

2021 HOUSE POLITICAL SUBDIVISIONS

HB 1451

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1451
2/12/2021

Relating to identifying the ultimate and true source of funds; and to provide a penalty
--

Chairman Dockter: (9:00). Opened the hearing.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	A
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	P
Representative Luke Simons	P
Representative Nathan Toman	P

Discussion Topics:

- Transparency in spending
- Administration procedures

Rep. Buffalo: Introduced the bill. Testimony #6480.

Aaron McKean: Campaign Legal Center. In favor, testimony #6475, 6476.

Ellen Chaffee: In favor, testimony #6460.

Don Morrison, ND Voters First: In favor, testimony #6500.

Jim Silrum, Deputy Secretary of State: In opposition, testimony #6436.

Additional written testimony:

#'s 6179,5661,5662.

Chairman Dockter: (9:39). Closed the hearing.

Carmen Hickle, Committee Clerk

February 12, 2021



North Dakota House of Representatives

State Capitol
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Bismarck, ND 58505-0360

Representative

Ruth Buffalo

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Committees:

Agriculture

Judiciary

Chair and House Political Subdivisions Committee,

North Dakota has a proud heritage of transparency, especially when it comes to campaign finance. As candidates and legislators, we reveal who donates to our campaigns and any personal financial interests that might be related to our public policy decisions. Disclosure is part of our commitment to being ethical and trustworthy. We also require political committees – multi-candidate, PACs, and ballot measures - to disclose their donors. We can be proud of these requirements, especially being one of only 11 states that places no limits on political contributions. We and the public need to know who is spending money to influence our elections.

North Dakota law now requires disclosing contributors of over \$200 to

- Candidate campaigns
- Political Committees (PACs)
- Ballot measure sponsors

HB 1451 makes no change at all to these existing procedures. But one major new form of political spending is left out. HB 1451 requires naming the donors to a new “Wild West” approach to election persuasion called “independent expenditures.”

This new kind of spending grew out of the 2010 U.S. Supreme Court “Citizens United” decision that freed corporations to make unlimited political expenditures under certain conditions. Primarily, corporations may not coordinate their spending with a candidate or a ballot measure committee. The rise of these Independent Expenditures since 2010 is stunning. At the federal level, spending reached \$2.9 billion in 2020 alone. In North Dakota, independent expenditures have averaged \$4 million per biennium since 2012.

The Century Code definition is

N.D.C.C. 16.1-08.1-01.6. "Independent expenditure" means an expenditure made for a political purpose or for the 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, committee, or political party.

The purposes of HB 1451 are:

- to apply North Dakota’s commitment to transparency of the ultimate and true source of political spending by requiring disclosure, as is done in all other North Dakota political spending,
- to harmonize state statute with the state constitution, and
- to define the administrative procedures for executive branch administration

This bill would ensure that the public knows the true source of funding for election ads. Spenders who transfer their money to other entities rather than purchasing their own election ads would no longer be able to hide their identity. The proposed legislation would require those who spend money on certain election activities in North Dakota to keep track of and disclose information about who contributes, donates, or transfers funds used for that spending and how the funds are spent. The purpose of the recordkeeping requirements is not to limit the funds that can be spent on campaign advocacy, but to reveal the original source of money behind election ads.

Please give HB 1451 a do pass recommendation. Thank you for your time. I am happy to answer any questions.

#6475

IN SUPPORT OF HB 1451

Implementing Article XIV's mandate for
transparency in political spending



Aaron McKean
Campaign Legal Center
February 12, 2021

HB 1451 and the Voter's Right to Know

- ▶ **HB 1451 implements Article XIV's mandate for transparency**
 - ▶ **Closing loopholes:** The bill closes loopholes that would allow political spenders to evade transparency requirements
 - ▶ **A comprehensive law:** The bill includes clear and consistent requirements for recording, reporting, and identifying the ultimate and true source of political spending

Closing loopholes

- ▶ Current law substantially limits which independent political spending is subject to disclosure, undermining the transparency mandate of Article XIV
 - ▶ Disclosure currently only applies to a person who “**knowingly** contributed...**solely** to influence a statewide election or an election for the legislative assembly” NDCC § 16.1-08.1-01
 - ▶ A group could donate \$10,000, earmark \$100 for non-political spending, and ensure the source of the remaining \$9,900 stays secret
 - ▶ HB 1451 amends the law to comply with Article XIV’s mandate, requiring independent groups that spend on elections to disclose donors who give more than \$200

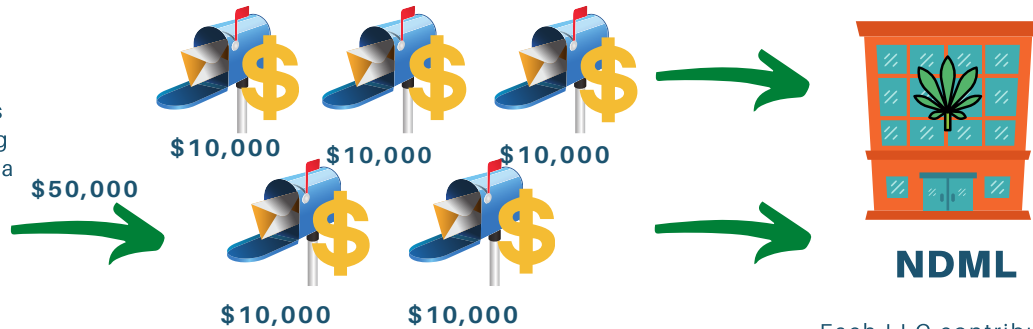
Key features of HB 1451

- ▶ **Requires independent groups that pay for political spending with money received from others to disclose the true sources of that spending**
- ▶ **Includes comprehensive recordkeeping and reporting requirements that provide clear guidance for political spenders**
- ▶ **Ensures that donors may opt their donations out of political spending and, thus, disclosure**
- ▶ **Provides prompt and accessible public disclosure of the ultimate and true source**

HB 1451 prevents shell games

MARK JOHNSON

Mark Johnson is a Las Vegas resident looking to expand his marijuana dispensary business.



