired.

The Supreme Court recently made it clear that privacy in charitable giving is required to exercise free speech in *Bonta v. AFPP*, because intimidation is an obvious side effect of disclosure that would render the right to speech mute. Legislators should take care to not violate these principles and rights when making changes to campaign finance law.

Many of the bluest states, like New York, have deliberately attempted to expand the definition of electioneering to hamstring advocacy groups that organize in support of, or opposition to, legislation. Democrats in Congress have relentlessly pushed a similar approach with H.R. 1, which would have required disclosure of donors by non-profit groups and twisted definitions to turn policy advocacy into electioneering.

While defending speech and citizen privacy can still be a non-partisan issue, these trends should make red state lawmakers who support individual rights and limited government think twice when such policies are put before them.

The North Dakota legislature passed responsible legislation in response to the unconstitutional ballot measure approved by hoodwinked voters a few years ago. HB 1500 would undo these efforts to protect free speech in North Dakota.

**For these reasons, Americans for Tax Reform strongly opposes HB 1500, and urges you to reject the bill.**

Thank you.

Representative Mike Schatz  
House District 39  
Testimony for HB 1500

To: The Honorable Members of the North Dakota Interim Judiciary Committee From: Rob Cook, former member of the Montana House of Representatives Subject: Testimony in Support of Dark Money Legislation Date: November 13, 2019  
My name is Rob Cook and I served in the Montana House of Representatives for four terms spanning from 2011 to 2017. In the 2015 legislative session, four years ago, the Montana Legislature passed sweeping legislation designed to reform our existing campaign finance disclosure regulations. The bill, called the Disclose Act, has now been in place for two election cycles and it has had a marked effect on Montana's campaign environment. I am proud to have been an integral part of its passage and I thank you for letting me tell you about it today.

Beginning in 2008, Montana voters were treated to a new campaign tactic. For the first time, they began to receive a significant volume of mailers and other campaign advertising from groups that were, on the surface, unaffiliated with a candidate. These groups had anonymous funding sources and they had benign and helpful sounding names like: "Western Tradition Partnership", "Mothers Against Child Predators", and many others. The campaign strategy employed by these groups was always the same. The groups saturated mailboxes and filled radio time with incendiary mailers and inflammatory radio ads during the period just before and just after mail ballots were delivered and again during the week leading up to election day. The volume and timing of these attacks caught most candidates unprepared to respond and the composition of our legislature began to change significantly.

To understand why Montana's elections were so vulnerable to this spending it is necessary to know a little about Montana's election history.

From the Copper Kings and the Anaconda Mining Company to William Clark himself, Montana's elections have a rather sordid past. In 1899 the US Senate refused to seat William Clark after it was discovered that he had bribed the Montana Legislature to attain the appointment. Clark's behavior was deemed so egregious that it became a major contributor to the passage of the 17th amendment which provides for the direct election of US Senators. In response, Montana's citizens used the constitutional initiative process to ban corporate spending in elections and, not to be outdone, Montana's Legislature passed strict campaign finance reporting laws with very low individual maximum contribution limits for candidates.

These laws, and our small population, served to keep the cost of a legislative race very low. Our inexpensive races had the advantage of increasing access to the legislature but it also made them extremely vulnerable to unregulated, outside spending. In other words, a relatively small influx of outside money could, and did, significantly influence the composition of our state legislature.

For example, in 2008 one outside group spent \$19,000 in each of fourteen Montana legislative elections. This spending represented more than four times the amount spent in previous elections and it resulted in a significant change in the makeup of our legislature. No information was available for radio listeners or mailer recipients to ascertain who was spending this money in their elections. The donors were anonymous, and the money was dark.

Montana had reached a crisis and by 2013 voters had had enough. A statewide referendum was passed opposing the Citizens United decision and voters were asking for laws to address the lack of transparency in election spending. The 2013 legislature tried, and failed, to improve transparency. And it fell upon the 2015 legislature to satisfy the voter's request.

During the 2015 session, the transparency debate was juxtaposed against the right to privacy or anonymity. But when these two concepts were evaluated against the backdrop of election spending it was necessary to determine which provided the greater good. It was my belief that, under existing campaign finance reporting laws, the local voter was functionally disenfranchised. Whether it be because of the arbitrarily low individual contribution limits, candidate disclosure requirements, or simply the limited wealth at the disposal of a single individual. Political groups, however, played by different rules. Their donations were not limited, they were currently anonymous, and the process of association with like-minded donors ensured that they had more money to apply to political outcomes.

