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April 20, 2017

RECEIVED

APR 21 2017

S.D. SEC. OF STATE

Mr. James D. Leach, Attorney at Law
1617 Sheridan Lake Road
Rapid City, SD 57702

Dear Mr. Leach:

Pursuant to SDCL 12-13-25, this office is required to review each initiated law. Further, this office is required by SDCL 12-13-24 to determine if each initiated law is written in a clear and coherent manner in the style and form of other legislation and that it is worded so that the effect of the initiated law is not misleading or likely to cause confusion among voters. You are under no obligation to accept the suggestions contained in this letter, but please keep in mind the legal standards established in SDCL 12-13-24.

The Guide to Legislative Drafting (<http://sdlegislature.gov/docs/referencematerials/draftingmanual.pdf>) explains more thoroughly the style and form changes we suggest in this letter and as attached. Of note about the submitted draft, you may refer to the sections of the Guide that discuss the use of severability clauses and the use of legislative declarations and findings. The simplest way of stating a proposition is usually the best way. Well-crafted language is concise, specific, uses active verbs, and is consistent and uniform throughout the text.

The proposed language is quite lengthy and includes a great amount of detail for a Constitutional amendment. As discussed more specifically below, most of the draft is more suitable for the South Dakota Codified Laws, not for the Constitution. The Constitution provides a basic framework for the structure and functions of state government and the rights of citizens, leaving the details and policies to be provided within the code or through administrative rules. Where language in the Constitution is concerned, less is more.

Section 1 of the draft is unnecessary and should be removed from the draft. Additionally, the section containing defined terms should be moved to the beginning of Section 2 to provide greater clarity.

Although § 16 provides certain defined terms, the submitted draft includes jargon that would cause confusion, would be subject to interpretation, and does not provide the necessary clarity for an average state citizen to understand the amendment's contents. Instances of jargon include "improper personal gain," "state resources," "significantly exploitative," "in-kind," "pertinent to the public interest," and others.

Referencing Section 2 of the submitted draft, although we provide style and form suggestions for your review and consideration, this section provides declarations and findings, which have no legal meaning or effect. The Constitution is not a platform for political statements or commentary, and as such you will note in the Guide to Legislative Drafting declarations and findings are strongly discouraged in both the Constitution and codified law. This language should therefore be removed from the draft. The first two paragraphs of § 15 should be removed for the same reason, as well as the fact that any Government Accountability Board created in the state constitution would automatically supersede any board by the same name created through statute.

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Several sections of the proposed draft include references to specific classes of felonies or misdemeanors. These references would be highly unusual to include in any state constitution and unprecedented within the South Dakota Constitution. Criminal penalties are found in codified law, which is subject to constant change through the legislative process. The state constitution is not a criminal code, but a framework for the function of the state's government and the rights of citizens. We provide style and form suggestions for your review and consideration, however, these criminal penalties should be removed from the draft entirely.

Paragraph (10) of § 15 provides for an appropriation of funds. The Constitution is not a budget bill, and such language is inappropriate in this context. This section would also create a conflict with existing constitutional provisions in Article 12 § 2, which requires appropriations to be included either in the general appropriation bill or in separate bills that are passed by a two-thirds vote of the Legislature. This section should be removed from the draft.

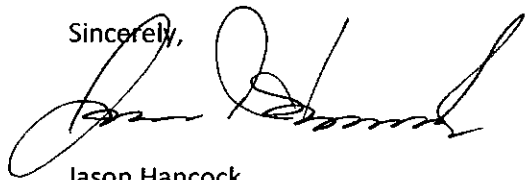
Regarding § 5 of the submitted language, which prohibits contributions and coordinated expenditures by certain "foreign" entities, the South Dakota Constitution considers the term "foreign" to mean anything outside the state, including any other state. This may affect how this section should be drafted. We note, however, that prohibitions of this nature may raise a constitutional question regarding contributions to ballot question committees under the United States Constitution. See *Citizens Against Rent Control, et al. v. City of Berkeley, CA*, 454 U.S. 290 (1981).

Language such as "notwithstanding any other law" is unnecessary in a Constitutional amendment, as the amendment would become part of the supreme law of the state and would therefore override any other state law or regulation that may exist within the code or administrative rules. In § 18 of the submitted draft, the language prohibiting law that would "hamper, restrict, or impair" the provisions of the amendment is unnecessary because any inferior law would automatically be overridden by the Constitution.

Attached is a copy of your initiative with all our suggested style and form changes.

This letter constitutes neither an endorsement of your initiative nor a guarantee of its statutory sufficiency. It does constitute fulfillment of your responsibility pursuant to SDCL 12-13-25 to submit your draft to this office for review and comment. If you proceed with your initiative, please take care to ensure your statements or advertising do not imply that this office endorses or approves your proposal.

Sincerely,



Jason Hancock
Director

JH/DO/ct

Enclosures

CC: The Honorable Shantel Krebs, Secretary of State
The Honorable Marty Jackley, Attorney General

Section 1. This amendment shall be known as the South Dakota Voter Protection and Anti-Corruption Amendment.

