

South Dakota Reverses Course on Campaign Finance and Ethics Overhaul

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Last November, South Dakota voters approved Initiated Measure 22 (IM-22), an ambitious overhaul of the state's campaign finance and ethics laws. Among the changes were significant decreases in contribution limits, enhanced disclosure for groups running pre-election advertisements, and a new limit on gifts from lobbyists and lobbyist employers to public officials.

Soon after IM-22's approval, however, a number of state legislators brought a lawsuit in state court seeking to enjoin the law. The court agreed with the legislators that several portions of IM-22 were likely unconstitutional and preliminarily enjoined its enforcement until the court could rule on the merits. The court further held that the potentially unconstitutional portions could not be severed from the constitutional ones, so the law would stand or fall together.

Now the courts will not get a chance to weigh in on the constitutionality of IM-22. The state legislature recently passed, and Governor Dennis Daugaard signed, legislation that repealed IM-22. The legislation included an emergency clause, which meant that it took effect immediately and could not be repealed by voters in a future referendum. At the same time, a number of bills relating to campaign finance and ethics reform have been circulating the legislature. The state House of Representatives, for example, approved a bill that limits the amounts out-of-state persons may contribute to ballot question committees.

The Governor also recently signed legislation that reinstates limits on gifts from lobbyists and lobbyist employers to public officials, although with more exceptions than contained in IM-22. Like the provision in IM-22, the recent legislation allows an official to accept

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gifts from a lobbyist or lobbyist employer with a value of up to \$100 annually. Unlike IM-22, however, this legislation permits the limit to be adjusted for inflation, does not apply the limit to staff members, and exempts food and beverages provided for immediate consumption under \$75. The Governor is expected to sign the bill.

Wiley Rein is closely monitoring the developments in South Dakota and is prepared to help clients navigate campaign finance and ethics laws there and across the country.