

REPRESENTATIVE G. MARK MICKELSON, CHAIR | SENATOR BROCK L. GREENFIELD, VICE CHAIR  
JASON HANCOCK, DIRECTOR | SUE CICHOS, DEPUTY DIRECTOR | DOUG DECKER, CODE COUNSEL

500 EAST CAPITOL AVENUE, PIERRE, SD 57501 | 605-773-3251 | SDLEGISLATURE.GOV



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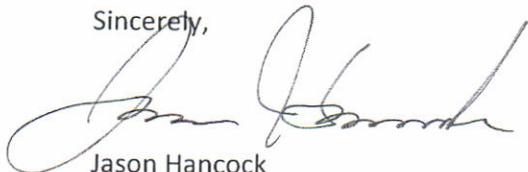
who have committed felonies, not misdemeanors. See, e.g., *Richardson v. Ramirez*, 418 U.S. 24 (1974), upholding a state prohibition against voting by convicted felons.

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

~~ENACTED BY THE PEOPLE OF SOUTH DAKOTA:~~

An Act to revise certain provisions regarding contributions to ballot question committees.

BE IT ENACTED BY THE ~~LEGISLATURE OF THE STATE~~ PEOPLE OF SOUTH DAKOTA:

Section 1. That chapter 12-27 be amended by adding a NEW SECTION to read:

If a ballot question committee receives contributions totaling twenty-five thousand dollars or more within a twelve-month period from an ~~organization~~ entity or from a political action committee that is not otherwise required to file a campaign finance disclosure statement under subdivision 12-27-22(2), the committee shall disclose in a supplemental ~~disclosure~~ report within the committee's campaign finance disclosure required under this chapter the name and address of the fifty largest contributors to the ~~organization~~ entity or political action committee during the one year preceding the date the supplemental ~~disclosure~~ report is filed.

Section 2. That chapter 12-27 be amended by adding a NEW SECTION to read:

If any ~~organization~~ entity, or any political action committee that is otherwise required to file a campaign finance disclosure statement under subdivision 12-27-22(2), makes an independent communication expenditure of twenty-five thousand dollars or more within a twelve-month period, the ~~organization~~ entity or committee shall disclose as a supplemental ~~disclosure~~ report within the campaign finance disclosure statement required under this chapter the name and address of the fifty largest contributors to the ~~organization~~ entity or the political action committee during the one year preceding the date the supplemental ~~disclosure~~ report is filed.

Section 3. That chapter 12-27 be amended by adding a NEW SECTION to read:

If any of the fifty largest contributors required to be disclosed under this Act is an ~~organization~~ entity or political action committee that is not otherwise required by any other law to disclose its contributors, the ballot question committee, ~~organization~~ entity, or political action committee shall collect and disclose the top fifty contributors to the contributing ~~organization~~ entity or political action committee in a supplemental ~~disclosure~~ report.

Section 4. That chapter 12-27 be amended by adding a NEW SECTION to read:

The disclosure requirements under this Act do not apply to:

- (1) A nonprofit corporation as defined in 26 U.S.C. § 501(c)(3);
- (2) An ~~organization entity~~ from which any part of the net earnings inures to the benefit of a private shareholder, partner, member, or person; or
- (3) A contributor of less than five thousand dollars during the required reporting period.

Section 5. That chapter 12-27 be amended by adding a NEW SECTION to read:

If an ~~organization entity~~, political action committee, or ballot question committee fails to make a timely disclosure pursuant to this Act, the ~~organization entity~~, political action committee, or ballot question committee ~~shall be~~ is subject to a civil penalty of not more than five thousand dollars to be imposed by the secretary of state and deposited into the state general fund. If a ballot question committee knowingly and intentionally fails to make a timely disclosure pursuant to this Act, the ballot question committee ~~shall be~~ is subject to a civil penalty equal to twenty-five percent of the ~~organization's entity's~~ or political action committee's aggregate contribution during that calendar year to be imposed by the secretary of state and deposited into the state general fund. If an organization entity or political action committee fails to make a timely disclosure pursuant to section 3 of this Act the organization entity or political action committee is subject to a civil penalty equal to twenty-five percent of the total independent communication expenditure made by that organization entity or political action committee imposed by the secretary of state and deposited into the state general fund. An intentional violation of the provisions of this Act is a Class 1 misdemeanor.

Section 6. That chapter 12-27 be amended by adding a NEW SECTION to read:

If any ballot question committee, ~~organization entity~~, or political action committee ~~is found to be in violation of the provisions violates any provision~~ of this Act and does not comply ~~with the provisions of this Act~~ within ten days of written notification of the violation delivered by certified mail from the secretary of state, the committee or ~~organization entity~~ may not contribute to any

other ballot question committee or make any other independent communication expenditure for a period of five years.

Section 7. That chapter 12-27 be amended by adding a NEW SECTION to read:

For purposes of this Act, all ballot question committees established, financed, maintained, or controlled by the same corporation, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit are affiliated and share a single contribution limit.