

INITIATIVE PETITION

WE, THE UNDERSIGNED qualified voters of the state of South Dakota, petition that the following proposed law be submitted to the voters of the state of South Dakota at the general election on November 8, 2016 for their approval or rejection pursuant to the Constitution of the State of South Dakota.

Title: An initiated measure to revise State campaign finance and lobbying laws, create a publicly funded campaign finance program, create an ethics commission, and appropriate funds

Attorney General's Explanation: This measure extensively revises State campaign finance laws. It requires additional disclosures and increased reporting. It lowers contribution amounts to political action committees; political parties; and candidates for statewide, legislative, or county office. It also imposes limits on contributions from candidate campaign committees, political action committees, and political parties.

The measure creates a publicly funded campaign finance program for statewide and legislative candidates who choose to participate and agree to limits on campaign contributions and expenditures. Under the program, two \$50 "credits" are issued to each registered voter, who assigns them to participating candidates. The credits are redeemed from the program, which is funded by an annual State general-fund appropriation of \$9 per registered voter. The program fund may not exceed \$12 million at any time.

The measure creates an appointed ethics commission to administer the credit program and to enforce campaign finance and lobbying laws.

The measure prohibits certain State officials and high-level employees from lobbying until two years after leaving State government. It also places limitations on lobbyists' gifts to certain state officials and staff members.

If approved, the measure may be challenged in court on constitutional grounds.

The text of the proposed law is as follows:

Be it enacted by the people of South Dakota,

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S.D. SEC. OF STATE

Section 1. This Act may be referred to as the "South Dakota Government Accountability and Anti-Corruption Act."

Section 2. The people find and declare that accountability to the people is of the utmost importance in South Dakota's political system. Today, that system does not properly prevent corruption or its appearance and is weakened by: insufficient participation by citizens, who believe that current campaign financing incentives have rendered their role insignificant; rapidly rising costs of elections that force candidates to prioritize special interest donors, often from outside of South Dakota, who have the potential to make large contributions; insufficient and delayed disclosure to the public of relevant information on campaign contributions, political advertising, and paid lobbying; and inadequate enforcement of the laws intended to address these problems. Therefore, the purpose of this Act is to increase accountability to the people of South Dakota in electoral politics and to combat government corruption and its appearance.

Section 3. Terms used in this Act mean:

- (1) "Commission," the ethics commission established by sections 32 to 41, inclusive, of this Act;
 - (2) "Democracy credit," a credit valued at fifty dollars, issued by the commission to a South Dakota resident voter under the Program established by sections 43 to 62, inclusive, of this Act, that can be, through proper assignment, used to make a contribution to a participating candidate;
 - (3) "Participating candidate," a candidate for statewide or legislative office who is certified by the ethics commission as qualified to be assigned and redeem democracy credits, pursuant to sections 51 to 54, inclusive, of this Act;
 - (4) "Program," the South Dakota democracy credit Program established by sections 43 to 62, inclusive, of this Act;
 - (5) "Qualified contribution," a contribution made by a natural person resident of the state that is not, in the aggregate, in excess of two hundred and fifty dollars to a candidate for legislative office or in excess of five hundred dollars to a candidate for statewide office; and
 - (6) "Registered representative," a volunteer who is permitted to solicit and collect democracy credits on behalf of a specific participating candidate because the volunteer has, pursuant to section 56 of this Act, properly filed with the commission to affirm understanding of the regulations and penalties associated with the Program.
- Other terms used in this Act have the meanings defined by § 12-27-1.

Section 4. That § 12-27-1 be amended to read as follows:

12-27-1. Terms used in this chapter mean:

