IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

SHERIFF KEVIN THOM, in his official capacity as Pennington County Sheriff, and COLONEL RICK MILLER, in his official capacity as Superintendent of the South Dakota Highway Patrol, Plaintiffs/Appellees, v. STEVE BARNETT, in his official capacity as South Dakota Secretary of State, Defendant, and SOUTH DAKOTANS FOR BETTER MARIJUANA LAWS, RANDOLPH SEILER, WILLIAM STOCKER, CHARLES PARKINSON, and MELISSA MENTELE, Intervenor Defendants/ Appellants.	Appeal No. 29546

BRIEF OF APPELLANTS SOUTH DAKOTANS FOR BETTER MARIJUANA LAWS, RANDOLPH SEILER, WILLIAM STOCKER, CHARLES PARKINSON, and MELISSA MENTELE

Notice of Appeal filed on February 17, 2021

APPEAL FROM THE CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT
HUGHES COUNTY, SOUTH DAKOTA

The Honorable Christina Klinger
Circuit Court Judge

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PRELIMINARY STATEMENT

Plaintiffs-Appellees Sheriff Kevin Thom and Colonel Rick Miller sued in their official capacities, seeking a judicial declaration that Amendment A was unconstitutional. South Dakotans for Better Marijuana Laws, Randolph Seiler, William Stocker, Charles Parkinson, and Melissa Mentele (collectively, the "Proponents") intervened as defendants before the circuit court. Thom and Miller also filed an election contest, and have concurrently but separately appealed the circuit court's dismissal of that matter.

JURISDICTIONAL STATEMENT

The circuit court issued an opinion granting Thom and Miller's motion for summary judgment on February 8, 2021. (App.5-16.)[1] The circuit court entered its corresponding judgment in favor of Thom and Miller on February 10, 2021, which was served on February 11, 2021. (App.17-20.) The Proponents timely filed this appeal on February 17, 2021. This Court has appellate jurisdiction pursuant to S.D.C.L. § 15-26A-3(1).

[1] Citations to the Proponents' Appendix are denoted as "App." followed by the referenced page number(s). Citations to the record before the circuit court are denoted as "R." followed by the referenced page number(s).

STATEMENT OF LEGAL ISSUES

I. Did the circuit court err when it concluded that Thom had standing to sue the state in his official capacity as county sheriff?

The circuit court found that Thom had standing in his official capacity because he took an oath to uphold the South Dakota Constitution and because his duties include enforcing the laws of the state. (App.7.) The circuit court did not address whether *Edgemont* precluded Thom from suing the state in his official capacity.

Most relevant authority:

Edgemont Sch. Dist. 23-1 v. S.D. Dep't of Revenue, 1999 S.D. 48, 593 N.W.2d 36.

Black Bear v. Mid-Cent. Educ. Coop., 2020 S.D. 14, 941 N.W.2d 207.

Danforth v. City of Yankton, 25 N.W.2d 50 (S.D. 1946).

II. Did the circuit court err when it concluded that Miller had standing to sue the state in his official capacity as State Highway Patrol Superintendent?

The circuit court found that Miller had standing in his official capacity because he took an oath to uphold the South Dakota Constitution and because his duties include enforcing the laws of the state. (App.7-8.) The circuit court did not address whether *Edgemont* precluded Miller from suing the state in his official capacity. The circuit court did not address

whether the Governor could delegate authority to bring this action to Miller.

Most relevant authority:

Edgemont Sch. Dist. 23-1 v. S.D. Dep't of Revenue, 1999 S.D. 48, 593 N.W.2d 36.

Black Bear v. Mid-Cent. Educ. Coop., 2020 S.D. 14, 941 N.W.2d 207.

Danforth v. City of Yankton, 25 N.W.2d 50 (S.D. 1946).

In re Tod, 81 N.W. 637 (S.D. 1900).

III. Did the circuit court err when it determined that the challenge to Amendment A's placement on the November 2020 ballot could not be brought until after the election?

The circuit court ruled that Thom and Miller could not challenge Amendment A's placement on the ballot until after the election, and that a pre-election lawsuit would amount to an advisory or hypothetical opinion. (App.8-9.)

Most relevant authority:

S.D. State Fed'n of Lab. AFL-CIO v. Jackley, 2010 S.D. 62, 786 N.W.2d 372.

State ex rel. Evans v. Riiff, 42 N.W.2d 887 (S.D. 1950).

State ex rel. Cranmer v. Thorson, 68 N.W. 202 (S.D. 1896).

Christensen v. Gale, 917 N.W.2d 145 (Neb. 2018).

IV. Did the circuit court err when it determined that Amendment A plainly and palpably violated the South Dakota Constitution because it contained multiple subjects that had no rational relationship?

The circuit court determined that the subject of Amendment A was the legalization of marijuana. (App.11.) The circuit court then determined that Amendment A contained additional distinct subjects that did not relate to the legalization of marijuana: the legalization of hemp, professional or occupational licensing, and taxation. (App.11-12.)

Most relevant authority:

S.D. Const. art. XXIII § 1.

Baker v. Atkinson, 2001 S.D. 49, 625 N.W.2d 265.

Indep. Cmty. Bankers Ass'n of S.D., Inc. v. State, 346 N.W.2d 737 (S.D. 1984).

Meierhenry v. City of Huron, 354 N.W.2d 171 (S.D. 1984).

Barnhart v. Herseth, 222 N.W.2d 131 (S.D. 1974).

V. Did the circuit court err when it determined that Amendment A plainly and palpably violated the South Dakota Constitution because it instituted far-reaching changes to South Dakota's basic governmental plan?

The circuit court rejected Thom and Miller's argument that constitutional amendments could only amend existing articles. (App.13.) Although the circuit court found that Amendment A was not a drastic rewrite of the state Constitution, the circuit court found that it created far-

reaching changes in the structure of government. (App.14.) Specifically, the circuit court determined that Amendment A (1) removed the legislature's ability to enact laws relating to the regulation and licensing of marijuana and to enact civil penalties; (2) removed the power of the executive branch to reallocate authority from the Department of Revenue; and (3) waived the state's sovereign immunity by establishing a new cause of action against the Department of Revenue. Therefore, the circuit court determined that Amendment A required a constitutional convention.

Most relevant authority:

S.D. Const. art. XXIII §§ 1, 2.

Byre v. City of Chamberlain, 362 N.W.2d 69 (S.D. 1985).

Barnhart v. Herseth, 222 N.W.2d 131 (S.D. 1974).

VI. Did the circuit court err when it concluded it did not have the legal authority to separate any unconstitutional provisions?

