



ISSUE BRIEF:

Initiated Measure 24 would prohibit contributions to ballot question committees by non-residents, out-of-state political committees, and entities that are not filed with the Secretary of State

Approved by the Board of Directors: Aug. 22, 2018

Sioux Falls Area Chamber of Commerce has taken a position to remain neutral on Initiated Measure 24 (IM-24).

Background

In South Dakota, state law provides that persons and organizations can make unlimited contributions to ballot question committees¹. South Dakota does not have special regulations for out-of-state contribution to ballot measure campaigns which effectively puts out-of-state donors on an even playing field as in-state donors. However, South Dakota is not alone—as of 2018, no states regulate out-of-state contribution to ballot measure campaigns.

Initiated Measure 24 would put a stop to out-of-state contributions by banning individuals, political action committees (PACs), and other entities from outside South Dakota from making contributions to ballot question committees. It would also ban any entity that had not registered with the South Dakota Secretary of State's office or recently moved to South Dakota for at least four years. Any ballot question committee found to have accepted an out-of-state contribution would be fined an amount equal to 200 percent of the prohibited contribution by the secretary of state. Courts would also be allowed to find individuals, committees, and entities up to \$5,000 per violation with fine revenue deposited in the general fund.

The Attorney General's 2018 ballot explanation states the following²:

This measure [IM-24] prohibits contributions to statewide ballot question committees by non-residents, by political committees organized outside South Dakota, and by any entity that is not filed as an entity with the Secretary of State for the four years prior to making a contribution. It requires the Secretary of State to impose a civil penalty on any ballot question committee that accepts a prohibited contribution. The civil penalty is double the amount of the contribution. The measure requires the Secretary of State to investigate alleged contribution violations prohibited by this measure.

Currently, there are state laws regulating other kinds of election-related contributions, disclaimers, and disclosures. Violations of these laws are classified as misdemeanors and are subject to criminal penalties. The measure allows a court to impose a civil penalty (up to \$5,000 per violation) in addition to the criminal penalty. Under the measure, the Secretary of State must investigate alleged violations of these particular election-related laws.

¹ South Dakota defines a ballot question committee as, "a person or organization that raises, collects or disburses contributions for the placement of a ballot question on the ballot or the adoption or defeat of any ballot question".

² [South Dakota Attorney General 2018 Ballot Explanation of Initiated Measure 24](#) (2018).

Out of State Contributions³

In 2016, approximately \$9.4 million of out-of-state money was contributed to ballot measures in the State of South Dakota. This accounts for over 75 percent of all contributions. For example, Amendment S (Marsy’s Law) raised over \$2,091,698 in support of the amendment—all of which was out-of-state funds. On the other hand, the opposition only raised \$6,277 and it was all in-state contributions. In the end, over 99.70% of the money raised for Amendment S was from out-of-state entities.

Proponent Rationale:

For the proponents, it comes down to protecting and simplifying South Dakota’s ballot. In their view, South Dakota is used as a “testing ground” for different political business models due to our relatively cheap media market and low signature requirements. Proponents point to the 2016 election where there were seven initiated measures—including four that proposed to re-write the South Dakota constitution—and the following occurred:

- Six of the seven ideas were brought to us by out-of-state political and business interests
- Over \$11 million was spent in total on ballot measures, 75% from out-of-state⁴;
- Three passed measure, four failed

Proponents firmly believe it’s too easy to get onto South Dakota’s ballot and, as a result, our constitution is being bought by out-of-state interests—with IM-24 they want to send their political business models and interest somewhere else. Since these individuals/entities do not have kids that attend South Dakota schools, do not attend our churches and aren’t active in our communities, they do not have the South Dakota’s best interests in mind . Thus, it is important to limit their involvement in our ballots unless they can demonstrate either residency or a legitimate business in South Dakota.

Proponents go on to concede that IM-24 won’t entirely stop out-of-state contributions, but it will discourage entities from using South Dakota as a “testing ground”. They argue that we are the easiest state in the nation to get something on the ballot and we need to raise this bar, so these entities look elsewhere. As one proponent put it, “you don’t have to be faster than the bear, you just have to be faster than the guy next to you.”

Opponent Rationale:

Opponent’s boil their argument against IM-24 down to three points:

1. The current system is not broken
2. It’s a poorly crafted measure that is unconstitutional and won’t hold up in courts
3. It will hinder economic development efforts

First, opponents argue that our current system is not jeopardizing South Dakota. Not all out-of-state money is inherently bad—in fact, sometimes we need it. For example, in 2006 South Dakota voters considered an initiative known as The South Dakota Judicial Accountability Amendment (Amendment E). This deeply flawed amendment that would have sent judges to jail, ultimately lost at the ballot box 90%

³ [Ballotpedia](#) tracked all donations received by committees registered to support or oppose ballot measures in 2016.

⁴ [Secretary of State’s Campaign Finance Reporting System](#)

to 10%, but not before an out-of-state entity raised over \$1 million dollars to defeat it. Flawed legislation will be on the ballot box again and opponents believe they should have every tool in the toolbox to defeat it.

Secondly, opponents believe that IM-24 is poorly crafted and will still allow out-of-state money into elections. In their view, IM-24 will not prevent an out-of-state donor from sending money to an established business and having them donate on their behalf. If anything, it will just hide who is contributing to the campaigns. On top of this, opponents argue that this initiated measure is unconstitutional by violating free speech and will not hold up in courts.

And lastly, opponents assert IM-24 will send a bad message to economic development. Entities looking at South Dakota to start or expand a business will be deterred due to the provision in IM-24 that doesn't allow businesses to make campaign contributions until they have established operation in South Dakota for four years.

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.

Chamber Position:

The Sioux Falls Area Chamber of Commerce has taken a position to remain neutral on Initiated Measure 24.

Rationale⁵:

The Chamber's Issues Management Council heard two detailed presentations on Initiated Measure 24. After vetting and discussing this ballot measure within the IMC and the Chamber's Board of Directors, there was no consensus to take a position in support or opposition. IMC understands the concerns from both sides of the issue and question whether or not this issue would have any significant affect upon the business community. This resulted in a decision not to weigh in on this issue.

⁵ Issues Management Council adopted their recommendation to the Board: Aug. 9, 2018. The Chamber Board of Directors adopted: Aug. 22, 2018. Both the Issues Management Council and the Chamber Board voted to stay neutral on Initiated Measure 24.