

Vote No on Measure One: A Solution in Search of a Problem

A petition drive to place Measure One on the ballot was initiated by a group calling itself North Dakotans for Public Integrity. NDPI hired a company that used paid circulators to gather the required signatures. All but \$4,250 of NDPI's funding came from out-of-state sources. The largest donor (\$260,000) was "Represent Us," an organization that promotes measures that require financial disclosure and impose regulations on political speech. The vast majority of its contributions came from California, including many Hollywood celebrities, as well as wealthy donors from Boston, New York and Philadelphia. Another out-of-state group called "Voters Right to Know" donated \$217,000 to the petition drive.

Below, based on legal analysis from government and private entities, are concerns about the measure:

- The initiative imposes reporting requirements for any speech, communication or publication that may "influence any ... election" or "state government action." Such a law appears to be unconstitutionally vague and overbroad. Because it provides no exemptions, it would require any person who spends more than \$200 to influence state policy to report their source of funds, including private individuals, bloggers, charities, trade associations, labor unions and even newspapers, radio and television stations. Proponents claim a right to know who is spending money to influence public policy, but the US Supreme Court has ruled such disclosure requirements constitute an invasion of privacy and tend to have a chilling effect on the individuals' right to free speech and association.
- The measure would allow citizen lawsuits against the state if anyone believes compliance with public disclosure requirements is not being properly enforced. The vague language to "fully vindicate the rights" (to transparency) leaves an opening for a floodgate of litigation against the state and state employees anytime a taxpayer believes he or she has not received proper "transparency" or complete information about funds used to influence state elections or that were used in lobbying efforts.
- The initiative would create a new North Dakota Ethics Commission, which would go into existence without any implementing legislation or any limits on its powers or standards governing its conduct of investigations. Without adequate safeguards, the agency may be prone to abuse for partisan or ideological advantage. A confidential whistleblower hotline would enable anyone to submit anonymous complaints about individuals or groups, potentially sending the ethics commission on an endless series of "witch hunts." The measure does not require that allegations of unethical conduct be kept confidential so such accusations, whether legitimate or unfounded, may become public knowledge, potentially influencing the outcome of elections or other matters.
- The North Dakota Constitution and state law already contain numerous anti-corruption provisions. They include provisions regarding bribery, conflict of interest, disclosure of contributions to candidates and ballot measures, disclosure of gifts valued at more than \$60, prohibitions on personal use of campaign funds, and requirements for open meetings. Lobbyists are required to register and file itemized lobbying expense reports. The legislature has extensive ethics rules and offers ethics training to its members during each organizational session.
- The measure would prohibit lobbyists from giving any gift (even a cup of coffee) to a public official. Lobbyists would not be allowed to deliver a campaign contribution made by another individual or entity, and an elected public official would not be allowed to become a lobbyist for two years after holding office. These provisions interfere with the freedom of individuals to engage their elected and government officials in the legislative process or any other government action. North Dakota has an open and transparent policy making process and a part-time citizen legislature. This open communication establishes trust and is how good public policy is made.
- Because it amends the constitution, the legislature could not change any of Measure One's provisions, and any laws it enacts to implement the measure would be subject to challenge by the aforementioned citizen lawsuit.