

STATE OF SOUTH DAKOTA)
) :SS
COUNTY OF HUGHES)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

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R. BLAKE CURD, M.D., DEB PETERS, DEB
SOHOLT, JIM STALZER, CAROL STALZER, :
MARK WILLADSEN, JIM BOLIN, GARY :
CAMMACK, JUSTIN CRONIN, BOB :
EWING, BROCK GREENFIELD, LANA :
GREENFIELD, TERRI HAVERLY, PHIL :
JENSEN, RYAN MAHER, AL NOVSTRUP, :
ERNIE OTTEN, BETTY OTTEN, LARRY :
TIDEMANN, JIM WHITE, JOHN WIIK, :
DAVID ANDERSON, TIMOTHY JOHNS, G. :
MARK MICKELSON, KENT PETERSON, :
CINDY ELIFRITS PETERSON, LEE QUALM, :
and SOUTH DAKOTA FAMILY HERITAGE :
ALLIANCE ACTION, INC., :

CIV. 16-_____

Plaintiffs, :

v. :

THE STATE OF SOUTH DAKOTA and :
MARTY JACKLEY, in his official capacity as :
its Attorney General, :

Defendants. :

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For their Complaint, Plaintiffs allege as follows:

1. Plaintiff R. Blake Curd, M.D., is a resident of South Dakota, a registered voter, a taxpayer, and an elected member of the South Dakota Senate. Dr. Curd is employed by, or otherwise receives compensation annually from, Sioux Falls Specialty Hospital, L.L.P., in excess of \$100 per calendar year. The Specialty Hospital employs a lobbyist to represent its interests before the South Dakota Legislature.

COMPLAINT

2. Plaintiff Deb Peters is a resident of South Dakota, a registered voter, a taxpayer, and an elected member of the South Dakota Senate. Plaintiff Deb Peters is an accountant and she regularly works or consults with entities that employ lobbyists before the South Dakota Legislature. Through her work with these entities, Plaintiff Deb Peters derives compensation or other benefits in excess of \$100 per calendar year.

3. Plaintiff Deb Soholt is a resident of South Dakota, a registered voter, a taxpayer, and an elected member of the South Dakota Senate. Soholt works as a registered nurse for Avera McKennan, which employs a lobbyist before the South Dakota Legislature, and she receives compensation in excess of \$100 per calendar year from Avera McKennan.

4. Plaintiff Jim Stalzer is a resident of South Dakota, a registered voter, a taxpayer, and an elected member of the South Dakota Senate. Stalzer's wife, Carol Stalzer, works as a nurse for, and receives compensation in excess of \$100 per calendar year from, Sanford Health, which employs lobbyists before the South Dakota Legislature.

5. Plaintiff Ernie Otten is a resident of South Dakota, a registered voter, a taxpayer, and an elected member of the South Dakota Senate. Otten's wife, Betty Otten, is an employee of Sanford Health, which employs lobbyists before the South Dakota Legislature, and from whom she receives compensation in excess of \$100 per calendar year.

6. Plaintiff Kent Peterson is a resident of South Dakota, a registered voter, a taxpayer, and an elected member of the South Dakota House of Representatives. Plaintiff Kent Peterson's wife, Cindy Elifrits Peterson, is a business consultant and owner of Maximizing Excellence, LLC, and provides services to entities that employ lobbyists, receiving compensation in excess of \$100 per calendar year from such entities.

7. Plaintiff Mark Willadsen is a resident of South Dakota, a registered voter, a taxpayer, and an elected member of the South Dakota House of Representatives. Willadsen owns a Farmers Insurance Agency in Sioux Falls, South Dakota, and thus derives income aggregating in excess of \$100 per calendar year from Farmers Insurance Group, an entity that employs a lobbyist before the South Dakota Legislature.

8. Plaintiff David Anderson is a resident of South Dakota, a registered voter, a taxpayer, and an elected member of the South Dakota House of Representatives. Anderson works as an insurance agent and sales representative, selling insurance for one or more insurance companies that employ lobbyists before the South Dakota Legislature, and he receives compensation in excess of \$100 per calendar year from such entities.

