

2023 SENATE STATE AND LOCAL GOVERNMENT

SB 2312

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SB 2312
2/2/2023

Relating to large expenditure disclosures statements required of political committees; relating to independent expenditures; provide a penalty.

9:00 AM Vice-Chair Barta opened the hearing. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- Reporting requirements
- Disclosure statements
- Funding
- Transparency

Sen Magrum, District 8, bill sponsor, testified in support with amendment 23.0731.01001. #19002, #19008.

9:16 AM Rep Jeff Hoverson, District 3, testified in support with no written testimony.

9:28 AM Shane Goettle, Brighter Future Alliance, testified in opposition #18768

9:43 AM Lee Ann Oliver, Sec of State Office, testified neutral #18762

9:48 AM Vice-Chair Barta closed hearing.

Pam Dever, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SB 2312
2/9/2023

Relating to independent expenditures; provide a penalty.

10:43 AM Chair Roers opened the meeting. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- Committee action

Sen Cleary moved a DO NOT PASS.

Sen Lee seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	Y
Senator Judy Lee	Y

VOTE: YES – 6 NO – 0 Absent – 0 Motion PASSED

Sen Roers will carry the bill.

10:47 Chair Roers closed the meeting.

Pam Dever, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2312: State and Local Government Committee (Sen. K. Roers, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2312 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

TESTIMONY

SB 2312

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**SENATE STATE & LOCAL
SENATOR KRISTIN ROERS, CHAIR**

**SENATE BILL 2312
FEBRUARY 2, 2023**

TESTIMONY PRESENTED BY

LEE ANN OLIVER, SECRETARY OF STATE

Chairman Roers and members of the committee, for the record, Lee Ann Oliver with the elections division of the Secretary of State.

Our office is currently tracking 41 bills related to elections. Of that number, 27 percent (11 bills) are campaign finance related. Senate Bill 2312 is also focused on campaign finance, related directly to large expenditure disclosure statements linked to political committees.

Our office is not against transparency and 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.

Due to the 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.

Chairman Roers, 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. The study would ensure that whatever changes are considered are adequately scoped in our preparation for a new system.

Madam Chairman, members of the committee, I urge you to consider amending this bill into an interim study that looks at our campaign finance laws.

Senate State & Local Government Committee
Chairman Kristen Roers
February 2, 2023
Testimony By Shane Goettle
Lobbyist for Brighter Future Alliance

SB 2312

Chairman Roers and members of the Senate State and Local Government Committee, my name is Shane Goettle, and I am here today as a lobbyist on behalf the Brighter Future Alliance, a 501(c)(4) advocacy organization operating in compliance with federal law.

I am just going to speak to Section 2 beginning on lines 17-22. That section is unworkable, and because it would serve as prior restraint on speech, also unconstitutional.

The History of 501(c)(4) Advocacy

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 advocacy organization and restored the rights of business and industry, safeguarding their 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)(4) advocacy organizations. The legislation in front of you today, specifically the tracing requirements in Section 2, would have the effect of muzzling the voice of business and giving certain groups in the various states exactly what they want: a one-sided debate on taxes, regulations, and commerce.

A 501(c)(4) can engage in any mission or cause. Some may never engage in “electioneering”, while others may put together voter guides to reveal the voting records of legislators who support or oppose their main issues. Some may zero in on those voting records in other ways, such as through radio or flyers. If that kind of activity occurs in the context of an upcoming election, specifically by naming someone who is up for election that cycle, the 501(c)(4) is now “electioneering” or transmitting information that might be relevant to voters concerning a particular candidate. But keep in mind, this is NEVER the primary activity or purpose of a 501(c)(4). It cannot be under federal law.

Thus, you should not treat non-profits like you would candidates, political committees, or measure committees. These all have a well-defined political purpose. On the other hand, most 501(c)(4)s operate in multiple states, focusing on a variety of issues, with only a small fraction of spending used for “electioneering.”

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 also helped defeat the legalization of recreational marijuana and its threat to workplace safety.

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 Section 2 of SB 2312?

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.

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 non-profit associations. By requiring disclosure of donations made to this nonprofit by its contributors AND subcontributors, the bill demands a disclosure and tracing requirement that is so onerous, it will operate as an unconstitutional prior restraint on speech.