The circuit court concluded that, due to the intermingling of multiple subjects within Amendment A, it was not possible to determine which subjects the voters intended to adopt. (App.16.)

Most relevant authority:

Dakota Systems, Inc. v. Viken, 2005 S.D. 27, 694 N.W.2d 23.

S.D. Educ. Ass'n/NEA v. Barnett, 1998 S.D. 84, 582 N.W.2d 386.

Simpson v. Tobin, 367 N.W.2d 757 (S.D. 1985).

STATEMENT OF THE CASE

Thom and Miller moved for summary judgment, seeking a declaration that Amendment A violated the single-subject rule and was a constitutional revision rather than an amendment. The Proponents and the Secretary of State separately moved for judgment on the pleadings. Judge Christina Klinger held a hearing on all pending motions on January 27, 2021, and later issued a written opinion granting Thom and Miller's motion for summary judgment and denying the motions for judgment on the pleadings filed by the Proponents and the Secretary of State. This appeal followed. On February 26, 2021, the Supreme Court entered an order approving a consolidated briefing schedule (with separate briefs) and increased word limit for this appeal and appeal no. 29547. The Secretary of State, through the Attorney General, is not participating in this appeal.

STATEMENT OF FACTS

All parties and the circuit court agreed that the facts in this matter were uncontested and that this lawsuit only presented questions of law. (*See* App.5.)

On August 16, 2019, the Attorney General's office provided to the Secretary of State the final form of Amendment A, along with a title and

explanation, which authorized the sponsors of Amendment A to begin collecting signatures to place Amendment A on the ballot. (App.77-85.) On November 4, 2019, the sponsors of Amendment A timely submitted signed petitions initiating Amendment A to the South Dakota Secretary of State for validation. (App.89.) On January 6, 2020, the Secretary of State announced that Amendment A received sufficient signatures and would be placed on the ballot in the 2020 general election. (App.88.) The deadline to challenge this decision was Wednesday, February 5, 2020, at 5:00 p.m. central time. (*Id.*)

At the general election held on November 3, 2020, South Dakota voters approved Amendment A, with 54.2% of voters voting in favor of adopting Amendment A. (App.60.)

Thom and Miller filed this declaratory judgment action on November 20, 2020. (App.23-33.) They explicitly brought this action in their official capacities only, as Pennington County Sheriff and South Dakota State Highway Patrol Superintendent, respectively. (*Id.*)

STANDARD OF REVIEW

This Court will not affirm a summary-judgment order unless "there are no genuine issues of material fact and the legal questions have been decided correctly." *Schafer v. Shopko Stores, Inc.*, 2007 S.D. 116, ¶ 5, 741 N.W.2d 758, 760 (quoting *King v. Landguth*, 2007 S.D. 2, ¶ 8, 726 N.W.2d 603, 607). Conclusions of law are reviewed under a de-novo standard. *Sherburn v. Patterson Farms, Inc.*, 1999 S.D. 47, ¶ 4, 593 N.W.2d 414, 416. Thus, constitutional issues are generally subject to de-novo review. *See Apland v. Bd. of Equalization for Butte Cnty.*, 2013 S.D. 33, ¶ 7, 830 N.W.2d 93, 97. Questions of statutory interpretation are also reviewed de-novo. *Discover Bank v. Stanley*, 2008 S.D. 111, ¶ 15, 757 N.W.2d 756, 761. When applying the de-novo standard of review, this Court "give[s] no deference to the circuit court's decision." *Johnson v. United Parcel Serv., Inc.*, 2020 S.D. 39, ¶ 26, 946 N.W.2d 1, 8 (quoting *Zochert v. Protective Life Ins. Co.*, 2018 S.D. 84, ¶ 18, 921 N.W.2d 479, 486).

ARGUMENT

This case is not just about marijuana. It is also about the future of the initiative process in South Dakota. If this Court affirms the decision of the circuit court, it will substantially impair the fundamental right of South Dakotans to initiate laws and constitutional amendments.

South Dakotans have retained for themselves the power to initiate legislation and constitutional amendments. The ability of voters to decide what rights their constitution guarantees is a fundamental and sacred right. This power to initiate laws and constitutional amendments enables South Dakotans to enact new laws or amend the state's Constitution where the ordinary legislative process does not reflect the will of the people. *See Byre v. City of Chamberlain*, 362 N.W.2d 69, 79 (S.D. 1985) ("The purpose of the initiative is not to curtail or limit legislative power to enact laws, but rather to compel enactment of measures desired by the people, and to empower the people, in the event the legislature fails to act, to enact such measures themselves.").

Thom and Miller bear an exceedingly heavy burden of proof to prevail on their arguments that Amendment A is unconstitutional. A strong presumption of constitutionality exists in favor of an amendment after it is adopted by the voters: "When considering a constitutional amendment after its adoption by the people, the question is not whether it is possible to condemn the amendment, but whether it is possible to uphold it." *Barnhart v. Herseth*, 222 N.W.2d 131, 136 (S.D. 1974) (cleaned up). An amendment passed by the people "should be sustained unless is

'plainly and palpably appear(s) to be invalid.' " *Id.* This is consistent with the approach followed in other states:

> [C]onstitutional amendments ratified by the electorate will be upheld unless they can be shown to be invalid beyond a reasonable doubt. The burden of showing this invalidity is upon the party challenging the results of the election. And "[e]very reasonable presumption is to be indulged in favor of a constitutional amendment which the people have adopted at a general election."

Watland v. Lingle, 85 P.3d 1079, 1084 (Haw. 2004) (internal citations omitted).

Rather than apply this standard, the circuit court strained to strike down Amendment A. The circuit court's decision is a misapplication of the law and logic. The arguments offered by Thom and Miller, and those accepted by the circuit court, do not support a finding that Amendment A is unconstitutional.

More fundamentally, however, the circuit court's decision—if affirmed— does great damage to the integrity of the initiative process. A ruling that Amendment A included multiple subjects improperly establishes new and heightened restraints on the right of the people to legislate by initiative. It would mark South Dakota as an outlier from the other states that have added marijuana provisions to their constitutions. In addition, a determination that Amendment A required a constitutional

revision not only calls into serious question the constitutional validity of past amendments to the Constitution (including those made in 1972 to reshape the Constitution itself) but could effectively excise the right to initiate constitutional amendments from the Constitution. Finally, allowing Thom and Miller to override the results of the 2020 election will subject virtually every initiated measure to a post-election court challenge, undermining the finality of elections and placing the judicial branch in the politically-fraught position of adjudicating the validity of elections after the results are known.

