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ANALYSIS OF THE "SOUTH DAKOTA GOVERNMENT ACCOUNTABILITY AND ANTI-CORRUPTION ACT" (2016 November General Election Initiated Measure 22)

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This November, South Dakotans will be asked to approve or reject ten statewide ballot questions. Among these is Initiated Measure 22, which would make approximately 70 changes to the state's campaign finance and lobbying laws. While some of these provisions are minor, others set forth detailed, complex, and comprehensive schemes to create an entirely new state bureaucracy (to be known as the "South Dakota Ethics Commission") and spending program (to be known as the "South Dakota Democracy Credit Program").

Given the vast number of measures South Dakotans will vote on, and the vast number of complex provisions in Initiated Measure 22, the Center for Competitive Politics ("CCP")[2] is providing the following analysis of some of the measure's more significant provisions. CCP does not ask South Dakotans to either vote for or against Initiated Measure 22. As an organization dedicated to promoting and defending the First Amendment and educating Americans about issues affecting their political speech rights, CCP is providing this analysis so that South Dakotans can make their own informed judgments about Initiated Measure 22.

If Initiated Measure 22 is approved, this analysis also will serve as an informational resource for South Dakotans to understand how their First Amendment rights would be impacted, and what the new law would require of them as a condition for exercising their speech rights.

EXECUTIVE SUMMARY

Initiated Measure 22, if approved by voters, would have a number of impacts on South Dakota political campaigns, speech on matters of public concern, and even purely commercial speech that incidentally mentions candidates for state office. These changes may be great and small, some may be unexpected, and some may not be as the measure's proponents have

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[2] The Center for Competitive Politics is a nonpartisan, nonprofit 501(c)(3) organization that promotes and protects the First Amendment political rights of speech, assembly, and petition. It was founded in 2005 by Bradley A. Smith, a former Chairman of the Federal Election Commission. In addition to scholarly and educational work, the Center is actively involved in targeted litigation against unconstitutional laws at both the state and federal levels. For instance, we presently represent a nonprofit, incorporated educational association in a challenge to state campaign finance laws in Colorado. We are also involved in litigation against the state of California.

described them. Some of the unexpected changes may be a function of drafting errors or omissions in the measure's language, while others may be deliberate. As discussed in more detail below, these issues include:

- Groups and even individuals that speak during certain pre- and post-election time windows about issues of public concern that incidentally mention elected state officials may be required to include disclaimers and file reports with the state if they spend as little as $100 on such speech. For organizations such as agricultural cooperatives and associations, advocacy and other nonprofit groups, trade associations, and labor unions, those disclaimers and reports would have to publicly report certain dues-paying members and donors to the government.

- Even speech that is objectively nonpartisan, such as a neutral voter guide or a legislative advocacy communication asking the public to contact their elected representatives about an official matter, would require the sponsors to affirmatively declare that they either support or oppose the candidates mentioned in the communication, if the communication is made within the pre- and post-election time windows. Many groups that sponsor such communications may have policies or operate under a section of the federal tax code (such as 501(c)(3) organizations) that bar the groups from making such an endorsement, subjecting these organizations to a Catch-22 situation.

- These disclaimer and reporting requirements also would apply to purely commercial speech that refers to candidates.

- These complex and significant government reporting burdens may not be sufficiently related to any legitimate governmental interest to survive a constitutional challenge in litigation. This could result in substantial legal fee payments by the state to successful plaintiffs under federal civil rights laws.

- The Democracy Credit program imposes severe limits on the supplemental private contributions that eligible candidates may accept. Those contribution limits are so restrictive that very few candidates may choose to participate.

- The legislative language describing the "Democracy Credit" program is written ambiguously and is susceptible to an interpretation under which vouchers would only be available to newly registered voters in the state, and only once initially (*i.e.*, not on a recurring basis) – contrary to how the measure is being characterized by its sponsors.

- Apparent drafting errors or omissions may lead to unexpected (but possibly also deliberate) consequences, such as:

    - Severe limitations on the ability of candidates' campaign committees, party committees, and PACs to sell or rent their contact lists to groups for whom those lists are important for reaching out to like-minded South Dakotans. The ability to sell off assets to retire campaign debts or to conserve party or PAC resources also would be impacted.

- PAC communications and solicitations would be required to include disclaimer language about authorization by and coordination with candidates, even if the communications and solicitations do not discuss or are totally unrelated to candidates.