- (1) "Ballot question," any referendum, initiative, proposed constitutional amendment, or other measure submitted to voters at any election;
 - (2) "Ballot question committee," a person or organization that raises, collects, or disburses contributions for the placement of a ballot question on the ballot or the adoption or defeat of any ballot question. A ballot question committee is not a person, political committee, or political party that makes a contribution to a ballot question committee. A ballot question committee is not an organization that makes a contribution to a ballot question committee from treasury funds;
 - (3) "Candidate campaign committee," any entity organized by a candidate to receive contributions and make expenditures for the candidate. Only one candidate campaign committee may be organized for each candidate;
 - (4) "Candidate," any person who seeks nomination for or election to public office, and for the purpose of this chapter a person is deemed a candidate if the person raises, collects, or disburses contributions in excess of five hundred dollars, has authorized the solicitation of contributions or the making of expenditures, or has created a candidate campaign committee for the purpose of obtaining public office. The person is also deemed a candidate if the person has taken all actions required by state law to qualify for nomination for or election to public office;
 - (5) "Clearly identified," the appearance of the name, nicknames, a photograph or a drawing of a candidate or public office holder, or the unambiguous reference to the identity of a candidate or public office holder;
 - (6) "Contribution," any gift, advance, distribution, deposit, or payment of money or any other valuable consideration, or any contract, promise or agreement to do so; any discount or rebate not available to the general public; any forgiveness of indebtedness or payment of indebtedness by another person; or the use of services or property without full payment made or provided by any person, political committee, or political party whose primary business is to provide such services or property for the purpose of influencing:
 - (a) The nomination, election, or re-election of any person to public office; or
 - (b) The placement of a ballot question on the ballot or the adoption or defeat of any ballot question submitted.The term does not include services provided by a person as a volunteer for or on behalf of any candidate, political committee, or political party, including the free or discounted use of a person's residence.
- Nor does the term include the purchase of any item of value or service from any political committee or political party. The purchase price of the item may not exceed the fair market value and may not include an intent to contribute beyond the item's value or office. A contribution does not include administration and solicitation of a contribution for a political action committee established by an organization and associated expenses, nor the use of an organization's real or personal property located on its business premises for such purposes. A contribution does not include nominal use of a candidate's real or personal property or nominal use of resources available at a candidate's primary place of business;
- (7) "County office," any elected office at a county in this state;
 - (8) "Election," any election for public office; any general, special, primary, or runoff election; and any election on a ballot question;
 - (9) "Expenditures" includes: any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election, office or ballot initiative, measure, or question; and the term includes a written contract, promise, or agreement to make an expenditure. However, the term "expenditure" does not include:
 - (a) A communication appearing in a news story, commentary, or editorial or letter to the editor distributed through the facility of any broadcasting station, newspaper, magazine, or other periodical publication, unless the facility is owned or controlled by any political party, political committee, or candidate;
 - (b) Any communication by a person made in the regular course and scope of the person's business or ministry or any communication made by a membership organization solely to members of the organization and the members' families; or
 - (c) Any communication that refers to any candidate only as part of the popular name of a bill or statute;
 - (10) "Expressly advocate," any communication which:
 - (a) In context has no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, public office holders, or the placement of a ballot question on the ballot or the adoption or defeat of any ballot question by use of explicit words of advocacy of election or defeat. The following are examples of words that convey a message of express advocacy: vote, re-elect, support, cast your ballot for, reject, and defeat; or
 - (b) If taken as a whole and with limited reference to external events, such as the proximity to the election, may only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates, public office holders, or the placement of a ballot question on the ballot or the adoption or defeat of any ballot question because:
 - (i) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and
 - (ii) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates, public office holders, or the placement of a ballot question on the ballot or the adoption or defeat of any ballot question or encourages some other kind of action;
 - (11) "Immediate family," a spouse of a candidate or public office holder, or a person under the age of eighteen years who is claimed by that candidate or public office holder or that candidate's or public office holder's spouse as a dependent for federal income tax purposes or any relative within the third degree of kinship of the candidate or the candidate's spouse; and the spouses of such relatives;
 - (12) "Independent expenditure," an expenditure, including the payment of money or exchange of other valuable consideration or promise, made by a person, organization, political committee, or political party to expressly advocate the election or defeat of a clearly identified candidate or the placement of a ballot question on the ballot or the adoption or defeat of any ballot question, but which is not made to, controlled by, coordinated with, requested by, or made upon consultation with a candidate, political committee, or agent of a candidate or political committee. The term does not include administration and solicitation of any contribution for a political action committee established by an organization and associated expenses; nor the use of an organization's real or personal property located on its business premises;

for such purposes. The term does not include any communication by a person made in the regular course and scope of the person's business or ministry or any communication made by a membership organization solely to any member of the organization and the member's family, for a communication by a person, organization, political committee, or political party which is not a contribution and which:

- (a) Refers to a clearly identified candidate for state or local elective office or the placement of a ballot question on the ballot or the adoption or defeat of any ballot question; and
 - (b) Is made without arrangement, cooperation, or consultation between any candidate or any authorized committee or agent of a candidate and the person making the expenditure or any authorized agent of that person, and is not made in concert with or at the request or suggestion of any candidate or any authorized committee or agent of the candidate; and
 - (c) Satisfies at least one of the following standards: Contains express advocacy, or its functional equivalent, of the election or defeat of a clearly identified candidate for office; or is disseminated, broadcast or otherwise published within sixty days of the election sought by a candidate, mentions a candidate and targets the candidate's relevant electorate.
- The term "independent expenditure" does not include: a communication appearing in a news story, commentary, or editorial or letter to the editor distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate; a communication by a person made in the regular course and scope of the person's business or ministry or any communication made by a membership organization solely to members of the organization and the members' families; or any communication that refers to any candidate only as part of the popular name of a bill or statute;
- (12) "In-kind contribution," the value of a good or service provided at no charge or for less than its fair market value. The term does not include the value of services provided by a person as a volunteer for or on behalf of any candidate, political committee, or political party, including the free or discounted use of any person's residence or office;
 - (13) "Legislative office," the Senate and the House of Representatives of the South Dakota Legislature;
 - (14) "Loan," a transfer of money, property, guarantee, or anything of value in exchange for an obligation, conditional or not, to repay in whole or part. The outstanding amount of a loan not made in the ordinary course of business and at a usual and normal interest rate is a contribution until repaid;
 - (15) "National political party," the organization which is responsible for the day-to-day operation of a political party at the national level, as determined by the Federal Election Commission;
 - (16) "Organization," any business corporation, limited liability company, nonprofit corporation, limited liability partnership, partnership, cooperative, trust except a trust account representing or containing only a contributor's personal funds, business trust, association, club, labor union, collective bargaining organization, local, state, or national organization to which a labor organization pays membership or per capita fees, based upon its affiliation and membership, trade or professional association that receives its funds from membership dues or service fees, whether organized inside or outside the state, any entity organized in a corporate form under federal law or the laws of this state, or any group of persons acting in concert which is not defined as a political committee or political party in this chapter;
 - (17) "Person," a natural person;
 - (18) "Political action committee," a person or organization that raises, collects or disburses contributions to influence the outcome of an election and who is not a candidate, candidate campaign committee, ballot question committee, or a political party. A political action committee is not any:
 - (a) Person that makes a contribution to a political committee or political party from that person's own funds; or
 - (b) Organization that makes a contribution to a ballot question committee from treasury funds;
 - (19) "Political committee," any candidate campaign committee, political action committee, or ballot question committee;
 - (20) "Political party," any state or county political party qualified to participate in a primary or general election, including any auxiliary organization of such political party. An auxiliary organization is any organization designated as an auxiliary organization in the political party's bylaws or constitution except any auxiliary organization that only accepts contributions to support volunteer activities of the organization and does not make monetary or in-kind contributions or any independent expenditures to any political committee;
 - (21) "Public office," any statewide office, legislative office, or county office;