This Court should reverse the circuit court, affirm the will of the voters, and preserve the fundamental right of South Dakotans to initiate laws and constitutional amendments.

I. Thom did not have standing to bring this declaratory judgment action in his official capacity.

The circuit court determined that Thom had standing to bring the underlying lawsuit in his official capacity because he took an oath to uphold the law, and because his duties include enforcing laws on the roads and highways. (App.7.) This conclusion is wrong as a matter of law for several reasons.

A. County officials, as a matter of law, cannot sue the State.

The circuit court ignored well-established precedent in South Dakota that a county (or a county official in his or her official capacity) cannot sue the state. *Edgemont Sch. Dist. 23-1 v. S.D. Dep't of Revenue*, 1999 S.D. 48, ¶ 15, 593 N.W.2d 36, 40 ("District and County are creations of the legislature and lack standing to challenge the constitutionality of [a statute]."); *Bd. of Supervisors of Linn Cnty. v. Dep't of Rev.*, 263 N.W.2d 227, 234 (Iowa 1978) ("A county and its ministerial officers ordinarily have no right, power, authority, or standing to question the constitutionality of a state statute."). Thom explicitly brought the underlying declaratory judgment action in his official capacity only. Neither Thom nor the circuit court explained how a county sheriff can sue the state, in contravention of this Court's holding in *Edgemont*.

There is simply no way around this fatal flaw. Whether other plaintiffs could bring a declaratory judgment action is not at issue, and neither the circuit court nor this Court needs to speculate on which, if any, other plaintiffs might have standing. Consistent with *Edgemont*, this Court must reverse and remand for entry of an order dismissing the claim by Thom for a lack of standing in his official capacity as a county sheriff.

B. Thom does not meet the established criteria for standing.

The circuit court's justifications for conferring standing on Thom in his official capacity are contrary to established law. To establish standing, a plaintiff must prove (1) an injury in fact suffered by the plaintiff, (2) a causal connection between the plaintiff's injury and the conduct of which the plaintiff complains, and (3) the likelihood that the injury will be redressed by a favorable decision. *See, e.g.*, *Black Bear v. Mid-Cent. Educ. Coop.*, 2020 S.D. 14, ¶¶ 11-12, 941 N.W.2d 207, 212-13 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)). A plaintiff bears the burden to prove the alleged harm they have or will have to a legally protected interest; speculative harm is insufficient. *See id.* at ¶ 11, 941 N.W.2d at 212-13.

Merely having taken an oath of office is not a legally-protected interest sufficient to confer standing. As the circuit court itself noted, every person elected or appointed to any civil office takes an oath to support the federal and state constitutions. (App.7 n.2.) Affirming the circuit court's decision that Thom has standing based on his oath of office would allow any elected or appointed official to challenge any law, regardless of whether that official otherwise had standing. Such a precedent is incompatible with the requirement that a plaintiff establish a specific,

concrete, and tangible harm. *See Black Bear*, 2020 S.D. 14 at ¶ 11, 941 N.W.2d at 212-13.

Furthermore, neither the circuit court nor Thom ever explained why Thom's oath of office should permit him to bring a lawsuit based on the laws at issue in this case. Thom, in his official capacity, is not charged with enforcing the single-subject requirement in Article XXIII, § 1, nor is it his responsibility to determine whether an initiative is an amendment or a revision. In short, Thom's duties have no connection whatsoever to the claims he brought in this lawsuit.

Thom and the circuit court both took the position that Thom has standing because Amendment A affects his ability to keep intoxicated drivers off the road. (App.7.) This position is unsupported and, in any event, does not confer standing. The complaint did not contain any reference to Amendment A's purported impact on Thom's ability to keep intoxicated drivers off the road. (*See* App.23-33.) Because the Proponents moved for judgment on the pleadings, Thom could not rely on materials outside the pleadings to carry his burden to prove standing. *See Nooney v. StubHub, Inc.*, 2015 S.D. 102, ¶ 7, 873 N.W.2d 497, 499 ("A court may not consider documents 'outside' the pleadings when ruling on a motion to dismiss for failure to state a claim."); *Steger v. Franco, Inc.*, 228 F.3d 889, 892

(8th Cir. 2000) (noting that "standing is determined as of the lawsuit's commencement, [so courts] consider the facts as they existed at that time"). Even if the circuit court could have considered this argument, Thom did not offer any evidence to support it. *See, e.g.*, *Black Bear*, 2020 S.D. 14 at ¶ 12, 941 N.W.2d at 213 (requiring that a party provide specific facts, rather than bare assertions, to establish standing when moving for summary judgment). This unsupported assertion by Thom—particularly the regurgitation of an argument rejected by the voters who passed Amendment A—does not satisfy his burden to prove he has standing.

Furthermore, Thom has no legally protectable interest in enforcing the laws as they are currently written. Laws can, and frequently do, change. Thom does not have the ability to judicially veto changes in the law simply because he enforces some laws. Such a rule would eviscerate this Court's settled standing law allowing officials to challenge any law they wanted. *See, e.g.*, *Danforth v. City of Yankton*, 25 N.W.2d 50, 53 (S.D. 1946) (requiring a plaintiff to prove a specific and tangible legally-protected interest to obtain a declaratory judgment). It would also freeze the status quo and create a new type of judicial review over every piece of legislation.

Thom never pleaded, briefed, or proved any specific legally-protected interest. Generalizations about taking an oath and enforcing laws on the highways do not identify specific, tangible, and legally-protected interests. After the passage of Amendment A, Thom can still legally enforce every law on the books. In fact, Amendment A specifically states that it "does not limit or affect laws that prohibit or otherwise regulate . . . [o]perating or being in physical control of any motor vehicle . . . while under the influence of marijuana[.]" (App.1 § 2(4).) It is immaterial that some previously illegal conduct will no longer be a crime. Thom has no legally protectable interest in stopping or arresting anyone for conduct that is no longer criminal. Thom needs to enforce the laws as they exist, not as they once existed. Because Thom did not—and cannot—explain how Amendment A causes a concrete injury to a legally-protected interest in his official capacity, he does not have standing. The circuit court's contrary conclusion is wrong.

Thom also failed to establish the type of adversarial legal relationship that would support standing. There is no contract for this Court to construe or declare, nor any other legally enforceable set of rights and obligations between the parties. Instead, there is a theoretical disagreement about the wisdom of Amendment A. The disagreement

about Amendment A is precisely the type of academic dispute that *Danforth* found did not confer standing. *Danforth*, 25 N.W.2d at 53 ("Unless the parties have such conflicting interests, the case is likely to be characterized as one for an advisory opinion, and the controversy as academic, a mere difference of opinion or disagreement not involving their legal relations, and hence not justiciable.") (citation omitted). Moreover, as noted above, the issues Thom raised regarding Amendment A have no connection to his office.

