

**2013 SENATE JUDICIARY**

**SB 2346**

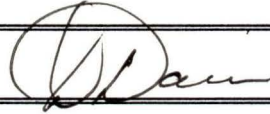
# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

SB2346  
2/11/2013  
Job #18651

☐ Conference Committee

Committee Clerk Signature



## Minutes:

*Attached testimony*

Relating to campaign contributions and expenditures

Senator David Hogue - Chairman

**Senator Schneider** - District 42 - See written testimony. (1) Senator Schneider explains the Citizens United Decision. Committee discusses with Senator Schneider the amendment he is proposing. He says many states have or are looking at disclosure on corporate contributions. Senator Hogue asks if other states are requiring what the true source of the money is. Senator Schneider says that Iowa is a very good model for disclosure. He added that some State's require a disclaimer however that is not in this bill.

**Al Jaeger** - Sec. of State - See written testimony (2) Explains the terminology in both 2346 and 2299 will be the same.

**Jim Silrum** - Deputy Sec. of State - He explains Citizens United and the ruling that did not allow for direct contributions or contributions to candidates, political parties or political committees for the direct political purpose for getting someone elected or opposing their election. He explains more of what they can do. He summarizes that ND current law does not speak to independent expenditures at all therefore in the most recent election cycle, corporations, unions were free to do whatever they wanted either for or against a candidate or political party and they would not have had a reporting requirement, this gives them a reporting requirement.

Opposition

Neutral

Close the hearing

# 2013 SENATE STANDING COMMITTEE MINUTES

**Senate Judiciary Committee**  
Fort Lincoln Room, State Capitol

SB2346  
2/13/2013  
Job #18916

☐ Conference Committee

Committee Clerk Signature	
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**Minutes:**

Vote
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**Senator David Hogue - Chairman**

Senator Sitte moves a do not pass  
Senator Berry seconded

Vote - 7 yes, 0 no  
Motion passes

Senator Nelson

Date: 2/13/13  
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2346

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S Sitte Seconded By S Berry

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment S Nelson

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2346: Judiciary Committee (Sen. Hogue, Chairman) recommends DO NOT PASS**  
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2346 was placed on the  
Eleventh order on the calendar.

**2013 TESTIMONY**

**SB 2346**

**TESTIMONY OF SENATOR MAC SCHNEIDER (DISTRICT 42 - GRAND FORKS)****SENATE BILL 2346 - SENATE JUDICIARY COMMITTEE - FEBRUARY 11, 2013**

Mr. Chairman, members of the committee, my name is Mac Schneider and I represent District 42 in the North Dakota Senate. I am the prime sponsor of Senate Bill 2346, which seeks to respond to United States Supreme Court rulings handed down recently which render parts of North Dakota's ban on union and corporate political spending unconstitutional.

N.D.C.C. § 16.1-08.1-03.3 restricts the ways in which a corporation or union may spend funds to influence the electoral process in North Dakota. Among other things, this section of the Code prohibits a "corporation, cooperative corporation, limited liability company, or association" ("including labor unions" and "trade associations" under the definition of "association" in N.D.C.C. § 16.1-08.1-01) from making a "direct contribution" to "aid any candidate for public office or for nomination to public office[]" or "for any political purpose or the reimbursement or indemnification of any person for money or property so used." In other words, it is largely a blanket ban on corporate and union political spending.

While I believe this statute has served North Dakota well by keeping both corporate and union dollars out of state elections, we are bound by the United States Supreme Court's rulings when it comes to the constitutionality of our laws. Two cases, Citizens United v. Federal Election Commission and American Tradition Partnership, Inc. v. Bullock both hold that corporate and union political expenditures constitute speech and therefore cannot be banned entirely under the First Amendment. While Citizens United applied this principle only to federal elections, American Tradition Partnership, which was unsuccessfully litigated by our neighbors in Montana, extended the holding of Citizens United to state bans on corporate and union political spending. Thus, portions of N.D.C.C. § 16.1-08.1-03.3 are unquestionably unconstitutional under American Tradition Partnership. However, the good news (for now) is

1

that the Court did not reach the issue of whether states may ban corporations and unions from directly contributing to candidates or political parties. The Court has also made it clear that states may require disclosure of corporate and union political expenditures so the public knows which entities are attempting to influence elections. In short, SB 2346 would maintain the current ban on direct contributions to candidates by unions and corporations while requiring disclosure of "independent expenditures" made by these entities.