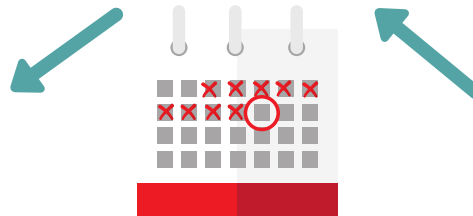
Seeing potential in North Dakota, Mark sets up 5 LLCs to funnel money to a group supporting a North Dakota ballot measure to legalize marijuana. He transfers \$10,000 to each LLC.

Each LLC contributes the \$10,000 to NDML.



Under the bill, North Dakota voters will know the true source of money spent to influence North Dakota elections.

The LLCs have 10 days from the date they receive notice from NDML to disclose the source of their contributions.



NDML wants to spend the \$50,000 from the LLCs on ads promoting the ballot measure to legalize marijuana. Before it can, NDML must identify the ultimate and true source of the money.

Donors' ability to opt out



NDML

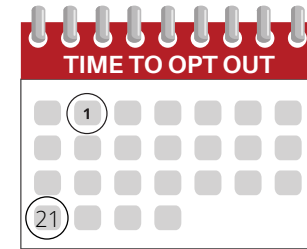
NDML solicits Mark for another \$10,000 contribution. He agrees, but contributes the money through the LLCs he established.



NDML's solicitation failed to inform donors that their money would be used for political spending and of their right to opt out of that spending.

NOTICE

Donation may be used
for political expenditures
Right to opt-out

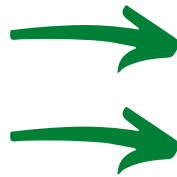


NDML must provide each donor **written notice** of NDML's intent to use the money for expenditures and that the donor has 21 days to opt out of that spending. Donors who opt out are not subject to disclosure.

Donations below \$200



Mary Olafson also wants to support North Dakota's marijuana legalization measure. She decides to contribute to NDML and tells her friends, who decide to contribute too.



NDML

Mary contributes \$300 and each of her friends contribute \$200.



PAID FOR BY:
Mary
NDML

When NDML reports its spending, it must disclose Mary's donation, but her friends' donations are not reportable because they do not exceed \$200.

Frequently Asked Questions

House Bill 1451 implements the transparency requirements of Section 1 of Article XIV of the North Dakota Constitution by revealing the true source of money used for political advertisements and other election spending. It requires transparency and prevents political donors from concealing their election spending by requiring recordkeeping and reporting of the ultimate and true source of expenditures of more than \$200 on election activities. These requirements provide transparency without restricting anyone's ability to spend money to criticize or support a candidate or ballot measure.

1. What new information would HB 1451 provide North Dakota voters?

- The bill requires that public campaign finance reports include more detailed information about the true source of money used for political spending. This information must trace money used for expenditures from the original source of the money to the spender who directly pays for the expenditure.
- The bill also requires a person or group that sponsors a political ad to include the names of its top three donors in the disclaimer on the face of the ad. Currently, political ad disclaimers are only required to identify the name of the group that sponsors the ad, which can leave voters in the dark about the true source of money behind the ad.

2. What is the basic structure of HB 1451?

- Any person or group that uses more than \$200 of money received from someone else to pay for an expenditure must create and maintain "tracing records." Tracing records keep track of how money has been passed along to the person or group making the expenditure, defined in the bill as a "covered person."
- The requirement to create and maintain tracing records does not apply to candidate committees or political party committees because those committees are already subject to comprehensive reporting requirements. Nor are tracing records required when expenditures are made by individuals using their own money or by businesses using their own profits – in these circumstances, the individual or business making the expenditure *is* the ultimate and true source of the expenditure.
- When a covered person receives contributions from others and spends more than \$200 of that money on expenditures, the covered person must create tracing records and begin filing reports with the Secretary of State. The reports must disclose, among other things, contributions of more than \$200 used by the covered person for expenditures, including contributions and transfers among intermediaries.
- The goal of the bill is to effectively implement Article XIV's transparency mandate by requiring transparency about all contributions and transfers of more than \$200 of funds that are ultimately used for expenditures. By requiring disclosure of each contribution and transfer of more than \$200, the bill prevents efforts to evade Article XIV's transparency mandate by breaking up a large political contribution into smaller contributions and routing those smaller contributions through different intermediaries.

3. Are contributors entitled to notice that their donations to a covered person may be disclosed?

- Yes. The bill requires a covered person who uses money contributed or transferred from others for expenditures to notify its contributors that their donations may be used for political spending

and that information about contributors may be required to be publicly reported. Contributors must also be provided an opportunity to opt out of having their contribution used for expenditures and if they opt out, their contributions are exempt from the bill's transparency requirements.

4. What if a covered person decides to make expenditures with contributed funds but failed to include the required notice when it solicited the contributions?

- A covered person may provide the required notice in connection with a fundraising appeal *or at a later time*. If the notice described above (see question 3) was not provided when the covered person initially solicited the money, the covered person may still use the funds for expenditures, but it must first provide notice that the contribution will be used for expenditures and provide the contributor 21 days to opt out of having their contribution used for expenditures.

5. What must a business do if it wants to contribute its profits to a covered person?

- If a business contributes its own profits to a covered person, and those funds, in turn, are used for expenditures, the covered person must disclose tracing records regarding the business's contribution, and the covered person may also be required to identify the business as a top-three donor on disclaimers, depending upon the size of the business's contribution. As explained above (see question 2) a business is not required to create or disclose tracing records when it uses its own profits directly for expenditures or makes a contribution to a covered person.