9. Plaintiffs Jim Bolin, Gary Cammack, Justin Cronin, Bob Ewing, Brock Greenfield, Terri Haverly, Phil Jensen, Ryan Maher, Al Novstrup, Larry Tidemann, Jim White, and John Wiik are all residents of South Dakota, registered voters, taxpayers, and elected members of the South Dakota Senate.

10. Plaintiffs Timothy Johns, G. Mark Mickelson, Lana Greenfield, and Lee Qualm are all residents of South Dakota, registered voters, taxpayers, and elected members of the South Dakota House of Representatives.

11. Plaintiffs Larry Tidemann, Jim Bolin, and Timothy Johns receive retirement benefits in excess of \$100 per year from the South Dakota Retirement System, which employs a lobbyist.

12. Plaintiff Mark Mickelson serves on the board of the Sioux Falls Chamber of Commerce, which employs a lobbyist. The Chamber serves lunch at its monthly board meetings, the annual value of which to Mickelson likely exceeds \$100.

13. Plaintiff South Dakota Family Heritage Alliance Action, Inc. (“FHA Action”), is a 501(c)(4) organization located in Rapid City, South Dakota, organized under South Dakota law and in good standing. FHA Action employs a lobbyist named Dale Bartscher who has petitioned the state government in Pierre on multiple issues during past legislative sessions and intends to do so again in 2017. After past legislative sessions, FHA Action has published a legislative scorecard and intends to do so again in the future. The cost of publishing and distributing the legislative scorecard exceeds \$500.

14. The State of South Dakota is one of the 50 sovereign states. Its Constitution was adopted October 1, 1889, and it governs, among other matters, the division of governmental powers, the authority of the legislative and executive departments, and elections and suffrage. The Constitution also contains a Bill of Rights, including a constitutional right to freedom of speech in Article 6, Section 5, and a right to equal protection of the law in Article 6, Section 18.

15. Plaintiffs challenge the constitutionality under both state and federal law of Initiated Measure 22 (“IM22”), which was passed by the voters in the general election held on November 8, 2016, and most of which by its terms became effective on November 16, 2016. The State is amenable to suit under Article 3, Section 27 of the Constitution and is an indispensable party under SDCL Ch. 21-24. *See Dan Nelson Automotive, Inc. v. Viken*, 2005 S.D. 109, ¶¶ 25-27, 706 N.W.2d 247, 248-49.

16. Section 68 of IM22 provides for an appropriation of \$9 per registered voter in South Dakota, to be adjusted every year for inflation based on the Consumer Price Index for the Midwest Region, to fund the programs established by IM22. IM22 expressly relates to the use of public funds and its constitutionality is a matter of public right. *South Dakota Physician's*

Health Group v. South Dakota, 447 N.W.2d 511, 515 (S.D. 1989). All named plaintiffs therefore have standing to challenge the validity of IM22.

17. Marty J. Jackley is the Attorney General of South Dakota. One of the Attorney General's duties under SDCL § 21-1-11(1) is to defend the State of South Dakota in a case in which the State is a party.

18. IM22 is an act "to increase accountability to the people of South Dakota in electoral politics by revising certain provisions concerning campaign finance and lobbying, establishing an ethics commission, creating a democracy credit program, and making an appropriation therefor." A copy of IM22 is attached as Exhibit A.

19. The explicit purpose of IM22 is "to increase accountability to the people of South Dakota in electoral politics and to combat government corruption and its appearance." (IM22, Section 2.)

20. In Section 12, IM22 prohibits any person, organization, candidate, political committee, or political party from giving or accepting a contribution aggregating more than \$500 in a calendar year unless the person making the contribution also discloses his or her name, address, occupation, and current employer. A violation of Section 12 is a class 2 misdemeanor. Section 22 of IM22 then requires the candidate, political party, political action committee, or ballot question committee to include that information in its campaign finance disclosure statement filed with the secretary of state.

21. In Section 16(1), IM22 requires any person or organization that makes an independent expenditure totaling \$100 or more concerning a communication to include in that communication conspicuous statements that: (1) identify the name and address or website of the person or organization making the independent expenditure; (2) state that the communication is

an independent expenditure not made in consultation or coordination with any candidate or authorized committee or agent of the candidate; and (3) if the independent expenditure was made by an organization also conspicuously state “Top Five Contributors” followed by a listing of the names of the five persons making the largest aggregate contributions during the twelve months preceding the communication. A violation is a class 1 misdemeanor.

