

W is Wrong



Amendment W

- Is eight pages and 3,329 words long
 - Entire South Dakota Constitution is 80 pages
- **Creates a Non-Elected Tribunal**
 - 4th Branch of State Government
 - “notwithstanding” - Article II
 - Divides power of the State to Executive, Legislative & Judicial
- Declares *“in case of conflict with any other provision of Constitution . . . this Article shall control”*

Puts Minutia into the Constitution

- “No law changing the criteria, requirements or rules of initiative/referendum process can pass without a vote of people”
 - “approved by a majority”

Changing details like the petition dates, paying signature gatherers or the forms used will take a statewide vote

Amendment W

Claims of superiority over all other laws

- Uses “Notwithstanding any other provision of the constitution of” - three times
- Uses “Notwithstanding any other provision of law” - once
- Article is “self-executing” – prohibits laws that would hamper, restrict or impair the powers

W - is an Amendment

Takes a statewide vote to fix problems

- Amendment W is too long, too confusing and too risky
- It takes another statewide vote to make any changes
 - *W should be a statute – not an amendment*

Puts Campaign Limits in Constitution

- \$500 – State Representative/local office, city, county, school district - *Current Limit - \$1,000*
- \$750 State Senate – *Current Limit - \$1,000*
- \$1,500 – Statewide Constitutional Office (AG, Secretary of State, et al) - *Current limit - \$4,000*
- \$4,000 – Governor - *Current Limit – same \$4,000*

Makes Contribution Limits Part of the Constitution!

- **Political parties limited to \$5,000**
 - Current law - \$10,000
 - including local chapters - currently local chapters separate
- **Statewide vote to change**
 - Should be in statute, not constitution

State Government

Accountability Board – *Non-Elected*

- Board with seven members appointed in the following manner:
- Two appointed by Supreme Court;
 - retired/former Judge –different political parties
- Two appointed by Governor
 - 1) list of 3 registered voters by Speaker of House
 - 1) list of 3 voters by Minority Leader of the House

State Government

Accountability Board - *Tribunal*

- Three appointed by majority vote of other four appointed members
 - Two of whom must be non-lawyers
- Each of seven members must have registered with same political party or been unaffiliated for two years

Board Empowered to Investigate

Vast Expansion Beyond Ethics

- bribery,
- theft, or
- embezzlement of public funds, or
- any violation of this Article,
- ethics rule, or
- state law,
- campaign finance
- lobbying,
- government contracts, or
- corruption by any elected or appointed official, judge, or employee of any state or local government
- issue subpoenas related to the investigation
- **Duplicates role of Attorney General**

Conflicts of Interest

An interesting approach

- Members disclose financial interests
- Members with substantial interests in a matter before the board shall disclose that “conflict of interest”
- *“and recuse himself or herself from working on the matter”*
- *“unless the board member's vote is necessary to resolve the matter.”*

Adopt rules, subject to rulemaking procedures as defined by law, including provisions on:

- campaign finance
- conflicts of interest
- confidential information
- use of position
- contracts with government agencies,
- legislative recusal
- financial interest disclosure

Board Powers

- (3) Issue advisory opinions, which may be relied upon by any person involved in the specific transaction or activity
- (4) Adopt rules of procedure for the board
- (5) Hire and supervise staff, including any legal, investigative, or administrative and clerical employee who is necessary to support the functions of the board

Powers and More Powers

- (6) Conduct specific or random audits of disclosures required by state laws on
 - campaign finance
 - ethics
 - lobbying
 - government contracting law
- Anonymous complaints
 - becomes a political tactic in other states

Plus

- (7) Impose sanctions on any elected or appointed official, judge, or employee of state or local government, including the power to
 - issue orders
 - impose fines
 - commence administrative actions

At least four members required for:

- the consideration and resolution of any matter that involves the exercise of the board's duties and powers(?) under this Article
- including the adoption or approval of any motion, procedure, provision, or appeal
- the hiring of staff
- the issuance of an advisory opinion
- the referral to the appropriate prosecutorial authority of a complaint alleging a violation, and the imposition of sanctions

Assent of only three members needed for

- the convening of meetings
- the initiation and carrying out of investigations
- the issuance of subpoenas
- the approval of public education materials
- the approval of minutes of previous meetings
and
- actions related to board contracts

Who Falls Under the Board's Control?

- “by any elected or appointed official, judge, or employee of any state or local government”
 - Teachers
 - Law enforcement
 - Parking enforcement officers
 - All other public employees
- "Elective office," a non-federal office elected by South Dakota voters
 - Includes small boards like road districts

4th Branch of Government

Unchecked Power – Rules Become Law

- Possible - Rules on Conflicts of Interest
 - Require tax returns for teachers; elected officials?
- Or - Financial Disclosure for Family Members
 - Businesses with government contracts
- **If Adopted by Tribunal**
 - *No veto by Governor; Review by Legislature*

Mandated Appropriation

- **\$389,000 Annual Appropriation**
 - Increases every year with inflation
 - Not subject to veto by the Governor
 - Not subject to review by the Legislature
- Money better spent for schools and law enforcement
- Unknown – Power to raise other funds
 - Power to levy fines
 - Administrative powers
 - Hire staff
- ***Amendment W claims control over the rest of the Constitution***

Board as Intervenor

- “The board may intervene as a matter of right in any civil action involving any government entity, agency, or instrumentality alleged to be in violation of any mandate or prohibition under this Article, and in any civil action relating to the board's powers or the sufficiency of resources provided for the board's implementation and operation”.

No Other State

- No other state has an ethics commission in constitution with mandated appropriation
 - Much less the claim of superiority
- Florida and Oklahoma – in constitution
 - Legislature appropriates funding
 - Has control over rules
- ***Takes a Statewide Vote to Make any Changes***

Proponents Not a South Dakota Organization

- **Represent SD** – is a ballot question committee only
- NOT registered as an organization with the Secretary of State:
 - NO bylaws filed
 - NO list of directors
 - No list of officers/treasurer – other than campaign

Financing the Campaign

- **In 2017 – Represent US – Massachusetts**
 - Donated \$369,588
 - Spent \$362,348 – *Mostly for signature gathering/consultants*
 - Balance \$7,240
- **Pre-Primary Report**
 - Additional \$16,000
- **Next Report – Just before General Election**

“Follow the Money”

- Year-end Supplemental Report
- 191 pages long
- Lists multiple donations of \$1
 - Ten or fifteen listed same name and address
 - *They will claim thousands of donors making average donation of a very small amount (like \$20/each)*
- Total = \$233,588
- Last 8 Contributors – gave 50%
- None of them in South Dakota

- *The trick to create average donation of \$20???*
- Barbara Epstein 1 Macarthur Boulevard Apt. 1101, , Haddon Township, NJ 08108 1.00
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- 11 pages of multiple \$1 contributions
- 45 pages of multiple \$3 contributions
- David Kirk – Valley Park Mo. – \$100 contribution – 8 times

VOTE

NO

— ON —

WW

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