6. What if an individual wants to give \$100,000 to a covered person?

- If an individual uses her own personal funds (e.g., income from salary or investments) to make a contribution to a covered person and does not opt the contribution out of being used for expenditures, the individual's contribution must be reported by the covered person, and the individual may be required to be identified as a top-three donor. No tracing records would be required to identify the underlying sources of the individual's personal funds.

7. How does HB 1451's tracing requirement work?

If money is passed from one organization to another – once, twice, or many times – before a covered person uses the money to pay for a political ad or other expenditure, the requirements of the bill ensure that these contributions or transfers can be traced back to the ultimate and true source of the funds.

Soliciting funds for expenditures

For example, consider the hypothetical nonprofit group North Dakotans for Marijuana Legalization (NDML). NDML supports ballot measures that would legalize marijuana sales in North Dakota and decides to buy a variety of ads to advocate for passage of those ballot measures. To raise money, NDML emails solicitations for contributions to support its cause. When a prospective contributor clicks on the link to donate online, she is asked to provide all the required information regarding the origin of the funds and is notified that her contribution may be used to make expenditures (and that her information may be subject to constitutional and statutory transparency requirements). The donation page includes the option to check a box to opt the donation out of being used for expenditures.

The bill ensures that the ultimate and true source of funds used for expenditures can be traced when funds are transferred through intermediaries

(See attached *Graphic A: Tracing the Ultimate and True Source*)

Suppose Las Vegas resident Mark Johnson is looking to expand his marijuana dispensary business and he receives an email solicitation from NDML. Viewing expanded marijuana legalization as a good business opportunity, Mark decides to contribute \$50,000 of his own money to NDML, but he doesn't want to be identified as the source of the contribution. In an effort conceal his identity as the out-of-state source of the contribution to NDML and to minimize attention to its large size, Mark sets up five LLCs and adopts

local-sounding names for each of them. Mark transfers \$10,000 of his personal funds to each of the LLCs, which, in turn, contribute the total amount transferred from Mark to NDML without opting the contributions out of being used for expenditures.

In this scenario, NDML would be required to trace each of the LLC's contributions back to Mark and disclose Mark as the ultimate and true source of funds it used for its expenditures. If Mark's funds were transferred through one or more additional LLCs or other intermediaries before ultimately being used by NDML, the bill would require tracing of the funds through those intermediaries as well. The bill requires that the LLCs disclose to NDML that Mark was the ultimate and true source of the funds they contributed, so that NDML can report that information as required under the bill. Once NDML requests this information, the LLCs would have 10 days to complete the disclosure.

Failing to identify the ultimate and true source of funds spent for an expenditure could result in a reporting violation

See attached *Graphic B: Reporting Violations*

Suppose one of the LLCs transfers the \$5,000 of the funds it received from Mark to a nonprofit, North Dakotans for Weed (NDFW), and NDFW, in turn, contributes the \$5,000 it received from the LLC to NDML. Suppose further that NDFW identifies the LLC as the source of its contribution, but is unable to trace the funds back to their ultimate and true source (Mark). If NDML nevertheless uses the funds for its expenditures without identifying Mark as the ultimate and true source, it would be committing a reporting violation. And if Mark intentionally structured his transactions to conceal his identity, his violation could be a criminal misdemeanor.

Contributors must be provided an opportunity to opt their contribution out of being used for expenditures

See attached *Graphic C: Opting Out*

Suppose Mark is at a business luncheon in Bismarck when he meets a fundraiser for NDML, who solicits Mark to contribute another \$10,000 of his personal funds to NDML. Mark follows the same steps described above, transferring his funds to one or more LLCs. But the NDML fundraiser neglected to provide Mark or any of the intermediaries with the required notice that the contribution would be used for expenditures, or that it could be opted out of that use. In this situation, NDML must provide each LLC written notice that it has 21 days to opt the funds out of political spending. Contributions that are opted out are not subject to tracing.

Only contributions in excess of \$200 are subject to the tracing requirement

See attached *Graphic D: Smaller Donations*

Suppose Mark's friend, Mary Olafson, also wants to support NDML. Mary contributes \$300, and when she tells her friends about her contribution, four of them each decide to contribute \$200 to NDML.

Under the bill, NDML's tracing records must identify Mary because her contribution exceeded the \$200 threshold for ultimate and true source reporting. Mary's friends' donations are below the threshold and, thus, are not reportable.

7. HB 1451 requires that a covered person identify their top three donors in political ads – how are the top three donors determined?

