

2025 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1286

2025 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1286
1/23/2025

Relating to identifying the ultimate and true source of funds; and to provide a penalty.
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9:30 a.m. Chairman Satrom opened the hearing.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, Brown, Christy, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Wolff

Members Absent, Representative Vetter

Discussion Topics:

- Disclosure of donors
- Constitutionality
- Enforceability
- Ambiguity of requirements

9:30 a.m. Representative Schatz, District 39, testified in favor, and submitted testimony, #31002.

9:37 a.m. Sandy McMerty, Deputy Secretary of State, testified in opposition, and submitted testimony, #31000.

9:45 a.m. Shane Goettle, Lobbyist for Brighter Future Alliance, testified in opposition, and submitted testimony, #30936.

Additional written testimony:

Lanny Kenner submitted testimony in favor, #30918.

Senator Magrum submitted testimony in favor, #30148.

Andrew Borneman submitted testimony in opposition, #30878.

10:10 a.m. Chairman Schauer closed the hearing.

Jackson Toman, Committee Clerk

Senator Jeffery J. Magrum
Senate District 8
Testimony for HB 1286

I have personally been attacked during several elections by individuals using dark money. The Constitution itself says that we have the right to meet our accuser. Although this is different I believe on principle alone that everyone should know who is behind the attacks or who is supporting certain candidates. I humbly ask for a do pass on HB1286

HB 1286
Testimony in opposition.

Mr. Chairman and members of the House Government and Veterans Affairs Committee.

I am writing to you to respectfully request a Do Not Pass recommendation from this committee on House Bill 1286.

While I sympathize with the sentiment of the authors of this bill, in that transparency in government is almost always a good thing, I feel this bill is a step too far in a number of ways.

First, to me, the monetary tracing requirements seem to be nearly impossible for the average person to follow correctly. The amount of paperwork required by this bill would force many "covered persons" to have to hire a compliance officer/accountant just to satisfy the requirements of this bill.

Second, the definition of "covered persons" is extremely vague, and could easily include many more individuals than the authors intend.

Third, tasking the Secretary of State with not only investigation, but also enforcement, would put a massive strain on the SOS office, and likely require several dedicated employees just to deal with complaints under this section.

Fourth, under line 13 of page 6, an entirely new type of donation is created: one with strings attached. I am not aware of any other place in law where one can make a donation to an organization or entity, and then retain control over how their funds are spent. On the surface this seems to be a good idea, but it is a dangerous path to take.

Fifth, the changes under section 6 would have a significant negative impact on political advertisements, particularly those which are audio based. The requirement to include the top three donors (besides the fact that the advertisement itself may not be directly approved by the donors) would take a significant amount of expensive airtime for both television and radio ads, thus reducing the effectiveness and raising the cost of advertising.

As a whole, this bill seems completely unworkable and overly complex. I respectfully request a Do Not Pass recommendation from this committee.

Sincerely,

Andrew Bornemann
Kintyre, ND

Lanny Kenner
Bismarck North Dakota
In favor of HB1286

***Hello committee members. I am in favor of House Bill 1286.
All governments super pacs and dark money should be disclosed of the origin. If we
have nothing to hide transparency is no problem. So please pass House Bill 1286 unless
you have something to hide.***

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

HB 1286

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

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

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

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

I. HB 1286: An Unconstitutional Assault on Fundamental Rights

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

A. Political Speech: A Cornerstone of Democracy

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

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

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

B. Associational Privacy: A Constitutional Shield

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

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

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

C. Vagueness and Arbitrary Enforcement

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

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

D. Restrictions on Political Advertising

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

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

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

E. Punitive Enforcement Mechanisms

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

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

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

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

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

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

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

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

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

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

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

III. HB 1286 is Impractical and Unworkable

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

1. **Impractical Disclaimers:** Section 16.1-10-04.1's requirement for three donor disclosures in addition to standard disclaimers is unmanageable, particularly for short-format advertisements.
2. **Excessive Bureaucracy:** The reporting requirements in Section 16.1-08.1-09 and -10 will overwhelm nonprofits and the Secretary of State's office, creating unnecessary administrative burdens.
3. **Tracing "True Source" of Funds:** Organizations cannot reasonably determine the origin of funds in cases of bundled donations or contributions from large entities, as required by Section 16.1-08.1-09. How are non-profits to know if someone bundled donations? How is it to know which members of a church are responsible? If a business contributes, is it really the owner, employee or stockholders that must be identified? Where does it stop? Who determines where it stops? Imagine the bureaucratic nightmare and cost if every donation must be traced to its supposed "true source."
4. **Chilling Criminal Penalties:** Criminalizing compliance disagreements (Section 16.1-08.1-10) risks deterring lawful advocacy altogether.