Danforth spells out the consequences when a plaintiff fails to prove standing:

> Litigants cannot by consent confer upon a person, who does not have a sufficient interest to entitle him to bring suit, the right to maintain suit or agree that a justiciable controversy exists so as to confer jurisdiction, when, in fact, it appears no such controversy is presented. When it is ascertained that no jurisdiction exists, we can go no further.

Danforth, 25 N.W.2d at 55. As in *Danforth*, this Court need go no further, and should remand for dismissal of Thom's complaint for lack of standing.

II. Miller did not have standing to bring this declaratory judgment action in his official capacity.

A. As with Thom, Miller has no standing.

The circuit court similarly determined that Miller had standing to bring this action because he took an oath of office and is charged with

enforcing laws on highways. (App.7-8.) As with Thom, this is insufficient to establish an injury to a legally-protected interest. The circuit court erred in concluding that Miller had standing for the reasons stated in the preceding section. The Proponents incorporate those arguments here without repeating them.

The circuit court also failed to consider whether Miller had standing to sue the state in his official capacity under *Edgemont*. Miller is an employee of a department of the executive branch of the state. (App.7-8.) Therefore, he is subordinate to the state and may not sue the state in his official capacity. *See Edgemont*, 1999 S.D. 48, ¶¶ 14-15, 593 N.W.2d at 40. Because Miller explicitly brought this declaratory judgment action only in his official capacity, the circuit court erred when it failed to consider the rule set forth in *Edgemont*. For the reasons set forth with respect to Thom, which the Proponents incorporate here without repeating, *Edgemont* compels the dismissal of Miller's claim in his official capacity.

B. The Executive Order cannot cloak Miller with standing.

Miller has another unique standing problem that the circuit court failed to address. When the Proponents pointed out that Miller lacked standing to sue the state in his official capacity under *Edgemont*, Miller changed his approach. On January 8, 2021—the same day Miller's response

brief was due—Governor Noem issued Executive Order 2021-02 (the "EO"), which claimed that she delegated her constitutional authority under Article IV, § 3 of the South Dakota Constitution to Miller, and directed the lawsuit from the beginning. (App.110-11.)

The EO was a transparent effort to avoid the clear consequences of *Edgemont*. The circuit court never addressed the EO, other than to note its existence in a footnote. (App.7 n.1.) On de-novo review, this Court should reject this improper attempt to circumvent jurisdictional standing requirements through the EO.

1. Miller's lawsuit was not under Section 3 of Article IV.

Miller's lawsuit did not fall under Article IV, § 3. That section authorizes the Governor, "by appropriate action or proceeding brought in the name of the state, [to] enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty or right by any officer, department or agency of the state or any of its civil divisions." S.D. Const. art. IV, § 3 (emphasis added). This declaratory-judgment action was not, and is not, brought in the name of the state. On its face, Miller's lawsuit is not the type of suit described in Article IV, § 3.

Moreover, Article IV, § 3 explicitly states that it does not authorize a suit against the Legislature, which prohibition would also apply to the voters when they legislate via initiative. Article IV, § 3 ("This authority shall not authorize any action or proceeding against the Legislature."). Here, the voters of South Dakota, legislating through their reserved power of the initiative, are not subject to suit under Article IV, § 3. Similarly, the voters are not a state officer, department, or agency. The claims for relief and arguments in Miller's lawsuit confirm that it is outside the confines of Article IV, § 3, and, in fact, violate the limitation contained in that section.

2. The EO is an improper delegation of power.

Miller's attempt to pass his declaratory-judgment action off as a lawsuit under Article IV, § 3 depends wholly on an impermissible delegation of the Governor's constitutional authority. A governor may not delegate constitutional powers conferred personally on the executive. *In re Tod*, 81 N.W. 637, 640 (1900), *overruled on other grounds by Grogan v. Welch*, 227 N.W. 74 (1929). The power to enforce compliance with the law in the name of the state is one of seven duties the Constitution directly confers on the governor. S.D. Const. art. IV, § 3. No governor may delegate this core function.

In addition, the EO contained no direction on how Miller should exercise the authority purportedly delegated to him. Even when branches of government can delegate certain authority, they must supply intelligible standards to guide the exercise of delegated powers. *Cf. State v. Outka*, 2014 S.D. 11, ¶¶ 25-26, 844 N.W.2d 598, 606 (requiring intelligible standards to guide the exercise of delegated power). The EO contained no direction on how Miller should exercise the power purportedly delegated to him. Thus, even if Governor Noem could have delegated her authority under Article IV, § 3, the EO was an improper mechanism for doing so.

The circuit court did not address whether the EO constituted a proper delegation of authority. It plainly does not. The EO also makes no sense: if Governor Noem truly intended this lawsuit to be an exercise of her powers under Article IV, § 3, she did not need Miller's involvement at all. On top of being wholly unnecessary, allowing this type of delegation would create a problematic precedent. It would allow a governor to circumvent the express constitutional requirement that lawsuits under Article IV, § 3 be brought in the name of the state. Worse, it would also allow a governor to "delegate" unpopular actions to unelected subordinates, thereby avoiding political accountability for those actions. If the Governor wants to try to undo the results of an election, she needs to

be politically accountable for that exercise of her power. She may not instruct an unelected subordinate—who is unaccountable to the voters but could be fired by the Governor—to act as her proxy.

In short, while a governor can, in certain circumstances, bring an appropriate action under Article IV, § 3, this declaratory-judgment action is not proper. Standing is not transferable by consent. *See Danforth*, 25 N.W.2d at 55 (declaring that "[l]itigants cannot by consent confer upon a person, who does not have a sufficient interest to entitle him to bring suit, the right to maintain suit or agree that a justiciable controversy exists so as to confer jurisdiction"). Miller never had standing to bring this declaratory judgment action in his official capacity, and the EO did not—and cannot—change that fundamental flaw. This Court should reverse and remand with an instruction to dismiss Miller's claim for lack of standing.

