



June 9, 2017

Mr. Drey Samuelson
1711 S. Phillips Avenue
Sioux Falls, SD 57105

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S.D. SEC. OF STATE

Dear Mr. Samuelson:

Pursuant to SDCL 12-13-25, this office is required to review each initiated amendment to the South Dakota Constitution. Further, this office is required by SDCL 12-13-24 to determine if each initiated amendment is "written in a clear and coherent manner in the style and form of other legislation" and that it is "worded so that the effect of the measure is not misleading or likely to cause confusion among voters." You are under no obligation to accept any of the suggestions contained in this letter, but please keep in mind the legal standards established in SDCL 12-13-24.

The proposed constitutional amendment includes elements from two previous constitutional amendment proposals considered in the 2016 general election. The combination of the subjects from the two proposed amendments may not comply with the related subject matter as required in S.D. Const. Art. XXIII, § 1.

The draft of the initiated constitutional amendment submitted to this office is not written in a clear and concise manner and does not conform to the form and style of other sections of the constitution. Parts of the proposed amendment are better suited for statute. Rarely do we find any definitions in the constitution and under that limited circumstance it usually defines one term within that section. It is inappropriate to have two sets of subdivisions within one section. This may cause confusion when making any reference to subdivision (1) within this section as to which subdivision (1) is being referenced. As an alternative you may define the term, "state public office", which is a unique definition for the purposes of this proposed amendment.

Furthermore, section 7 conflicts with section 8 of the proposed constitutional amendment as submitted to our office. Section 7 proposes to amend S.D. Const. Art. III, § 5 and section 8 proposes to repeal the same section.

When drafting legislation, we use "may not" instead of "shall not." A negative used with "may" negates the obligation and permission to act and is the stronger prohibition. A negative used with "shall" negates the obligation, but not the permission to act and therefore is avoided.

The proposed constitutional amendment should outline the requirements of the proposal and the details should be set in law. The more details placed in the constitution, the more likely there may be a need for another constitutional amendment. If the wording is unclear, has ambiguous phrases, or unintended consequences, it is a complex process to propose and pass constitutional amendments to address the matter. Therefore, it is critical that the proposed constitutional amendments be carefully constructed.

Section 6 of the draft as it was submitted to our office – if the constitutional amendment is passed by the people in the 2018 general election, existing laws and regulations must be amended to comply with the provisions. It is unnecessary to have a section added to the Constitution requiring the state to comply with the previous constitutional sections. If you wished to delay the effective date of the proposed amendment and first apply those

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provisions to the 2022 election this section would serve a purpose. Furthermore, it may lead to unintended consequences with the addition of unnecessary phrases and comments.

Section 37 appears to require redistricting in 2019 and 2020 and does not provide for redistricting in 2021. Redistricting is a time consuming and costly use of resources. The redistricting requirements for 2019 and 2020 would be based on 2010 census data and would only apply to one election. This requirement appears to be an unnecessary use of state resources. Since there would not be an appropriation to fund the commission in FY 2019, the commission may have to wait FY 2020 to begin the redistricting process. The commission must purchase redistricting software and comply with the Voting Rights Act requirements. You should consider eliminating the 2019 redistricting requirement. The requirement to redistrict again in 2020 is nonsensical. Redistricting should be required for 2021.

It is unclear who would nominate the ten individuals for the commission for the three categories, especially the ten applicants that do not belong to either of two largest political parties. The current language implies the Board of Elections must accept any qualified applicant. Legislation could be enacted to provide the details for the application process. The time frame for reviewing the applications and verifying the applicant eligibility is limited, especially since this time frame occurs during the middle of legislative session. It may provide more flexibility by requiring the board to establish the commission by a certain date and omit the application deadline.

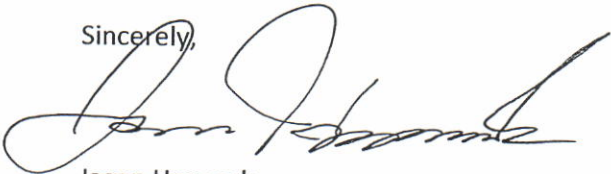
There is a reference to chapter 25 of the South Dakota Codified Laws in § 37. Perhaps you are referring to SDCL chapter 1-25. It is inappropriate to make cross references to codified laws in the Constitution for several reasons. If the chapter is recodified or repealed, the code counsel does not have authority to correct any cross references in the Constitution. If the goal is to require the independent redistricting commission to comply with the open meeting laws found in SDCL chapter 1-25, that chapter already applies to all public bodies and agencies, including the proposed commission.

The proposed amendment specifies that the Legislative Research Council must provide staff and services to the commission. This agency was created by law and it is inappropriate to specify an agency that may or may not continue to exist under this title or general purpose. Alternative language is provided in the form and style notes.

Attached is a copy of your proposed constitutional amendment with all our suggested style and form changes.

This letter constitutes neither an endorsement of your initiated amendment nor a guarantee of its statutory sufficiency. It does constitute fulfillment of your responsibility pursuant to SDCL 12-13-25 to submit your draft to this office for review and comment. If you proceed with your initiated amendment, please take care to ensure that your statements or advertising do not imply that this office endorses or approves your proposals.

Sincerely,



Jason Hancock
Director

JH:FB:ct

Enclosure

CC: The Honorable Shantel Krebs, Secretary of State
The Honorable Marty Jackley, Attorney General