

Substantial Disruption



South Dakota Goes To Hell

By Mike Tully

If any state should recognize an emergency, it's South Dakota. The Mt. Rushmore state has experienced more than its share of [disasters](#), from the "Schoolhouse Blizzard" of 1888 that killed 235 people to the Ice Storm of 2013, from the Black Hills Flood of 1972 that killed 238 to the killer tornado that hit Spencer in 1998 and reduced the town's population by more than half. South Dakota's most recent "emergency" is different from these.

South Dakota, like every state, has dealt with a number of scandals. One of the ugliest involved the operator of a non-profit corporation who allegedly [embezzled](#) at least a million dollars intended to help Native American students. The term "allegedly" is necessary because the suspect, Scott Westerhuis, never went to trial. As the posse closed in, he shot and killed his wife and children and burned down their house before killing himself. Around the same time Richard Benda, an aide to a former South Dakota governor found himself under investigation for alleged [improprieties involving a visa program](#). Like Westerhuis, Benda never went to trial. He also killed himself as the posse closed in. While the Benda investigation implicated former Governor Mike Rounds and another state official, a legislative investigation decided to let them off the hook and blame the dead guy. These scandals, as well as South Dakota's notorious laissez-faire attitude toward lobbyists, [earned the state an "F"](#) from The Center for Public Integrity.

The people of South Dakota finally had enough. In 2016, they passed [Measure 22](#), a grass-roots initiative formally known as the "South Dakota Government Accountability and Anti-Corruption Act," a compelling dose of ethical disinfectant. As the election pamphlet [explained](#), the Act limited the amount of donations candidates could accept from individuals or campaign committees, required additional reporting of contributions, and created a "democracy credit" that voters could allocate to candidates. Each voter had two credits worth \$50 each and could donate one or both to candidates of their choice, or not at all. The Act also prevented state officials from engaging in lobbying for two years after leaving office.

Measure 22 attracted outside supporters, including [Our Revolution](#), a 501(c)(4) non-profit organized by supporters of Senator Bernie Sanders, and [Represent.Us](#), a Massachusetts non-profit. The Measure was opposed by the [Koch Brothers](#) and other apostles of laissez-faire. The measure passed with [51% of the voters approving it](#).

The Republican Governor, Republican legislators and their lobbyist bedmates went ballistic. Opponents of Measure 22 immediately filed an action in court to overturn it and reinstate the lobbyist-friendly status quo. Even though a judge [placed the measure on hold](#), the opposition was not satisfied. After all, a reviewing court could vacate the restraining order and breathe life back into the Act. There was no time to waste. Time was of the essence. To South Dakota

Republicans, the imposition of ethical rules was a natural disaster, *an [emergency](#)*, in the same category as floods, blizzards, tornadoes and wildfires. They argued the Act violated the state and federal constitutions. The Republican Governor, Dennis Daugaard, said the voters were “hoodwinked” by “scam artists.” The Governor’s use of the term “hoodwink” was ironic because the status quo blindfolded voters to the cozy, covert and corrupt relationship between lawmakers and lobbyists, and the origin of the term mean to [blindfold](#). In actuality, it was the Governor who kept the blindfold intact.

The courthouse was an appropriate forum. There is precedent for regarding limiting campaign contributions as a First Amendment violation, although the Act limited receipts, not contributions, and there is no limit on what a candidate can raise. Public financing has already survived court challenges and the Democracy Credit providing financing based on voters’ individual wishes instead of lump-sum financing. Candidates would not have to raise a certain sum to qualify, as in Arizona. They would have to convince registered voters to assign Democracy Credits to them, giving the average guy unprecedented pocket-book leverage. Perhaps that is why South Dakota Republicans passed emergency legislation to eliminate the Act. All Democrats and a handful of Republicans voted to keep it, but Governor Hoodwink gleefully signed legislation repealing the Act.

We inhabit a mad realm, in [which corporations are people](#) and the highest court in the land [does not believe that money corrupts](#) politicians. The people of South Dakota made a valiant, if futile, attempt to cure the madness and deserved their day in court. The Republicans’ refusal to allow a court to hear both sides is a slap in the face to South Dakota voters.

The South Dakota State Motto is, “Under God the people rule.” Unfortunately, God is not a lobbyist.