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June 14, 2017

RECEIVED

JUN 14 2017

S.D. SEC. OF STATE

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 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 regarding the submitted draft, you may refer to the sections of the guide that discuss the use of severability clauses. Severability is a long-established doctrine of the South Dakota Supreme Court, and as such the court will uphold any part of a legislative measure that will stand on its own without the part that is unconstitutional. See *State ex rel Mills v. Wilder*, 73 S.D. 330, 42 N.W.2d 891 (1950). The third paragraph of the draft is therefore unnecessary and should be removed.

Whenever both a criminal penalty and a civil penalty are imposed, the statute generally authorizes the court to impose both of the penalties. For purposes of uniformity, we therefore recommend changing the language of the second paragraph to authorize the court instead of the secretary of state to impose civil penalties in these circumstances.

The Supreme Court of the United States has not directly addressed the issue of limits or prohibitions on out-of-state contributions to ballot question committees. Please be advised, however, that closely-related rulings by the court about contribution limits to ballot question committees indicate the prohibition in this draft may be subject to constitutional scrutiny. Political contribution limits are generally upheld by the court 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). Contribution limits to ballot question committees, however, have been viewed by the court as a restraint on the rights of association and free speech. See *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 300 (1981).

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

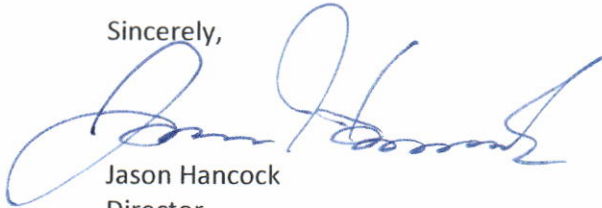
Representative G. Mark Mickelson

June 4, 2017

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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 blue ink, appearing to read "Jason Hancock", is written over the typed name and title.

Jason Hancock
Director

JH:DO:ct

Enclosures

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

~~FOR AN ACT ENTITLED,~~ Be it enacted by the people of South Dakota:

An Act to prohibit contributions to ballot question committees by out-of-state residents, political committees, and entities and to establish civil penalties ~~therefore~~ therefor.

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

~~Contributions~~ Any contribution to a statewide ballot question committee by a person who is not a resident of the state at the time of the contribution, a political committee that is organized outside South Dakota, or an entity that is not filed as an entity with the secretary of state for the four years preceding such contribution ~~are~~ is prohibited. If a statewide ballot question committee accepts a contribution prohibited by this ~~Act~~ section, ~~such committee shall be subject to a civil penalty in an amount~~ the secretary of state may impose a civil penalty equal to two hundred percent of the prohibited contribution ~~to be imposed by the secretary of state and after notice and opportunity to be heard pursuant to chapter 1-26. Any civil penalty collected pursuant to this section shall be~~ deposited into the state general fund.

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

Any resident of South Dakota may report a violation of this Act, § 12-27-12, subdivision 12-27-16(1), or § 12-27-19 to the secretary of state, who ~~must~~ shall investigate the alleged violation and determine whether a violation ~~has~~ occurred. In addition to ~~the any~~ criminal ~~penalties in penalty~~ imposed under § 12-27-12, subdivision 12-27-16(1), and or § 12-27-19, the court may impose on any person, committee, or entity found in violation of § 12-27-12, subdivision 12-27-16(1), or §

12-27-19 ~~shall be subject to~~ a civil penalty of not more than five thousand dollars per violation to be ~~imposed by the secretary of state and~~ deposited in the state general fund.

~~If any term of this Act is to any extent invalid, illegal, or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality, or unenforceability, all other terms hereof shall remain in full force and effect.~~

FOR AN ACT ENTITLED, An Act to prohibit contributions to ballot question committees by out-of-state residents, political committees, and entities and to establish civil penalties therefore.

Contributions to a statewide ballot question committee by a person who is not a resident of the state at the time of the contribution, a political committee that is organized outside South Dakota, or an entity that is not filed as an entity with the secretary of state for the four years preceding such contribution are prohibited. If a statewide ballot question committee accepts a contribution prohibited by this Act, such committee shall be subject to a civil penalty in an amount equal to two hundred percent of the contribution to be imposed by the secretary of state and deposited into the general fund.

Any resident of South Dakota may report a violation of this Act, 12-27-12, 12-27-16(1), or 12-27-19 to the secretary of state, who must investigate the violation and determine whether a violation has occurred. In addition to the criminal penalties in 12-27-12, 12-27-16(1), and 12-27-19, any person, committee, or entity found in violation of 12-27-12, 12-27-16(1) or 12-27-19 shall be subject to a civil penalty of five thousand dollars per violation to be imposed by the secretary of state and deposited in the general fund.

If any term of this Act is to any extent invalid, illegal, or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality, or unenforceability, all other terms hereof shall remain in full force and effect.