22. In Section 16(2), IM22 requires any person or organization to file electronically with the secretary of state a statement concerning an independent expenditure if the independent expenditure was over \$100. The filing must occur every time a payment is made. The filing must include the relevant election, and must explicitly state whether the expenditure was for or against the particular candidate or measure. For organizations, the filing must also identify the donors whose funds were used for the independent expenditure by full name, address, occupation, and employer.

23. In Section 31, IM22 prohibits any employer of a lobbyist from making gifts aggregating in excess of \$100 in a calendar year to an elected state officer or legislative official, or executive department official. A “gift” includes compensation or employment. Violation of the section is a Class 1 misdemeanor. In addition, the value of “gifts” given to an immediate family member of any elected state officer, legislative official, or executive branch official must be attributed to the officer or official.

24. In Section 32, IM22 creates the South Dakota Ethics Commission, which is an independent commission not accountable or assigned to any branch of South Dakota government or to any existing department, officer, or agency. Under Section 39, the Ethics Commission has broad responsibility for the “effective administration and implementation” of IM22, including

broad investigative powers, the right to bring a private civil action seeking monetary penalties and injunctive relief, and the power to make findings and impose civil penalties.

25. Section 34 of IM22 provides that members of the Ethics Commission must be nominated by the Governor from five lists, ranked in order of preference, provided by the senate majority leader, the senate minority leader, the senate majority and minority leader together, the President of the University of South Dakota, and the President of South Dakota State University. If the Governor does not make any of the five appointments by January 31 of each calendar year, then a member is “automatically appointed” in order of the preference indicated in one of the respective lists. A vacancy must be filled in the same manner.

26. Section 40(9) provides that the Ethics Commission may adopt rules under SDCL Ch. 1-26 regulating the qualification and certification of candidates for public office who participate in the democracy credit program.

27. Section 43 creates the South Dakota Democracy Credit Program, through which registered voters will receive democracy credits that can be assigned to qualified and participating candidates for public office. Section 59 limits the amount in democracy credits that candidates for different public offices may receive in a single election year.

28. Section 60 sets aggregate limits, beyond which a participating candidate is ineligible to receive democracy credits, on the amount of democracy credits available for enumerated statewide races.

29. For the general election held on November 8, 2016, there were 544,428 registered voters in South Dakota as determined by the South Dakota Secretary of State.

30. Based on the most-recent number of registered voters in South Dakota, the required appropriation under Section 68 of IM22 for the 2017-18 budget year would be \$4,899,852.

31. South Dakota has a part-time citizen legislature. According to the National Conference of State Legislatures, South Dakota is one of six states with the most traditional or “citizen” legislatures. South Dakota legislators are paid \$6,000 per regular legislative session, which is among the lowest pay in the nation. SDCL § 2-4-2.

32. South Dakota has no recent history of election or campaign-related scandals involving corrupt elected state officials.

33. A controversy exists between the parties over the constitutionality and enforceability of IM22.

34. Under SDCL Ch. 21-24, this Court has the power to declare whether IM22 is constitutional and enforceable.

Count One—The Ethics Commission violates Article 2 and Article 4, Section 8

35. Section 32 of IM22 creates an independent Ethics Commission that is not part of the legislative, executive, or judicial branches of government nor is it allocated to, responsible to, attached to, or overseen by any existing department, agency, or constitutional officer of the State of South Dakota.

36. Article 2 of the South Dakota Constitution provides in its entirety: “The powers of the government of the State are divided into three distinct departments, the legislative, executive and judicial; and the powers and duties of each are prescribed by this Constitution.”

37. Article 4, Section 8 of the South Dakota Constitution provides that all executive and administrative boards, agencies, commissions, and instrumentalities of state government

must be allocated by law within the principal departments of the State. The Governor may make changes to the structure of such boards, agencies, commissions, and instrumentalities only by executive order to be submitted to the Legislature, which may disapprove the executive order by resolution adopted by a majority of either house.