Let me illustrate by way example:

- First, keep in mind that, by federal law, a 501(c)(4)'s primary mission can NOT be to "electioneer" in advance of an election. It's primary mission, to maintain its nonprofit status, must be what is termed in federal law as "social welfare."

- To maintain its status as a nonprofit “social welfare” entity, a safe harbor rule that most 501(c)(4)s follow is that that over 75% of expenditures MUST be on mission related work. Thus, “electioneering” expenditures must then be less than 25% of total expenditures. (Brighter Future Alliance follows this rule.)
- Let’s suppose a 501(c)(4) operates in multiple states, engages in multiple issues (election laws in one state, recreational marijuana in another, religions freedom in a third, etc.)
- Let’s also suppose it raises \$1m dollars to support its communication efforts on all these issues in the various states. It receives money from churches, individuals, businesses, trade associations, and other nonprofits.
- It picks one state where it puts out a voter guide in the weeks leading up to the election rating certain legislators. Suppose the voter guide costs \$10 thousand to produce and distribute. Let’s assume this voter guide meets the requirements of an independent expenditure and is done within the context of an upcoming election.
- While the independent expenditure amounts to only 1% of its total expenditures, Section 2 of SB 2312 would have it reveal all its contributors and subcontributors who gave over \$200.

And herein lies the problem. First, donations are not earmarked and so cannot be attributed to one use. Rather than engage in the exhaustive disclosure requirement to list ALL donors over \$200 (going back how far?), and attempting to secure information pertaining to their subdonors, the organization will choose to simply refrain from the speech it intended.

Government regulation has been effectively used to mute a voice that would have otherwise spoken up. Under the 1st Amendment to the U.S. Constitution, this “muzzling” serves as a prior restraint on speech. It may also impact the ability to bring people together for such purposes, which also infringes on freedom of association. Perhaps some large multi-state 501(c)(4)s might get creative and structure themselves in a way that arranges their disclosures to fit the political winds, but that just makes another point: small entities are chased out of using their voice in the political process while large nonprofit entities, with larger staff and more sophisticated software and legal acumen, find yet another way to continue to engage in elections.

Four final points to summarize:



1. The concept of tracing true source of funds from contributors through to subcontributors 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 proposed in SB 2312 is extreme and unlike anything else in North Dakota election law. No other candidate or measure related group is required to trace their donations like what is proposed in this bill. Clearly, this requirement is intended to target and punish 501(c)(4) organizations that engage in political speech.

3. 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.
4. Under Citizens United, business and industry have the right to come together and pursue a mission in support of their interests. The constitution protects their speech. The constitution also protects their identity as members of an association. (See the U.S. Supreme Court case: *Americans for Prosperity v Bonta, Attorney General of California*, 2021.)

Conclusion

When taken in its entirety, Section 2 of SB 2312 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 SB 2312 with a "do not pass."

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Federal Election Commission
UNITED STATES - of - AMERICA

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> [FEC announces 2021-2022 campaign cycle contribution limits](#)

PRESS RELEASE

FEC announces 2021-2022 campaign cycle contribution limits

February 2, 2021

WASHINGTON – The Federal Election Commission announced updated contribution limits that have been indexed for inflation and are effective for federal elections in 2021-22.

The Bipartisan Campaign Reform Act of 2002 (BCRA) included provisions that indexed some contribution limits for inflation. The limit on individuals' contributions to candidates, for example, was set at \$2,000 per election in BCRA; it is adjusted at the start of each new election cycle. Adjustments are announced after the Department of Labor determines the inflation rate for the previous election year.

During the current two-year election cycle the limit for contributions by individuals to federal candidates for President, the U.S. Senate and the U.S. House of Representatives will increase to \$2,900 per election.

Campaign finance provisions of the Consolidated and Further Continuing Appropriations Act, 2015 permitted national party committees to establish three additional accounts to defray certain expenses incurred with respect to presidential nominating conventions, election

ARTICLE XIV ETHICS COMMISSION

Section 1.