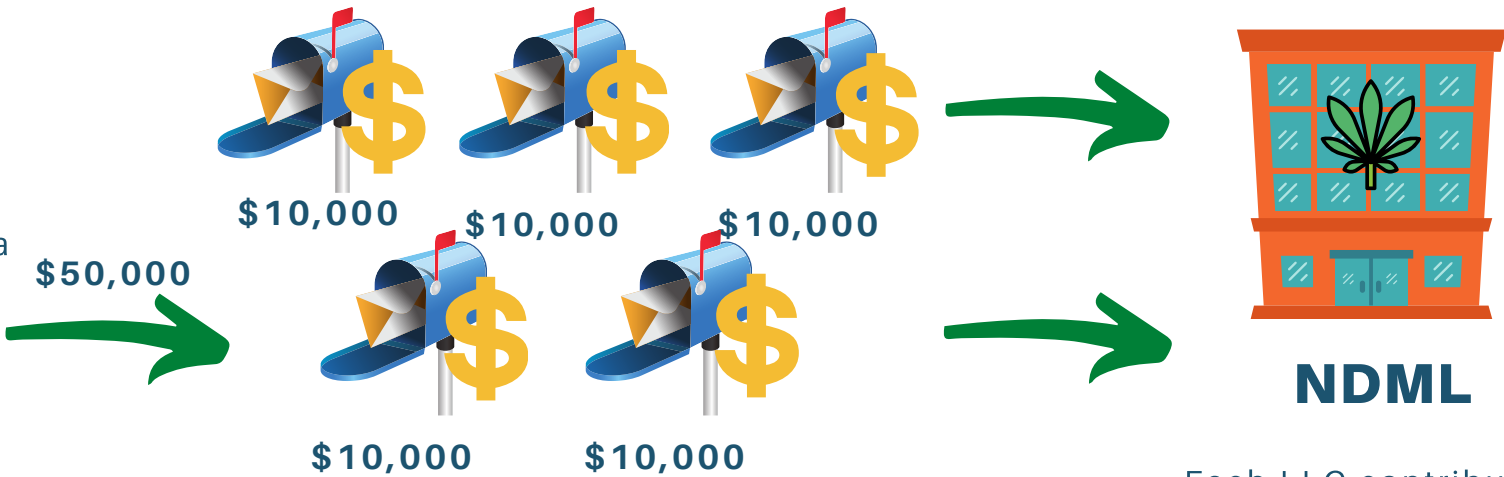
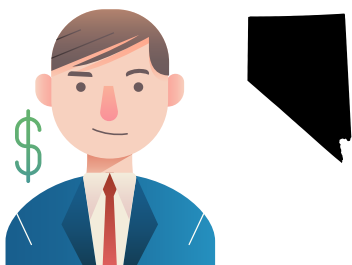
- To identify the top three donors, the covered person will first identify the three donors who contributed the most original funds to it during the election cycle, even if those funds came through intermediaries. Only donors who gave aggregate contributions of more than \$200 would be required to be named as a top donor in a disclaimer.

- A covered person is generally only required to name top donors from the current election cycle, but there's one important exception: If a contributor's aggregate contributions to the covered person constituted more than half of the covered person's traceable funds at the start of the election cycle, then those contributions are treated as if they had been made in the current election cycle. This exception prevents a contributor from contributing the majority of a group's election funds just before an election cycle begins in an attempt to evade transparency.
- If no original source contributes over \$200, but one or more intermediaries transferred more than \$200 in traceable funds to the covered person during the election cycle, then those intermediaries will be treated as ultimate and true sources of funds for purposes of the required disclaimer.

GRAPHIC A: Tracing the Ultimate and True Source

MARK JOHNSON

Mark Johnson is a Las Vegas resident looking to expand his marijuana dispensary business.



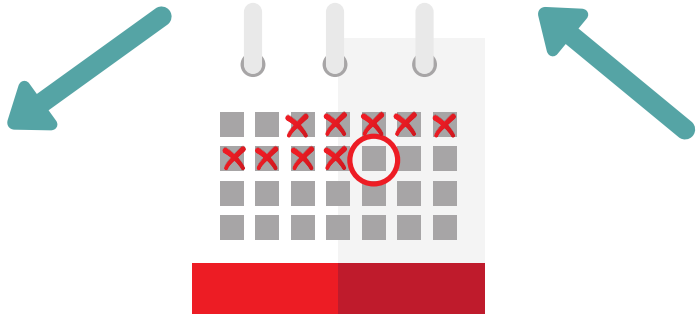
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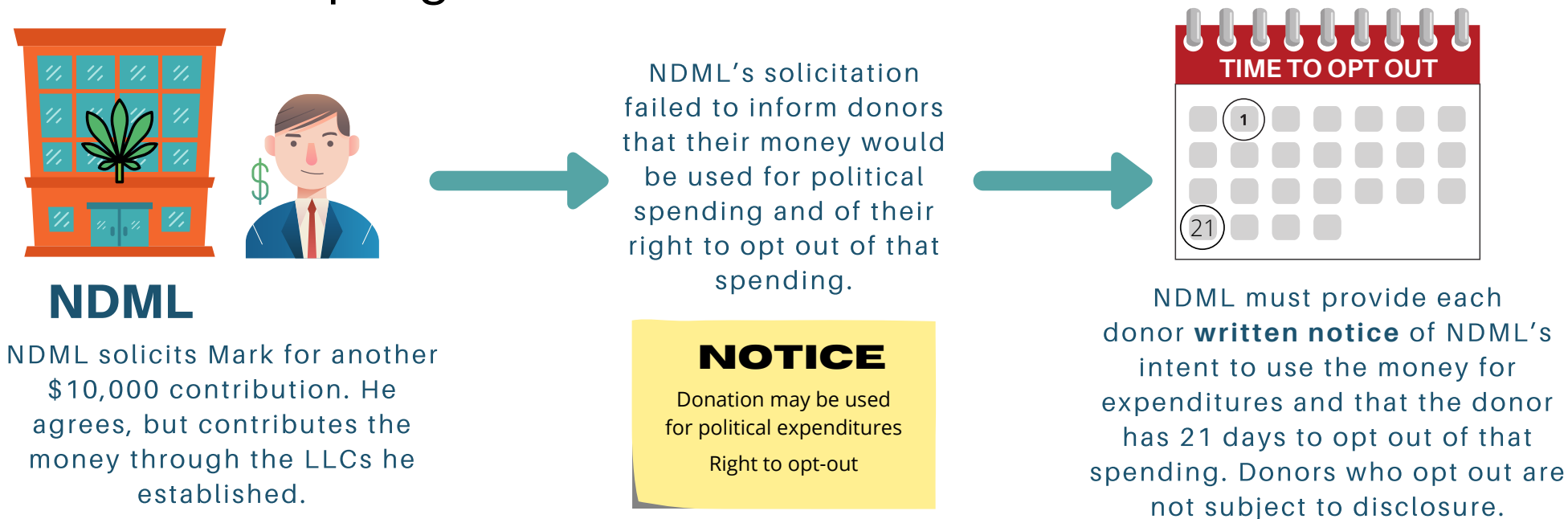


NDML wants to spend the \$50,000 from the LLCs on ads promoting the ballot measure to legalize marijuana. Before it can, NDML must identify the ultimate and true source of the money.

