



WESTERN DAKOTA ENERGY ASSOCIATION

January 6, 2025

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Testimony of:

Geoff Simon, Lobbyist #144

in opposition to SB 2052 – Restrictions on public officials and lobbyists
Senate Judiciary Committee

Chair Larson and Committee members:

I am executive director and a registered lobbyist for the Western Dakota Energy Association, but submit testimony regarding this legislation as the chairman of North Dakotans for Good Government, a group that was formed in 2018 in opposition to passage of Measure 1, the ballot measure which established the Ethics Commission.

We cautioned during the campaign that the measure was poorly written, and fraught with provisions that were subject to constitutional challenge. Our words proved to be prophetic with the section of the ethics measure which banned public officials from employment as a lobbyist for two years after leaving office or their position in state government. The 8th Circuit Court of Appeals, in a ruling issued in a Missouri case in July 2024, determined that the state's lobbying ban, virtually identical to that found in North Dakota's ethics measure, is an unconstitutional restriction of Freedom of Speech, improperly limiting the employment opportunities of former legislators.

The Missouri case involved a former legislator, Rockne Miller, who received an offer of employment from Presidio Environment, to lobby for the company's interests, but had to wait for the two-year prohibition to expire before registering as a lobbyist. Miller and Presidio sought to overturn the ban in Missouri's state constitution in a lawsuit filed against the Missouri Ethics Commission. A judge initially upheld the lobbying ban as a means of inhibiting "corruption," but the federal appeals court overturned the lower court ruling. Excerpts of the court's decision are paraphrased in the following:

Missouri's lobbying ban burdens political speech in two ways. First, it cuts off the speech of would-be lobbyists like Miller for two years. The role of a lobbyist is "to influence" government policy through information and persuasion, which qualifies as "core political speech." Second, the lobbying ban burdened Presidio, which wanted to hire Miller to advocate for a minor change in a state permitting law. It believed that an "experienced environmental engineer" and former legislator like him had the best chance to persuade lawmakers. The lobbying ban, however, limited the company's options and kept it from "advocating its cause" in the way it believed to be the most effective. Corporate political speech is just as protected under the First Amendment as individual speech.

With due respect, the statute should not be amended as contemplated in SB 2052. It should be repealed, and the provision in the state constitution should not be enforced.

I appreciate the opportunity to offer testimony. Thank you for your consideration.

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