- A $100 limit on the value of gifts that lobbyists and lobbyist employers may provide to state officials and staff that is easily evaded by simply making gifts to more than one official or staff.

ANALYSIS

I. The Initiative would impose broad, burdensome, and intrusive government reporting and compelled speech requirements of questionable relevance and constitutionality for legislative advocacy, voter education, and even commercial advertising.

Initiated Measure 22 would enact expansive new disclaimer, reporting, and compelled speech requirements for anyone – even an individual – who spends even a minimal amount communicating about issues of public concern. These burdensome requirements include extensive government reporting requirements of private donor information. They would result in public exposure of an organization's donors if the group engages in this type of speech. Such a requirement would deter and punish the exercise of First Amendment rights.

Under the Initiative, any communication that so much as refers to a state or local candidate "within [60] days of the election sought by a candidate," and that "targets the candidate's relevant electorate," would be regulated as an independent expenditure campaign ad that expressly advocates for the election or defeat of a candidate.[3] This regulation would apply regardless of how a communication is "disseminated, broadcast or otherwise published"[4] and even if the communication is made by an individual.[5]

If any organization spends as little as $100 on such a regulated communication, "a clear and conspicuous" disclaimer must list "the names of the five persons making the largest contributions in aggregate to the organization during the twelve months preceding that communication."[6] Any sponsor of such a communication must also file a public report of the expenditure within 48 hours.[7] Aside from having to report anyone who gave $100 or more to the sponsor during the calendar year specifically to pay for "independent expenditures," if such donors do not sufficiently cover the cost of the communication, then a "last in, first out" accounting must be done to identify donors to the organization until the amounts given by the reported donors sufficiently cover the expenditure, regardless of whether the donors had any knowledge, expectation, or intent that their funds might have been used for the speech or not.

[3] Initiated Measure 22 § 4.
[4] *Id.*
[5] *See id.* (defining "person" to mean a "natural person"); *see also* S.D. Codified Laws (2016) § 12-27-1(17).
[6] Initiated Measure 22 § 16.
[7] *Id.*

Even a donor who said his contribution could not be used for a regulated communication would be reported as supporting it.[8]

Sponsors of these regulated communications also would be forced to select from a binary choice on the reports and declare whether the communication "was for or against the candidate" identified in the communication even it was completely neutral.[9]

Although ostensibly aimed at "disclosure to the public of *relevant* information on campaign contributions [and] political advertising,"[10] these disclaimer and reporting requirements would cover an array of *irrelevant* donor information and spending on communications that are not at all related to political campaigns and elections, and compel speakers to declare that their speech either supports or opposes candidates when, in fact, the speech does neither.

Take, for example, the September 12, 2016 "Ag. Land Assessment Task Force" meeting posted on the Legislative Research Council's website,[11] which will be held within 60 days before the upcoming November General Election. If a farmer or the South Dakota Farmers Union (SDFU) sends out letters to fellow farmers[12] shortly before the meeting to contact any of the eight state legislators on the Task Force[13] about a matter the Task Force will be considering, the speaker would have to comply with the independent expenditure disclaimer, reporting, and donor disclosure requirements (for the farm group), as well as declare whether the speaker is "for or against" any of the legislators who may be up for re-election. Certain dues-paying members of the SDFU would have to be reported on campaign finance reports as having funded a campaign ad, even though they did not provide funding for such purposes. It is questionable whether any of this "disclosure" is the type of "relevant information" Initiated Measure 22 purports to enact.[14]

To take another example, completely nonpartisan voter guides that might be distributed by groups such as Ag United For South Dakota, League of Women Voters, Project Vote Smart, the South Dakota Cattlemen's Association, the South Dakota Farm Bureau Federation, or Vote411.org within the 60 days before an election informing voters about candidates' positions on agriculture or other issues would also be subject to these requirements. Again, the sponsors would be required to declare whether they were "for or against" any of the candidates listed, even if the voter guide is perfectly neutral.