III. Thom and Miller's decision to file this lawsuit after the election precludes their claims as untimely.

Thom and Miller acknowledge that they are not challenging the substantive constitutionality of legalized marijuana—and, indeed, there is no basis to argue that the subject matter of Amendment A is substantively unconstitutional. (*See, e.g.*, R.343 ("Colonel Miller is not alleging that Amendment A is substantively unconstitutional . . . .").) Their lawsuit centers on the process by which Amendment A was initiated. But that

challenge is untimely. By waiting until after the results of the election went against them, Thom and Miller are belatedly seeking, in effect, to undermine the democratic process. This Court should not allow anyone, particularly public officials, to wait until after an election and then sue to judicially veto the will of the voters based on arguments that were fully available to them before the voters spoke.

A. Governor Noem, and Thom and Miller, passed up earlier opportunities to challenge Amendment A.

Taking Governor Noem at her word that she is directing this litigation, she could have asked the Supreme Court to issue an advisory opinion on the constitutionality of Amendment A before the November 2020 election. "The Governor has authority to require opinions of the Supreme Court upon important questions of law involved in the exercise of [the Governor's] executive power and upon solemn occasions." S.D. Const. art. V, § 5; *see also To His Excellency Wollman*, 268 N.W.2d 820, 822 (S.D. 1978) (holding that the Supreme Court answers important questions of law (1) involving the Governor's exercise of power and (2) upon solemn occasions); *In re Request of Janklow*, 530 N.W.2d 367, 368-70 (S.D. 1995) (addressing when the Supreme Court answers questions under Article V, § 5). Notably, a governor can seek an advisory opinion even if the reviewed action is not "final." *In re Request of Janklow*, 530 N.W.2d at 369. The effort

to establish standing through the Governor essentially admits that she had an earlier opportunity to raise the arguments now presented.

Setting the Governor's authority aside, Thom and Miller had two alternate pre-election options to challenge Amendment A. South Dakota law prohibits the Secretary of State from counting petition signatures that are gathered in contravention of the law. *See* S.D.C.L. § 2-1-14. Here, if Thom and Miller believed the form of Amendment A, as circulated on the petitions, did not comply with the law, then the Secretary should not have counted any signatures gathered on a petition that did not comply with the South Dakota Constitution. Thom and Miller could have challenged the Secretary's decision to place Amendment A on the ballot under S.D.C.L. §§ 2-1-17.1 or 2-1-18. The statutory deadline to file that challenge was February 5, 2020. (App.88.)

Alternatively, if Thom and Miller believed they did not have a pre-election statutory remedy, they could have sought a writ preventing the Secretary of State from placing Amendment A on the ballot. Injunctive or equitable relief is proper where a statutory remedy does not exist. *Beinert v. Yankton Sch. Dist., 63-3*, 507 N.W.2d 88, 90 (S.D. 1993). Thus, if Thom and Miller could not bring a challenge under the statutes discussed above, by

definition they could have sought injunctive or equitable relief on the same grounds.

Had a court determined before the election that Thom and Miller could not bring a challenge at that time, then they would have been able to re-file their challenge after the election without timeliness concerns. But by waiting until after the election to sue, Thom and Miller never gave the courts a chance to make that decision. They bear the risk of making that strategic choice.

Any one of these options would have allowed Thom and Miller (or the Governor) to raise their arguments before the election. Instead, they chose to wait until after the election. This Court should not allow a party to wait until after the election results are in to decide if it will pursue a challenge: "Efficient use of public resources demand that we not allow persons to gamble on the outcome of the election contest then challenge it when dissatisfied with the results, especially when the same challenge could have been made before the public is put through the time and expense of the entire election process." *Watland v. Lingle*, 85 P.3d 1079, 1088 (Haw. 2004) (quoting *Lewis v. Cayetano*, 823 P.2d 738, 741 (Haw. 1992)).

B. Waiver and laches preclude these claims.

As a result of Thom and Miller's failure to pursue pre-election relief, their claims are barred by statute and are waived. The deadline to file a statutory challenge to the Secretary's decision that Amendment A qualified for the November 2020 ballot was February 5, 2020. A party waives a right when, with full knowledge of the material facts, the party does or forbears the doing of something inconsistent with the intention to rely on that right. *See Kolb v. Monroe,* 1998 S.D. 64, ¶ 11, 581 N.W.2d 149, 151; *see also W. Cas. & Sur. Co. v. Am. Nat'l Fire Ins. Co.*, 318 N.W.2d 126, 128 (S.D. 1982). This Court has made clear, for example, that a party alleging that a candidate's petition is invalid should pursue that challenge before an election, or the invalidity of the petition is waived. *See Noel v. Cunningham*, 5 N.W.2d 402, 404 (S.D. 1942) ("This Court has already indicated that a candidate desiring to challenge the nomination of his opponent must act with some diligence. . . . The American authorities are almost unanimous in holding that objections to irregularities in the nomination of a person for office must be taken prior to the election, and that thereafter it is too late." (citations omitted)). The same result should apply here: objections regarding alleged irregularities in a petition placing

a measure on the ballot should be raised before an election, or should not be raised at all.

Similarly, the doctrine of laches bars Thom and Miller's complaints after the election. Laches will bar an action where a party (1) has full knowledge of the facts, (2) regardless of that knowledge, the party unreasonably delayed before seeking relief in court, and (3) it would be prejudicial to proceed with the action. *See In re Admin. of the C.H. Young Revocable Living Tr.*, 2008 S.D. 43, ¶ 10, 751 N.W.2d 715, 717-18. Here, Thom and Miller's delay in bringing this lawsuit was unreasonable because they waited until after the election. *See, e.g.*, *Trump v. Biden*, 951 N.W.2d 568, 573-76 (Wis. 2020) (noting the importance of laches in the election context and finding that waiting until after an election was over to file a challenge was unreasonable delay); *Bowyer v. Ducey*, No. CV-20-02321-PHX-DJH, 2020 WL 7238261, at *9-11 (D. Ariz. Dec. 9, 2020) (applying the doctrine of laches to an election challenge and finding that prejudice in the potential disenfranchisement of Arizona voters would be "extreme" and "unprecedented").

Thom and Miller's delay prejudiced the sponsors and supporters of Amendment A, prejudiced the voters of South Dakota, and prejudiced the taxpayers in that, if Thom and Miller prevail, the taxpayers will have

borne the burden of funding an election that was apparently void from the outset. Allowing voters to vote on a measure only to have the will of the voters undone in court undermines faith in the democratic process, the initiative process, and in the judiciary itself. *Watland* provides a succinct summary of the equitable application of laches in the election context: "[t]he general rule is that[,] if there has been opportunity to correct any irregularities in the election process or in the ballot prior to the election itself, plaintiffs will not, in the absence of fraud or major misconduct, be heard to complain of them afterward." *Watland*, 85 P.3d at 1087 (alterations in original) (quoting *Lewis*, 823 P.3d at 741).