Before I get into the mechanics of the bill, I would briefly like to explain why it is important to respond to these cases and require disclosure of independent expenditures made by corporations and unions. Only two general election cycles have taken place since the Citizens United case was decided, but already the relaxed rules governing independent expenditures have had a profound effect on the political process. According to information gathered by [opensecrets.org](http://opensecrets.org), independent expenditures rose from around \$200 million during the 2010 general election cycle to over \$1 billion in 2012. These dollars, unsurprisingly, largely funded negative television ads. Unfortunately, I believe the proliferation of "SuperPACs" and unregulated union and corporate political spending will soon take hold in North Dakota unless we act to require disclosure (and, sadly, maybe even if we do act).

This bill seeks to ensure disclosure of union and corporate political spending by essentially requiring independent expenditures to conform with current law mandating that unions and corporations disclose political spending which seeks to influence the passage or defeat of a ballot measure. In drafting this legislation, I have been fortunate to receive outstanding cooperation not only from the co-sponsor of this bill, the Senate Majority Leader, but also the Attorney General and Secretary of State. Since the bill's introduction, this working



group has put together several amendments that I have included with my testimony. I have also attached a redlined version of the bill that I will work from with the permission of the committee.

Going through the operative sections of the bill with its proposed amendments, several mechanical changes are made in section 1:

- i) Excludes "independent expenditure" from the definition of "contribution" under current law (page 3 line 1);
- ii) Strikes the definition of "direct expenditure" since the operative language would now be covered in the definition of "independent expenditure" (page 3 lines 5 through 9);
- iii) Includes "a political purpose" within the definition of "expenditure" (page 3 line 14);
- iv) Defines "independent expenditure" as "an expenditure made for a political purpose or for the direct purpose of influencing the passage or defeat of a measure if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or a candidate committee or measure committee[]" (page 3 lines 21 through 25).
- v) Broadens the definition of "political committee" to include all organizations governed by the Internal Revenue Code, rather than just 527s, which "solicit[] or receives contributions or makes expenditures for political purposes[]" (page 4 lines 11 and 12).

Several substantive changes are made in section 2:

- i) Makes clear that "[a] corporation, cooperative corporation, limited liability company, or association may not make a contribution for a political purpose." This restates existing law

banning direct corporate and union contributions and is believed to be constitutional under Citizens United and American Tradition Partnership (page 5 lines 16 and 17).

ii) Restates existing law which permits corporations and unions to make contributions to measure committees "for the purpose of promoting the passage or defeat of an initiated or referred measure" and then permits corporations and unions to "make a contribution to any other person that makes an independent expenditure[]" (page 6 lines 4 through 7). The latter language regarding "contribution" is meant to address a situation in which a corporation or union contributes to a so-called "Super PAC," i.e., gives money to "The Motherhood and Apple Pie Committee" or some other group.

iii) Acknowledges that existing North Dakota law preventing corporations and unions from making expenditures for political purposes is unconstitutional under Citizens United and American Tradition Partnership and instead permits corporations and unions to make "an independent expenditure for a political purpose[]" (page 6 lines 8 through 9).

iv) Replaces the existing ban on corporate and union political expenditures with meaningful reporting requirements. Essentially, the bill would require corporations and unions to report both "independent expenditures" and "contributions" in a manner similar to the way corporations and unions must presently report expenditures "for the purpose of promoting passage or defeat of initiated or referred measures[]" under existing law (page 6 lines 14 through 29 and page 7 lines 1 and 2).