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[8] *Id.*
[9] *Id.*
[10] *Id.* § 2 (emphasis added).
[11] "Ag. Land Assessment Task Force," South Dakota Legislature, Legislative Research Council. Retrieved on August 22, 2016. Available at: http://sdlegislature.gov/Interim/CommitteeMembers.aspx?Committee=156.
[12] While the measure does exempt communications made by membership organizations solely to their own members, *see* Initiated Measure 22 § 4, an organization may also wish to communicate outside of its membership class, or with prospective members on matters of public importance. This is especially true because a cooperative, such as the SDFU, may also operate for the benefit of non-members. *See, e.g.* "IRC section 521 Exempt Farmers' Cooperatives," Internal Revenue Service. Retrieved on August 22, 2016. Available at: https://www.irs.gov/irm/part4/irm_04-044-001.html; Bruce R. Hopkins, THE LAW OF TAX-EXEMPT ORGANIZATIONS, 11th. ed. 2016 § 19.12. The exemption for membership communications also does not specifically cover communications between a corporation and its stockholders, executives, or employees.
[13] *See* Ag. Land Assessment Task Force," South Dakota Legislature, Legislative Research Council. Retrieved on August 22, 2016. Available at: http://sdlegislature.gov/Interim/CommitteeMembers.aspx?Committee=156.
[14] Initiated Measure 22 § 2.

Many groups that sponsor such communications may have internal policies that bar the groups from making such an endorsement, and groups such as 501(c)(3) organizations are specifically prohibited under federal tax law from making such endorsements.[15] While the Internal Revenue Service has determined that certain nonpartisan public communications that identify candidates for elected office shortly before an election are perfectly permissible for a 501(c)(3) organization to sponsor,[16] Initiated Measure 22 could convert those nonpartisan communications into prohibited partisan communications by forcing speakers to declare that their speech either supports or opposes the candidates mentioned. In short, Initiated Measure 22 could put such organizations in a Catch-22 situation: If they choose to exercise their free-speech rights under the First Amendment and as recognized by the IRS, South Dakota law could force them to declare that their activity is a form of speech that the IRS prohibits. For other organizations, such as 501(c)(4) advocacy groups, 501(c)(5) labor unions, and 501(c)(6) trade associations, Initiated Measure 22 could similarly cause the sponsorship of otherwise nonpartisan communications to result in a tax liability for those groups and to count against their limits on political activity.[17]

Because Initiated Measure 22 covers the 60 days "*within* . . . the election sought by [the] candidate" referenced in a communication, and is not limited to the 60 days *before* the relevant election, these disclaimer, reporting, and compelled speech requirements also appear to apply to legislative advocacy communications that occur even *after* an election.[18] Seeing as how the 2017 Legislative Session is scheduled to begin on January 10, 2017, which is well "within" 60 days of the 2016 November 8 General Election, yet even more communications about matters of public concern would be subject to these regulatory burdens.[19]

Nor are these disclaimer and reporting burdens limited to legislative advocacy and voter guides. Even purely commercial speech appears to be regulated. If a sandwich shop, for example, offers election-oriented sandwich specials that are named after both the leading candidates for Governor,[20] and spends as little as $100 on advertising the specials, the business would be required to include a disclaimer, and arguably would have to disclose the business's five most lucrative customers during the prior twelve months.

This same requirement would also apply to a company that bears a candidate's name (*e.g.*, Joe Smith Plumbing, or Jane Doe Chevrolet) and runs advertisements in its normal course

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[15] *See* 26 U.S.C. § 501(c)(3).

[16] *See, e.g.*, "Rev. Rul. 2007-41 (Jun. 18, 2007) Situation 14," Internal Revenue Service. Retrieved on August 22, 2016. Available at: https://www.irs.gov/pub/irs-drop/rr-07-41.pdf.

[17] 26 U.S.C. §§ 527(f)(1); "2002 Exempt Orgs. CPE Text (Election Year Issues)," Internal Revenue Service. Retrieved on August 22, 2016. Available at: https://www.irs.gov/pub/irs-tege/eotopici02.pdf, p. 433 (explaining that 501(c) organizations other than 501(c)(3) entities may not "engage primarily in political campaign activities").

[18] *See id*. § 4.

[19] If approved by voters, the new independent expenditure disclaimer and reporting requirements should go into effect no later than seven days after the 2016 General Election, as they are not among the provisions in Initiated Measure 22 with a delayed 2018 effective date. S.D. Codified Laws §§ 2-1-12 (providing that initiated measures become effective the day after the State Canvass is completed) and 12-20-36 (providing for the State Canvass to be completed "*within*" six calendar days "*after*" the election) (emphasis added).

