

Chamber Opposes Constitutional Amendment W

Background: The 2017 Legislature repealed Initiated Measure 22 in its entirety and worked to enact legislation that upheld the main provisions and intent of the law regarding transparency, oversight and campaign restrictions. In response to the repeal of IM22, Represent SD circulated petitions and put Constitutional Amendment W on the 2018 ballot.

Some of the key provisions within CA W include:

Section 2: Adds CA W as a new article to the SD Constitution.

- Explains the purpose of the amendment is to 1) subject public officials, candidates, and lobbyists to robust ethics, conflict of interest, and anti-corruption laws, 2) create an independent ethics commission, 3) demand the will of the people be upheld.
- Prohibits lobbyists from giving a gift to any *elected or senior public official*. Unless they are immediate family. This includes any person elected to any office, such as all municipal elected office, water districts, road districts, township boards and of course legislature and statewide office. Senior public office may include appointed city and county positions. A gift includes anything. No monetary threshold exists. Prohibits the personal use of state resources or campaign contributions.
- Prohibits corporations and Unions from contributing to a candidate or political party.
- Prohibits senior public servants from lobbying for two years after their service. It is unclear as whether lobbying is limited to lobbying the state legislature or would include lobbying city councils or government agencies.
- Requires Judges to recuse themselves from cases in which they have a conflict of interest.
- Sets the following campaign contribution limits:
 - \$500 for state representatives or local offices
 - \$750 for state senators
 - \$1500 for state constitutional offices
 - \$4000 for Governor
 - EXEMPTS: political parties, the candidate or candidate spouse.
 - \$5000 limit on contributions to political parties. This section groups all affiliates of each party together. For example, a person could not give \$5000 to the State Democratic

Party and \$5000 to the Pennington County Democrat Party (annually adjusted for inflation).

- Enacts the State Government Accountability Board (SGAB) and establishes committee structure and authority.
 - SGAB has the authority to investigate allegations of state ethical violations.
 - Adopt rules regarding campaign finance, conflicts of interest, and other ethics issues pertaining to state government.
 - Issue advisory opinions
 - Impose sanctions on elected, appointed officials, judges, or employees of state and local government. Unclear as to whether there is any appeal process.
- Sets the quorum for major activities of the board at 4 people.
 - Of note: A Board member must recuse themselves from working on any matters of which they have personal or financial connections to. Unless the Board member's vote is needed to resolve the matter (break a tie).
- Appropriates \$389,000 annually to the Ethics Law Enforcement Fund to be used by the Board. Adjusted annually for inflation.
- Includes a severability clause that allows for any component of the amendment that should be found invalid to be severed from the amendment without affecting any other provision of the amendment.
- Sets this article above any other article or provision held within the Constitution.
- Voters must approve by a simple majority any changes or repeal of measures previously approved by the voters. NOTE: This would override Constitutional Amendment Y should it be approved by the voters this November.
- Requires that any changes to the initiated measure and referendum process must be approved by a vote of the people.
- Asserts this new amendment will supersede any provisions in any other amendments within the constitution.

CA W does not include the Democracy Credit program that was implemented, then repealed, with IM22.

Proponents Argument:

Represent SD is the lead agency advocating for the passage of CA W. The Constitutional Amendment is a direct response to the repeal of IM22 in the last legislative session. Proponents claim that the legislature did not go far enough in enacting replacement legislation that addresses the ethical concerns of the citizens of South Dakota.

The Ethics Commission enacted through IM 22 was repealed under questions on constitutionality. Therefore, by amending the constitution the proposed Commission becomes legal. The goal of the Commission is a uniquely separate oversight entity that cannot be influenced by any branch of government. All state agencies, campaign financing requirements, and lobbyists would be accountable to review by this board.

South Dakota is among a handful of states that does not have a separate ethical oversight commission or committee. Proponents claim that the lack of ethical oversight within our state government has led to instances of corruption and fraud.

Opponents Argument:

W is Wrong

- It demands to be “in control” over all other provisions of the State Constitution
- It creates a seven member; non-elected tribunal that has the power to create rules the legislature cannot amend or review
- Its members are allowed to vote on items where they have conflicts of interest, if that vote is needed to break a tie among the other six members
- It is entirely funded by out-of-state special interests using South Dakota as an experimental study for changing how governments operate, and
- No other state has an ethics commission in their constitution with a mandated appropriation (\$389,000) plus the right to go to court for more money.

Rapid City Chamber’s Position

The Rapid City Area Chamber of Commerce opposes Constitutional Amendment W as an unnecessary change to our state Constitution, as a restriction on people’s rights and imposing a restriction to modify any law established by any initiated measure by requiring a new state referendum to amend any law so

established. Ethics reforms, campaign finance and advocacy policy should be implemented and upheld via the legislative and rules process making it more responsive to the demands of the people and adaptable to current challenges found within the campaign and legislative processes.

The Chamber wholeheartedly supports the values of open, transparent government upon which CA W is intended, where all who want to participate can and those that do are held to high standards. However, we do not feel the proposed amendment to the Constitution meets these objectives.

Constitutional Amendment W contains many concerning aspects:

- The State Government Accountability Board (SGAB) structure and scope would be defined via constitution and stand as a separate governmental entity without oversight or accountability.
- Commission members must recuse themselves from decisions and Commission actions of which they may have a conflict of interest. However, the member with the potential conflict of interest could vote on the issue in the case of a tie.
- Allocates from the general fund \$389,000 annually to fund the SGAB prohibiting the legislature from making adjustments as needed in times of budget shortfalls. This sets the SGAB as the priority over other state budgetary obligations such as safety and health care.
- Definitions contained within the Amendment are broad and include persons elected to positions such as local road district. These unreasonable campaign and advocacy restrictions may potentially deter citizens from running for office, further undermining civic engagement.

In 2017, the Legislature repealed IM22 and sought to replace the majority of the concepts within the measure with vetted policy upholding the intent of the voters. This amendment would write into the state constitution many reforms that were included in IM22 and found to be unconstitutional and overreaching. We believe the policies put into place by the legislature were fair, vetted, and meet the intent of the voters. Therefore, CA W is an unnecessary addition to the State's founding document.

The Rapid City Chamber of Commerce spends time and resources advocating for business interests at all levels of government. We encourage thoughtful and business-minded individuals to participate in the civic process and CA W runs in opposition of that goal. Policies, such as CA W, implement ill-conceived regulations limiting a citizen's opportunity to engage effectively in the public process by establishing unrealistic restrictions to political speech and advocacy efforts.