(21A) "Qualified contribution," a contribution made by a natural person resident of the state that is not, in the aggregate, in excess of two hundred and fifty dollars to a candidate for legislative office or in excess of five hundred dollars to a candidate for statewide office;

- (22) "Recognized business entity," any:
 - (a) Domestic corporation, limited liability company, nonprofit corporation, limited liability partnership, or cooperative duly registered with the secretary of state as of the first day of January of the current calendar year, and which is currently in good standing;
 - (b) Foreign corporation, limited liability company, nonprofit corporation, limited liability partnership, or cooperative duly registered with the secretary of state as of the first day of January of the current calendar year, and which is currently in good standing; or
 - (c) Entity organized in a corporate form under federal law;

A term "recognized business entity" does not include a political committee or political party is not a recognized business entity. An organization which was established by or is controlled, in whole or in part, by a candidate, political committee, or agent of a candidate or political committee is not a recognized business entity;

- (23) "Statewide office," the offices of Governor, lieutenant governor, secretary of state, attorney general, state auditor, state treasurer, commissioner of school and public lands, and public utilities commissioner;
- (23A) "Treasury funds," funds of an organization that were not raised or collected from any other source for the purpose of influencing a ballot question;
- (24) "Volunteer," a person who provides person's own personal services free of charge.

Section 5. That § 12-27-7 be amended to read as follows:

12-27-7. If the contributor is a person, no candidate for statewide office or the candidate's campaign committee may accept any contribution which in the aggregate exceeds four thousand dollars during any calendar year. A candidate campaign committee may accept contributions from any candidate campaign committee, political action committee, or political party. No candidate for governor or the candidate's campaign committee may accept contributions from a person or political committee which in the aggregate from one source exceeds four thousand dollars during any calendar year, or contributions from a political party which in the aggregate from one source exceeds forty thousand dollars during any calendar year.

No candidate for attorney general or lieutenant governor, or the candidate's campaign committee, may accept contributions from a person or political committee which in the aggregate from one source exceeds ten thousand dollars during any calendar year, or contributions from a political party which in the aggregate from one source exceeds twenty thousand dollars during any calendar year.

No candidate for secretary of state, state auditor, state treasurer, commissioner of school and public lands, or public utilities commissioner, or the candidate's campaign committee, may accept contributions from a person or political committee which in the aggregate from one source exceeds one thousand dollars during any calendar year, or contributions from a political party which in the aggregate from one source exceeds ten thousand dollars during any calendar year.

No candidate for statewide office may accept a contribution from a ballot question committee.

Funds received by a candidate or candidate's campaign committee by way of redemption of a democracy credit are considered a contribution from the person who assigned the democracy credit to the candidate.

The limitation on any contribution from a person in this section does not apply to any contribution by the candidate or the candidate's immediate family to the candidate's campaign committee. A violation of this section is a Class 1 misdemeanor.

Section 6. That § 12-27-8 be amended to read as follows:

12-27-8. If the contributor is a person, no candidate for legislative or county office or the candidate's campaign committee may accept any contribution which in the aggregate exceeds one thousand dollars during any calendar year. A candidate campaign committee may accept contributions from any candidate campaign committee, political action committee, or political party. Contributions from a person or political committee which in the aggregate from one source exceeds seven hundred and fifty dollars during any calendar year, or contributions from a political party which in the aggregate from one source exceeds five thousand dollars during any calendar year.

No candidate for legislative or county office may accept a contribution from a ballot question committee.