Finally, section 3 gives "teeth" to the bill by allowing the Secretary of State to fine violators for up to 200% of the amount of the expenditures or contributions and makes willful violations of the chapter a class A misdemeanor rather than a mere infraction. The rationale behind this

change is that if a union or corporation is willing to spend hundreds of thousands of dollars to influence elections in North Dakota that it will not be deterred by a 5% fine. Rather, many entities would just see this as the cost of doing business.

Mr. Chairman, I wish to thank the Majority Leader, the Attorney General, and the Secretary of State for the hours they have put into drafting this legislation. It was certainly a challenging effort on a somewhat complex topic.

As the committee considers this legislation, I would respectfully leave you with one thing to consider that I hope will illustrate the need for this legislation. Right now, my aunt Dorothy has to report her name and address when she gives me \$250 for my campaign in District 42.

However, if OmniCorp , Inc. wanted to spend \$100,000 from its corporate treasury blasting my opponent, it could legally do so under some benign sounding name ("Americans for Good Government" or the like) without reporting the true nature of these funds. That simply isn't right, and it certainly isn't in the best interests of the citizens who value clean elections in the state.

Mr. Chairman, the Supreme Court has said that unions and corporations have a right to free speech. But it has also said that we, as legislators, are entirely free to require that they stand up and be counted. Thank you for your consideration of this bill. I would be happy to answer any questions.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2346

Page 3, line 14, overstrike "direct"

Page 3, line 22, remove "direct"

Page 4, line 5, remove "a"

Page 4, line 5, overstrike "direct"

Page 4, line 6, after "~~contributions~~" insert "a"

Page 5, line 17, remove "direct"

Page 6, line 12, after "an" insert "independent"

Page 6, line 13, after "or" insert "independent"

Page 6, line 20, after "or" insert "independent"

Page 6, line 21, remove the overstrike over "~~d.~~"

Page 6, line 21, after "~~The~~" insert "If the contribution or independent expenditure is related to a measure, the"

Page 6, line 21, remove the overstrike over "~~title of the measure and whether the~~" and insert immediately thereafter "contribution or independent"

Page 6, line 21, remove the overstrike over ~~expenditure is made in support of or~~

Page 6, remove the overstrike over line 22

Page 6, line 23, remove the overstrike over "~~e.~~"

Page 6, line 23, after "~~The~~" insert "If the contribution or independent expenditure is related to a measure, the"

Page 6, line 23, remove the overstrike over "~~election date on which the measure either will appear or did appear on the~~"

Page 6, remove the overstrike over line 24

Page 6, line 25, remove the overstrike over "~~f.~~"

Page 6, line 25, remove "d."

Page 6, line 25, after "or" insert "independent"

Page 6, line 26, remove the overstrike over "~~g.~~"

Page 6, line 26, remove "e."

Page 6, line 26, after "and" insert "independent"

Page 6, line 29, remove the overstrike over "~~h.~~"

Page 6, line 29, remove "f."

Page 6, line 29, after "The" insert "telephone number and the"

Page 6, line 31, remove the overstrike over "i."

Page 6, line 31, remove "g."

Renumber accordingly

Sixty-third  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2346**

Introduced by

Senators Schneider, Wardner

1 A BILL for an Act to amend and reenact sections 16.1-08.1-01, 16.1-08.1-03.5, 16.1-08.1-05,  
2 and 16.1-08.1-07 of the North Dakota Century Code, relating to campaign contributions and  
3 expenditures; to repeal subsection 1 of section 16.1-08.1-03.3 of the North Dakota Century  
4 Code, relating to campaign contributions; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 16.1-08.1-01 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **16.1-08.1-01. Definitions.**