IV. Conclusion

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

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

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

HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE
REPRESENTATIVE AUSTEN SCHAUER, CHAIR**TESTIMONY PRESENTED BY****SANDY McMERTY, DEPUTY SECRETARY OF STATE**

Chairman Schauer and members of the committee, for the record my name is Sandy McMerty, Deputy Secretary of State.

Our office is in opposition to HB 1286. I want to be perfectly clear; our office's opposition to HB 1286 is in no way an endorsement of dark money in politics. More and more citizens do not want to run for office for fear of hidden political attacks. Watching dark money contribute to the political divide in our country can be attributed to the lack of participation in democracy. We see it firsthand in North Dakota with lack of interest down for ballot elected offices at the school, city, and county levels. Even in our volunteer, citizen-led legislative elections we have seen dark money infiltrate to those seeking to represent their communities. Dark money may cause disinterest in citizens showing up at the polls. Statewide voter turnout in North Dakota primary elections – often where some of the most vile campaign tactics occur – is consistently near 20%.

Our office prides itself on being a hub of transparency for documents and records, including campaign finance information. However, the United States Supreme Court has ruled on dark money in political campaigns with Citizens United. That decision has frustrated most everyone across the political spectrum. In fact, it might be the one issue that gets bipartisan support.

HB 1286 has many complexities, constitutional questions, and would be nearly impossible to fully implement. It allows the Secretary of State to have the unique power to investigate possible violations with or without receiving a complaint. The Secretary of State is also then open to frivolous lawsuits alleging the action or inaction of the office was not reasonable.

The legislation is simply not enforceable no matter its intent. I would ask the committee give HB 1286 a **DO NOT PASS** recommendation.

HB 1286 dark money

& Veterans

Chairman Schaur and members of the ~~Veterans~~ and Government Affairs Committee

For the record, my name is Mike Schatz from New England and I am a representative from District 39 which is the far southwest corner of our great state.

I am here today to try to get you to vote favorable for HB 1286 which I like to call the "dark money" bill. My main premise is to have a level playing field for candidates and Political Action Committees. Both of which are trying to influence elections.

HB 1286 is divided into six sections. The bill is 11 pages but the keys are section 2 and section 3. Section 1 is made up of definitions of 24 words or phrases. One main phrase is "covered person" which means any person that spends more than \$200 in an election cycle on expenditures.

In very general terms, a 'covered person' must disclose any amount of money over \$200 which is received. The people who gave the money must have their names listed and it will go on the Sec. of States website for all of us to see, just like all legislators and statewide officials have to do. Since they are trying to influence an election and we are trying to as well, it only seems fair.

The investigation and keeping of records will be handled by the Sec. of State. If a person has evaded the reporting requirements, they are guilty of a Class A misdemeanor. Section 4 deals with complaints, Sec. 5 defines civil actions, and Sec. 6 talks about political advertisements.

The reason this bill was put forward was to answer this question: Who is trying to influence my vote? Why are they trying to influence my vote? Why are they so secretive about it? What do they have to gain? What are they trying to hide?

Most people in North Dakota want to know. People are tired of mailers. Mailers that are nasty, negative, and nonsense. People are tired of half truths and of candidates that tell half-truths. They want the "dark money" brought into the light. Just like the candidates have to do.

This bill will be a start in the right direction. Montana passed a bill that is very similar to this one and it had a very positive affect on cleaning up election. Chairman Schaur and members of the Government and Veterans Affairs committee, I hope you will give a do pass to hb 1286. Thank you and I will answer questions.

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Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1286
1/30/2025

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

9:08 a.m. Vice Chairman Satrom opened the meeting.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, Brown, Christy, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, Vetter, Wolff

Members absent: Representative VanWinkle

Discussion Topics:

- Committee work

9:11 a.m. Representative Christy moved a Do Not Pass.

9:11 a.m. Representative Grindberg seconded the motion.

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	N
Representative Collette Brown	Y
Representative Josh Christy	Y
Representative Karen Grindberg	Y
Representative Karen Karls	Y
Representative Carrie McLeod	N
Representative Karen Rohr	N
Representative Mary Schneider	N
Representative Vicky Steiner	N
Representative Lori VanWinkle	AB
Representative Steve Vetter	Y
Representative Christina Wolff	N

9:13 a.m. Motion passed 7-6-1.

Vice Chairman Satrom will carry the bill.

9:14 a.m. Chairman Schauer closed the meeting.

Jackson Toman, Committee Clerk

REPORT OF STANDING COMMITTEE
HB 1286 ([25.0486.01000](#))

Government and Veterans Affairs Committee (Rep. Schauer, Chairman) recommends **DO NOT PASS** (7 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). HB 1286 was placed on the Eleventh order on the calendar.