

**Government and Veterans Affairs Committee**  
**Chairman Austin Schauer**  
**January 23, 2025**

## **HB 1286**

Chair Schauer, Members of the Committee, my name is Shane Goettle. Thank you for the opportunity to testify on House Bill No. 1286.

I appear before you today as a lobbyist for the Brighter Future Alliance, a 501(c)(4) organization. As defined by the Internal Revenue Code, 501(c)(4) organizations are social welfare organizations that exist to promote the common good and general welfare of communities. They are unique in their ability to engage in issue advocacy and participate in limited political activities, while their primary focus remains on public education and policy initiatives.

I also speak today as an attorney with over 30 years of legal experience, including teaching Communications Law and Ethics at the University of Mary as an adjunct professor.

My testimony will focus on the constitutional flaws of this legislation, its impractical implementation, and the significant harm it poses to lawful political engagement. As we discuss HB 1286, I will guide you through the legal and constitutional implications of this bill. My aim is to provide not just analysis, but clarity, ensuring a full understanding of why this bill poses significant risks to free speech and association.

### **I. HB 1286: An Unconstitutional Assault on Fundamental Rights**

Let us begin with the heart of the matter: HB 1286 represents an unconstitutional overreach that infringes on the First Amendment's protections of free speech and association. These rights are the foundation of our republic, and any legislation that compromises them demands our utmost scrutiny. Its provisions create a regulatory regime that chills lawful political advocacy and undermines fundamental constitutional rights.

#### **A. Political Speech: A Cornerstone of Democracy**

First, let us address the issue of political speech. The First Amendment recognizes political speech as essential to a democratic society, ensuring that all voices—whether popular or dissenting—can participate in shaping public policy. In *Citizens United v. FEC* (2010), the U.S. Supreme Court emphasized that "political speech is indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual." The Court held that laws suppressing political expenditures violate the First Amendment, as "political speech must prevail against laws that would suppress it, whether by design or inadvertence." HB 1286 imposes:

- **Overbroad Regulations:** Section 16.1-08.1-09 and -10 requires organizations to disclose donors contributing as little as \$200, far exceeding the threshold needed for transparency and targeting organizations engaged in lawful advocacy.

- **Chilling Effects:** Fear of punitive enforcement discourages participation in constitutionally protected speech, disproportionately affecting smaller organizations and grassroots movements.

## **B. Associational Privacy: A Constitutional Shield**

The U.S. Supreme Court's decision in *NAACP v. Alabama* (1958) affirmed that "inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association." Compelled disclosure of membership lists was ruled unconstitutional, as it created a chilling effect on participation. Similarly, HB 1286 blatantly disregards this precedent by:

- Requiring disclosure of even small donors under Section 16.1-08.1-09, infringing on associational privacy and exposing individuals to harassment or retaliation.
- Mandating intrusive recordkeeping to trace the "ultimate and true source" of funds (Section 16.1-08.1-09), an administratively burdensome requirement that is invasive and difficult to implement.

These provisions violate the constitutional protections afforded to associations like the Brighter Future Alliance, which rely on the privacy of their members and donors to advocate effectively.

## **C. Vagueness and Arbitrary Enforcement**

Next, we must consider the issue of vagueness in statutory language. HB 1286 introduces provisions that lack clear definitions, opening the door to arbitrary enforcement and undermining due process protections guaranteed by the Fifth and Fourteenth Amendments. For example:

- **"Ultimate and true source"** (Section 16.1-08.1-09): This ill-defined term creates uncertainty, making compliance difficult and exposing organizations to legal risks.
- **Ambiguous Reporting Requirements:** Organizations are required to trace funds through complex financial systems involving intermediaries, large entities, or bundled contributions, which is often impractical and unreliable.

## **D. Restrictions on Political Advertising**

Now, let us turn to the specific burdens placed on political advertising. Section 16.1-10-04.1 mandates that political advertisements disclose the top three donors funding the ad. This impractical requirement not only infringes on free speech but also poses significant logistical challenges for organizations communicating in short formats like digital banners or radio spots. The U.S. Supreme Court's ruling in *McIntyre v. Ohio Elections Commission* (1995) reaffirmed that "anonymity is a shield from the tyranny of the majority," protecting individuals engaging in political advocacy. The Court struck down a requirement for disclaimers on anonymous leaflets, recognizing that such mandates infringe on free speech. Similarly, HB 1286:

- Forces organizations to include the top three donors funding an advertisement, distracting from the message and creating excessive burdens.