9 As used in this chapter, unless the context otherwise requires:

- 10 1. "Association" means any club, association, union, brotherhood, fraternity, organization,  
11 or group of any kind of two or more persons, including labor unions, trade  
12 associations, professional associations, or governmental associations, which is united  
13 for any purpose, business, or object and which assesses any dues, membership fees,  
14 or license fees in any amount, or which maintains a treasury fund in any amount. The  
15 term does not include corporations, cooperative corporations, limited liability  
16 companies, political committees, or political parties.
- 17 2. "Candidate" means an individual who seeks nomination for election or election to  
18 public office, and includes:
- 19 a. ~~A person~~An individual holding public office;
- 20 b. ~~A person~~An individual who has publicly declared that ~~person's~~individual's  
21 candidacy for nomination for election or election to public office or has filed or  
22 accepted a nomination for public office;
- 23 c. ~~A person~~An individual who has formed a campaign or other committee for that  
24 ~~person's~~individual's candidacy for public office;

- 1 d. ~~A person~~An individual who has circulated a nominating petition to have that  
2 ~~person's~~individual's name placed on the ballot; and
- 3 e. ~~A person~~An individual who has, in any manner, solicited or received a  
4 contribution for that ~~person's~~individual's candidacy for public office, whether  
5 before or after the election for that office.
- 6 3. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription,  
7 loan, advance, deposit of money, or anything of value, made for the purpose of  
8 influencing the nomination for election, or election, of any ~~person~~individual to public  
9 office or aiding or opposing the circulation or passage of a statewide initiative or  
10 referendum petition or measure. The term also means a contract, promise, or  
11 agreement, express or implied, whether or not legally enforceable, to make a  
12 contribution for any of the above purposes. The term includes funds received by a  
13 candidate for public office or a political party or committee which are transferred or  
14 signed over to that candidate, party, or committee from another candidate, party, or  
15 political committee or other source. The term "anything of value" includes any good or  
16 service of more than a nominal value. The term "nominal value" means the cost, price,  
17 or worth of the good or service is trivial, token, or of no appreciable value. The term  
18 "contribution" does not include:
- 19 a. A loan of money from a bank or other lending institution made in the regular  
20 course of business.
- 21 b. Time spent by volunteer campaign or political party workers.
- 22 c. Money spent by a candidate on the candidate's own behalf.
- 23 d. Money or anything of value received for commercial transactions, including rents,  
24 advertising, or sponsorships made as a part of a fair market value bargained-for  
25 exchange.
- 26 e. Money or anything of value received by a candidate in that person's personal  
27 capacity, including pursuant to a contract or agreement made for personal or  
28 private employment purposes, and not received for a political purpose or to  
29 influence the performance of that person's official duty.
- 30 f. Contributions of products or services for which the actual cost or fair market  
31 value are reimbursed by a payment of money.



- 1           g. An independent expenditure.
- 2           4. "Cooperative corporations", "corporations", and "limited liability companies" are as
- 3           defined in this code, and for purposes of this chapter "corporations" includes nonprofit
- 4           corporations.
- 5           5. ~~"Direct expenditure" means an expenditure made by a corporation, cooperative~~
- 6           ~~corporation, limited liability company, or association for the specific purpose of~~
- 7           ~~promoting passage or defeat of an initiated or referred measure without the express or~~
- 8           ~~implied consent, authorization, or cooperation of, and not in concert with or at the~~
- 9           ~~request or suggestion of a measure committee.~~
- 10          6. "Expenditure" means a:
- 11           a. A gift, transfer, conveyance, provision, loan, advance, payment, distribution,
- 12           disbursement, outlay, or deposit of money or anything of value, except a loan of
- 13           money from a bank or other lending institution made in the regular course of
- 14           business, made for a political purpose or for the ~~direct~~ purpose of influencing the
- 15           passage or defeat of a measure ~~or the nomination for election, or election, of any~~
- 16           ~~individual to office. The term also means a~~
- 17           b. A contract, promise, or agreement, express or implied, whether or not legally
- 18           enforceable, to make any expenditure ~~and includes the.~~
- 19           c. The transfer of funds by a political committee to another political committee.
- 20           d. An independent expenditure.
- 21          6. "Independent expenditure" means an expenditure made for a political purpose or for
- 22           the ~~direct~~ purpose of influencing the passage or defeat of a measure if the expenditure
- 23           is made without the express or implied consent, authorization, or cooperation of, and
- 24           not in concert with or at the request or suggestion of, any candidate or a candidate
- 25           committee or measure committee.
- 26          7. "Patron" means a person who owns equity interest in the form of stock, shares, or
- 27           membership or maintains similar financial rights in a cooperative corporation.
- 28          8. "Person" means an individual, partnership, political committee, association,
- 29           corporation, cooperative corporation, limited liability company, or other organization or
- 30           group of persons.