38. There are no executive and administrative boards, agencies, commissions, or instrumentalities of state government in South Dakota other than those created by the Constitution that operate independently of the principal departments of the State.

39. As an independent entity, that is, a new, fourth branch of government, the Ethics Commission created by IM22 violates Article 2 and Article 4, Section 8 of the South Dakota Constitution.

Count Two—The Ethics Commission violates the Governor’s executive appointment authority and the separation of powers

40. Under Section 24 of IM22, the members of the Ethics Commission must be appointed by the Governor from prescribed and ranked lists. If the Governor does not make an appointment, it is made automatically. The Governor may not depart from the lists in making an appointment. Because three of the five members must be chosen from ranked lists provided by legislators, the Legislature in effect has the authority to control appointment of a majority of the members of the Ethics Commission.

41. Under Article 4, Section 1 of the South Dakota Constitution, the Governor is vested with the executive power of the State. Under Article 4, Section 3, the Governor must commission all officers of the State. Under Article 4, Section 9, each principal department of the State must be under the supervision of the Governor, who has the power to appoint executives for each department, and, in cases in which a board or commission is the head of a principal department, to nominate the members of the board or commission, subject to the advice and

consent of the senate. In all other cases, the Governor may, in his or her discretion, appoint lower-level officials to carry out the law without restriction by or the consent of the Legislature.

42. The members of the Ethics Commission do not meet the definition of the governmental appointments that must be made with the consent of the senate. The Governor is therefore constitutionally entitled to make the appointments in his or her discretion.

43. Even if appointment of the members of the Ethics Commission required the consent of the senate, IM22 does not provide for appointment on that basis.

44. Section 24 of IM22 violates the doctrine of separation of powers, which provides that each department of state government should act independently of the others. Section 24 violates this doctrine because the Governor's executive authority to make appointments to the Ethics Commission is limited and in effect negated.

**Count Three—IM 22 unconstitutionally
delegates legislative authority to the Ethics Commission**

45. Section 40 of IM22 gives the Ethics Commission the authority to “adopt rules that replace or modify the requirements established in sections 43 to 62” of IM22.

46. Under Article 3, Section 1 of the South Dakota Constitution, the legislative power of the state, i.e., the power to enact, amend, or repeal laws, is vested in the Legislature.

47. The legislative power of the State may not be abdicated or delegated.

48. Sections 43-62 of IM22 became law on November 16, 2016. They will be codified as statutes under SDCL Ch. 2-16.

49. The power given to the Ethics Commission in Section 40 of IM22 to “replace or modify” 21 sections of the law constitutes an unlawful delegation of legislative power in violation of Article 3, Section 1 of the South Dakota Constitution.

Count Four—the Ethics Commission cannot lawfully qualify candidates

50. Section 40(9) of IM22 gives the Ethics Commission the broad power to adopt rules under SDCL Ch. 1-26 to regulate the qualification and certification of candidates. IM22 contains no limitation on what rules the Ethics Commission might adopt related to qualification of candidates.

51. Under Article 3, Section 9 of the South Dakota Constitution, each house of the Legislature shall be the judge of the qualifications of its own members. Article 3, Section 3 establishes the qualifications for each house of the Legislature.

52. Article 4, Section 2 of the South Dakota Constitution establishes the qualifications for the offices of governor and lieutenant governor.

53. By giving the Ethics Commission the power to regulate the qualification of candidates for the Legislature and the offices of governor and lieutenant governor, Section 40(9) usurps the constitutional authority of the legislative and executive branches under Article 3, Section 9 and Article 4, Section 2 of the South Dakota Constitution, and thereby violates Article 2 of the Constitution.

Count Five—IM22 unconstitutionally appropriates from the general fund

54. Section 68 of IM22 provides that “[t]here is hereby appropriated from the general fund” millions of dollars on an annual basis.

55. An appropriation is “legislative sanction for the disbursement of the public revenue.” *State ex rel. Mills v. Wilder*. 42 N.W.2d 891, 893 (S.D.1950).

56. Under Article 12, Section 2 of the South Dakota Constitution, all appropriations must be made by separate bills embracing one object each, and require a two-thirds vote of the members of each house of the Legislature.