Section 2. That Article XXX of the Constitution of South Dakota be created by adding new sections to read as follows:

§1 Whereas the motto of the state of South Dakota is “Under God the People Rule” and whereas the Legislature inherently derives its power from the consent of the people, the people of South Dakota hereby find and declare that in order to protect the public trust:

- (1) Public officials, candidates, and lobbyists must be subject to robust ethics, conflict-of-interest, and anti-corruption laws;
- (2) A strong and independent citizen ethics commission is necessary to oversee and enforce those laws in the name of the people of South Dakota; and
- (3) The will of the people, especially when voiced to ensure the integrity, honesty, and accountability of their government, must be respected.

§2 The offenses of bribery and corrupt solicitation described in Article III, Section 28 shall be Class 4 felonies.

§3 A lobbyist may not knowingly give or offer a gift to an individual who they know or should know is a senior public servant. This prohibition does not apply if the lobbyist is the spouse, fiancée, or fiancé, or is, whether by blood or by marriage, a child, parent, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew of the senior public servant. Any person who violates this section shall be guilty of a Class 1 misdemeanor.

§4 No public official may knowingly use state resources for improper personal gain. Any public official who violates this section shall be guilty of a Class 1 misdemeanor, but a public official who knowingly uses state resources for improper personal gain in a way that is significantly exploitative of the state shall be guilty of a Class 2 felony.

§5 A foreign government, foreign corporation, foreign political party, or foreign national may not make a contribution or expenditure in connection with any state or local candidate or ballot-issue election.

§6 A candidate or person holding elected office may not knowingly use a campaign contribution for personal use. Any person who violates this section shall be guilty of a Class 5 felony.

§7 A labor union or corporation may not, directly or through an intermediary, make a campaign contribution to a candidate or political party.

§8 A candidate may not knowingly solicit, accept, or receive a campaign contribution within the South Dakota capitol building. Any person who violates this section shall be guilty of a Class 1 misdemeanor.

§9 A senior public servant may not become a lobbyist, other than a public lobbyist for state or local government, while they are a senior public servant and for a period of two years after they cease to be a senior public servant. Any person who violates this section shall be guilty of a Class 1 misdemeanor.

§10 A lobbyist may not knowingly deliver a campaign contribution made by another individual or entity. Any person who violates this section shall be guilty of a Class 1 misdemeanor.

As used in this section, “deliver” means to transport, carry, transfer, or otherwise transmit, either physically or electronically. The prohibition in this section does not apply when a person delivers a

campaign contribution to his or her own campaign, or to the campaign of his or her immediate family member, and shall not be interpreted to prohibit any person from making a campaign contribution or from encouraging others to make campaign contributions or otherwise support or oppose a candidate.

§11 A judge shall avoid the appearance of bias, and shall disqualify himself or herself in any proceeding where monetary or in-kind support related to the judge's election or retention creates an appearance of bias to a reasonable person.

§12 A candidate may not accept campaign contributions from a single source that, in total and per election cycle for the office sought, exceed:

- (1) \$500 for the office of member of the South Dakota house of representatives, or for any other local, non-statewide elected office other than member of the South Dakota senate, including, but not limited to, county, municipal, and school board office;
- (2) \$750 for the office of member of the South Dakota senate;
- (3) \$1,500 for the office of attorney general, lieutenant governor, commissioner of school and public lands, auditor, treasurer, and secretary of state, or for any other statewide elected office other than Governor; and
- (4) \$4,000 for the office of Governor.

The limits prescribed in this section do not apply to contributions made by a political party, or to contributions made by the candidate or the candidate's spouse to the candidate's own campaign. The dollar amounts in this section shall be adjusted for inflation by the secretary of state after each general election.

§13 A political party may not accept campaign contributions from a single source that, in total and per calendar year, exceed \$5,000. For the purposes of this section, a state party and its affiliated local committees and/or subdivisions shall be treated as a single political party recipient. The dollar amounts in this section shall be adjusted for inflation by the secretary of state after each general election.

§14 The Legislature shall regulate persons who are employed or otherwise gainfully compensated to act as a lobbyist to influence in any manner legislative, executive, or administrative action, and shall ensure that such persons promptly register with the state as lobbyists and disclose information pertinent to the public interest.

§15 (1) The people of South Dakota find and declare that the Legislature's State Government Accountability Board did not fully respond to the people's demand for strong and accountable ethics oversight, in that:

- (1) The Legislature exempted itself from oversight by that board; and
- (2) The oversight authority of that board was inadequate to protect the public trust.

Therefore, the people of South Dakota find and declare that they are best suited to create an ethics commission that can adequately protect the public trust, and hereby nullify the State Government Accountability Board created by the Legislature in 2017 in House Bill 1076 and in its place create a new State Government Accountability Board to serve as an independent citizen ethics commission.

The State Government Accountability Board shall serve as an independent entity, notwithstanding any other provision of the Constitution of South Dakota, including Article II, and shall conduct itself in a nonpartisan manner with integrity, honesty, and fairness. All rules adopted, investigations conducted, and sanctions imposed by the board are subject to judicial review consistent with the Constitution.

(2) All South Dakota registered voters are eligible to apply for membership on the board. Only registered