[20] *See, e.g.*, Erin O'Neill, "Philly cheesesteak shop pits Clinton vs. Sanders in 'sandwich showdown,'" NJ.com. Retrieved on August 22, 2016. Available at: http://www.nj.com/food/index.ssf/2016/07/philly_cheesesteak_shop_pits_clinton_against_sanders_in_sandwich_showdown.html (July 13, 2016) (reporting on how a Philadelphia sandwich shop will offer sandwich specials named "the Hillary" and "the Bernie" during the Democratic National Convention).

of business during an election season. These companies also arguably would have to report certain of their most recent customers on the independent expenditure report they would be required to file, as well as declare whether they are "for or against" each of the candidates, even if the business is perfectly neutral.

As the U.S. Court of Appeals for the Eighth Circuit, in whose jurisdiction South Dakota lies, has explained, campaign finance disclosure requirements such as those proposed in Initiated Measure 22 are subject to "exacting scrutiny."[21] Exacting scrutiny "requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest."[22] For the reasons discussed above, the independent expenditure disclaimer and reporting requirements proposed in the measure do not have any obvious public informational benefit when applied to issue and commercial speech, and appear to be aimed more at deterring speech than they are calculated to serve any legitimate governmental interest.[23] Accordingly, these provisions of Initiated Measure 22 could very well be invalidated as being unconstitutional if challenged in litigation.

The sheer length and complexity of Initiated Measure 22, which purports to regulate every South Dakotan's core First Amendment rights, also poses serious constitutional questions. It took the author of this analysis, an attorney who specializes in the types of campaign finance and lobbying laws addressed in this Initiative, more than five hours to read and re-read the measure in order to understand its provisions. As the U.S. Supreme Court has warned:

> The First Amendment does not permit laws that force speakers to retain a campaign finance attorney, conduct demographic marketing research, or seek declaratory rulings before discussing the most salient political issues of our day. Prolix laws chill speech for the same reason that vague laws chill speech: People "of common intelligence must necessarily guess at [the law's] meaning and differ as to its application."[24]

II. The Democracy Credit Program may impose an unattractive fundraising straightjacket on participating candidates, and is also written ambiguously.

Initiated Measure 22 would also create a "South Dakota Democracy Credit Program," which purports to provide two $50 vouchers to all South Dakotans to then give to certain eligible candidates for state office.[25] CCP expresses no view here on the general concept of a voter-directed voucher system for financing candidates' campaigns, other than to note that the fundraising straightjacket the proposed Democracy Credit Program would impose on participating candidates may make the program an unattractive option for financing campaigns.

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[21] *Iowa Right to Life Comm., Inc. v. Tooker*, 717 F.3d 576, 589 (8th Cir. 2013) (citing *Citizens United v. FEC*, 558 U.S. 310, 366 (2010)).
[22] *Id.* at 590 (quoting *Minnesota Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 875 (8th Cir. 2012)).
[23] *See, e.g.*, "Senator Schumer Doubles Down on Lauding 'Deterrent Effect' of Bill on Speech, Center for Competitive Politics. Retrieved on August 22, 2016. Available at: https://www.youtube.com/watch?v=NHX_EGH0qbM (July 24, 2014) (U.S. Senator Chuck Schumer acknowledges that disclosure requirements deter speech, and contends "it's good to have a deterrent effect").
[24] *Citizens United v. FEC*, 558 U.S. 310, 312-16 (2010).
[25] Initiated Measure 22 § 44.

In order to be eligible to receive voters' assigned Democracy Credits, candidates would be required to limit their fundraising to $250 per contributor for legislative candidates and $500 per contributor for statewide candidates.[26] It is not at all clear from the measure whether these contribution limits are lifetime limits, election cycle limits (*i.e.*, one combined limit applies for the primary and general elections), per-election limits (*i.e.*, separate limits apply to the primary and general elections), or per-calendar year limits.[27]

As the U.S. Supreme Court recognized in a case involving similarly low contribution limits enacted by Vermont, contribution limits of $400 per election for gubernatorial candidates, $300 for state senate candidates, and $200 for state house candidates impose "substantial restrictions on the ability of candidates to raise the funds necessary to run a competitive election."[28] Taking into account the fact that those limits were enacted in Vermont in 2007 and would have since been eroded by inflation, as well as the fact that South Dakota's population is slightly more numerous than Vermont's,[29] the $250 and $500 contribution limits Initiated Measure 22 imposes for candidates to be eligible for the Democracy Credits would likely result in similarly substantial restrictions on their ability to run competitive campaigns.

