

HB 1424
Testimony in favor.

Mr. Chairman and members of the House Government and Veterans Affairs Committee.

My name is Andrew Bornemann, I am a lifetime resident of North Dakota, and I stand before you this morning to respectfully request a Do Pass recommendation from this committee on House Bill 1424.

This bill would significantly change the primary election process in our state, in a way that would protect the right of a political party to select its own candidate. Due to the unique nature of our state's lack of voter registration, our current election system has no safeguards against crossover voting, or "raiding", and thus no ability for a political party to have any meaningful control over the candidate bearing its name in the general election. The US Supreme Court has on multiple occasions held that a political party's right to select its own candidate is a fundamental right of a party, protected by the First Amendment. From *California Democratic Party v. Bill Jones, California Secretary of State*:

"The Court has recognized that the First Amendment protects "the freedom to join together in furtherance of common political beliefs," Tashjian, supra, at 214—215, which "necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only," La Follette, 450 U.S., at 122. That is to say, a corollary of the right to associate is the right not to associate. "Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being." Id., at 122, n. 22 (quoting L. Tribe, American Constitutional Law 791 (1978)). See also Roberts v. United States Jaycees, 468 U.S. 609, 623 (1984).

In no area is the political association's right to exclude more important than in the process of selecting its nominee. That process often determines the party's positions on the most significant public policy issues of the day, and even when those positions are predetermined it is the nominee who becomes the party's ambassador to the general electorate in winning it over to the party's views.

Unsurprisingly, our cases vigorously affirm the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party "select[s] a standard bearer who best represents the party's ideologies and preferences." Eu, supra, at 224 (internal quotation marks omitted). The moment of choosing the party's nominee, we have said, is "the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community." Tashjian, 479 U.S., at 216; see also id., at 235—236 (Scalia, J., dissenting) ("The ability of the members of the Republican Party to select their own candidate ... unquestionably implicates an associational freedom"); Timmons, 520 U.S., at 359 ("[T]he New Party, and not someone else, has the right to select the New Party's standard bearer" (internal quotation marks omitted)); id., at 371 (Stevens, J., dissenting) ("The members of a recognized political party unquestionably have a constitutional right to select their nominees for public office")."

The fact that current state law allows any person to run as a candidate of any party, under their own choice and with no prior affiliation or approval from the party which they chose to represent, is I believe an infringement on a political party's right not to associate if they so chose. It is time to remedy this longstanding oversight, and return the power to choose their own candidates to the political parties of this state.

It is of note, if this bill passes, should a political party choose not to file a certificate of endorsement, the current primary process is completely unchanged. For a political party that prefers the primary to making an endorsement, they would still have the ability to make that choice.

For these reasons, I respectfully request a "Do Pass" recommendation on House Bill 1424, and I would stand for any questions from this committee.