Government and Veterans Affairs Committee
Chairman Austin Schauer
February 6, 2025

HB 1583

Chairman Schauer, Members of the Committee, thank you for the opportunity to testify on House Bill 1583. My name is **Shane Goettle**, appearing today as a lobbyist for the Brighter Future Alliance (BFA), a North Dakota 501(c)(4) social welfare organization, and as an attorney with over 30 years of legal experience. I also serve as an adjunct professor teaching Communications Law and Ethics, where I educate students on First Amendment jurisprudence, campaign finance law, and constitutional protections for political advocacy.

Earlier this session, I spoke against HB 1286 on similar grounds. I am here again to respectfully **oppose HB 1583**, which I believe suffers from the *same fundamental constitutional flaws*.

This bill threatens core First Amendment freedoms of speech and association by imposing sweeping disclosure mandates and burdensome regulations on political advocacy. In my testimony, I will **integrate and expand upon the constitutional arguments** raised previously, reinforcing why HB 1583 is unconstitutional and unworkable.

Understanding 501(c)(4) Organizations

A **501(c)(4) organization**, as defined by the Internal Revenue Code, is a **tax-exempt social welfare organization** that is primarily engaged in promoting the common good and general welfare of the community. Unlike 501(c)(4) charitable organizations, which are strictly prohibited from engaging in political activity, **501(c)(4) organizations are allowed to participate in political advocacy and lobbying, provided that political activity does not become their primary function**.

Generally, a 501(c)(4) is well-advised to keep electioneering activty below twenty-five percent of its overall activities in order to preserve its 501(c)(4) social welfare status. This “safe-harbor” guidance is what I generally advise and am comfortable defending. In any event, a 501(c)(4) MUST ensure that its primary mission is to promote social welfare, meaning the majority of its total activities must be related to social welfare purposes rather than candidate political campaign involvement.

A 501(c)(4) is prohibited from direct campaign contributions to candidates, political parties, or PACs. They are also prohibited from coordination with political campaigns (which could lead to a loss of their status and reclassification as a 527 political organization.

Under North Dakota law, a 501(c)(4) must disclose expenditures on electioneering communications (e.g., ads mentioning candidates close to an election). *NDCC § 16.1-08.1-03.7.*

My client, BFA, is in full compliance with North Dakota law. I have verified that in the 2024 general election BFA spent less than five percent of its overall fiscal year expenditures on

electioneering communications related to state candidates and further limited itself to just three legislative candidates.

HB 1583 improperly subjects 501(c)(4) organizations to excessive donor disclosure requirements even for periods of time in which they are **not directly engaging in electioneering activities**.

Under **Section 3 of HB 1583**, any 501(c)(4) organization that spends as little as **$200 on an independent expenditure** or **the passage or defeat of a ballot measure**, must disclose **all contributors** who donated **over $1,000**.

Keeping in mind that the primary purpose of 501(c)(4) is NOT political activity. For example, a donor in January of 2024 may have given $50,000 dollars to a 501(c)(4) in support of its general mission. Later, the 501(c)(4) decides to spend some dollars opposing a June primary ballot measure. Let's say that amounts to twenty percent of its overall activity. In the general election, it may decide to publish a candidate "scorecard" and send it out to voters. Let's say that is five percent of its overall activities. It is operating well within the IRS parameters to maintain its 501(c)(4) status.

North Dakota law requires fill disclosure of these expenditures. HB 1583 is not needed to make that happen.

Keep in mind as we proceed here that page 4, line 13-14, of the bill states: "If the expenditure is ***related*** to a candidate, the name of the candidate and whether the expenditure is made in support of or opposition to the candidate." I believe this language picks up even scorecards published by a 501(c)(4).

HB 1583 proposed that ALL donors exceeding $1000 in contributions must be disclosed if the 501(c)(4) engages in any political activity (candidate or ballot measure), at anything over the $200 expenditure threshold.

The January donor may not have been motivated at all by either the ballot measure or the subsequent candidate scorecard, but under HB 1583 would be subject to disclosure. This may have a chilling effect on both that donor's freedom of speech and association, both of which are violations of the donors First Amendment rights.

In fact, a single donor may have been opposed to both activities but is still motivated by other activities of the 501(c)(4). That is the difference between a 501(c)(4) and a candidate committee, PAC, or ballot measure committee. The latter have a direct line between the donors motive and the political expenditure. A 501(c)(4) exists for a very different purpose and there is no direct line between the donation, raised for a general purpose, and any subsequent political expenditures.

The sweeping mandate of HB 1583 goes beyond the established legal standards set forth by the Supreme Court and imposes unconstitutional burdens on civic participation.