1. The people of North Dakota need information to choose candidates for office, vote on ballot measures, and ensure that their representatives are accountable. This transparency must be sufficient to enable the people to make informed decisions and give proper weight to different speakers and messages. The people therefore have the right to know in a timely manner the source, quantity, timing, and nature of resources used to influence any statewide election, election for the legislative assembly, statewide ballot-issue election, and state government action. This right is essential to the rights of free speech, assembly, and petition guaranteed by the First Amendment to the Constitution of the United States and shall be construed broadly.
2. The legislative assembly shall implement and enforce this section by enacting, no more than three years after the effective date of this article, laws that require prompt, electronically accessible, plainly comprehensible, public disclosure of the ultimate and true source of funds spent in any medium, in an amount greater than two hundred dollars, adjusted for inflation, to influence any statewide election, election for the legislative assembly, statewide ballot-issue election, or to lobby or otherwise influence state government action. The legislative assembly shall have an ongoing duty to revise these laws as necessary to promote the purposes of this section in light of changes in technology and political practices. The legislative assembly shall vest by law one or more entities with authority to implement, interpret, and enforce this section and legislation enacted thereunder. If the laws or rules enacted or an implementation, interpretation, or enforcement action taken under this section fail to fully vindicate the rights provided in this section, a resident taxpayer may bring suit in the courts of this state to enforce such rights.

Section 2.

1. A lobbyist may not knowingly give, offer, solicit, initiate, or facilitate a gift to a public official. A public official may not knowingly accept a gift from a lobbyist. These prohibitions do not apply if the lobbyist is an immediate family member of the public official. "Gift," as used in this subsection, means any item, service, or thing of value not given in exchange for fair market consideration, including gifts of travel or recreation. However, "gift" does not mean any purely informational material, campaign contribution, or, in order to advance opportunities for North Dakota residents to meet with public officials in educational and social settings inside the state, any item, service, or thing of value given under conditions that do not raise ethical concerns, as determined by rules adopted by the ethics commission. Such rules must be adopted within two years after the effective date of this article. So as to allow for the adoption of these rules, these prohibitions shall take effect two years after the effective date of this article. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.
2. An elected public official may not be a lobbyist while holding office or for two years after holding office. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.
3. A lobbyist may not knowingly deliver a campaign contribution made by another individual or entity. "Deliver," as used in this subsection, means to transport, transfer, or otherwise transmit, either physically or electronically. This prohibition does not apply to a person who delivers a campaign contribution to the person's own campaign, or to the campaign of the person's immediate family member. This prohibition shall not be interpreted to prohibit any person from making a campaign

23.0731.01001

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2312

Introduced by

Senator Magrum

Representative Hoverson

1 A BILL for an Act to create and enact a new section to chapter 16.1-08.1 of the North Dakota
2 Century Code, relating to large expenditure disclosure statements required of political
3 committees; to amend and reenact subsection 3 of section 16.1-08.1-03.5 and section
4 16.1-08.1-03.7 of the North Dakota Century Code, relating to independent expenditures; and to
5 provide a penalty.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1.** A new section to chapter 16.1-08.1 of the North Dakota Century Code is
8 created and enacted as follows:

9 **Large expenditure disclosure statements required of political committees.**

- 10 1. A political committee, whether registered with the state or federal government, making
11 any expenditure in excess of five thousand dollars shall file a statement disclosing the
12 expenditure made under this section with the secretary of state within forty-eight hours
13 after making the expenditure.
- 14 2. The statement must include:
 - 15 a. The name of the recipient of the expenditure;
 - 16 b. If the expenditure is related to a measure or petition, the title of the measure or
17 petition and whether the expenditure is made in support of or opposition to the
18 measure or petition;
 - 19 c. If the expenditure is related to a measure, the election date on which the
20 measure either will appear or appeared on the ballot;
 - 21 d. If the expenditure is in support of or opposition to a candidate, political party, or
22 political committee, the name of the candidate, political party, or political
23 committee for which the expenditure is made and whether it is in support of or
24 opposition to the candidate, political party, or political committee;

- 1 e. The purpose and tangible item created or acquired as a result of the expenditure;
2 f. The amount of the expenditure;
3 g. A list of all subcontributors that contributed in excess of one thousand dollars to
4 the political committee making the expenditure, including:
5 (1) The name and mailing address of the subcontributor;
6 (2) The total amount of the contribution; and
7 (3) The date the last contributed amount was received;
8 h. The telephone number and the printed name and signature of the individual
9 completing the statement, attesting to the statement being true, complete, and
10 correct; and
11 i. The date the statement was signed.
12 3. Subsequent expenditures that total five thousand dollars or more require an additional
13 statement that meets the requirements of subsection 2 to be filed with the secretary of
14 state within forty-eight hours after each subsequent five thousand dollar increment is
15 surpassed.
16 ~~4. This section does not apply to candidate committees.~~