The application of laches is particularly compelling where, as here, a complaining party is trying to void the results of an election that it opposed. Had the electorate voted in the way that Thom and Miller preferred, they would happily abide by the results of the same election they now claim was void from the outset. Moreover, their decision to wait until after the election forced the state and the voters to bear the cost of putting Amendment A on the ballot and voting on it—only to potentially have the results taken away. This Court should not adopt a rule that requires post-election procedural lawsuits.

C. The law does not preclude pre-election procedural challenges.

The circuit court did not address the issues of laches or waiver. Instead, the circuit court held that Thom and Miller could not bring their claim until after the election, relying on *State ex rel. Cranmer v. Thorson* and *State ex rel. Evans v. Riiff*. (App.9.) The law does not support the circuit court's conclusion.

In *Cranmer*—a decision from 125 years ago—a relator commenced an original proceeding in the Supreme Court seeking an injunction prohibiting the Secretary of State from certifying to county auditors a joint resolution proposing a constitutional amendment.[2] 68 N.W. 202, 202-03 (S.D. 1896). The Court determined that it could not intervene when a proposed amendment was on its way from the legislature to the voters any more than it could intervene if a bill was on its way from the legislature to the governor's desk. *Id.* at 204. The Court twice noted that no precedent supported judicial intervention in the initiative process. *Id.* at 203-04. Therefore, the Supreme Court decided not to insert itself in the

[2] At that time, constitutional amendments were initiated by the legislature and then submitted to a vote of the people—the people could not directly initiate constitutional amendments until 1972.

amendment process until the voters had acted on the proposed amendment.

Evans reached a similar conclusion. 42 N.W.2d 887 (S.D. 1950). In that case, voters submitted a petition for a new statute to the legislature, which passed the proposed act and submitted it to the voters. *Id.* at 887. The plaintiff sued, alleging that the signatures on the petition were not in the form prescribed by law. *Id.* After quoting extensively from *Cranmer*, the Court noted that several other states "entertain a different view." *Id.* at 888. Nonetheless, the Court determined that waiting until after the election was a more appropriate public policy choice. *Id.* at 889.

Cranmer, and by extension *Evans*, relied on the fact that in the late 1800s, states had not developed precedent on how courts should monitor compliance with initiative requirements. That is no longer the case:

> [T]here are two exceptions to the rule that judicial review of the constitutionality of an initiative is unavailable until after it has been enacted by the voters: first, where the initiative is challenged on the basis that it does not comply with the state's constitutional and statutory provisions regulating initiatives, and second, where the initiative is challenged as clearly unconstitutional or clearly unlawful.

16 Am. Jur. 2d *Constitutional Law* § 41 (Feb. 2021 update). This rule has a powerful justification: challengers should not be permitted to wait to see the results of an election before they decide whether to challenge it. The

rationale from 1896 that pre-election litigation is unsupported by precedent is no longer accurate.

Moreover, the central principle animating *Cranmer* and *Evans*—namely, that courts may not interfere to answer procedural questions regarding a voter-initiated ballot measure before a vote on the measure—is no longer accurate either. South Dakota courts do, in fact, have the statutory ability to consider the presentation of initiated measures to the voters before an election. For example, S.D.C.L. § 2-1-17.1, adopted in 2017, allows an interested person to challenge the sufficiency of petitions to the secretary of state, and provides that, "[t]he secretary of state's decision regarding a challenge under this section may be appealed to the circuit court of Hughes County." Similarly, S.D.C.L. § 2-1-18, adopted in 2007, allows other challenges relating to petitions to be brought in circuit court by serving a summons and complaint on each petition sponsor. Each of those statutes allows a court to review the presentation of an initiated measure to the voters before an election. Thus, when revisiting the question the *Cranmer* court posed 125 years ago—can the court address alleged procedural deficiencies in a petition prior to its submission to the voters?—the answer today is a clear yes.

South Dakota State Federation of Labor AFL-CIO v. Jackley is consistent with the general rule that substantive challenges to a proposed law are not ripe until the law is enacted. 2010 S.D. 62, 786 N.W.2d 372. That case concerned whether a proposed constitutional amendment was substantively unconstitutional "in light of federal preemption law." *Id.* at ¶ 10, 786 N.W.2d at 376. The Court expressed skepticism that it could "anticipate conditions which may never exist" and so declined to rule on the substantive constitutionality of an amendment before it was adopted. *See id.* at ¶ 12, 786 N.W.2d at 376-77. Challenges to the substantive constitutionality of a statute or amendment necessarily relate to future lawsuits, such that the issue is not properly before the court until a plaintiff with standing articulates a challenge. Until then, any judgment on the substantive constitutionality of a law would amount to an advisory opinion.

That rationale does not apply to challenges like Thom and Miller's. *Jackley* did not consider whether a court could address a question posed by a governor under Article V, § 5. In such a situation, courts need not wait for a final action before answering such a question. *In re Janklow*, 530 N.W.2d at 369.

In addition, Thom and Miller's challenge to Amendment A does not depend on a resolution of any future or contingent facts, nor would such a decision before November 2020 have amounted to an advisory opinion. The harm alleged by Thom and Miller—that Amendment A was an example of logrolling, and that voters would be confused by Amendment A—would necessarily happen before the election. It was not contingent on the outcome of the election, because no matter what the outcome of the vote, the voters still had to vote one way or the other on an allegedly improper measure. And once the election is over, the precise harm alleged here ceased—Amendment A will not be on the ballot again.

Procedural challenges are distinguishable from a substantive challenge, such as a law infringing on free speech. The harm of a law infringing on free speech does not happen until after the law passes, and only occurs if the law passes. Until the illegal restriction actually goes into place, no harm occurs. That type of substantive challenge is not ripe until after the law passes. Here, Thom and Miller are not raising a substantive challenge to Amendment A's constitutionality. As the Nebraska Supreme Court recently held, a single-subject challenge to a voter-initiated measure is a procedural challenge that is ripe for pre-election adjudication. *Christensen v. Gale*, 917 N.W.2d 145, 156-58 (Neb. 2018) (determining that

the expansion of Medicare and the funding of the expansion were, in fact, a single subject).