GRAPHIC B: Reporting Violations



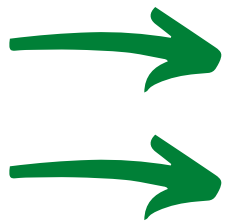
GRAPHIC C: Opting Out



GRAPHIC D: Smaller Donations



Mary Olafson also wants to support North Dakota’s marijuana legalization measure. She decides to contribute to NDML and tells her friends, who decide to contribute too.



NDML

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PAID FOR BY:

Mary

NDML

When NDML reports its spending, it must disclose Mary’s donation, but her friends’ donations are not reportable because they do not exceed \$200.

Testimony HB 1451 - Support
House Political Subdivisions Committee
 February 12, 2021

Mr. Chairman and members of the House Political Subdivisions Committee, my name is Ellen Chaffee. I live in Bismarck and I am providing testimony as a private citizen. I support HB 1451.

North Dakota government is committed to transparency, and rightly so. Many of us appreciate the Legislative Assembly's leadership in this regard and the improvements you've made in recent years regarding campaign finance disclosure. I believe that HB 1451 is consistent with your values as well as mine.

Candidates have been reporting their contributors to the state's campaign finance system for many years. PACs, political parties, and initiated measure sponsoring committees report both contributions and expenditures. HB 1451 does not change any of that.

Only one group is not required to report its contributors - Independent Expenditures. Arising in just the past decade, Independent expenditures have enabled people, organizations, and corporations to spend unlimited amounts of money to influence elections in secret. Therefore, voters cannot assess the integrity and motives of behind powerful campaign ads. Voters cannot even be sure that the spenders are Americans, rather than foreigners attempting to interfere in our elections and government. Organizations that make "independent expenditures" must be held to the same transparency standards as other political spenders, so that they cannot be used as a tool for concealing the true sources of money spent to influence North Dakota elections.

Independent expenditure groups have accounted for over \$20 million dollars of spending to influence North Dakota elections in the last four election cycles, and no one knows where all that money came from. "Independent" should not mean "anonymous" when it comes to influencing our elections.

Anonymous cannot be held accountable. Here is an example of a 2020 independent expenditure in North Dakota.



This 2020 ad is against your own proposed constitutional amendment for the State Board of Higher Education to have 15 members with six-year terms. Despite its claims, I have no idea how the backers imagine such changes could hurt students, alumni, the economy, and taxpayers. How could it give faraway bureaucrats control of a student's education or deprive local communities of control? In this ad, a group called Vote No on Measure 1 accuses the legislature of aiming to expand big government and harm higher education. Who ARE these people? I'd like to know, you deserve to know, and North Dakota voters have a right to know. This group failed to make a required campaign finance report to the Secretary of State but even if it had done so, all we would know is what it spent, not who paid for them.

Groups must not be used as shields. The next example is from a 2018 group opposing the North Dakotans for Public Integrity (NDPI) measure that became Article XIV of the state Constitution. Opponents hit hard that this campaign used out of state funds.

The sponsors of the ad, North Dakotans for Sound Government (NDSG), claimed that Article XIV would overrule all other rights in the constitution, create a new unaccountable layer of government, and cost millions. Neither the fiscal note nor the first two years of experience come close to validating any of those claims. Who ARE these people, so careless with the truth? They complain about out-of-state interests funding the pro- amendment campaign, which they know because state law - your law - requires disclosing contributors to pro-measure campaigns. Are the donors to this ad from out of state as well? Without HB 1451, we have no way of knowing.

Let me explain that, because NDSG did report both contributors and expenditures to Campaign Finance online. Here are three of their 20 contributors -

Americans for Prosperity	1310 N Courthouse Rd Suite 700 Arlington, VA 22201
Associated General Contractors of North Dakota	422 North 2nd Street Bismarck, ND 58501
Basin Electric Power Cooperative	1717 E Interstate Ave Bismarck, ND 58503



Clearly, one of their contributors is from out of state, but all the rest have North Dakota addresses. The question for many of them, though, is where did they get the money they contributed in their own name? Did the Greater North Dakota Chamber take \$100,000 out of member dues, or did others contribute to a special GNDC fund? Same

for the \$60,000 from the ND Petroleum Council? Did any of them pass through funds from other states, even other nations? We have no way of knowing because they were not required to report the original source of funds.

NDPI, the sponsors of the amendment, voluntarily disclosed the original source of its contributions, as shown here:

Represent Us	Sub-Contributors	PO Box 60008 Florence, MA 01062	09/07/18
Voters Right to Know	Sub-Contributors	28 Liberty Ship Way Sausalito, CA 94965	09/09/18
End Citizens United	Sub-Contributors	PO Box 66005 Washington, DC 66005	09/09/18

Clicking on the “Sub-Contributors” column reveals the names and addresses of individual “persons,” as defined in North Dakota law and HB 1451, who gave the money that these organizations are reporting - they are the ultimate and true source. And that’s how easy it is to implement full transparency of contributors to independent expenditures - it has been done within our existing system simply by disclosing sub-contributors.

Knowing who cares enough about a person or issue to spend money in support or opposition is a cornerstone of responsible decision-making by voters and public officials. Seeing friends or others you agree with taking out their wallets to back an ad or mailing can be far more persuasive than anything on the document itself. And vice versa. Please recommend DO PASS on House Bill 1451.

