

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

HB 1500

Chairman Klemin 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."