



ISSUE BRIEF:

Constitution Amendment W addresses campaign finance and lobbying laws creates an accountability board, changes initiative and referendum provisions.

Approved by the Board of Directors: June 27, 2018

The Sioux Falls Area Chamber of Commerce urges a “NO” vote on Constitutional Amendment W on the 2018 general election ballot and to actively campaign on its behalf.

Background

In South Dakota, a constitutional amendment can be initiated by the citizenry by obtaining valid signatures equaling at least 10 percent¹ of the vote total from the prior gubernatorial election. “Represent South Dakota”² are the proponents of Constitutional Amendment W (CA-W) and through their effort have qualified for the November 2018 ballot. The Attorney General has titled CA-W³ “*an initiated amendment to the South Dakota Constitution changing campaign finance and lobbying laws, creating a government accountability board, and changing certain initiative and referendum provisions.*” In addition, the Attorney General explanation states CA-W will likely be challenged on constitutional grounds.

CA-W Proposed Changes to the South Dakota Constitution

In this brief, the Chamber will focus on the more significant changes proposed in CA-W as the amendment is 17 sections long and contains more than 3,000 words.

The proposed constitutional amendment:

- Creates a State Government Accountability Board that functions outside of the three branches of government. This Board would replace the government accountability board recently created by the Legislature. The new board would be granted very broad and comprehensive powers, including the power to investigate, issue subpoenas related to the investigation, adopt administrative rules to govern the three branches of government and citizens, issue advisory opinions, and conduct audits. It may also impose sanctions, including fines, on any elected or appointed official, judge, or State or local government employee. The Board annually appropriates and solely administers State funds outside of the legislative⁴ process.
 - The seven-member board is appointed in the following manner:
 - Two- appointed by the South Dakota Supreme Court
 - Retired or former judges from different political parties
 - Two appointed by the Governor

¹ <http://sdlegislature.gov/Statutes/Constitution/DisplayStatute.aspx?Type=Statute&Statute=0N-23-1> (2018).

² <https://act.represent.us/sign/2016-election-what-happened/> (2018).

³ https://sdsos.gov/elections-voting/assets/2018_CA_AGStatement_V1.pdf (2018).

⁴ <https://www.politico.com/story/2018/06/19/ryan-zinke-halliburton-park-whitefish-montana-647731> (2018).

- One from a list of three registered voters submitted by the Speaker of the House
 - One from a list of three registered voters submitted by the Minority Leader of the House
- Those four appointed members then appoint the other three members – two of whom must be non-lawyers
- The amendment limits the number of votes necessary for approval of any initiative or referendum to a simple majority. It requires the Legislature to make specific factual findings when enacting laws that are not subject to referral. If the Legislature wants to change the initiative or referendum process, or a law passed by initiative, it must submit the change to the voters.
- This amendment lowers campaign contribution amounts to candidates and political parties. It prohibits contributions to candidates or political parties by labor unions and corporations. Candidates and elected officials are prohibited from using campaign contributions for personal use. The amendment reduces contribution limits to:
 - \$500 for state representatives, local office, city, county and school districts (current limit is \$1,000)
 - \$750 for state senators (current limit is \$1,000)
 - \$1,500 for statewide constitutional office (current limit is \$4,000)
 - \$4,000 for Governor (current limit is \$4,000)
 - \$5,000 limit to political parties (current law is \$10,000)
 - Contributions from a single source, including local chapters (currently local chapters are separate)
- The amendment expands the scope of activities requiring people to register as lobbyists, and places additional restrictions on lobbyists.

Proponent Rationale⁵:

Proponents assert CA-W is an anti-corruption measure that will clean up government through lowering or contribution limits to elected officials, establishing a government accountability board, ending legislative tampering. The CA-W seeks to fight corruption by reducing the influence of big donors and lobbyists and asserts the amendment puts the voters of South Dakota back in charge and hold politicians accountable. The amendment will enact an accountability board that will serve as a tribunal and make judicial determinations, including levying fines. As part of their argument they site ethical violations of the past and often include the criminal embezzlement of GEAR-UP⁶ and EB-5⁷.

Proponents, Represent South Dakota, have stated that they turned in 50,000 signatures by paid signature gathers, which was well above the level needed to qualify. They assert the have 50,000 signatures indicate broad statewide support of CA-W along with passage⁸ of initiated measure 22 (IM-

⁵ Note: The Chamber reached to proponents for their speaking points on CA-W and is still waiting for the documents.

⁶ <https://www.argusleader.com/story/news/politics/2017/08/31/what-we-learned-gear-up-scandal-week-and-why-matters/617078001/> (2018).

⁷ <https://www.argusleader.com/topic/3f928c9b-0fb1-4e09-a978-d8c88ecad2ff/eb-5-scandal/> (South Dakota).

