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22 January 2025

HOUSE AGRICULTURE COMMITTEE

600 East Boulevard Avenue
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Dear Chairman Beltz, Vice Chairman Hauck, and members of the Committee,

I write to you today to provide testimony regarding H.B. 1396, which aims to amend N.D.C.C. § 61-16.1-45 as it relates to drainage improvement projects that require landowner votes under N.D.C.C. § 61-16.1-45(3). The proposed amendment seeks to empower water resource districts to deny permits to any landowner that votes against such a project, representing a severe overreach of governmental authority. This legislation directly undermines fundamental principles of democratic participation and threatens to chill free expression on matters of vital importance to landowners and their communities.

Firstly, the proposed legislation strikes at the heart of the First Amendment, specifically the rights to free speech and association. The act of voting on a drainage project is inherently an act of expressing one's views on land use and water management. By penalizing a "no" vote with the denial of essential permits, the state effectively silences dissent and coerces landowners into supporting projects they may find detrimental to their interests. This runs counter to the spirit of *NAACP v. Button* (1963), which recognized litigation, a form of political expression, as protected speech, and *Citizens United v. FEC* (2010), which, despite its complexities, affirmed the First Amendment rights of individuals and groups to engage in political expression. Additionally, rejecting permit applications on the basis of a landowner's "no" vote would fail to pass the test laid out in *Mt. Healthy City School District Board of Education v. Doyle* (1977), which determines if a government action was motivated by retaliation for protected speech.

Furthermore, this legislation raises serious concerns under the Fourteenth Amendment's Equal Protections Clause. By creating a distinct class of landowners – those who vote against drainage improvement projects – and subjecting them to discriminatory treatment, the law violates the principle of equal treatment under the law. This echoes the problematic legal landscape of *Yick Wo v. Hopkins* (1886), where seemingly neutral laws were applied in a discriminatory manner. The proposed amendment similarly utilizes the seemingly neutral act of voting to mask a discriminatory intent against those who exercise their right to oppose a project. This not only erodes the integrity of the democratic process but also opens the door to potential abuses of power by water resource districts, potentially leading to a chilling effect where landowners fear expressing any opposition for fear of reprisal.

In summary, this proposed legislation is a clear infringement on individual rights and a threat to the foundations of fair governance. I urge the Committee to issue a "Do Not Pass" recommendation on H.B. 1396 and protect the constitutional rights of North Dakota landowners.

Sincerely,

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Disclaimer: The views and opinions expressed in this testimony are solely my own, and are not representative of the views and opinions on this matter of the Pennsylvania State University, my colleagues, or my collaborators.