Testimony HB 1451
House Political Subdivisions Committee
February 12, 2021

Mr. Chairman and members of the House Political Subdivisions Committee, my name is Don Morrison. I live in Bismarck and am providing testimony as a volunteer for North Dakota Voters First. We are a non-partisan group of North Dakotans working to strengthen our democracy, help make our elections and public policy more open, ethical, and accountable to the people of our state.

HB 1451 is needed to make sure North Dakotans are able to know who is paying to influence our elections outside of candidate campaigns, political committees, and ballot measure committees. This bill is about “dark money.” Those using “dark money” to influence North Dakota elections should not be given the veil of secrecy any longer. This bill is good whether you are a Republican, Democratic-NPLer, Libertarian, or independent. Our elections and public policy discussions work better when they are more open, ethical, and accountable to the citizens of our state.

This session we have heard a lot about the problem of out-of-state money coming to North Dakota to try to tell us how to vote. That concern has been used as a reason to put restrictions on ballot measures, to make it harder to pass ballot measures, and even to require the whole text of the initiated or referred measure to be printed in full on the ballot. That last effort would not only be confusing, but it would also make our ballots irritatingly cumbersome and expensive.

Making it more difficult for the citizens of our state to have our voices heard is like a throwing a wet blanket on the citizen engagement we should be encouraging.

Instead of that, we should be straight forward and direct our problem solving at the real problem we all seem to have identified – money in our politics. HB 1451 tackles that problem.

North Dakota Voters First urges this committee to recommend a Do Pass on HB 1451. Thank you for the opportunity to talk with you this morning.

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 12, 2021

TO: Chairman Dockter and Members of the House Political Subdivisions Committee

FR: Jim Silrum, Deputy Secretary of State on behalf of Secretary of State Al Jaeger

RE: HB 1451 – Campaign disclosure requirements

This bill adds to the disclosure requirements for all political action committees, multicandidate political committees, and measure committees registered with the Secretary of State each year. In addition to the pre-primary, pre-general, 48-hour, and year-end statements already required of these committees, each time one of the committees makes a qualifying expenditure, the expenditure must be disclosed in a new statement that would need to be created in North Dakota Campaign Finance Online (ND CFO).

Using 2020 as an example, of the 548 campaign disclosure filers, this bill would have impacted:

- 4 Initiated Petition Sponsoring Committees
- 5 Measure Committees
- 33 Multicandidate Committees
- 81 Political Action Committees
- **123 Total Committees**

Campaign disclosure is not an easy topic to understand. Individuals who are required to file statements often call the Secretary of State's office looking for clarifications as to what is required of them and when. Even those who advocate for campaign disclosure reform in North Dakota show their lack of understanding of the current campaign disclosure requirements in law by what they ask of us and what they disclose on the statements they have filed.

HB 1451 would significantly complicate a topic that is already complex. It would add to ch. 16.1-8.1:

- New definitions for identity, original funds, traceable funds, and tracing record.
- New details for recordkeeping, notice approval, and notice rejection that must be kept and followed relating to the ultimate and true source of funds.
- A new 5-day disclosure statement for qualifying expenditures.
- New requirements for the Secretary of State to receive complaints and investigate possible violations of the new requirements.
- A determination as to where civil action is to be filed in this state.

The Secretary of State was not asked to submit a fiscal note for this bill, but the requirements in this bill will require new enhancements to ND CFO. The costs for this are uncertain, but we estimate that the new statement required in this bill would cost the state somewhere between \$20,000 to \$30,000.

On behalf of the Secretary of State and his election team, we request the committee to vote for a **DO NOT PASS** recommendation.

*The Big Sky Country*

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE ROB COOK
HOUSE DISTRICT 18

HOME ADDRESS:
223 1ST AVE SW
CONRAD, MT 59425
PHONE: (406) 868-3426

09 February 2021

To Members of the Political Subdivisions Committee;

Montana has had a long and sordid relationship with dark money. Each time my state has been faced with its intrusion into the political sphere - either the citizenry, or the legislature, has reacted to clean up in its aftermath.

Montana's political ills began when Copper King William Clark bribed the Montana State Legislature to purchase a US Senate seat. Other members of the US Senate, after being made aware of his underhanded activities, refused to allow him to be seated. William Clark's perfidy has been largely credited with being the driving force behind the 17th amendment to our US Constitution. The amendment that removed the selection of Senators from the purview of state legislatures and, instead, made their selection subject to each state's popular vote. In a similar fashion, Montanans employed our initiative process to amend our constitution. The amendment banished corporate money from our state's elections.

For nearly 100 years Montana's amended constitution served my state well. It protected our elections from 1912 until 2010 when the *Citizens United* decision declared our ban on corporate money to be unconstitutional. Seemingly overnight, hundreds of political action committees sprang into existence. Most of them providing no visible clues as to the true source of their bloated war chests.

Groups with disingenuous names and suspect enrollment began to campaign against incumbent legislators in our state's primary elections. One of these groups, Mothers against Child Predators, was comprised in its entirety of just two men and it did not receive an in-state donation.

Political action committees like these plagued both parties and, sometimes, they even artificially propped up a Libertarian or Green party candidate to syphon votes away from Republicans and Democrats in the general election. Vote syphoning by artificially supported Libertarian candidates likely cost Republican Representative Denny Rehberg a US Senate seat and it certainly caused Republican candidate for governor, Rick Hill, to lose to Democrat Steve Bullock.

After a failed attempt in 2013 to revise our state's campaign finance reporting laws, the legislature returned in 2015 to successfully pass some of the nation's most stringent reporting requirements. By revealing who is spending in our local elections, these reporting requirements provide the transparency necessary for the citizens of Montana to make an informed choice while voting.

As a nation we are currently suffering from a dangerous lack of trust in the institutions of democracy. Nowhere is this more apparent than in our widespread disbelief in the integrity of our elections.