- Undermines effective communication in short-format advertisements, such as digital banners or radio spots, by requiring impractical disclosures.
- Mirrors the types of restrictions struck down in *McIntyre*, where the Court held that such requirements unconstitutionally infringe on the right to anonymous advocacy.

## E. Punitive Enforcement Mechanisms

Section 16.1-08.1-11 imposes disproportionate penalties, including fines of up to three times the monetary value of violations and criminalizing "structuring" transactions. These measures:

- Disproportionately harm smaller organizations, which lack the resources to navigate such a punitive regulatory framework.
- Dissuade lawful participation in political advocacy by creating undue risks for minor errors.

## II. Historical Context: The Role of 501(c)(4)s

To understand the broader implications of this bill, we must recognize the unique role of 501(c)(4) organizations. These organizations have long been integral to public discourse, providing citizens with a platform to organize around shared causes and engage in advocacy. Historically, unions and special interest groups operated with fewer restrictions than business or industry groups. The Supreme Court's decision in *Citizens United* restored balance, affirming the role of 501(c)(4)s in fostering robust public debate.

HB 1286 undermines these protections, restricting the ability of organizations like the Brighter Future Alliance to:

- Promote public policy issues such as infrastructure development, workforce safety, and fair elections.
- Mobilize voters and challenge radical proposals, such as in 2020 when then Measure 3 attempted to overhaul our state election laws. The Brighter Future Alliance ultimately kept that Measure off the ballot through a court challenge.

To illustrate that 501(c)(4) organizations operate on both ends of the political spectrum, I quickly researched nationally recognized and locally recognized examples. Nationally, 501(c)(4) organizations contribute significantly to public discourse. Examples include:

1. **Americans for Prosperity (AFP)** — Advocating for free-market policies and limited government.
2. **Planned Parenthood Action Fund** — Promoting reproductive rights and access to healthcare.
3. **NRA Institute for Legislative Action (NRA-ILA)** — Supporting Second Amendment rights through grassroots advocacy.
4. **Susan B. Anthony Pro-Life America** — Advancing pro-life policies and supporting candidates aligned with this mission.

In North Dakota, several 501(c)(4)s play an equally important role, including:

1. **Family Policy Alliance of North Dakota** — Advocating for religious liberty, pro-life policies, and parental rights.
2. **North Dakota United Voices** — Supporting education and labor issues.
3. **North Dakota Farm Bureau Action** — Advancing agricultural interests and property rights.
4. **Dakota Resource Council** — Addressing energy policy, landowner rights, and environmental advocacy.

These organizations exemplify the diverse and essential contributions of 501(c)(4)s to local and national policy debates.

### **III. HB 1286 is Impractical and Unworkable**

In addition to its constitutional flaws, HB 1286 creates practical challenges that render its implementation unworkable:

1. **Impractical Disclaimers:** Section 16.1-10-04.1's requirement for three donor disclosures in addition to standard disclaimers is unmanageable, particularly for short-format advertisements.
2. **Excessive Bureaucracy:** The reporting requirements in Section 16.1-08.1-09 and -10 will overwhelm nonprofits and the Secretary of State's office, creating unnecessary administrative burdens.
3. **Tracing "True Source" of Funds:** Organizations cannot reasonably determine the origin of funds in cases of bundled donations or contributions from large entities, as required by Section 16.1-08.1-09. 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."
4. **Chilling Criminal Penalties:** Criminalizing compliance disagreements (Section 16.1-08.1-10) risks deterring lawful advocacy altogether.

### **IV. Conclusion**

In conclusion, Chair Schauer and members of the Committee, HB 1286 represents an unconstitutional attempt to silence advocacy groups through excessive regulation and intimidation, undermining the very freedoms our Constitution was designed to protect. It undermines associational privacy, imposes unworkable administrative requirements, and chills lawful political engagement.

I urge you to uphold the constitutional protections afforded to 501(c)(4)s, and other groups across the country. I respectfully recommend a "do not pass" vote on HB 1286.

Thank you for your time and attention. I welcome any questions from the Committee.