- 1       9. "Political committee" means any committee, club, association, or other group of  
2 persons which receives contributions or makes expenditures for political purposes and  
3 includes the following:
- 4       a. A political action committee, derived from a corporation, cooperative corporation,  
5 limited liability company, or an association that is prohibited from making ~~a direct~~  
6 ~~contributions~~ a contribution for political purposes under section  
7 ~~16.1-08.1-03.316.1-08.1-03.5~~, and which solicits or receives contributions or  
8 makes expenditures for political purposes;
- 9       b. A candidate committee, established to support an individual candidate seeking  
10 statewide office, that solicits or receives contributions for political purposes;
- 11       c. An organization governed by ~~section 527 of the Internal Revenue Code~~  
12 ~~[26 U.S.C. 527]~~ and registered with the federal election commission which solicits  
13 or receives contributions or makes expenditures for political purposes;
- 14       d. A multicandidate political committee, established to support multiple groups or  
15 slates of candidates seeking public office, that solicits or receives contributions  
16 for political purposes; and
- 17       e. A measure committee that solicits or receives contributions for the purpose of  
18 aiding or opposing a measure to be voted upon by the voters of the state.
- 19       10. "Political party" means any association, committee, or organization which nominates a  
20 candidate for election to any office which may be filled by a vote of the electors of this  
21 state or any of its political subdivisions and whose name appears on the election ballot  
22 as the candidate of such association, committee, or organization.
- 23       11. "Political purpose" means any activity undertaken in support of or in opposition to the  
24 election or nomination of a candidate to public office and includes using "vote for",  
25 "oppose", or any similar support or opposition language in any advertisement whether  
26 the activity is undertaken by a candidate, a political committee, a political party, or any  
27 person. In the period thirty days before a primary election and sixty days before a  
28 special or general election, "political purpose" also means any activity in which a  
29 candidate's name, office, district, or any term meaning the same as "incumbent" or  
30 "challenger" is used in support of or in opposition to the election or nomination of a  
31 candidate to public office. The term does not include activities undertaken in the

1 performance of a duty of a state office or any position taken in any bona fide news  
2 story, commentary, or editorial.

3 12. "Public office" means every office to which ~~persons~~an individual can be elected by  
4 vote of the people under the laws of this state.

5 **SECTION 2. AMENDMENT.** Section 16.1-08.1-03.5 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **16.1-08.1-03.5. Allowable corporate contributions and expenditures - Report required.**

- 8 1. ~~Corporations, cooperative corporations, limited liability companies, and associations~~  
9 ~~may make contributions to a measure committee, as described in section~~  
10 ~~16.1-08.1-01, for the purpose of promoting passage or defeat of initiated or referred~~  
11 ~~measures.~~ Corporations, cooperative corporations, limited liability companies, and  
12 associations may make expenditures and contributions for promoting any general  
13 political philosophy or belief deemed in the best interest of the employees,  
14 stockholders, patrons, or members of the corporation, cooperative corporation, limited  
15 liability company, or association other than a "political purpose" as defined by this  
16 chapter. A corporation, cooperative corporation, limited liability company, or  
17 association may not make a direct contribution for a political purpose.
- 18 2. A corporation, cooperative corporation, limited liability company, or association may  
19 make a donation of property or money to a state political party or nonprofit entity  
20 affiliated with or under the control of a state political party for deposit in a separate and  
21 segregated fund. Money in the fund must be used exclusively by the state political  
22 party or nonprofit entity affiliated with or under the control of a state political party for  
23 purchasing, maintaining, or renovating a building and for the purchase of fixtures for  
24 the building. A state political party or nonprofit entity affiliated with or under the control  
25 of a state political party receiving a donation under this subsection shall file a  
26 statement with the secretary of state no later than the thirty-first day of January of  
27 each calendar year. The statement must include the name and mailing address of  
28 each donor, the amount of each donation, the date each donation was received, all  
29 expenditures made from the fund during the previous calendar year, and cash on hand  
30 in the fund at the start and close of the reporting period. Any income and financial gain  
31 generated from a building purchased, maintained, or renovated from donations