Funds received by a candidate or candidate's campaign committee by way of redemption of a democracy credit are considered a contribution from the person who assigned the democracy credit to the candidate.

The limitation on any contribution from a person in this section does not apply to any contribution by the candidate or the candidate's immediate family to the candidate's campaign committee. A violation of this section is a Class 1 misdemeanor.

Section 7. That § 12-27-9 be amended to read as follows:

12-27-9. If the contributor is a person or an organization, no political action committee may accept any contribution from a person, organization, political committee or political party which in the aggregate from a single source exceeds ten thousand dollars during any calendar year. A political action committee may not accept contributions from a ballot question committee, any candidate campaign committee, political action committee, or political party. A violation of this section is a Class 1 misdemeanor.

Section 8. That § 12-27-10 be amended to read as follows:

12-27-10. If the contributor is a person, no political party may accept any contribution from a person or political committee which in the aggregate from a single source exceeds ten thousand dollars during any calendar year. A political party may not accept contributions from a ballot question committee, any candidate campaign committee, political action committee, or political party. A violation of this section is a Class 1 misdemeanor.

Section 9. That chapter 12-27 be amended by adding thereto a NEW SECTION to read as follows:

A candidate, person holding statewide or legislative office, agent of a candidate or a person holding statewide or legislative office, or an entity directly or indirectly established, financed, maintained, or controlled by or acting on behalf of one or more candidates or persons holding statewide or legislative office, may not solicit, receive, direct, transfer, or spend funds in connection with an election unless the funds are subject to the limitations, prohibitions, and reporting requirements of this chapter.

Section 10. That chapter 12-27 be amended by adding thereto a NEW SECTION to read as follows:

For the purpose of the contribution limits established by §§ 12-27-7, 12-27-8, 12-27-9, and 12-27-10, all 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 thereof, are affiliated and share a single contribution limit both with respect to contributions made and contributions received.

Section 11. That chapter 12-27 be amended by adding thereto a NEW SECTION to read as follows:

Any expenditure made by any person, group of persons, political committee, or other entity in cooperation, consultation, or concert, with or at the request or suggestion of, a candidate, the candidate's authorized political committee, or the candidate's committee's agents, is considered to be a contribution to the candidate.

For the purposes of this section, candidate solicitation or direction of funds for or to a person, group of persons, political committee or other entity constitutes cooperation sufficient to render any subsequent expenditure by the person, group of persons, political committee, or other entity in support of that candidate or in opposition to that candidate's opponent to be considered a contribution to the candidate.

The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by a candidate, the candidate's authorized committee, or an agent of either of the foregoing is considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person group of persons, political committee or other entity making the expenditure. The candidate who prepared the campaign material does not receive or accept an in-kind contribution, and is not required to report an expenditure, unless the dissemination, distribution, or republication of campaign materials was done in concert or cooperation with or at the request or suggestion of the candidate. However, the following uses of campaign materials do not constitute a contribution to the candidate who originally prepared the materials:

- (1) The campaign material is disseminated, distributed, or republished by the candidate or the candidate's authorized committee who prepared that material;
- (2) The campaign material is incorporated into a communication that advocates the defeat of the candidate or party that prepared the material; or
- (3) The campaign material is disseminated, distributed, or republished in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.

Section 12. That § 12-27-11 be amended to read as follows:

12-27-11. No person, organization, candidate, political committee, or political party may give or accept a contribution unless the name and residence address of the contributor is made known to the person receiving recipient of the contribution. Any contribution, money, or other thing of value received by a candidate, political committee, or political party from an unknown source shall be donated to a nonprofit charitable organization. No person, organization, candidate, political committee, or political party may accept from a person a contribution of more than five hundred dollars in the aggregate in a calendar year.

unless the occupation and current employer of that person disclosed to the recipient at the time the contribution is made. A violation of this section is a Class 2 misdemeanor.

Section 13. That § 12-27-12 be amended to read as follows:

12-27-12. No person or organization may make a contribution in the name of another person or organization, make a contribution disguised as a gift, make a contribution in a fictitious name, make a contribution on behalf of another person or organization, or knowingly permit another to use that person's or organization's name to make a contribution. No candidate may accept a contribution disguised as a gift. This section does not prohibit a person from assigning a democracy credit to a participating candidate, pursuant to sections 45, 46, and 48 of this Act and commission regulation, or prohibit a participating candidate from redeeming a democracy credit, pursuant to section 58 of this Act and commission regulation. A violation of this section is a Class 1 misdemeanor.

Section 14. That § 12-27-13 be amended to read as follows:

12-27-13. A contribution or receipt is considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign, person's duties as a holder of elective office, or political committee's political activities, including but not limited to a home mortgage, rent, or utility payment; a clothing purchase; a noncampaign-related automobile expense; a country club membership; a vacation or other noncampaign-related trip; a household food item; a tuition payment; admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign; and dues, fees, and other payments to a health club or recreational facility.

Equipment, supplies, and materials purchased with contributions are property of the political committee or political party, and are not property of the candidate or any other person.