While the campaign finance scheme at issue in Vermont consisted solely of very low contribution limits, and was not supplemented by a publicly funded voucher system such as the one proposed here, it is not at all clear that the proposed supplemental "Democracy Credits" would be sufficient to tilt the balance in favor of sufficiently funded, competitive campaigns. Each registered South Dakota voter would only be able to direct $100 at most in vouchers to a participating candidate – an effective contribution limit that is even lower than the $250/$500 limits for supplemental private monetary contributions for candidates participating in the Democracy Credit Program. Moreover, the total amount of Democracy Credits that any participating candidate may receive is also capped. For example, a participating gubernatorial candidate may receive only a total of $700,000 in Democracy Credits for an election,[30] which is less than 25% of the amount raised by the winning candidate during the 2014 gubernatorial election.[31] Raising the remaining 75% of funds in $500 increments might be too difficult. Even the capped amount might overstate the funds available, because there is an additional cap for all races combined. If insufficient funds are available to pay the full amount of the vouchers, the value of certain vouchers would be reduced below the face amount.

Adding to the concerns about the Democracy Credit Program's viability as an alternative campaign financing option is the ambiguity in the legislative language Initiated Measure 22 uses to describe the program. According to its sponsors, if the measure is enacted, "*Every* South Dakota *resident* would have access to two $50 democracy credits to donate to state

[26] *Id.* §§ 3, 4, and 51.
[27] The measure is also proposing to slash the regular contribution limits for non-participating candidates, which apply on a per-calendar year basis, to $2,000 for attorney general and lieutenant governor candidates, $1,000 for other statewide offices, and $750 for legislative candidates (contributions to gubernatorial candidates would remain capped at $4,000). *Id.* § 5.
[28] *Randall v. Sorrell*, 548 U.S. 230, 253-4 (2007).
[29] *See* "State Population by Rank, 2015," Infoplease. Retrieved on August 22, 2016. Available at: http://www.infoplease.com/us/states/population-by-rank.html (2016).
[30] Initiated Measure 22 § 59.
[31] "South Dakota 2014 Election Overview," National Institute of Money in State Politics. Retrieved on August 22, 2016. Available at: http://www.followthemoney.org/election-overview?s=SD&y=2014.

candidates."[32] The Attorney General, on the other hand, has more accurately described the vouchers as being available to "each *registered voter*."[33] Nonetheless, the Initiative's actual wording is also susceptible of readings under which only *newly* registered voters in South Dakota who registered immediately or recently prior to or during any election year would be eligible to receive the Democracy Credits, and only on a one-time, non-recurring basis.

According to the Initiative's legislative language:

> On the first business day in January of every even-numbered year, the ethics commission shall mail to each person who was by the previous December *first registered to vote* in the state, to voter's address in the voter registration records, two democracy credits valued at fifty dollars each, accompanied by instructions for the assignment of democracy credits and information about the Program . . . Thereafter, the commission shall on the first and eleventh business day of every month in that election year issue two democracy credits valued at fifty dollars each to any person not yet issued democracy credits in that election year *who becomes a registered voter in the state* after the previous December first and before October first of the election year.[34]

Under a literal reading of this legislative text, it is unclear whether the vouchers would only be made available to: (1) those who "first registered to vote" in South Dakota during the last election cycle but before December prior to an election year (and those "who become a registered voter in the state" thereafter, but prior to October 1 of the election year); or (2) *all* of those who are "registered to vote" in South Dakota as of December 1 prior to an election year (and those "who become a registered voter in the state" thereafter, but prior to October 1 of the election year). Because of this ambiguity, it is recommended that dates always be written out in numeric figures, and not as ordinal numbers.[35]

III. Other Unexpected or Absurd Results

1. *Candidates' campaign committees, party committees, and PACs would be limited in their ability to sell off old office equipment, furniture, and other assets, and to rent and sell their contact lists.*

If approved by voters, Initiated Measure 22 would eliminate the current exemption under South Dakota's campaign finance law for any political committee or party committee to sell items at fair market value without the transaction becoming a regulated contribution to a political committee or party committee.[36] This would have a profoundly disruptive effect on the ability of

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[32] "Read the Act," South Dakotans for Ethics Reform. Retrieved on August 22, 2016. Available at: https://sdethics.wordpress.com/theact/ (emphasis added).
[33] "Initiative Measure, Attorney General's Statement," South Dakota Attorney General Marty J. Jackley. Retrieved on August 22, 2016. Available at: https://sdsos.gov/elections-voting/assets/IM22CampaignFinanceLobbyingLaws.pdf (September 25, 2015) (emphasis added).
[34] Initiated Measure 22 § 44 (emphasis added).
[35] *See, e.g.*, THE ASSOCIATED PRESS STYLEBOOK 68 (Norm Goldstein, ed.) (2000).
[36] Initiated Measure 22 § 4.