Transparent campaign finance reporting is just one tool we can employ on our long road back to trust in our institutions. I urge this committee to embrace the merits of transparent campaign finance reporting by passing HB1451 – The Voters Right to Know Act.

Thanks you all for your time and consideration,

A handwritten signature in blue ink, appearing to read "Rob Cook". The signature is fluid and cursive, with the first name "Rob" being more prominent than the last name "Cook".

Former Representative Rob Cook – Montana HD18

P.S. When the 2015 legislation first passed, there were many who felt it would create a disadvantage for Republicans. This is not true – as evidenced by Montana's statewide red wave election in 2020. Transparent campaign finance reporting is not partisan. Rather, transparency is necessary to ensure that our citizens make their best choices when casting their ballot on Election Day.



North Dakotans for Public Integrity

January 29, 2021

The Honorable Representative Jason Dockter, Chairman
The Honorable Representative Brandy Pyle, Vice Chairman
House Political Subdivisions Committee, North Dakota Legislative Assembly

RE: Support for HB1451

Dear Chairman, Vice Chairman, and Members of the Committee,

North Dakotans for Public Integrity (NDPI) respectfully submits this letter in support of HB1451, relating to political advertisements and reporting the ultimate and true sources of funds. This bill contains crucial provisions for implementing Article XIV of the North Dakota Constitution, including uniform procedures for tracing the ultimate and true source of election spending; requirements to identify the top donors to sponsors of election ads on the face of the ads; and procedures that allow donors to opt out of such spending and the corresponding transparency requirements. The bill also closes loopholes in current law that would make it easy for donors to evade Article XIV's transparency mandate. Together, these provisions would help protect North Dakotans' constitutional right to know who is funding elections and spending money to influence government action in our state.

NDPI was formed by a non-partisan group of North Dakota citizens who organized to educate and inform other North Dakotans about the importance of integrity and public accountability in government institutions. NDPI promotes efforts to increase integrity and accountability in North Dakota's government institutions, and advocates for proposals that will increase the people's confidence in the honesty and transparency of our government and public officials. NDPI sponsored North Dakota Measure 1, the ballot measure that North Dakota voters passed in November 2018, which resulted in new Article XIV to the North Dakota Constitution.

NDPI supports the bill because it includes crucial elements for implementing Article XIV's promise of transparency in election spending. The bill establishes a uniform process for spenders to trace the money they use for election spending back to its true source and makes it harder for donors to conceal their election spending by funneling donations through nonprofit organizations and other intermediaries that don't disclose their donors. The bill's tracing procedures would make compliance with its transparency requirement more straightforward and consistent, while ensuring that North Dakotans have the transparency we need to make informed decisions about our government. The bill also requires political advertisements to include on-ad disclaimers that identify their sponsors' top donors, ensuring that North Dakotans can know who is truly behind ads seeking to influence how we vote. At the same time, the bill provides donors the opportunity to opt

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www.ndintegrity.org • 701-885-4260 • #NDIntegrity • @NDIntegrity

Paid for by North Dakotans for Public Integrity, Inc. - Dina Butcher, President

their donations out of political spending and corresponding transparency requirements, giving donors more control over how their money is used.

In addition, the bill closes loopholes in current law that make it easy for spenders to evade Article XIV's transparency mandate. The Century Code's current definition of "ultimate and true source" is limited to persons who "knowingly" contributed money "solely" to influence an election. These "knowingly" and "solely" qualifications improperly limit the scope of which sources of election spending are identified and will make it easy for spenders to evade disclosure by, for example, earmarking a nominal portion of a large contribution for non-election spending. This is not the transparency promised by Article XIV.

The voters of North Dakota are entitled to know who is spending in our elections and to prevent wealthy, out-of-state special interests from concealing their efforts to influence North Dakota elections and policy. The bill provides uniform and clear rules for the identification and disclosure of spenders in North Dakota elections. Importantly, the provisions ensure that North Dakota voters have access to the information we need to evaluate political messages and participate in self-government. Passing the bill would help protect North Dakotans' constitutional right to transparency in our elections.

NDPI respectfully requests a "Do Pass" recommendation for this bill. Thank you for your consideration.

Respectfully submitted,



Dina Butcher, President
Board of Directors
North Dakotans for Public Integrity

HB 1451: Voters Right to Know – DO PASS

Frequently Asked Questions

What is the problem?

A new kind of political spending in the past decade has enabled people, organizations, and corporations to spend unlimited amounts of money to influence elections in secret. This is a problem because when large amounts of money are spent to influence elections and government in secret, voters cannot assess the integrity and motives of the spenders. Voters cannot even be sure that the spenders are Americans, rather than foreigners attempting to interfere in our elections and government. Organizations that make “independent expenditures” must be held to the same transparency standards as other political spenders, so that they cannot be used as a tool for concealing the true sources of money spent to influence North Dakota elections. Section 1 of Article XIV in North Dakota’s Constitution requires it.

What is the purpose of HB1451?

North Dakotans have a right to know who is trying to influence our elections. Law now requires disclosing donors over \$200 to

- Candidate campaigns
- Political Committees (PACs)
- Ballot measure sponsors

One major new group is left out. HB1451 requires naming the donors to a new “Wild West” approach to election persuasion called “independent expenditures.”

The purposes of HB1451 are:

- to apply North Dakota’s commitment to transparency of the ultimate and true source of political spending by requiring disclosure, as is done in all other North Dakota political spending,
- to harmonize state statute with the state constitution, and
- to define the administrative procedures for executive branch administration

What is an Independent Expenditure?

North Dakota state law defines “independent expenditure” as “an expenditure made for a political purpose or for the 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, committee, or political party.”

Who makes Independent Expenditures?