17 **SECTION 2. AMENDMENT.** Subsection 3 of section 16.1-08.1-03.5 of the North Dakota
18 Century Code is amended and reenacted as follows:

- 19 3. A corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or
20 association may make an expenditure to a measure committee as described in section
21 16.1-08.1-01 for the purpose of promoting the passage or defeat of an initiated or
22 referred measure or petition or make an expenditure to any other person that makes
23 an independent expenditure. A corporation, cooperative corporation, limited liability
24 company, affiliate, subsidiary, or association may make an independent expenditure
25 for a political purpose, including political advertising in support of or opposition to a
26 candidate, political committee, or a political party, or for the purpose of promoting
27 passage or defeat of initiated or referred measures or petitions. The corporation,
28 cooperative corporation, limited liability company, affiliate, subsidiary, or association
29 shall file a statement disclosing any expenditure made under this subsection with the
30 secretary of state within forty-eight hours after making the expenditure. The statement
31 must include:

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- 1 a. The full name of the corporation, cooperative corporation, limited liability
- 2 company, affiliate, subsidiary, or association;
- 3 b. The complete address of the corporation, cooperative corporation, limited liability
- 4 company, affiliate, subsidiary, or association;
- 5 c. The name of the recipient of the expenditure;
- 6 d. If the expenditure is related to a measure or petition, the title of the measure or
- 7 petition and whether the expenditure is made in support of or opposition to the
- 8 measure or petition;
- 9 e. If the expenditure is related to a candidate, the name of the candidate and
- 10 whether the independent expenditure or disbursement is made in support or
- 11 opposition to the candidate;
- 12 f. If the expenditure is related to a measure, the election date on which the
- 13 measure either will appear or did appear on the ballot;
- 14 f.g. The amount of the expenditure;
- 15 g-h. The cumulative total amount of expenditures since the beginning of the calendar
- 16 year which are required to be reported under this subsection;
- 17 i. The ultimate and true source of funds listed by contributor and subcontributor of
- 18 any amount over two thousand five hundred dollars collected or used to make the
- 19 independent expenditure or disbursement including:
- 20 (1) The name and address of the contributor;
- 21 (2) The total amount of the contribution; and
- 22 (3) The date the last contribution was received.
- 23 h-j. The telephone number and the printed name and signature of the individual
- 24 completing the statement, attesting to the statement being true, complete, and
- 25 correct; and
- 26 i-k. The date on which the statement was signed.

27 **SECTION 3. AMENDMENT.** Section 16.1-08.1-03.7 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **16.1-08.1-03.7. Political committees that organize and register according to federal**
2 **law that make independent expenditures or disbursements to nonfederal candidates,**
3 **political parties, and political committees.**

4 A political committee that organizes and registers according to federal law and makes an
5 independent expenditure or makes a disbursement in excess of two hundred dollars to a
6 nonfederal candidate seeking public office or to a political party or political committee in this
7 state shall file a copy of that portion of the committee's federal report detailing the independent
8 expenditure or the disbursement made. The political committee shall file a copy of the
9 committee's federal report, and supplementary information as necessary under this section, with
10 the secretary of state at the time of filing the report with the applicable federal agency. The
11 report and supplementary information must include:

- 12 1. The name, mailing address, and treasurer of the political committee;
- 13 2. The recipient's name and mailing address;
- 14 3. The date and amount of the independent expenditure or disbursement; ~~and~~
- 15 4. If the independent expenditure or disbursement is related to a candidate, the name of
16 the candidate and whether the independent expenditure or disbursement is made in
17 support or opposition to the candidate; and
- 18 5. The ultimate and true source of funds listed by contributor and subcontributor of any
19 amount over two hundred dollars collected or used to make the independent
20 expenditure or disbursement including:
 - 21 a. The name and address of the contributor or subcontributor;
 - 22 b. The total amount of the contribution; and
 - 23 c. The date the last contribution was received.