PACs, party committees, and candidate committees – which are a form of "political committee"[37] – to engage in routine transactions, such as renting or selling their contact lists, subletting their offices, and disposing of their office equipment and technology after a campaign ends.

Anyone attempting to purchase any of these assets would be treated as making a political contribution, subject to the much lower limits under the measure.[38] Because South Dakota otherwise prohibits political contributions from corporations and labor unions,[39] corporations and unions also would not be permitted to purchase these assets at all. Incorporated advocacy groups of all persuasions, from the Sierra Club to the National Rifle Association, from South Dakota Right to Life to NARAL, rely on the ability to rent or purchase these valuable mailing lists from campaigns, PACs, and party committees to reach out to like-minded members and voters, and they would no longer be permitted to do so if Initiated Measure 22 is approved.

Candidates' campaign committees also rely on the ability to rent and sell their lists and other hard assets to pay off campaign debts. Subjecting the sale of those assets to the contribution limits and prohibitions would greatly impede their efficient and economical disposal. South Dakotans also may find that the candidates, PACs, and party committees they support are wasting their donor-derived funds by having to give away used equipment, rather than being able to recoup some of those assets' value.

2. *PACs would have to include irrelevant disclaimer language about authorization and coordination with candidates, even for communications having absolutely nothing to do with candidates.*

Initiated Measure 22 would require any "printed material or communication" that is made or paid for by a PAC to include a disclaimer that, in addition to stating that it is "Paid for by the" PAC, indicate "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."[40] This language about authorization by or coordination with a candidate would have to be included even if the PAC's material has absolutely nothing to do with a candidate whatsoever. For example, a PAC established by a corporation or a trade association that makes written solicitations for its employees or members to contribute to the PAC would need to state that the solicitation is not authorized or coordinated with any candidate, even if the solicitation does not mention any candidates. It is unclear what purpose is served by this additional required verbiage.

3. *Lobbyists and employers of lobbyists may evade the gift limit if gifts are made to more than one state official or staff.*

Initiated Measure 22 proposes to prohibit any registered state lobbyist or employer of such a lobbyist from "mak[ing] gifts *to one person* who is an elected state officer, legislative

[37] *Id.*; *see also* S.D. Codified Laws § 12-27-1(19).
[38] Initiated Measure 22 § 5.
[39] S.D. Codified Laws § 12-27-18.
[40] Initiated Measure 22 § 15.

official or staffperson, or executive department official or staffperson aggregating more than [$100] in a calendar year."[41] It is unclear if this is a drafting error for a provision that appears to be intended to limit the value of a gift that a lobbyist or lobbyist employer may give to *any* state official or staffer. Read literally, this provision may be a deliberately drafted loophole whereby a lobbyist or lobbyist employer may evade the gift limit simply by giving gifts of any value to *two*, *three*, or even *100* or more state officials and staffers, and which technically would not be prohibited under this language. A quick survey of South Dakota's neighboring states confirms that those with gift prohibitions or restrictions in their government ethics laws do not phrase these provisions with respect to gifts to a specific number of officials. Instead, such laws are typically phrased with respect to gifts to "an" official or "any" official.[42]

CONCLUSION

South Dakota voters should judge for themselves whether they support or oppose each of the changes discussed above that Initiated Measure 22 would appear to make to their state's existing campaign finance and lobbying laws. To the extent CCP's analysis has identified any unexpected issues that may arise from the measure, South Dakota voters also should consider whether they view those issues as flaws in the measure, and if so, whether such flaws are sufficient to outweigh what they view as the measure's virtues. CCP takes no position on the merits of Initiated Measure 22 as a whole, and provides this analysis merely as an educational resource for South Dakota voters to make their own informed judgments before voting this November.

[41] *Id.* § 31 (emphasis added).
[42] *See, e.g.*, Neb. Rev. Stat. § 49-1490; Iowa Code § 68B.22(2); Minn. Stat. § 10A.071(2).