Section 15. That § 12-27-15 be amended to read as follows:

12-27-15. Any printed material or communication made, purchased, paid for, or authorized by a candidate, political committee, or political party which expressly advocates for or against a candidate, public office holder, ballot question, or political party shall prominently display or clearly speak the following statement: "Paid for by (Name of candidate, political committee, or political party)." If the communication is made, purchased, paid for, or authorized by a political committee or political party, the communication shall also state whether or not the communication was authorized by or coordinated with any candidate and the name of any candidate who authorized the communication or with whom the communication was coordinated. This section does not apply to buttons, balloons, pins, pens, matchbooks, clothing, or similar small items upon which the inclusion of the statement would be impracticable. A violation of this section is a Class 1 misdemeanor.

Section 16: That § 12-27-16 be amended to read as follows:

12-27-16. The following apply to independent expenditures by individuals, persons, and organizations related to communications advocating for or against candidates, public office holders, ballot questions, or political parties.

(1) Any person or organization that makes a payment or promise of payment totaling one hundred dollars or more, including an in-kind contribution, for a communication which expressly advocates for or against a candidate, public office holder, ballot question, or political party, shall append to or include in each communication a disclaimer that clearly and prominently conspicuously:

- (a) Identifies the name and address or website of the person or organization making the independent expenditure for that communication;
- (b) States the address or website address of the person or organization;
- (c) States that the communication is independently funded and an independent expenditure and not made in consultation or coordination with any candidate, political party, or political committee or any authorized committee or agent of the candidate; and

(d) (a) If the independent expenditure is undertaken by an organization not including a candidate, public office holder, political party, or political committee, then the following notation: "This communication must also be included include a clear and conspicuous statement entitled: "Top Five Contributors" followed by a listing of the names of the five persons making the largest contributions in aggregate to the organization during the twelve months preceding that communication.

A violation of this subdivision is a Class 1 misdemeanor.

(2) Any person or organization that makes a payment or promise of payment of for an independent expenditure aggregating one hundred dollars or more in any calendar year, including an in-kind contribution, for a communication described in subdivision (1) shall file by electronic transmission a statement with the secretary of state within forty-eight hours of the time that the communication is disseminated, broadcast, or otherwise published; payment or promise of payment is made and each time any additional payment or promise of payment aggregating one hundred dollars or more is made. The statement for each person or organization shall include:

- (a) The name, street address, city, and state of the person or organization and any expenditures made for the independent expenditure during that calendar year, but not yet reported on a prior statement;
 - (b) The elections to which the independent expenditures pertain and name of candidate, ballot question, or political party identified in each independent expenditure;
 - (c) The amount spent on each independent expenditure, as well as the name, street address, city, and state of the person or organization paid; and
 - (d) Whether the independent expenditure was for or against the candidate, ballot question, or political party.
- (e) For an organization, the full name, residence address including city and state, occupation, name of employer, and aggregate amount of the payment of each person whose funds were used for the independent expenditure. The identity of the person or persons whose funds were used for the independent expenditures shall be determined in the following manner. Any person or persons who made payments in the aggregate in excess of \$100 during that calendar year pursuant to an agreement or understanding that person's funds would be used for an independent expenditure shall be identified. A person's payment can only be credited to all independent expenditures up to the amount given in the calendar year. If the funds identified pursuant to this subdivision are insufficient to cover the cost of the independent expenditure, the organization shall report its donors utilizing a "last in, first out" accounting method, reporting donors in reverse chronological order beginning with the most recent of its donors or, if there are any prior payments or expenditures, beginning with the most recent donor for which unattributed payments remain, until the full amount expended for the independent expenditure is accounted for.

(3) The statements required by this section shall include the name, street address, city, and state of the person or organization and, any expenditures made for communications described in subdivision (1) during that calendar year but not yet reported on a prior statement, the name of each candidate, public office holder, ballot question, or political party mentioned or identified in each communication, the amount spent on each communication, and a description of the content of each communication. For an organization, the statement shall also include the name and title of the person filing the report, the name of its chief executive, if any, and the name of the person who authorized the expenditures on behalf of the organization;

(4) For an organization whose majority ownership is owned by, controlled by, held for the benefit of, or comprised of twenty or fewer persons, partners, owners, trustees, beneficiaries, participants, members, or shareholders, the statement shall also identify by name and address each person, partner, owner, trustee, beneficiary, participant, shareholder, or member who owns, controls, or comprises ten percent or more of the organization;

(5) An organization shall also provide supplemental statements, as defined in subdivision (3) (2), for any of its partners, owners, trustees, beneficiaries, participants, members, or shareholders identified pursuant to subdivision (4) which are owned by, controlled by, held for the benefit of, or comprised of twenty or fewer persons, partners, owners, trustees, beneficiaries, participants, members, or shareholders, until no organization identified in the supplemental statements meets the ownership test set forth in subdivision (4);

(6) For the purposes of this section, the term, communication, does not include:

- (a) Any news articles, editorial endorsements, opinion, or commentary writings, or letter to the editor printed in a newspaper, magazine, flyer, pamphlet, or other periodical not owned or controlled by a candidate, political committee, or political party;
- (b) Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate, political committee, or political party;
- (c) Any communication by a person made in the regular course and scope of the person's business or ministry or any communication made by a membership organization solely to members of the organization and the members' families; and
- (d) Any communication that refers to any candidate only as part of the popular name of a bill or statute.