Should a citizen, who is directly affected by the outcome of a local race, be functionally disenfranchised by an enormous pot of outside money, collected anonymously, whose only tie to the race is most often just a single issue? I don't think so. Further, I think that by illuminating the source of funds, transparency requirements actually reduce the efficacy of outside spending. This, in turn, helps to ensure a more level playing field for the voter.

Montana's legislature did not pass the Disclose Act unanimously. In fact, the reforms were extremely contentious, and it required a collection of both Republicans and Democrats to get the bill to our Governor's desk. Coalitions, by their

nature, demand compromise, Republicans did not get higher individual contribution limits and Democrats did not get a lower disclosure threshold. I do not view the need for a bipartisan coalition to be unusual as campaign finance reform is generally seen as a larger threat to the party that is in power. This is one of the factors that makes it so difficult to achieve meaningful reforms. For those who might hold this concern, subsequent election results have provided compelling evidence that the reforms didn't hamper either party.

And finally, for me the question became: "Can truly representative government continue to exist in a universe of highly skewed campaign finance regulations?" When I analyzed Montana's existing laws I found that, almost without exception, each of my state's campaign finance laws favored political groups at the expense of the individual donor. Surely this is not what our founders envisioned when they established the Republic. Change was required, the voters asked for it, and our legislature complied with their request.

**House Judiciary Committee  
Chairman Lawrence Klemm  
January 30, 2023  
Testimony By Shane Goettle  
Lobbyist for Brighter Future Alliance**

**HB 1500**

Chairman Klemm and members of the House Judiciary Committee, my name is Shane Goettle, and I am here today as a lobbyist on behalf the Brighter Future Alliance, a 501(c)(4) operating and a 527 organization under federal law.

**Summary**

HB 1500 is punitive, unworkable, and unconstitutional. The bill is an assault on non-profits like the Brighter Future Alliance and proposes intimidation and excessive regulation to restrict and interfere with lawful activity. This burden will serve as a prior restraint on free speech and interfere with constitutional rights to free association, and collective speech.

**The History of 501(c)(4)s**

For decades, the voice of business and industry was prohibited from participating in our democracy while unions, environmental groups and certain anti-business groups were given free reign. Then came Citizens United. The U.S. Supreme Court, in the Citizens United decision, fostered the modern 501(c)(4) organization and restored the rightful voice of business and industry in safeguarding its important voice in matters of public policy and elections.

Since that decision, many forces have been at work attempting to overturn the ruling and effect of Citizens United by legislating a regulatory regime at the state level that impedes and restricts the effectiveness of 501(c)4s. The legislation in front of you today is nothing more than a veiled attempt to bypass the rights granted to business by the U.S. Supreme Court. It would muzzle the voice of business and give certain groups in the various states exactly what they want: a one-sided debate on taxes, regulations, and commerce.

**Brighter Future Alliance**

The Brighter Future Alliance is a social education 501(c)(4) non-profit. Its mission is to advance the cause of freedom and free enterprise to further the common good and general welfare of the citizens of North Dakota and the United States. Much of its work and spending is in the public policy arena. Brighter Future Alliance has promoted voting, free and fair elections, infrastructure development, workforce safety and a number of other issues confronted by our state's leading businesses and industry. Actual political campaign activity is limited, by IRS regulation, to less than 25%.

The impact of Brighter Future Alliance's political involvement, while not a major part of its overall effort, has been significant. For example, it got involved against Measure 3 in the 2020 election cycle, a ballot measure that would have overturned our election laws with jungle primaries and rank choice voting. Measure 3 was ultimately kept off the ballot through a court challenge. Brighter Future Alliance helped defeat the legalization of recreational marijuana and its threat to workplace safety.

You should not treat non-profits like you would candidate, political or measure committees. Unlike candidate and measure committees who have well-defined political purposes, most 501(c)4s operate in multiple states focusing on a variety of issues with only a small fraction of spending used for electioneering.

In the case of the Brighter Future Alliance, in accord with its missions, it will always pursue a pro-business, responsible government agenda.

## **What is wrong with HB 1500?**

### **It's Unconstitutional**

We may not always like the protections afforded by the constitution, especially when we disagree with the activity protected, but the constitution is the foundation of our democracy and requires adherence to its principles above all else. HB 1500 is a clear violation of the constitutional right to association, associational privacy and free speech.

In *Citizens United v. the FEC*, the U.S. Supreme Court held that a prohibition on corporate independent expenditures and electioneering communications is a ban on speech and "political speech must prevail against laws that would suppress it, whether by design or inadvertence." Accordingly, laws that burden political speech are subject to "strict scrutiny," which requires the government to prove that a restriction furthers a compelling interest and is narrowly tailored to achieve that interest.