⁸ South Dakota voters approved IM-22 in November 2016, 180,634 to 169,481. <https://sdsos.gov/elections-voting/assets/BallotQuestions.pdf> (2019).

22) in 2016. IM-22⁹ was a similar ballot measure against government corruption through a change state statute that was challenged in Circuit Court¹⁰ upon passage and repealed¹¹ in the 2017 legislature. The 2018 version¹² is pared down from IM-22.

Opponent Rationale:

W is Wrong. The impact of the amendment is intentionally in conflict with the existing provisions of the South Dakota Constitution. Opponents assert:

- Amendment W is eight pages long, which is more of re-writing than an amendment.
 - The state’s constitution is 80 pages long.
- Amendment W is 3,329 words long – the longest amendment ever attempted.
- Amend-W uses “notwithstanding any other provisions of the constitution” five times, which means the amendment is controlling over other sections in the constitution that are not included in the actual amendment language.
- Amend-W uses “in case of conflict with other. . . *this Article shall control*” twice, which makes it superior to even the South Dakota’s Bill of Rights.
- Members of Board must declare conflicts of interest but can vote if needed to break a tie.
- Mandated appropriation of \$389,000 to fund the board. No mention of how to pay for additional staff the Board is empowered to hire.
- Bans lobbyists from giving gifts to senior public officials of any value including coffee.
- Creates a government accountability board that is not accountable to any branch of government in South Dakota.

In addition, the campaign has been entirely financed with out-of-state money. Financial filing reports¹³ indicate that not one South Dakotan has contributed to this effort. The year-end supplemental financial report was 191 pages long and lists multiple entries of one-dollar contributions by the same donor. The last eight donors gave 50% of the total contributions of \$233,588.

Note: Detailing “Proponents” and “Opponents” rationale is designed to provide the reader with an understanding of the opinions and talking points from each perspective. They are not intended to reflect any position of the Sioux Falls Area Chamber of Commerce.

⁹ Note: The Sioux Falls Area Chamber of Commerce urged our members to vote “NO” on IM-22 in the 2016 general election.

http://www.siouxfallschamber.com/publications/BOD%20CampaignFinance_positions_rationale%20Mark.pdf (2018).

¹⁰ The Court issued a preliminary injunction on the newly adopted law reasoning there were provisions that were unconstitutional and that the law was not severable.

¹¹ In January 2016, the South Dakota Legislature voted 54-13 in the House and 27-8 in the Senate to repeal IM-22. http://www.sdlegislature.gov/Legislative_Session/Bills/Bill.aspx?Session=2017 (2018).

¹² The model language for both the 2016 and 2018 ballot measures follow the “American Anti-Corruption Act.” <https://represent.us/> (2018).

¹³ It is important to note that the year-end supplemental report is 191 pages long. The report lists multiple donations by the same donor. There are 11 pages of multiple donations of one-dollar contributions from the same persons and 45 pages of three-dollar contributions from the same persons. Example is David Kirk, Valley Park, MO contributed \$100 eight times. <https://sdcfr.sdsos.gov/Search/SearchResults.aspx?cid=729&rid=1879> (2018).

Chamber Position¹⁴

The Sioux Falls Area Chamber of Commerce urges a “NO” vote on Constitutional Amendment W on the 2018 general election ballot and for the Chamber to actively campaign on the measures behalf.

Rationale

Although proponents to CA-W are well intentioned, South Dakota already has laws¹⁵ against bribery, embezzlement, campaign finance, ethics and conflict of interest mandatory disclosures. In addition, the legislature recently enacted a government accountability board. The CA-W adds 17 sections of law, eight pages, to our Constitution with one vote. It uses the term, notwithstanding, four times to override existing provisions within the Constitution. The amendment also declares, “in case of conflict with any other provision of the Constitution . . . This Article shall control.” This language allows the amendment to take precedence over existing law, including the Bill of Rights.

The CA-W will create a quasi-fourth branch of government through the government accountability board, that will have broad and sweeping powers to enact and enforce new laws against public officials, public employees and others. There are concerns about the right to repeal the board decisions against citizens and an uneasiness that only a federal court could intervene with the government accountability board decisions but only on a federal law violation.

Our form of government is designed to ensure no individual or branch of government will have too much power. Each branch of government can change the acts of the other branches, designed to create a balance of power and interests between the branches. The CA-W functions outside of our three branches of government and does not provide for accountability or a balance of power within our form of government.

In addition, the CA-W would not address the illegal actions, such as embezzlement related to EB-5 and GEAR-UP. CA-W doesn't not provide any legal remedies associated with illegal activity of those tragic occurrences.

¹⁴ Issues Management Council adopted their recommendation to the Board: June 18, 2018. The Chamber Board of Directors adopted: June 27, 2018. Both the Issues Management Council and the Chamber Board voted unanimously to oppose.

¹⁵ http://www.sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=3 (2018), http://www.sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=12 (2018).