Section 17: That § 12-27-17 be repealed.

12-27-17. Any political committee, organization, person, or political party that makes a payment or promise of payment totaling one hundred dollars or more, including an in-kind contribution, for a communication that clearly identifies a candidate or public office holder, but does not expressly advocate the election or defeat of the candidate or public office holder, and that is disseminated, broadcast, or otherwise published, shall file a statement with the secretary of state disclosing the name, street address, city, and state of each political committee, organization, person, or political party. The statement shall also include the name of the candidate or public office holder mentioned in the communication, the amount spent on the communication, and a description of the content of the communication. The statement shall be received and filed within forty-eight hours of the time that the communication is disseminated, broadcast, or otherwise published.

For the purposes of this section, the term, communication, does not include:

- (1) Any news articles, editorial endorsements, opinion or commentary writings, or letter to the editor printed in a newspaper, magazine, flyer, pamphlet, or other periodical not owned or controlled by a candidate, political committee, or political party;
- (2) Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate, political committee, or political party;
- (3) Any communication by a person made in the regular course and scope of the person's business or ministry or any communication made by a membership organization solely to members of the organization and the members' families;
- (4) Any communication that refers to any candidate only as part of the popular name of a bill or statute; and
- (5) Any communication used for the purpose of polling if the poll questions do not expressly advocate for or against a candidate, public office holder, ballot question, or political party.

Section 18: That § 12-27-17.1 be repealed.

12-27-17.1. Any political committee, organization, person, or political party that makes a communication as defined in § 12-27-17, which does not expressly advocate for or against a candidate, public office holder, ballot question, or political party, shall append to or include in each communication a disclaimer that:

- (1) Identifies the political committee, organization, person, or political party making the communication; and
- (2) States the address or website address of the political committee, organization, person, or political party.

If the communication is an independent expenditure made by a person or organization, then the disclaimer shall include the following: "This communication is independently funded and not made in consultation with any candidate, political party, or political committee." If the independent expenditure is undertaken by an organization not including a candidate, public office holder, political party, or political committee, then the following notation must also be included: "Top Five Contributors" followed by a listing of the names of the five persons making the largest contributions to an organization during the twelve months preceding that communication.

A violation of this section is a Class 1 misdemeanor.

Section 19: That § 12-27-20 be amended to read as follows:

12-27-20. The state, an agency of the state, and the governing body of a county, municipality, or other political subdivision of the state may not expend or permit the expenditure of public funds for the purpose of influencing the nomination or election of any candidate, or for the petitioning of a ballot question on the ballot or the adoption or defeat of any ballot question. This section may not be construed to limit the freedom of speech of any officer or employee of the state or such political subdivisions in his or her personal capacity. This section does not prohibit the state, its agencies, or the governing body of any political subdivision of the state from presenting factual information solely for the purpose of educating the voters on a ballot question. This section does not prohibit the use of any type of state funds for the democracy credit fund or Democracy Credit Program pursuant to this Act.

Section 20: That § 12-27-21 be amended to read as follows:

12-27-21. No candidate, political committee, or political party may accept any contribution from any state, state agency, political subdivision of the state, foreign government, Indian tribal entity as defined in the Federal Register Vol. 72, No. 55 as of March 22, 2007, federal agency, or the federal government. This section does not prohibit a candidate or candidate's campaign committee from redeeming or accepting a democracy credit pursuant to sections 41 to 62, inclusive, of this Act. A violation of this section is a Class 1 misdemeanor.

Section 21: That § 12-27-22 be amended to read as follows:

12-27-22. A campaign finance disclosure statement shall be submitted to the secretary of state by the treasurer of every:

- (1) Candidate or candidate campaign committee for any statewide or legislative office;
- (2) Political action committee;
- (3) Political party;
- (4) Ballot question committee; and

(5) Candidate or candidate committee for any statewide or legislative office whose name appears on the primary ballot, but does not appear on the general election ballot, shall submit a campaign finance disclosure statement, or termination report, which shall be received by the secretary of state by 5:00 p.m. on the second Friday of August following that primary election.

The statement shall be signed and submitted by the treasurer of the political committee or political party. The statement shall be received by the secretary of state and submitted by 5:00 p.m. on the first Monday of February and shall cover the contributions and expenditures for the preceding calendar year. The statement shall also be received by the secretary of state and submitted by 5:00 p.m. on the fifth Tuesday before each primary and general election complete through the fifth day prior to that election. The statement shall also be received by the secretary of state and submitted by 5:00 p.m. on the second Friday prior to each primary and general election complete through the fifteenth day prior to that election. The statement shall also be received by the secretary of state and submitted by 5:00 p.m. on the fourth Friday after each primary and general election complete through second Friday after that election. Any statement submitted pursuant to this section shall be consecutive and shall cover contributions and expenditures since the last statement submitted.