As defined in *Citizens United*, business and industry have the right to come together and pursue an agenda in support of their interests. Further, the constitution protects the identity of the members of associations like the Brighter Future Alliance. By requiring disclosure of donations made by its members, HB1500 discourages the formation of associations and violates rights of privacy.

HB 1500's limits on the use of funds, disclaimer rules and radical enforcement provisions are also an attack on the constitutional right to free speech. *Citizens United* already settled the issue and prevents government from limiting who contributes, and how and when funds can be used. Further, the disclaimer, criminalization, and private right of action provisions are extreme and unlike anything else in North Dakota election law. Clearly, these provisions are intended to discourage donors from exercising their right to free speech as guaranteed by the U.S. Supreme Court's *Citizens United* decision.

The modern day 501(c)(4)s were recognized and permitted by the U.S. Supreme Court. They

are regulated by the Internal Revenue Service. To ensure the even and fair application of reporting requirements, any regulation must happen at the federal level.

### **It's Unworkable and Punitive**

1. The concept of tracing true source of funds is unworkable. How are non-profits to know if someone bundled donations? How is it to know which members of a church are responsible? If a business contributes, is it really the owner, employee or stockholders that must be identified? Where does it stop? Who determines where it stops? Imagine the bureaucratic nightmare and cost if every donation must be traced to its supposed "true source."
2. The tracing requirement is also punitive. No other candidate or measure related group is required to trace their donations. Clearly, this requirement is intended to target and punish 501(c)(4) organizations.
3. The bill's requirement to list the top three donors in any disclaimer is also punitive. No other political entity or candidate is required to use donor names in disclaimers. This provision is clearly intended to suppress contributions to 501(c)(4)s, especially to state-based 501(c)(4)s, from large donors through intimidation.
4. The new reporting required creates a mountain of bureaucratic excess for the Secretary of State and the affected non-profits. And the truth is that the state's current system cannot handle it.
5. The private right of action has the potential to encourage a deluge of frivolous lawsuits against both the Secretary of State and any non-profit engaged in political activity by those on the opposite side of any particular issue.
6. The standard for structure is undefined and the potential for criminalization based on differences of opinion is chilling.

### **Conclusion**

When taken in its entirety, HB 1500 is obviously designed to do through legislation what anti-business forces could not do in the court -- limit the voice of business in our political process and upend the Citizen's United decision.

On behalf of Brighter Future Alliance, I encourage you to reject HB 1500 with a "do not pass."

MICHAEL C. HOWE  
SECRETARY OF STATE

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

HOUSE BILL 1500  
JANUARY 30, 2023

HOUSE JUDICIARY COMMITTEE  
REPRESENTATIVE LAWENCE KLEMIN, CHAIR

TESTIMONY PRESENTED BY

**MICHAEL HOWE, SECRETARY OF STATE**

Chairman Klemin and members of the committee, for the record, Michael Howe, North Dakota Secretary of State.

We are in opposition to HB 1500. This bill mirrors the intent of HB 1451 from the 2021 session, which was defeated on a party-line vote 14 to 80. The previous Secretary of State’s administration also testified in opposition to that bill.

I want to be perfectly clear; our office’s opposition is not to be meant as advocating against transparency. Our office prides itself on working with the legislature, as well as the public, on providing a transparent system that shows who is funding and influencing candidates, political parties, and measure campaigns.

Along with the many complexities this bill presents for reporting, and perhaps its unconstitutionality, the bill also gives the Secretary of State’s office a unique power to investigate possible violations with or without receiving a complaint.

The bill states that if a complaint is brought forward to the Secretary of State and is dismissed, the complainant may file an action against the Secretary of State, alleging the action or inaction of the Secretary of State was not reasonable. The bill also states the court may not give deference to the Secretary of State’s decision in the lawsuit. We feel this may open the Secretary of State’s office to frivolous lawsuits.

Mr. Chairman, this bill will certainly require a new campaign finance system to be implemented. We have made that request in SB 2002. But if that request isn’t appropriated, this bill will certainly not be able to be implemented and enforced by our office.

There are numerous bills this session that examine campaign finance laws. We would encourage the legislative assembly to consider an interim study to look at North Dakota’s campaign finance laws and systems. If all of them were to pass, it would create a ball of wires within Century Code and our system that would be impossible to enforce and a burden to implement with our technology.

Mr. Chairman, I urge a DO NOT PASS on HB 1500, or at the very least, amending this bill into an interim study that looks at our campaign finance laws.



23.1069.01002  
Title.

Prepared by the Legislative Council staff for  
Representative S. Olson  
February 3, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1500

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- Page 3, line 26, after "committee" insert : and
  - d. A nonprofit organization exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)]"
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