57. The annual appropriation made by Section 68 was not made by a two-thirds vote of the members of each house of the Legislature, and is therefore unconstitutional.

58. Without an annual appropriation, the democracy credits program and the Ethics Commission would be unfunded and therefore unable to function.

Count Six—Section 31 impairs existing contracts

59. Section 31 of IM22 prohibits any employer of a lobbyist from making gifts to any elected official of more than \$100 in a calendar year. A “gift” includes compensation and employment.

60. Under Section 31 of IM22, Plaintiffs Blake Curd, Deb Peters, and Deb Soholt, like any other elected official who is employed by an entity or person who employs a lobbyist, may not be compensated for their work in excess of \$100 per year.

61. Curd, Peters, and Soholt have existing employment agreements pursuant to which each is compensated more than \$100 per year for their work.

62. Under Section 31, Curd, Peters, and Soholt must give up either their employment or their elected office to comply with IM22, which substantially impairs their existing contractual relationships.

63. Similarly, Section 31 precludes Plaintiffs Jim Stalzer, Kent Peterson, and Ernie Otten, and other elected officials who have an immediate family member employed by or receiving compensation from an entity or person who also employs a lobbyist, from serving in the legislature as long as an immediate family member receives compensation in excess of \$100 per year from an employer. Alternatively, Section 31 requires Cindy Elifrits Peterson and Betty Otten to give up their existing contracts so that their husbands can remain in the legislature. The section further precludes Plaintiffs Mark Willadsen and David Anderson from serving in the

legislature as long as they continue to derive compensation from insurance companies, which employ lobbyists.

64. There is no legitimate purpose in requiring a part-time citizen legislator and his or her family members to choose between his or her employment and participating in the political process.

65. The requirement that citizen legislators or their family members not accept compensation from their primary employer if the employer happens to employ a lobbyist is not reasonably related to the purpose of IM22 of preventing corruption.

66. IM22 therefore violates the Contracts Clause to the United States Constitution (Article 1, Section 10) and the South Dakota Constitution (Article 6, Section 12).

Count Seven—Section 31 violates the right to free speech

67. Section 31 of IM22 prohibits any employer of a lobbyist from making gifts aggregating more than \$100 in a calendar year to any elected state officer, legislative official, or executive department official. Because “gift” includes any “thing of value,” IM22 prevents any employer of a lobbyist from making political contributions aggregating more than \$100 in a calendar year to candidates running for these offices.

68. The First Amendment guarantees the right to petition the government for grievances. Under Section 31, an employer who hires a lobbyist is denied this right.

69. Under Section 31, an employer who hires a lobbyist is also impermissibly restricted in exercising its right to free speech.

70. Under Section 31, a lobbyist or employer who hires a lobbyist is limited to contributing \$100 to many elected officials running for office, while anyone else is subject to much higher limits.

71. Section 31 thereby restricts and reduces political speech protected by the First Amendment to the United States Constitution and Article 6, Section 5 of the South Dakota Constitution.

72. Because the limit of \$100 in aggregate gifts during a calendar year is significantly less than the other contribution limits provided by South Dakota law, the restriction is not narrowly tailored to serve the State's interest in preventing corruption.

73. Section 31 therefore violates both the First and Fourteenth Amendments to the United States Constitution and Article 6, Section 5 of the South Dakota Constitution.

Count Eight—the Democracy Credit Program violates equal protection and rights protected by the First Amendment to the United States Constitution and Article 6, Sections 4 and 5 of the South Dakota Constitution

74. Section 44 requires that in January of every even-numbered year, each registered voter in South Dakota as of the previous December will receive two democracy credits valued at fifty dollars each, to be assigned to qualified and participating candidates for elective office.

75. The number of registered voters in South Dakota as of the general election held on November 8, 2016 was 544,428. Based on this number, the value of the democracy credits to be distributed in January, 2018, would be approximately \$54 million.

76. Section 68 of IM22 appropriates only \$9 per registered voter in each year, and Section 42 of IM22 caps the democracy credit fund at \$12 million.