Examples of National 501(c)(4) Organizations

1. **American Civil Liberties Union (ACLU) Action** – Advocates for civil rights and liberties, including free speech and voting rights.
2. **Americans for Prosperity (AFP)** – A conservative-leaning group that supports free markets and limited government.
3. **League of Conservation Voters (LCV)** – An environmental advocacy group supporting policies to combat climate change.
4. **National Rifle Association Institute for Legislative Action (NRA-ILA)** – The lobbying arm of the NRA that focuses on Second Amendment rights.
5. **Planned Parenthood Action Fund** – A pro-choice organization advocating for reproductive rights and healthcare access.
6. **Susan B. Anthony Pro-Life America** – A pro-life organization advocating for anti-abortion policies and supporting aligned candidates.

Examples of North Dakota-Based or Well-Known Local 501(c)(4) Organizations

1. **Greater North Dakota Chamber (GNDC)** – Advocates for pro-business policies in North Dakota.
2. **Dakota Resource Council (DRC)** – Works on environmental and land use issues, including agriculture and energy policy.
3. **North Dakota Family Alliance (NDFA)** – A socially conservative organization advocating for family and religious values.
4. **North Dakota Native Vote** – Focuses on increasing civic engagement and voter participation among Native American communities in the state.
5. **North Dakota Women's Network** – A pro-choice organization supporting gender equity and reproductive rights.
6. **North Dakota Right to Life** – A pro-life organization advocating against abortion and supporting related policies.

These organizations represent a wide range of political and policy interests, demonstrating that **501(c)(4) organizations are essential vehicles for citizen engagement in the democratic process**.

1. First Amendment Protections for Political Speech

Political speech is core protected speech: The First Amendment firmly protects political expression, including advocacy by corporations and organizations. The U.S. Supreme Court has recognized that **independent expenditures** (political spending not coordinated with a candidate) are a form of *political speech* central to our democracy.

In *Citizens United v. FEC* (2010), the Court famously held that the identity of the speaker (even if a corporation or union) cannot be used to silence speech: *"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 further ruled that **laws suppressing political expenditures violate the First Amendment**, emphasizing that *"political speech must prevail against laws that would suppress it, whether by design or inadvertence."*

This means organizations like 501(c)(4)s have a constitutional right to engage in issue advocacy and political commentary without undue government interference.

HB 1583's Violation of *Citizens United*

HB 1583 directly infringes on protected political speech through its mandate that any communication that **refers to a candidate or ballot measure,** presumably triggered by **$200 or more in spending,** must be classified as **regulated political activity** and compels organizations to turn over detailed contributor lists for any public advocacy deemed to influence an election for a state candidate or ballot measure. Such **excessive disclosure requirements** extend well beyond what courts have upheld as necessary for an informed electorate.

In summary, **HB 1583's sweeping regulation of political speech by nonprofits conflicts with the First Amendment protections affirmed in *Citizens United***. Political advocacy – whether by an individual or an incorporated group – *"must prevail"* over laws that aim to suppress it

2. Associational Privacy and Donor Disclosure

Freedom of association and privacy: The Constitution safeguards not just the right to speak, but to **associate privately** in support of causes. For many groups, especially nonprofits and advocacy organizations, the privacy of their members and donors is a vital protection. The U.S. Supreme Court's landmark decision in *NAACP v. Alabama* (1958) held that **compelled disclosure of an organization's members or donors can violate the First Amendment**. In that case, Alabama sought the NAACP's membership lists, and the Court unequivocally rejected the demand, declaring that the *"inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association."*

Forcing groups to reveal their supporters creates a **chilling effect**: people may fear harassment, retaliation, or public backlash for their beliefs, and thus be **deterred from donating or participating**. Privacy in association, the Court recognized, is often essential for individuals to band together and advocate for change, especially on controversial issues.

Specific Violations in HB 1583

Dangers of forced donor disclosure in HB 1583: HB 1583 ignores these constitutional warnings. It would require nonprofit advocacy groups (such as 501(c)(4) social welfare organizations) to **disclose the identities of their donors** once certain spending thresholds are met in matters referring to a candidate or measure, even if those donors gave for general causes and not specifically for election ads.

This kind of blanket disclosure **mirrors the scenario struck down in NAACP v. Alabama** – it exposes supporters to potential intimidation and **discourages civic engagement**. The likely result is a *chilling effect* on donors. Faced with the loss of anonymity, many will simply choose not to give to advocacy organizations, silencing voices and impoverishing the marketplace of ideas. This is not speculative; history shows that donor exposure leads to pullback of support. Even those who continue may face harassment, as modern examples of doxxing and boycotts demonstrate. Our **political discourse suffers** when citizens refrain from lawful association out of fear.