The following are not required to submit a campaign finance disclosure statement:

- (1) A candidate campaign committee for legislative or county office on February first following a year in which there is not an election for the office;
- (2) A county, local, or auxiliary committee of any political party, qualified to participate in a primary or general election, prior to a statewide primary election;
- (3) A legislative or county candidate campaign committee without opposition in a primary election, prior to a primary election;
- (4) A candidate campaign committee whose name is not on the general election ballot, prior to the general election;
- (5) A political committee that regularly submits a campaign finance disclosure statement with another state or the Federal Election Commission or a report of contributions and expenditures with the Internal Revenue Service;
- (6) (1) A statewide candidate who is publicly seeking a nomination by that candidate's party convention prior to a primary election; and
- (7) (2) An independent statewide candidate prior to a primary election.

A violation of this section is a Class 1 misdemeanor.

Section 22: That § 12-27-24 be amended to read as follows:

12-27-24. A campaign finance disclosure statement shall include the following information, regardless of whether it has previously been included in a timely contribution disclosure statement pursuant to section 23 of this Act:

- (1) Political committee or political party name, street address, postal address, city, state, zip code, daytime and evening telephone number, and e-mail address;
- (2) Type of campaign statement (fifth Tuesday pre-primary, second Friday pre-primary, fourth Friday post-primary, fifth Tuesday pre-general, second Friday pre-general, fourth Friday post-general, mid-year, year-end, amendment, supplement, or termination);
- (3) If a ballot question committee, the ballot question number and whether the committee is for or against the measure;
- (4) The balance of cash and cash equivalents on hand at the beginning of the reporting period;
- (5) The total amount of all contributions received during the reporting period;
- (6) The total amount of all in-kind contributions received during the reporting period;
- (7) The total of refunds, rebates, interest, or other income not previously identified during the reporting period;
- (8) The total of contributions, loans, and other receipts during the reporting period;
- (9) The total value of loans made to any person, political committee, or political party during the reporting period;
- (10) The total of expenditures made during the reporting period;
- (11) The total amount of all expenditures incurred but not yet paid, detailed in an itemized list. An expenditure incurred but not yet paid shall be reported on each report filed after the date of receipt of goods or services until payment is made to the vendor. A payment shall be listed as an expenditure when the payment is made;
- (12) The statement shall state the cash balance on hand as of the close of the reporting period;
- (13) The total amount of contributions of one thousand dollars or less in the aggregate from one source received during the reporting period calendar year;
- (14) The name, residence address, city, and state of each person contributing a contribution of more than one hundred dollars in the aggregate during the reporting period calendar year and the amount of the contribution, as well as the occupation and name of employer of each person contributing a contribution of more than five hundred dollars in the aggregate during the calendar year. Any contribution from any political committee or political party shall be itemized. Any contribution from a federal political committee or political committee organized outside this state shall also include the name and internet website address of the filing office where campaign finance disclosure statements are regularly filed for the committee. If all of the information required is not on file, the political committee or political party may not deposit the contribution;
- (15) The statement shall contain the same information for in-kind contributions as for monetary contributions, and shall also include a description of the in-kind contribution;
- (16) Upon the request of the treasurer, a person making an in-kind contribution shall provide all necessary information to the treasurer, including the value of the contribution;
- (17) Any monetary or in-kind contribution made by the reporting political committee or political party to any political committee, political party, or nonprofit charitable organization shall be itemized;
- (18) A categorical description and the amount of the refunds, rebates, interest, sale of property, or other receipts not previously identified during the reporting period;
- (19) A categorical description and the amount of funds or donations by any organization to its political committee for establishing and administering the political committee and for any solicitation costs of the political committee;
- (20) The total balance of loans owed by the political committee or political party;
- (21) The balance of loans owed by the political committee or political party, itemized by lender's name, street address, city, and state, including the terms, interest rate, and repayment schedule of each loan;
- (22) The total balance of loans owed to the political committee or political party;
- (23) The amount of each loan made during the reporting period. The name, street address, city, and state of the recipient of the loan;
- (24) The balance of each loan owed to the political committee or political party, itemized by name, street address, city, and state;
- (25) The expenditures made during the reporting period shall be categorized. Disbursements to consultants, advertising agencies, credit card companies, and similar firms shall be itemized into expense categories. Any contribution made by the reporting political committee or political party that is not in exchange for any item of value or service shall be itemized;
- (26) The expenditures incurred but not yet paid during the reporting period and to whom the expenditure is owed;
- (27) The amount of each independent expenditure, as defined in this chapter, made during the reporting period, the name of the candidate, public office holder, or ballot question related to the expenditure and a description of the expenditure;
- (28) The information contained in any statement provided under § 12-27-19; and
- (29) The statement shall include a certification that the contents of the statement is true and correct signed by the treasurer of the political committee or political party.