77. IM22 does not appropriate enough money for every registered voter to be able to use \$100 in democracy credits. In addition, the cap on the democracy credit fund allows only a small percentage of currently registered voters to obtain the face value of their democracy credits. The amounts of the appropriation and cap are arbitrary, thereby creating arbitrary,

irrational, and unconstitutional distinctions between voters and candidates who receive the full value of democracy credits and those who receive a smaller, prorated amount or no value at all.

78. Based on current voter registration totals and the number of people who voted in the 2016 general election, in 2018 the amount of funds available for the democracy credit program would only be sufficient for a small percentage of those who voted in the November 2016 election to redeem their democracy credits. Under Section 39(1)(g), if the Ethics Commission determines at some point that it will receive more democracy credits for redemption than it has funds, it may publicly announce that sufficient funds are no longer available to pay the face value of unredeemed democracy credits and then may allocate any remaining available funds on a proportionate and prorata basis.

79. Similarly situated voters may receive democracy credits of the same face value but the credits of some voters may not be redeemable at face value by the candidate to whom the voter assigned the credit if there are insufficient funds in the democracy credit fund when the candidate submits the democracy credit for redemption. In addition, voters who register to vote during an election year may not receive any value, or a smaller amount of value, for their democracy credits due to insufficient funds in the democracy credit fund.

80. Similarly situated candidates may be assigned democracy credits of the same face value, but one candidate may receive a smaller amount of funds for their credits if some of their credits are submitted for redemption later in the year due to insufficient funds in the democracy credit fund.

81. Section 59 of IM22 establishes limits on the amount of funds that candidates for particular offices may receive. Because voters will not know at all times the value of democracy

credits assigned to candidates, some voters may assign their democracy credits to candidates who have exceeded the cap for funds, thereby rendering those voters' democracy credits of no value.

82. Section 60 of IM22 establishes aggregate limits on the amount of funds that all candidates running for a particular office or group of offices may receive. If one of those limits is reached during a campaign, democracy credits assigned to similarly situated candidates by similarly situated voters would be rendered of no value.

83. As structured, the democracy credit provisions in IM22 violate the Equal Protection Clause of the United States Constitution and Article 6, Section 18 of the South Dakota Constitution by creating arbitrary and irrational distinctions between voters who receive less or no value for their democracy credits compared to other similarly situated voters and between candidates who receive less or no value for the democracy credits assigned to them compared to other similarly situated candidates.

84. The democracy credit provisions also violate the First Amendment to the United State Constitution and Article 6, Section 4 and 5 of the South Dakota Constitution because arbitrarily providing more public campaign funds to some voters and candidates than the State provides to other, similarly situated voters and candidates substantially burdens the free speech and political participation rights of the voters and candidates who receive a smaller amount of public campaign funds.

85. The Equal Protection Clause of, and First Amendment to, the United States Constitution and Article 6, Sections 4, 5, and 18 of the South Dakota Constitution do not permit the State to provide monetary benefits to some voters and candidates for the purpose of engaging in political speech and activity and provide a smaller amount or no benefit to other voters and candidates due to arbitrary and irrational appropriation and other limits concerning the program

that further no legitimate government purpose, and certainly do not serve IM22's stated purpose of reducing government corruption. This unequal treatment disadvantages the latter voters and candidates compared to the voters and candidates who receive the full value of democracy credits with regard to the fundamental rights of engaging in political speech and activity, thereby triggering heightened scrutiny. The distinction created by the democracy credit program cannot survive rational basis review, much less heightened scrutiny because these distinctions between voters and candidates serve no rational purpose and do not advance IM22's stated purpose of reducing government corruption.

**Count Nine—the disclosure requirements for independent expenditures
violate the right to free speech**

86. Section 16 of IM22 requires that individuals and organizations disclose detailed personal information when making independent expenditures over \$100, including, for an organization such as FHA Action, the name of all contributors whose funds were used in the independent expenditure and the contributor's residence address, occupation, and name of employer.

87. Section 16 of IM22 further requires individuals and organizations, including FHA Action, making an independent expenditure over \$100 related to a communication to include in the communication a conspicuous statement entitled "Top Five Contributors" followed by a list of the five persons who donated the largest aggregate amounts during the twelve months preceding the communication.

