

REPRESENTATIVE G. MARK MICKELSON, CHAIR | SENATOR BROCK L. GREENFIELD, VICE CHAIR
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RECEIVED

JUN 30 2017

S.D. SEC. OF STATE

June 30, 2017

Representative G. Mark Mickelson
101 N. Main Ave., Ste. 321
Sioux Falls, SD 57104

Dear Representative Mickelson:

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

The language of your submitted draft is identical to the final version of House Bill 1200 as amended, so with limited exceptions, the language is within the style of form of the South Dakota Codified Laws. During the 2017 Legislative Session, however, the Legislature passed Senate Bill 54, which amended relevant sections of chapter 12-27 that would affect the nomenclature used in the text of your submitted draft. For purposes of uniformity throughout chapter 12-27, we recommend changing the terms "organization" to "entity," and "supplemental disclosure" to "supplemental report."

Section 6 of the submitted draft provides that any ballot question committee, entity, or political action committee that fails to comply with the reporting requirements established under the Act would be subject to a prohibition against contributing to a ballot question committee or making an independent communication expenditure for a period of five years. The prohibitions against contributions and independent expenditures in this Act may raise constitutional scrutiny. Political contribution limits are generally upheld by the Supreme Court of the United States only for "the prevention of corruption and the appearance of corruption." See *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 388 (2000), quoting *Buckley v. Valeo*, 425 U.S. 1, 25 (1976). "When *Buckley* identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to *quid pro quo* corruption." *Citizens United v. F.E.C.*, 558 U.S. 310 (2010).

Further, the Supreme Court of the United States directly addressed the issue of limits or prohibitions on contributions to ballot question committees and found them to be an unconstitutional restraint on the rights of association and free speech. See *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 300 (1981). The Supreme Court also addressed limits placed on entities making independent expenditures and found them to be unconstitutional as a violation of free speech. See *Citizens United v. F.E.C.*, applied to state law in *American Tradition Partnership, Inc. v. Bullock*, 567 U.S. 516 (2012).

However, the Supreme Court has not directly addressed the issue of whether a state may prohibit independent expenditures or contributions to a ballot question committee as part of a criminal penalty. With regard to other protected rights, however, the Court has upheld a prohibition only as against those

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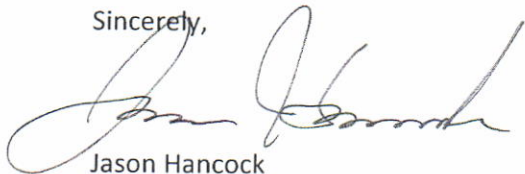
who have committed felonies, not misdemeanors. See, e.g., *Richardson v. Ramirez*, 418 U.S. 24 (1974), upholding a state prohibition against voting by convicted felons.

It has been determined during this review that this initiated measure requires a prison or jail population cost estimate. As the sponsor of the initiated measure you should submit a request for a cost estimate to the Legislative Research Council at the time your initiated measure is filed with the Attorney General.

Attached is a copy of your proposed initiated measure with all our suggested style and form changes.

This letter constitutes neither an endorsement of your initiated measure 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 initiated measure, please take care to ensure that your statements or advertising do not imply that this office endorses or approves your proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Hancock", written in a cursive style.

Jason Hancock
Director

JH:DO:ct

Enclosures

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