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**APR 26 2019**

**S.D. SEC. OF STATE**

April 25, 2019

Ms. Melissa Mentele  
New Approach SD  
241 N. 7<sup>th</sup> Street  
Emery, SD 57332

Dear Ms. Mentele:

This office is required to review each initiated measure to determine whether it is written in a clear and coherent manner in the style and form of other legislation and worded so that the effect of the measure is not misleading or likely to cause confusion among voters in accordance with SDCL 12-13-24. Further, in accordance with SDCL 12-13-25, this office is required to provide written comments for the purpose of assisting the measure's sponsor in complying with SDCL 12-13-24, including assistance regarding the substantive content of the measure in order to minimize any conflict with existing law and ensure the measure's effective administration. 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 and 12-13-25.

If the voters were to adopt this initiated measure, federal law would still apply to conduct related to marijuana use, possession, production, sale, or transportation. Passage of this initiated measure would place South Dakota law in conflict with federal law.

The definitions section includes terms that are commonly repeated or terms that need to be defined to ensure complete clarity in their intended use. Terms that are defined in this section should not include definitions of legal substance. Therefore, the substantive legal definitions for "Cannabis cultivation facility" and "Possession limit" should be moved to their own section of the measure as they regulate activities related to these terms and do not merely provide a clarifying definition. We have relocated the substantive components of these definitions to their own sections at the end of the measure.

With regard to the definition of "Possession limit," there is a likely constitutional question under the Constitution of the United States (dormant commerce clause), as this section would apply two separate standards of possession limits for persons in the state based on their state residency. To avoid this question, you would need to make the possession limits identical for both residents and non-residents.

Sections 8 to 12, inclusive, of the measure attempt to provide an exception to illegal conduct. Activities that are not explicitly prohibited under law are deemed legal activities. In order to legalize an activity that is currently illegal, the statute that prohibits that activity should be repealed or amended. Because this measure is not attempting to carve out an exception to existing law that would remain intact if the measure were adopted, but instead seeks to overturn existing marijuana prohibitions, the language of existing statutes should be amended to accomplish the measure's goal, or the measure would likely "cause confusion among voters." Consider amending SDCL 22-42-6, 22-42-7, and 34-20B-70. We have provided recommended amendments to these code sections in sections 38 – 40 of the measure.