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MARTY J. JACKLEY
ATTORNEY GENERAL

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FEB 27 2023

SD Secretary of State

MARK W. BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

February 27, 2023

Honorable Monae Johnson
Secretary of State
500 E. Capitol
Pierre, SD 57501

RE: Attorney General's Statement (Initiated Constitutional Amendment Concerning Open Primaries)

Dear Secretary Johnson,

Enclosed is a copy of a proposed constitutional amendment, in final form, that the sponsor submitted to this Office. In accordance with state law, I hereby file the enclosed *draft* Attorney General's Statement for the purposes of receiving public comment on the same.

By copy of this letter, I am providing a copy of the *draft* Statement to the sponsor.

Very truly yours,

A handwritten signature in blue ink, appearing to read "M. Jackley".

Marty J. Jackley
ATTORNEY GENERAL

MJJ/dd
Enc.

Cc/encl: Joe Kirby
Reed Holwegner – Legislative Research Council

Filed this 27th day of

February 2023

A handwritten signature in black ink, appearing to read "Monae L. Johnson".

SECRETARY OF STATE

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**CONSTITUTIONAL AMENDMENT
DRAFT ATTORNEY GENERAL'S STATEMENT**

SD Secretary of State

Title: An amendment to the South Dakota Constitution establishing top-two primary elections

Explanation:

Currently, to appear on the general election ballot, major party candidates for the following offices must participate in a partisan primary election: Governor, State Legislature, U.S. Senate and House of Representatives, and elected county offices. Only members of the candidate's party may vote for that candidate unless that party has opened the primary to voters not affiliated with the party.

Minor party candidates may be chosen by primary or party convention.

Unaffiliated candidates (independents) are only required to file nominating petitions to appear on the general election ballot.

For the listed offices, this amendment requires one primary election wherein all candidates run against each other in their respective races, including major and minor party and unaffiliated candidates. A candidate may list a party next to their name on the ballot regardless of party affiliation or registration. All voters may vote for any candidate. The two candidates receiving the most votes advance to the general election. If there is more than one candidate to be elected to an office, the number of candidates advancing to the general election is twice the number to be elected.

Primary elections may be held for other offices.

The amendment may be challenged on constitutional grounds.

Filed this 27th day of
February 2023

Monae L. Johnson

SECRETARY OF STATE

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FEB 27 2023

Open Primaries

SD Secretary of State

Be it enacted by the People of South Dakota:

That Article VII of the Constitution of South Dakota be amended by adding a NEW SECTION to read:

§ 4. A primary election held for the office of governor, a legislative office, a county office, the United States Senate, or the United States House of Representatives shall be open to all candidates and all qualified voters without regard to the candidates' or voters' party registration or affiliation, or lack thereof.

In a primary election covered by this section, each candidate must be listed on a single primary ballot regardless of the candidate's political party. A voter may vote for any primary candidate regardless of the voter's party affiliation or lack thereof. The two candidates receiving the highest number of votes cast in a primary election advance to the general election. If more than one candidate is to be elected to an office at the general election, the number of candidates advancing from the primary election is twice the number to be elected in the general election.

The general election ballot may only include those candidates advancing from the primary election. The legislature may, by law, establish procedures for replacing a candidate who advanced from the primary election but will not participate in the general election due to death, withdrawal from the race, or disqualification.

A candidate may select the name of a political party to be listed next to the candidate's name on the primary ballot. The same political party designation shall appear next to the candidate's name on the general election ballot if the candidate advances to the general election.

Both the primary and general election ballots must state that a candidate's indicated political party designation does not constitute or imply an endorsement of the candidate by the political party designated.

The legislature may establish any necessary procedures to implement this section.

If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity will not affect any other provision or application of the section that can be given effect without the invalid provisions or applications, and to this end the provisions of this section are severable.

Monae L. Johnson

SECRETARY OF STATE