88. In Section 4(11), IM22 exempts from the disclosure requirements of Section 16 "a communication in a news story, commentary, or editorial or letter to the editor distributed through the facilities to any broadcasting station." The exemption applies regardless of whether

an editorial or letter to the editor has been instigated or funded by an organization or an individual.

89. No constitutionally sufficient justification supports the media exemption in Section 4(11).

90. Although the stated purpose of IM22 is preventing corruption, the media exemption to the disclosure requirements establishes that the State lacks a sufficiently important governmental interest in the disclosure requirements for individuals and organizations other than those exempted in Section 4(11).

91. Section 4(18) of IM22 expands the definition of a political action committee (PAC) to any organization that collect contributions and does not fall within one of the exceptions in that section. IM22's definition of a PAC improperly makes entities that qualify as 501(c)(3) organizations, or 501(c)(4) organizations such as FHA Action, subject to IM22's disclosure requirements and other limitations upon PACs.

92. Section 23 of IM22 requires entities, including entities it improperly defines as PACs such as FHA Action, to file a timely contribution disclosure statement electronically with the South Dakota Secretary of State whenever the entity has received a contribution from a person or entity aggregating more than \$500 in that calendar year and each time that further contributions from the same source aggregate an additional \$500. For individual donors, the amount disclosed must include the donor's full name, address, occupation, and employer. The report must be filed within five days of receipt of the contribution, unless the contribution is received within twenty days of a South Dakota primary, general, or special election and the entity has expended funds in connection with the election, in which case it must be filed within twenty-four hours of receipt.

93. Section 22 of IM22 requires entities that must file a campaign finance disclosure report statement to disclose the full name, address, and amount of aggregate contributions from any person who contributed more than \$200 in aggregate during the calendar year. For any contributor who contributed more than \$500 in aggregate during the calendar year, entities must disclose not only that information but also the contributor's occupation and employer.

94. Based on the many and short deadlines for disclosure, the information that must be disclosed, and the low disclosure threshold, the disclosure requirements in IM22 are unduly burdensome and thereby violate the right to free speech protected by the United States and South Dakota Constitution because they will burden, chill, and reduce individuals' and organizations' ability to engage in political speech and activity and do not have a relevant correlation or substantial relation to a sufficiently important governmental interest.

95. In addition, Section 4(11) states that an independent expenditure is the exchange of consideration for a communication that refers to the defeat or adoption of a ballot measure.

96. Section 16 requires persons paying \$100 towards the communication that refers to the adoption or defeat of a ballot measure to disclose their name and address in the communication. This requirement violates the First Amendment to the United States Constitution and Article 6, Section 5 of the South Dakota Constitution.

97. Section 16 also requires persons paying \$100 towards a communication that supports or opposes a candidate to disclose their name and address on the communication. This requirement violates the First Amendment to the United States Constitution and Article 6, Section 5 of the South Dakota Constitution.

98. Because Section 16 punishes a substantial amount of protected speech, Section 16 is overbroad and therefore unconstitutional in its entirety.

99. The disclosure requirements of IM22 violate the First Amendment right to free speech under the United States Constitution and Article 6, Section 5 of the South Dakota Constitution.

Count Ten—single subject rule

100. Article 3, Section 21 of the South Dakota Constitution prohibits laws from embracing more than one subject.

101. IM22 is unconstitutional because it addresses multiple distinct subjects including campaign contribution limits, lobbying restrictions, the democracy credit program, and the establishment of an independent ethics commission.

102. Article 3, Section 21 of the South Dakota Constitution also requires the subject of a law to be expressed in its title. The purpose of this requirement is to prevent the unintentional and unknowing passage of provisions of which the title gives no intimation. Although IM22's title lists multiple subjects, IM22's one-sentence title could not, and did not, fairly apprise the voters of IM22's content, which is 34, single-spaced pages long.

Count Eleven—declaratory relief

103. A present controversy exists between the parties over the constitutionality of IM22.

104. This controversy is ripe because the date IM22 became effective was November 16, 2016. The Legislature will be in session beginning in January 2017 and IM22 requires it to leave room in the general state budget for 2017-18 to allow for the multi-million dollar appropriation of \$9 per registered voter mandated by IM22. Multiple officials will now have to work on the appointment of the members of the ethics commission, which must be appointed and in place no later than January 31, 2017.