Recent Supreme Court affirmation – *Americans for Prosperity Foundation v. Bonta* (2021): The Supreme Court reaffirmed these principles just a few years ago. In *Americans for Prosperity Foundation v. Bonta*, a case challenging California's law requiring charities to submit their major donor lists to the state, the Court struck down the **forced donor disclosure regime** as unconstitutional. The law was found to place a substantial burden on First Amendment rights *without being narrowly tailored*. The Court made clear that even under "exacting scrutiny" (the standard used for disclosure laws), the government **must demonstrate a strong interest and use a narrowly tailored approach** – it **cannot cast a wide net** that sweeps in far more information than necessary. As Chief Justice Roberts wrote, *"[w]hile exacting scrutiny does not require that disclosure regimes be the least restrictive means of achieving their ends, it does require that they be narrowly tailored to the government's asserted interest."*

In other words, a law that compels disclosure of donor identities **across the board**, regardless of need, is **overbroad and unconstitutional**.

HB 1583 raises the **same red flags**. It would compel advocacy groups to hand over donor information **beyond what is narrowly needed** for any legitimate oversight. The state's interest in fair elections does not justify dragging every supporter of an issue group into a public registry.

HB 1583's disclosure mandates apply to a broad range of speech and speakers, ensnaring donors who never intended to fund electioneering or measure campaigns. This **departure from narrow tailoring** means the bill is likely to **fail constitutional scrutiny**, as did the law in *Americans for Prosperity*. In protecting donor privacy, the Supreme Court has consistently favored *protecting civil society from overreaching surveillance* by the state.

We should not chill participation in nonprofits that enrich our civic life.

3. Overbroad Reach and Chilling Effects on Speech

Broad application beyond legitimate campaign regulation: A fundamental problem with HB 1583 is its **overbreadth** – it reaches far beyond the proper scope of campaign finance regulation. Laws governing elections are constitutional **only if they focus on the *core* area of electoral advocacy**, such as express advocacy for or against candidates or electioneering communications close to an election. Yet HB 1583's provisions cover a wide swath of communications by issue organizations that may only tangentially relate to political campaigns. For example, a group primarily devoted to public education on policy issues could be swept under HB 1583's

requirements if it merely mentions an elected official or pending ballot measure in its publications. This **blurs the line between genuine campaign activity and issue advocacy**, subjecting the latter to the same heavy regulations intended for election campaigns. By **extending disclosure and reporting mandates to activity that is not unambiguously campaign-related**, the bill ventures into regulating **pure issue speech** – an area strongly protected by the First Amendment.

Legal uncertainty for advocacy groups: Because of its breadth, HB 1583 would create significant **legal uncertainty** for organizations. Many nonprofits will be left guessing whether their issue advocacy might later be deemed an "independent expenditure" or a "political advertisement" under the bill. This vagueness in scope means groups must either **over-comply (and curtail their speech)** or risk penalties due to a misinterpretation. Such uncertainty is itself chilling – when you cannot tell what speech might trigger enforcement, the safe route is to say *less*.

North Dakota's many 501(c)(4) social welfare organizations – which work on everything from **infrastructure and education to agriculture and civil liberties** – would all have to tread carefully, unsure if routine advocacy could land them in legal trouble. The *ambiguity* about what triggers the law's application is essentially a tax on speech: only those willing to hire lawyers and accept risk will continue unfettered advocacy, and even they might scale back. Smaller grassroots groups, lacking resources for complex compliance, would be **silenced the most**.

Overbreadth and chilling effect case law: The Supreme Court has long held that laws which are *overbroad* – sweeping in a substantial amount of protected speech along with any targeted unprotected speech – are **unconstitutional**.

Even when a law has a legitimate aim, if it is so broadly written that it **deters lawful expression**, courts will strike it down or require it to be narrowed.

For instance, in *McIntyre v. Ohio Elections Commission* (1995), the Court invalidated an Ohio law that banned anonymous campaign literature. The law was intended to prevent fraud, but it applied even to innocuous, **small-scale pamphlets by private citizens**. The Court noted that **anonymity is a shield for unpopular speech** and held that the blanket disclaimer requirement was too broad, infringing on free expression.

This illustrates that even well-intentioned regulations must not ignore less extreme alternatives. Likewise, *Buckley v. Valeo* (1976) narrowly construed campaign finance rules to cover only communications that expressly advocate election or defeat of a candidate ("**vote for/against**"), specifically to avoid chilling more generalized issue discussion. The lesson from these cases is clear: **campaign laws must be precisely targeted**. If they roam into covering issue advocacy or general political speech, they burden more speech than necessary and become unconstitutional.

HB 1583's chilling breadth: By casting such a wide net, HB 1583 would inevitably **discourage protected speech**. Consider an organization that primarily focuses on educating the public about tax policy. If the bill becomes law, before releasing a policy report or a Facebook post that names a lawmaker (even purely for issue context), the group must worry: Will this trigger

political disclosure rules? Will we have to register and report our supporters because this could be seen as influencing an upcoming election? Faced with that dilemma, many groups will choose to **stay silent on contentious issues**, especially close to an election year. This is exactly the kind of chilling effect our courts guard against. A law **"too broad and hence unconstitutional"** – as the *Americans for Prosperity* case described California's rule cannot be allowed to stifle the open debate on which our democracy depends.

