

---

[https://rapidcityjournal.com/news/local/govt-and-politics/federal-judge-rules-im-24-unconstitutional/article\\_f33eb589-3c89-5f59-aecb-b145e8178303.html](https://rapidcityjournal.com/news/local/govt-and-politics/federal-judge-rules-im-24-unconstitutional/article_f33eb589-3c89-5f59-aecb-b145e8178303.html)

TOP STORY

## Federal judge rules IM 24 unconstitutional

Sarah Mearhoff Forum News Service

May 9, 2019

---



**A**BERDEEN | A federal judge ruled Thursday that South Dakota's recently passed ban on out-of-state contributions to ballot measure committees is unconstitutional.

In making the decision, U.S. District Court Judge Charles Kornmann in Aberdeen ruled in favor of plaintiffs, who argued that the ban known as Initiated Measure 24 violated the First Amendment and the Commerce Clause of the U.S. Constitution.

"IM 24 is unconstitutional because it violates First Amendment rights to engage in political speech and to associate with others to fund political speech," Kornmann wrote in his ruling. "IM 24 is also unconstitutional

because it violates the Commerce Clause by interfering with the free flow of money between persons or entities from another state and ballot questions committees in South Dakota."

---

---

Kornmann ordered that the state is barred from implementing or enforcing IM 24. The law — which was passed by South Dakota voters via ballot measure in November by a 56-44 percent margin — was scheduled to take effect July 1.

As of Thursday, it is not clear whether the state will appeal Kornmann's decision. Attorney General Jason Ravnsborg's Chief of Staff Tim Bormann said in a written statement that the Office of Attorney General "respect(s) the decision of the Court."

"We are reading the decision and are examining the avenues available to our office that best coincide with protecting the best interests of the people and the State of South Dakota," Bormann said.

---

---

Two separate cases were filed against IM 24, based on the same arguments: One by political blogger Cory Heidelberger and SD Voice and another by the South Dakota Newspaper Association, Retailers Association, Broadcasters Association and Chamber Ballot Action Committee, as well as Americans for Prosperity and Thomas Barnett Jr.

Plaintiffs argued that campaign contributions are speech and that limiting or creating a preference for some speakers or donors (in state versus out of state) violates First Amendment rights to free speech.

Kornmann concurred, citing the 2010 Citizens United v. Federal Election Commission decision, in which he said the U.S. Supreme Court "came to the blanket conclusion that in the context of political speech, the Government may not impose restrictions on certain disfavored speakers."

---

In the case of IM 24, those "certain disfavored speakers" would be out-of-state contributors.

"IM 24 bans all direct political speech from one segment of society, a practice specifically struck down in Citizens United," Kornmann wrote.

The state defended IM 24, saying its purpose was to protect "its democratic self-government from those who cannot vote on a state ballot question."

Kornmann disagreed: "It is clear that the Governor of South Dakota urged voters to adopt IM 24 to further the interest of preventing non-residents from having any voice concerning South Dakota ballot issues in connection with ballot issue committees."

---

In a state with a Republican supermajority, Kornmann said it's especially important that out-of-state political speech is allowed. With one-party control over the governor's office, House and Senate, Kornmann said it is "more difficult for the opposition party to pursue its agenda in the state Legislature." Banning out-of-state speech makes that even harder, he said.

Plaintiffs also argued that IM 24 violated the Constitution's Commerce Clause by attempting to regulate interstate commerce. Kornmann agreed, writing that the measure violated the clause "without question."

South Dakota Newspaper Association Executive Director David Bordewyk said he particularly appreciates Kornmann's "very strong argument" for free speech, saying that the association decided to get involved with the lawsuit in the first place to defend the First Amendment.

---

"Particularly political speech involved with election issues and campaigns needs to have great protection, as much as possible," Bordewyk said. "You need to do all you can to make sure that all voices are heard. And let's face it, those voices sometimes equate to money."

According to the lawsuit, in-state plaintiffs like the newspaper association would "suffer significant civil penalties" under IM 24 if they accepted contributions from out-of-state groups.

IM 24 also would have prevented out-of-state organizations like Charles and David Koch's Virginia-based lobbying group Americans for Prosperity (AFP) from contributing to South Dakota ballot measure committees. AFP was a plaintiff on the case.

---

---

AFP's state director and former state legislator Don Haggar said in a written statement: "IM 24 would have made it harder for everyday citizens to engage in civic life. Today's ruling is good for South Dakotans, good for free speech, and good for our democracy."

Kornmann's decision was also lauded by other out-of-state interests that were not involved in the case: Virginia-based Institute for Free Speech called the ruling "a big win for free speech."

"Government cannot ban speech simply because it dislikes who is speaking," said Institute for Free Speech Legal Director Allen Dickerson in a written statement. "South Dakotans have the right to hear messages from all Americans."

#### Online

To read the court decision and judgment, visit [rapidcityjournal.com](http://rapidcityjournal.com)

---

## Get Election 2020 & Politics updates in your inbox!

Keep up on the latest in national and local politics as Election 2020 comes into focus.

Email Address