To the extent that South Dakota law is not clear on this issue, this case presents the Court with an important opportunity to clarify the law. Allowing post-election procedural challenges such as these would create significant and ongoing problems from a public policy perspective. In 2005, Professor Richard Hasen warned about the dangers of post-election efforts to overturn election results in court. Richard L. Hasen, *Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown*, 62 Wash. & Lee L. Rev. 937 (2005). Among other problems, post-election legal challenges invite litigants to take a second bite at the apple (i.e., the election and the ensuing court case), and puts judges in the difficult position of deciding a political question when the results of the election are already clear. *Id.* at 993-94. Post-election litigation undermines the integrity of the electoral and judicial processes and imposes unnecessary costs on the public. *Id*.

Allowing pre-election procedural challenges is the better-considered policy position. Otherwise, every election in South Dakota may be followed by a lawsuit to determine the validity of the election results. Every voter initiative drive will have to be prepared to defend the will of

the voters in court. If a measure is ultimately struck down on procedural grounds, the state will have incurred the costs of unnecessarily holding an election. In addition, state court judges will be put in the exceedingly difficult position of ruling on procedural issues after the results of the election are known. Those serious consequences counsel in favor of allowing courts to adjudicate pre-election procedural challenges.

Permitting post-election challenges also improperly creates an extra-constitutional mechanism for repealing adopted constitutional amendments. Once approved by a majority of the voters, a constitutional amendment is part of the Constitution. *See* Art. XXIII, § 3 ("Any constitutional amendment or revision must be submitted to the voters and shall become a part of the Constitution only when approved by a majority of the votes cast thereon."). The language of Article XXIII, § 3 is mandatory: once the voters approve an amendment, it "shall" be a part of the Constitution. *See McIntyre v. Wick*, 558 N.W.2d 347, 364 (S.D. 1996) (Sabers, J., dissenting) ("When 'shall' is the operative verb in a statute, it is given 'obligatory or mandatory' meaning."). After its adoption, a constitutional amendment may only be repealed using one of the mechanisms provided in Article XXIII.

If this Court permits post-election procedural challenges, it will effectively create another way for opponents to repeal a constitutional amendment—one that bypasses the voters entirely. Indeed, Thom and Miller's dire predictions about the impact of Amendment A overlook the plain remedy they have: they can try to repeal or revise the amendment at the ballot box. Of course, to do so they would have to convince a majority of South Dakota voters to agree with them, which would be a daunting challenge, considering the broad public support Amendment A enjoyed at the polls.

In short, because Thom and Miller could have brought this lawsuit before the election, they waived their ability to challenge Amendment A, and their challenge is barred by laches. The equitable rule is simple and effective: "if there has been opportunity to correct any irregularities in the election process or in the ballot prior to the election itself, plaintiffs will not, in the absence of fraud or major misconduct, be heard to complain of them afterward." *Watland*, 85 P.3d at 1087 (cleaned up). Any other rule would permit parties dissatisfied with an election outcome to take a second bite at the apple and attempt to obtain a judicial veto of election results. This Court should not countenance that result, and should reject this lawsuit as untimely.

IV. Amendment A does not violate the single-subject rule.

The law places two significant hurdles in front of a plaintiff seeking to overturn an adopted constitutional amendment based on an alleged violation of the single-subject rule.

First, the bar for establishing the necessary relationship between subjects is low: the topics must only have a "reasonably germane" relationship. *Baker v. Atkinson*, 2001 S.D. 49, ¶ 25, 625 N.W.2d 265, 273. In *Barnhart*, this Court upheld a multi-part constitutional amendment with the strikingly general goal of "making the executive branch of state government more efficient and responsible" because each of the changes were "rationally related to this general purpose." *Barnhart v. Herseth*, 222 N.W.2d 131, 135-36 (S.D. 1974). In the legislative context, South Dakota courts have routinely upheld laws with numerous provisions relating to one broad overall goal. *See, e.g.*, *Indep. Cmty. Bankers Ass'n of S.D., Inc. v. State ex rel. Meierhenry*, 346 N.W.2d 737, 740 (S.D. 1984) (upholding an act that amended six different statutory sections, which governed bank holding companies, insurance, taxation of insurance companies, and bank sales, because each provision related to "the regulation of 'certain banks and their subsidiaries'"); *Kanaly v. State*, 368 N.W.2d 819, 828 (S.D. 1985) (upholding an act that amended several statutory provisions dealing with

prison facilities, escape, and prison funding, because all eleven sections of the bill were reasonably related to the single goal of closing a university and establishing a prison using its facilities); *Meierhenry v. City of Huron*, 354 N.W.2d 171, 182 (S.D. 1984) (upholding an act that authorized various public entities to issue and register bonds and revised statutes relating to tax incremental districts because they related to the subject of municipal finance).

Second, courts apply a strong presumption in favor of constitutionality. An amendment adopted by the voters must "plainly and palpably" violate the Constitution before courts will strike it down. *Barnhart*, 222 N.W.2d at 136 (quoting *State ex rel. Adams v. Herried*, 72 N.W. 93, 97 (S.D. 1897)). As the *Barnhart* court eloquently stated: "When considering a constitutional amendment after its adoption by the people, the question is not whether it is possible to condemn the amendment, but whether it is possible to uphold it." *Id.* (cleaned up).

The circuit court's decision did not correctly apply either of these legal principles, and must be reversed.

A. South Dakota courts apply a broad interpretation of what constitutes a single subject.

Article XXIII, § 1 of the South Dakota Constitution states that "[a] proposed amendment may amend one or more articles and related subject matter in other articles as necessary to accomplish the objectives of the amendment; however, no proposed amendment may embrace more than one subject." The public purposes behind the single-subject rule for legislation are to (1) prevent logrolling, or the combining of otherwise unpopular measures with other popular measures to force a single vote on all the measures combined; (2) prevent the unintentional passage of a provision that is not listed in the title; and (3) fairly apprise the public of what is in the measure and avoid fraud or deception. *See Kanaly*, 368 N.W.2d at 827.

This Court has not yet interpreted the "single subject" rule for constitutional amendments, which was added to the Constitution in 2018. But this Court has interpreted a similar constitutional provision, Article III, § 21, which provides: "No law shall embrace more than one subject, which shall be expressed in its title." This Court liberally construes enactments in favor of constitutionality. "Sound policy and legislative convenience dictate a liberal construction of title and subject matter." *Accts. Mgmt., Inc. v. Williams*, 484 N.W.2d 297, 302 (S.D. 1992) (citing *State v. Morgan*, 48 N.W.

314, 317 (S.D. 1891)); S.D.C.L. § 2-1-11 (applying the rule of liberal construction to initiated petitions). Thus, "[o]bjections to an act on the basis that it embraced more than one subject and was not adequately expressed in its title should be grave, and the conflict between the statute and the constitution plain and manifest, before it may be justifiably declared unconstitutional and void." *Indep. Cmty. Bankers Ass'n of S.D., Inc. v. State*, 346 N.W.2d 737, 742 (S.D. 1984) (citing *Morgan*, 48 N.W. at 318).