1 authorized under this subsection and not otherwise authorized by law must be  
2 deposited in the building fund and must be reported when the political party or  
3 nonprofit entity files the statement required under this subsection.

- 4 3. A corporation, cooperative corporation, limited liability company, or association may  
5 make a contribution to a measure committee for the purpose of promoting the passage  
6 or defeat of an initiated or referred measure or make a contribution to any other  
7 person that makes an independent expenditure. A corporation, cooperative  
8 corporation, limited liability company, or association may make ~~a direct~~ an independent  
9 expenditure for a political purpose or for the purpose of promoting passage or defeat  
10 of initiated or referred measures. ~~A direct expenditure~~ The corporation, cooperative  
11 corporation, limited liability company, or association shall file a statement disclosing a  
12 contribution or an independent expenditure made under this subsection must be filed  
13 with the secretary of state within forty-eight hours after making the contribution or  
14 independent expenditure. The statement must include:

- 15 a. The full name of the corporation, cooperative corporation, limited liability  
16 company, or association;  
17 b. The complete address of the corporation, cooperative corporation, limited liability  
18 company, or association;  
19 c. The name ~~and telephone number of the person completing the report of the~~  
20 recipient of the contribution or independent expenditure;  
21 d. ~~The~~ If the contribution or independent expenditure is related to a measure, the  
22 title of the measure and whether the contribution or independent expenditure is  
23 made in support of or opposition to the measure;  
24 e. ~~The~~ If the contribution or independent expenditure is related to a measure, the  
25 election date on which the measure either will appear or did appear on the ballot;  
26 ~~f. d.~~ The amount of the contribution or independent expenditure;  
27 ~~g. e.~~ The cumulative total amount of contributions and independent expenditures since  
28 the beginning of the calendar year ~~in support of or opposition to the measure~~  
29 which are required to be reported under this subsection;

1        ~~h.f.~~ The telephone number and the printed name and signature of the  
2        ~~person~~individual completing the report, attesting to the report being true,  
3        complete, and correct; and

4        ~~i.g.~~ The date on which the report was signed.

5        **SECTION 3. AMENDMENT.** Section 16.1-08.1-05 of the North Dakota Century Code is  
6        amended and reenacted as follows:

7        **16.1-08.1-05. Audit by secretary of state - Requested audits - Reports.**

8        1. If a substantial irregularity is evident or reasonably alleged, the secretary of state may  
9        arrange an audit of any statement filed pursuant to this chapter, to be performed by a  
10       certified public accountant of the filer's choice, subject to approval by the secretary of  
11       state. If an audit of a statement arranged by the secretary of state under this  
12       subsection reveals a violation of this chapter, the candidate, political party, ~~or~~ political  
13       committee, or other person filing the statement shall pay a fine to the secretary of  
14       state equal to ~~five~~two hundred percent of the aggregate of contributions and  
15       expenditures found to be in violation or an amount sufficient to pay the cost of the  
16       audit, whichever is greater. If an audit of a statement arranged by the secretary of  
17       state under this subsection does not reveal a violation of this chapter, the cost of the  
18       audit must be paid for by the secretary of state.