North Dakota benefits when a rich variety of voices – left, right, and center – can engage in policy dialogue. We should not enact a regulatory scheme so expansive that it scares those voices into silence.

4. Unworkable and Burdensome Compliance Requirements

Practical burdens on organizations: Beyond the high-level constitutional issues, HB 1583 is fraught with **practical compliance problems** that make it unworkable and unfair, especially for organizations **not primarily engaged in electioneering**. The bill would effectively force many nonprofits to become quasi-political committees, **diverting their focus and resources to paperwork and legal hoops**. The administrative demands are stark:

- **Extensive Record-Keeping and Donor Tracking:** HB 1583 compels groups to track the **"ultimate and true source"** of every dollar used for any communication that might be deemed political. This sounds reasonable in theory but is **nearly impossible in practice**. Modern nonprofits receive funds from many sources (individual donors, memberships, perhaps other pooled funds, or grants). Requiring an organization to **trace each contribution back through any number of intermediaries** to identify the original source is a **logistical nightmare**. As I pointed out in prior testimony, terms like *"ultimate and true source"* are **ill-defined**, creating uncertainty about how far back an organization must investigate its funds.

  For example, if a nonprofit receives a grant from another nonprofit, which in turn raised money from thousands of donors, does HB 1583 require listing all those donors? If a business or association contributes, does the nonprofit have to somehow determine which individuals (owners, employees, members) "truly" supplied that money? The bill does not say where this chain of tracing stops. Such **vague and boundless requirements** make compliance *difficult at best and impossible at worst*. This vagueness not only burdens organizations but also raises due process concerns – laws must provide clear notice of what is required and HB 1583 fails that test by leaving too much to guesswork.

- **Intrusive Donor Disclosure and Privacy Burdens:** Under HB 1583, even donors who gave relatively small amounts ($1000) could have their information reported to the government and potentially made public. This means **everyday citizens** who give modest support to causes would have their names and addresses exposed in public filings. This is a significant burden on privacy and will dissuade individuals from contributing. Many people donate to 501(c)(4) groups because they care about issues, not elections, and do not expect to be dragged into a political spotlight. For the organizations, compiling and continually updating these donor lists is a heavy lift – especially when donors give for

general mission support, not earmarked for political use. The compliance costs (hiring staff or attorneys to manage filings) could be crippling for smaller organizations. In effect, HB 1583 **penalizes civic participation**, drowning organizations in red tape and compromising their supporters' privacy.

- **Risk of Arbitrary and Inconsistent Enforcement:** The **vagueness** in HB 1583's language – e.g., how to identify an "ultimate and true source" – opens the door to inconsistent enforcement. Different interpretations by regulators could lead to **unequal treatment** of organizations or even selective enforcement. One group might be penalized for a certain communication while another, doing something similar, is not – simply due to how the officials interpret the statute. This undermines the rule of law and feeds a perception of unfairness or political bias. Given the complexity of the law, an organization acting in good faith could still **find itself facing sanctions** if an official later disagrees with how it reported something. The threat of such penalties would further chill speech – many groups would self-censor rather than gamble on an unclear rule with severe consequences. In constitutional terms, the combination of vagueness and punitive enforcement **violates due process** and the First Amendment. Laws that are not clear enough to be understood invite arbitrary application, which is exactly what the Constitution's vagueness doctrine prohibits.

The bottom line: HB 1583's compliance regime is so burdensome and unclear that it would *discourage even well-intentioned organizations from speaking*. Those that try to comply could be trapped in endless paperwork and **legal jeopardy**, diverting time and money away from their actual advocacy missions.

It is **unwise to enact a law that non-profits literally cannot comply with perfectly** – the inevitable result is less participation in public discourse.

As a practical matter, this bill is an **administrative quagmire** that would entangle the Secretary of State's office as well, inundating regulators with reports and data of dubious value.

In my view, these onerous requirements are not an accident but a feature – they serve to **deter advocacy through bureaucratic intimidation**, which is contrary to the spirit of the First Amendment.

Conclusion: Reject HB 1583 as an Unconstitutional Overreach

HB 1583 is constitutionally unsound. It violates **First Amendment protections for political speech**, intrudes upon **associational privacy**, and imposes **overbroad and burdensome compliance requirements**.

The bill not only conflicts with constitutional protections but also places undue burdens on civic organizations, discouraging participation in the democratic process. I urge the Committee to reject this overreaching legislation in favor of policies that protect free speech and association.

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