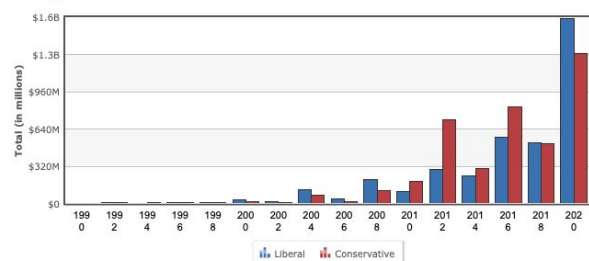
For an expenditure to be “independent,” it must not be made in coordination with candidates or campaigns. Groups who make independent expenditures are often temporary, with nice-sounding but misleading names that conceal who is behind the group while appealing to the local voters the group seeks to influence.¹ Under current law, these groups do not have to report where they got the money they use to pay for their political spending. That money may come from individuals, other groups, or corporations, and there is no limit to how much they may contribute to help finance this secret political spending. Since the 2010 Supreme Court decision called “Citizens United” began allowing corporations to make political donations, the use of this approach has exploded nationally.

¹ In North Dakota, these groups range from conservative to liberal, including: Brighter Future Alliance, Americans for Prosperity, CitizenLink, Conservation Federation of Missouri, Divorce Film LLC, Family Policy Alliance of North Dakota, Fargo Stopping Center LLC, Feminist Majority Foundation, First Principle, Liberty Initiative Fund, NDCC Inc, NDFA Action, North Dakotans for Sound Government, North Dakotans for Common Sense Conservation, North Dakotans Against the 400% Tax Increase, Prairie Action ND, Protect the Harvest, US Term Limits, USND, Vets for Economic Freedom, Working America.

What do they spend the money on? How much?

Independent expenditures fund political ads that are intended to influence voters and decision-makers, independent of any candidate or ballot committee. Since 2012, ballot measures have been the major issues for independent spending in North Dakota.²

Total Liberal vs. Conservative Outside Spending, Excluding Party Committees



At the federal level, independent expenditures went from \$205 million in 2010 to \$2.9 billion in 2020, from both conservatives and liberals. Just 11 wealthy individuals, liberal and conservative, invested over \$1 billion between 2010 and 2018.

In North Dakota, independent expenditure groups spent \$20.6 million in the last five elections, from a low of \$383,000 to a high of \$11,350,500, averaging \$4.12 million per election.

How must the sources of independent expenditures be identified – what does “ultimate and true source” mean?

Based on Section 1 of HB 1451, this Article XIV requirement focuses on “original funds” from an individual or corporate “person,” *i.e.*, wages, investment returns, bequests, or money received through ordinary commercial transactions. This approach allows voters to know specifically who is behind the message by eliminating anonymous pass-through to an organization.

How can a donor “opt out” of having their money used for political spending?

HB1451 balances voters’ right to know the ultimate and true source of political spending with donors’ right to privacy regarding donations that are not intended for political spending. A donor who exercises the right to opt their donation out of being used for political spending is not subject to the disclosure requirements of HB1451.

Where did HB1451 come from? Is there a deadline?

The bill is a continuation of the legislature’s mandate to implement Article XIV, which the voters approved in 2018. This bill expands and improves on the legislature’s work in 2019, to ensure the legislation fully implements Article XIV’s transparency mandate. The Constitution requires completion of this work by January 2022.

Specifically, what does this bill apply to?

HB1451 requires a person that spends substantial amounts of money that is not the person’s own “original funds” on state-level political spending to disclose the ultimate and true source of that spending. It does NOT apply to

- A person who spends or contributes the person’s own original funds
- Candidates and their committees
- Political party committees

Those individuals and groups are already required to disclose the sources of their political spending. This bill DOES apply to SuperPACS, which the Federal Election Commission defines this way: “Super PACs are independent expenditure-only political committees that may receive unlimited contributions from individuals, corporations, labor unions and other political action committees for the purpose of financing independent expenditures and other independent political activity.”

² Practices of farming and ranching, Prohibiting smoking in public places and worksites, Prevention of animal cruelty, School after Labor Day, Operation of a pharmacy, Parental rights and responsibilities, Clean water, wildlife, and parks trust, Fiscal impact of initiated measures, Change SBHE to three-member commission, Prohibit mortgage and real estate sales taxes, Right to life at every stage, Legislator residency, Oil extraction tax distribution, Crime victim rights, Tobacco tax increase, Medical marijuana, Ethics commission, Qualified elector, Legal marijuana, Personal plates for emergency responders, State board of higher education, Initiated measures.

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1451
2/18/2021

Relating to identifying the ultimate and true source of funds; and to provide a penalty
--

Chairman Dockter: (9:15). Opened for committee work.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	A
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	A
Representative Luke Simons	P
Representative Nathan Toman	P

Discussion Topics:

- Disclosure of campaign funds

Rep. Adams: Made a do pass motion.

Motion failed for lack of a second

Rep. Johnson: Made a do not pass motion.

Rep. Simons: Second the motion.

Representatives	Vote
Representative Jason Dockter	Y
Representative Brandy Pyle	Y
Representative Mary Adams	N
Representative Claire Cory	A
Representative Sebastian Ertelt	Y

Representative Clayton Fegley	Y
Representative Patrick Hatlestad	Y
Representative Mary Johnson	Y
Representative Lawrence R. Klemin	Y
Representative Donald Longmuir	Y
Representative Dave Nehring	Y
Representative Marvin E. Nelson	A
Representative Luke Simons	Y
Representative Nathan Toman	Y

11-1-2 carried.

Rep. Klemin: Will carry the bill.

Chairman Dockter: (9:16). Closed committee work.

Carmen Hickle, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1451: Political Subdivisions Committee (Rep. Dockter, Chairman) recommends **DO NOT PASS** (11 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). HB 1451 was placed on the Eleventh order on the calendar.