19       2. If a substantial irregularity is reasonably alleged, the secretary of state may arrange an  
20       audit of any statement filed pursuant to this chapter, performed by a certified public  
21       accountant of the filer's choice, subject to approval by the secretary of state, upon  
22       written request by any interested party made to the secretary of state within thirty days  
23       following receipt of a statement by the secretary of state. The request must be made in  
24       writing, recite a substantial irregularity and a lawful reason for requesting an audit, and  
25       be accompanied by a bond in an amount established by the secretary of state  
26       sufficient to pay the cost of the audit. If an audit of a statement arranged by the  
27       secretary of state under this subsection reveals a violation of this chapter, the  
28       candidate, political party, or political committee filing the statement shall pay a fine to  
29       the secretary of state equal to ~~five~~two hundred percent of the aggregate of  
30       contributions and expenditures found to be in violation or an amount sufficient to pay  
31       the cost of the audit, whichever is greater, and the bond shall be returned to the

1 person submitting it. If an audit of a statement arranged by the secretary of state under  
2 this subsection does not reveal a violation of this chapter, the cost of the audit must be  
3 satisfied from the bond filed with the secretary of state.

4 3. An audit may not be made or requested of a statement for the sole reason that it was  
5 not timely filed with the secretary of state. An audit made or arranged according to this  
6 section must audit only those items required to be included in any statement,  
7 registration, or report filed with the secretary of state according to this chapter. The  
8 secretary of state may collect any payment obligation arising out of this section by civil  
9 action or by assignment to a collection agency, with any costs of collection to be  
10 added to the amount owed and to be paid by the delinquent filer. Any remaining  
11 moneys collected by the secretary of state after an audit is paid for under this section  
12 must be deposited in the state's general fund. This section does not apply to  
13 statements filed according to sections 16.1-08.1-03.10 and 16.1-08.1-03.11.

14 **SECTION 4. AMENDMENT.** Section 16.1-08.1-07 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **16.1-08.1-07. Penalty.**

17 Except as otherwise provided, any person who willfully violates any provision of this chapter  
18 is guilty of ~~an infraction~~ a class A misdemeanor.

19 **SECTION 5. REPEAL.** Subsection 1 of section 16.1-08.1-03.3 of the North Dakota Century  
20 Code is repealed.

2346 (2)

ALVIN A. JAEGER  
SECRETARY OF STATE

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SECRETARY OF STATE  
STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500

February 11, 2013

TO: Sen. Hogue, Chairman, and Members of the Senate Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: SB 2346 – Campaign Finance

Section 1, pages 1 through 5: This entire section pertains to definitions used throughout the Chapter in the Century Code governing campaign contributions. The term "direct expenditure" is removed because it is incorporated into the definition of the new term "independent expenditure," which is added on page 3 and is defined as being associated with expenditures that are made without the consent of any candidate or political organization.

Section 1, page 4, lines 11 and 12: The change in these two lines clarifies the definition of a political committee that is governed under federal law by the Internal Revenue Service and which is registered with the federal election commission.

Section 2, page 5, lines 8 through 11: This deleted sentence pertains to expenditures corporations may make to measure committees. The concept is reinserted into subsection 3 as part of independent expenditures and the reports that are required by those who make them.

Section 2, page 6, lines 4 through 31 on the introduced version of the bill and through page 7, line 4 of the markup version provided: The changes describe the independent expenditures that may be made by corporations and the reports required to be filed by those making independent expenditures. The amendment provided for this bill ensure all of the filing elements necessary are included in law and to make sure any references to "expenditures" are known as "independent expenditures."

Section 3, page 7, lines 10 and 25 (introduced) lines 14 and 29 (markup): The change raises the penalty from 5% to 200% of the aggregate contributions and expenditures found in violation on a report from an investigation.

Section 4, page 8, line 15 (introduced) and line 18 (markup): Raises the penalty for someone who violates a provision of the chapter from an infraction to a class A misdemeanor.

We request your favorable consideration.