Section 23. That chapter 12-27 be amended by adding thereto a NEW SECTION to read as follows:

When a candidate campaign committee for any statewide or legislative office, political action committee, political party, or ballot question committee has accepted contributions in the aggregate of more than five hundred dollars in the calendar year, the treasurer of that political committee or political party is required to file a "timely contribution disclosure statement" by electronic transmission with the secretary of state. Further timely contribution disclosure statements must be filed each time new contributions accepted in that same calendar year from that same source exceed five hundred dollars in the aggregate. A timely contribution disclosure statement shall include the following:

- (1) If the contributor is a person, the amount and date of the contribution in the aggregate as well as the person's full name, residence address including city and state, occupation and name of employer; or
- (2) If the contributor is a political committee or political party, the amount and date of the contribution in the aggregate as well as the name of the political committee or political party and its registered street address including city and state.

A timely contribution disclosure statement shall be filed with the secretary of state by electronic transmission within five business days after the day of the receipt of the contribution. However, if a contribution is received within twenty days of a South Dakota primary, general, or special election, the filing shall be made within twenty-four hours of the time of the receipt of the contribution. A political committee or political party does not have to file a report within twenty-four hours of the receipt of a contribution received within twenty days of a special election if the political committee or political party has not made any expenditures in connection with that special election.

Section 24: That § 12-27-29 be amended to read as follows:

12-27-29. In addition to any other penalty or relief provided under this chapter, the secretary of state or the ethics commission, after notice and opportunity for hearing pursuant to chapter 1-26, may impose an administrative penalty for the failure to timely file any statement, amendment, or correction required to be filed by this chapter. The administrative penalty is fifty dollars per day for each violation not to exceed three thousand dollars. However, if the violation is made by a county political party or auxiliary, the administrative penalty is ten dollars per day for each violation not to exceed six hundred dollars. Any administrative penalty collected pursuant to this section shall be deposited in the state general fund.

Section 25: That § 12-27-35 be amended to read as follows:

12-27-35. The attorney general shall investigate violations of the provisions of this chapter relating to a legislative office, statewide office, or statewide ballot question and prosecute any violation thereof. In lieu of bringing a criminal action, the attorney general may elect to file a civil action. In a civil action, in addition to other relief, the court may impose a civil penalty in an amount not to exceed ten thousand dollars for each violation. Any civil penalty recovered shall be paid to the state general fund. A civil action brought by the attorney general shall be commenced in Hughes County, in the county where the person resides, or in the county where the organization, political party, or political committee has its principal office.

Section 26: That § 12-27-36 be amended to read as follows:

12-27-36. The attorney general and ethics commission may, for the purpose of enforcing the provisions of this chapter, inspect or examine any political committee or political party records required to be maintained by this chapter. It is a Class 1 misdemeanor for any person having charge, control, or possession of political committee or political party records to neglect or refuse the attorney general or ethics commission reasonable access to any records required to be maintained by this chapter which are necessary to enforce the provisions of this chapter.

Section 27: That § 12-27-37 be amended to read as follows:

12-27-37. The attorney general and ethics commission shall keep each record inspected or examined confidential except when the records are used to enforce provisions of this chapter associated with a criminal or civil action.

Section 28. That § 12-27-41 be amended to read as follows:

12-27-41. Any statement required to be filed under this chapter may be filed by electronic transmission shall be filed in accordance with the methods approved by the secretary of state pursuant to the requirements of section 29 of this Act. The treasurer of a candidate campaign committee for any statewide or legislative office, political action committee, political party, or ballot question committee is required to file by electronic transmission with the secretary of state the campaign finance disclosure statements required pursuant to § 12-27-27, if the political committee or political party has received contributions in the aggregate of one thousand dollars or more during the period covered by the statement. If a political committee or political party is required by this chapter to file a statement by electronic transmission, the secretary of state may not accept nor consider filed any statement that uses handwriting as input, aside from a signature. Any statement or disclosure not required to be filed by electronic transmission may be filed by electronic transmission in accordance with the methods approved by the secretary of state. To be timely filed, any statement received by electronic transmission shall be legible and readable when received by the means it was delivered.

Section 29. That chapter 12-27 be amended by adding thereto a NEW SECTION to read as follows:

The secretary of state shall ensure that political committee and political party treasurers need only a commonly used internet web browser to properly submit the campaign finance disclosure statements required pursuant to § 12-27-22, the timely contribution disclosure statements required pursuant to section 23 of this Act, and any other campaign finance information required to be filed by electronic transmission by this chapter. The secretary of state shall develop a secure method for electronically signing statements. The methods provided to treasurers by the secretary of state to file by electronic transmission shall when feasible facilitate bulk itemized data submission using a standardized format prescribed by the secretary of state. The secretary of state shall provide training materials for filing required statements by electronic transmission.

The secretary of state may grant brief extensions with no penalty for filing by electronic transmission in the event of prolonged circumstances outside the control of the secretary of state or a treasurer that make electronic filing unfeasible.

Section 30. That chapter 12-27 be amended by adding thereto a NEW SECTION to read as follows: