

# HB 1451: Voters Right to Know – DO PASS

## Frequently Asked Questions

### What is the problem?

A new kind of political spending in the past decade has enabled people, organizations, and corporations to spend unlimited amounts of money to influence elections in secret. This is a problem because when large amounts of money are spent to influence elections and government in secret, voters cannot assess the integrity and motives of the spenders. Voters cannot even be sure that the spenders are Americans, rather than foreigners attempting to interfere in our elections and government. Organizations that make “independent expenditures” must be held to the same transparency standards as other political spenders, so that they cannot be used as a tool for concealing the true sources of money spent to influence North Dakota elections. Section 1 of Article XIV in North Dakota’s Constitution requires it.

### What is the purpose of HB1451?

North Dakotans have a right to know who is trying to influence our elections. Law now requires disclosing donors over \$200 to

- Candidate campaigns
- Political Committees (PACs)
- Ballot measure sponsors

One major new group is left out. HB1451 requires naming the donors to a new “Wild West” approach to election persuasion called “independent expenditures.”

The purposes of HB1451 are:

- to apply North Dakota’s commitment to transparency of the ultimate and true source of political spending by requiring disclosure, as is done in all other North Dakota political spending,
- to harmonize state statute with the state constitution, and
- to define the administrative procedures for executive branch administration

### What is an Independent Expenditure?

North Dakota state law defines “independent expenditure” as “an expenditure made for a political purpose or for the purpose of influencing the passage or defeat of a measure if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate, committee, or political party.”

### Who makes Independent Expenditures?

For an expenditure to be “independent,” it must not be made in coordination with candidates or campaigns. Groups who make independent expenditures are often temporary, with nice-sounding but misleading names that conceal who is behind the group while appealing to the local voters the group seeks to influence.<sup>1</sup> Under current law, these groups do not have to report where they got the money they use to pay for their political spending. That money may come from individuals, other groups, or corporations, and there is no limit to how much they may contribute to help finance this secret political spending. Since the 2010 Supreme Court decision called “Citizens United” began allowing corporations to make political donations, the use of this approach has exploded nationally.

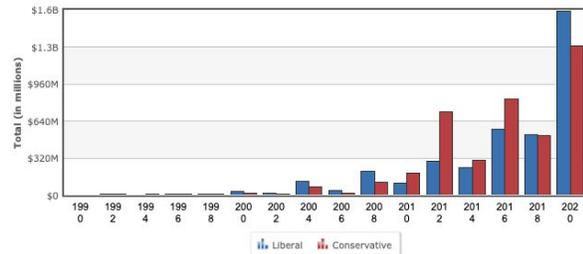
---

<sup>1</sup> In North Dakota, these groups range from conservative to liberal, including: Brighter Future Alliance, Americans for Prosperity, CitizenLink, Conservation Federation of Missouri, Divorce Film LLC, Family Policy Alliance of North Dakota, Fargo Stopping Center LLC, Feminist Majority Foundation, First Principle, Liberty Initiative Fund, NDCC Inc, NDFA Action, North Dakotans for Sound Government, North Dakotans for Common Sense Conservation, North Dakotans Against the 400% Tax Increase, Prairie Action ND, Protect the Harvest, US Term Limits, USND, Vets for Economic Freedom, Working America.

## What do they spend the money on? How much?

Independent expenditures fund political ads that are intended to influence voters and decision-makers, independent of any candidate or ballot committee. Since 2012, ballot measures have been the major issues for independent spending in North Dakota.<sup>2</sup>

### Total Liberal vs. Conservative Outside Spending, Excluding Party Committees



At the federal level, independent expenditures went from \$205 million in 2010 to \$2.9 billion in 2020, from both conservatives and liberals. Just 11 wealthy individuals, liberal and conservative, invested over \$1 billion between 2010 and 2018.

In North Dakota, independent expenditure groups spent \$20.6 million in the last five elections, from a low of \$383,000 to a high of \$11,350,500, averaging \$4.12 million per election.

## How must the sources of independent expenditures be identified – what does “ultimate and true source” mean?

Based on Section 1 of HB 1451, this Article XIV requirement focuses on “original funds” from an individual or corporate “person,” *i.e.*, wages, investment returns, bequests, or money received through ordinary commercial transactions. This approach allows voters to know specifically who is behind the message by eliminating anonymous pass-through to an organization.

## How can a donor “opt out” of having their money used for political spending?

HB1451 balances voters’ right to know the ultimate and true source of political spending with donors’ right to privacy regarding donations that are not intended for political spending. A donor who exercises the right to opt their donation out of being used for political spending is not subject to the disclosure requirements of HB1451.

## Where did HB1451 come from? Is there a deadline?

The bill is a continuation of the legislature’s mandate to implement Article XIV, which the voters approved in 2018. This bill expands and improves on the legislature’s work in 2019, to ensure the legislation fully implements Article XIV’s transparency mandate. The Constitution requires completion of this work by January 2022.

## Specifically, what does this bill apply to?

HB1451 requires a person that spends substantial amounts of money that is not the person’s own “original funds” on state-level political spending to disclose the ultimate and true source of that spending. It does NOT apply to

- A person who spends or contributes the person’s own original funds
- Candidates and their committees
- Political party committees

Those individuals and groups are already required to disclose the sources of their political spending. This bill DOES apply to SuperPACs, which the Federal Election Commission defines this way: “Super PACs are independent expenditure-only political committees that may receive unlimited contributions from individuals, corporations, labor unions and other political action committees for the purpose of financing independent expenditures and other independent political activity.”

<sup>2</sup> Practices of farming and ranching, Prohibiting smoking in public places and worksites, Prevention of animal cruelty, School after Labor Day, Operation of a pharmacy, Parental rights and responsibilities, Clean water, wildlife, and parks trust, Fiscal impact of initiated measures, Change SBHE to three-member commission, Prohibit mortgage and real estate sales taxes, Right to life at every stage, Legislator residency, Oil extraction tax distribution, Crime victim rights, Tobacco tax increase, Medical marijuana, Ethics commission, Qualified elector, Legal marijuana, Personal plates for emergency responders, State board of higher education, Initiated measures.