105. In addition, some specific issues, such as the free speech and Equal Protection problems concerning the democracy credit program, relate to elections. If the Court were to wait until these specific issues arise to address them, there would not be sufficient time for the legal system to address them before they became moot. If not addressed now, these will be recurring, yet incapable of judicial review.

106. In addition, several of the Plaintiffs could face immediate criminal prosecution because of the prohibitions contained in Section 31 of IM22.

107. The validity of IM22 is a matter of great public concern that should be addressed immediately.

108. The Court has the authority under SDCL Ch. 21-24 to address the constitutionality of an initiated measure when it has been challenged.

109. The provisions of IM22 at issue in this case are interdependent and any sections of the measure that are determined to be valid cannot stand by themselves after the invalid sections are stricken. Furthermore, the invalid provisions are so material to implementation of the whole that the voters would not have intended the remaining sections to take effect without the invalidated sections. *See Dakota Systems, Inc. v. Viken*, 2005 S.D. 27, ¶ 20, 694 N.W.2d 23, 32.

110. IM22 does not contain a severability provision that invalidated sections may be stricken without invalidating the whole.

111. Plaintiffs are therefore entitled to judgment striking the challenged sections of IM22 as unconstitutional and invalidating the entire measure.

Count Twelve—injunctive relief

112. Because IM22 implicates First Amendment and other state constitutional rights and because it impairs existing employment contracts and requires that some of the Plaintiffs make immediate decisions to either resign their elected office or give up their employment, Plaintiffs would suffer irreparable harm if the implementation and enforcement of IM22 is not enjoined.

113. As noted, the Legislature will be in session beginning in January 2017, and Section 68 of IM22 requires it to leave room in the general state budget for 2017-18 for the multi-million dollar appropriation of \$9 per registered voter mandated by IM22. Allocating these funds to IM22 will prevent the Legislature from allocating them to other important governmental purposes in 2017-18. If IM22 is eventually declared unconstitutional, no remedy at law exists to recover funds spent implementing an unconstitutional law, and Plaintiffs would suffer irreparable harm. Plaintiffs' only remedy to prevent the expenditure of public funds on an unconstitutional measure and to prevent the diversion of important governmental resources is injunctive relief by declaratory judgment.

114. IM22 requires that the initial members of the ethics commission must be appointed no later than January 31, 2017. As stated above, the ethics commission is unconstitutional. Plaintiffs have no adequate remedy at law to compensate them for the establishment of an unconstitutional entity, and would suffer irreparable harm. Plaintiffs' only remedy to prevent the establishment of an unconstitutional ethics commission is injunctive relief by declaratory judgment.

115. The balance of harm favors the Plaintiffs because the implementation of IM22 threatens their immediate interests, while temporarily enjoining the implementation of IM22

would not adversely affect the public. The Attorney General advised the public in the ballot explanation for IM22 that its constitutionality could be challenged in court if the measure were approved.

116. Given the obvious conflicts between IM22 and the plain language of the South Dakota Constitution, some of which were noted by the Legislative Research Council to IM22's proponents before IM22 was submitted to the voters, Plaintiffs are likely to succeed on the merits.

117. The public interest favors preliminary relief because of the significant state and federal constitutional issues involved in the case, including the right of free speech.

118. Plaintiffs are also entitled to permanent injunctive relief under SDCL § 21-8-14 because they have been and will be irreparably harmed by IM22 and monetary compensation would not afford adequate relief.

Wherefore, Plaintiffs pray that the Court enter judgment as follows: (1) awarding preliminary and permanent injunctive relief precluding the implementation and enforcement of IM22; (2) declaring that IM22 is unconstitutional in part, that the parts that are unconstitutional are so integral to the whole that the voters would not have approved the measure without them, and that the measure is therefore unenforceable; (3) awarding costs and disbursements; and (4) awarding any other relief that the Court deems just and equitable.

Dated this 23rd day of November, 2016.

WOODS, FULLER, SHULTZ & SMITH P.C.

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