"The constitution does not restrict the scope or magnitude of the single subject of a legislative act." *Meierhenry v. City of Huron*, 354 N.W.2d 171, 182 (S.D. 1984) (citing *Morgan*, 48 N.W. at 317). This Court employs a broad interpretation of what falls under a single subject for legislation:

> [W]e are of the view that the [single subject] provision is not to receive a narrow or technical construction in all cases, but is to be construed liberally to uphold proper legislation, *all parts which are reasonably germane*. The provision was not enacted to provide means for the overthrow of legitimate legislation. Numerous provisions, *having one general object*, if fairly indicated in the title, may be united in one act. Provisions governing projects so related and interdependent as to constitute *a single scheme* may be properly included within a single act.

Baker, 2001 S.D. 49 at ¶ 25, 625 N.W.2d at 273 (italics in original) (quoting *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 583 P.2d 1281, 1290 (Cal. 1978)).

Notably, "the subject of a statute 'is singular when a number of things constituting a group or class are treated as a unit for general legislation.' " *Indep. Cmty. Bankers Ass'n*, 346 N.W.2d at 741 (quoting *State v. Youngquist*, 13 N.W.2d 296, 297 (S.D. 1944)); *Mettet v. City of Yankton*, 25 N.W.2d 460, 463 (S.D. 1946).

> [W]hile the subject must be single, the provisions to accomplish the objective of an act may be multifarious. . . . "When the title of a legislative act expresses a general subject or purpose which is single all matters which are naturally and reasonably connected with it and all measures which will or may facilitate the accomplishment of the purpose so stated, are germane to its title."

Accts. Mgmt., 484 N.W.2d at 302 (citations omitted) (quoting *Morgan*, 48 N.W. at 317).

B. The circuit court erred when it determined that parts of Amendment A were not reasonably germane to its purpose.

The circuit court correctly recognized the "reasonably germane" standard and the permissive principles of construction designed to uphold legislation. (App.11-12.) But the circuit court erred when it failed properly to apply those principles to Amendment A.

The circuit court determined that "[t]he subject of Amendment A is: the legalization of marijuana." (App.11.) The circuit court then found that Amendment A included the following three unrelated subjects: hemp,

professional licensing, and taxation. Contrary to the circuit court's conclusion, each relates to Amendment A's general subject.

1. Marijuana and hemp are not separate subjects simply because Amendment A defines both terms.

The circuit court's decision that marijuana and hemp are not reasonably related to each other rests solely on the fact that the attorney general's title and explanation use the word "marijuana," but the definitions section of Amendment A defines marijuana and hemp differently. (App.11-12.) This reasoning is the type of hypertechnical approach this Court has rejected. *See, e.g., Meierhenry*, 354 N.W.2d at 182. This Court has also been clear that a single subject may include a "number of things constituting a group or class." *Indep. Cmty. Bankers Ass'n*, 346 N.W.2d at 741 (quoting *Youngquist*, 13 N.W.2d at 297). The circuit court's conclusion that, because marijuana and hemp are subsets of cannabis, they are separate subjects is contrary to this established law.

Definitions sections are common in legislation and amendments. The Colorado Constitution contains similar definitions of marijuana and hemp. *See, e.g.*, Colo. Const. art. XVIII, § 16(2) (separately defining "industrial hemp" and "marijuana"). Notably, Colorado's Constitution also contains a single-subject requirement (Colo. Const. art. XIX, § 2) and distinguishes between amendments and revisions by constitutional

convention (Colo. Const. art. XIX, §§ 1-2). In addition, other state constitutions addressing medical marijuana contain detailed and extensive definitions. *See* Ark. Const. amend. 98, § 2 (containing 26 detailed definitions); Fla. Const. art. X, § 29(b) (including a definitions section with ten detailed definitions); Mo. Const. art. XIV, § 1(2) (including a definitions section with sixteen detailed definitions). Prohibiting constitutional amendments from containing definitions sections that guide the details of the amendment's construction would improperly impose a de-facto limit on the types of constitutional amendments that voters can draft.

Moreover, the definitions in Amendment A actually show that marijuana and hemp are part of the same subject. Marijuana is broadly defined as the cannabis plant, and hemp is the cannabis plant with a THC concentration of .3% or less.[3] (App.1.) In other words, cannabis is marijuana, and hemp is a specific subset of cannabis. Thus, the definitions in Amendment A do not support the circuit court's conclusion.

It makes perfect sense that Amendment A would contain different definitions of these two subsets of the cannabis plant. THC is the ingredient in marijuana that causes a high. The laws governing the version

[3] Amendment A's definition of hemp is effectively identical to the definition of hemp in existing South Dakota law. *See* S.D.C.L. § 38-35-1(2).

of cannabis that can cause a high (and can be used recreationally) are necessarily different from the laws governing the version of cannabis that does not cause a high but is only used for agricultural or industrial purposes. The portions of Amendment A that address limits on the personal growth, consumption, and sale of cannabis with THC for adult recreational use would not—and should not—apply to the agricultural production of cannabis without THC. Amendment A had to distinguish between recreational marijuana and hemp to ensure that the limits on one did not inadvertently apply to the other. Therefore, the distinction in Amendment A between marijuana and hemp is rationally related to accomplishing the objective of Amendment A: legalizing and regulating marijuana. That does not mean that the definitions "plainly and palpably" deal with different subjects that bear no rational relationship to each other.

The circuit court's reliance on the fact that Amendment A's title and the Attorney General's explanation used the words "marijuana" and "hemp" rather than the word "cannabis" is misplaced. The sponsors of Amendment A did not draft the title or the explanation, and those statements are not included in the text of the Constitution. This is neither the time nor the place to challenge the Attorney General's explanation. In addition, the title and explanation need not be perfect, they only need to

fairly set forth the substance of the proposed amendment. *See, e.g.*, *Jackley*, 2010 S.D. 62 at ¶¶ 14-26, 786 N.W.2d at 377-79 (discussing the purposes of the attorney general's explanation and the discretion in drafting it); *Barnhart*, 222 N.W.2d at 137. No voter would be confused by the title and explanation's use of the terms marijuana and hemp—the explanation itself fairly sets forth the substance of Amendment A. The circuit court's reliance on the title and explanation are not only flawed, but again represent the restrictive and hypertechnical approach this Court should not take when evaluating an amendment after its adoption by the voters.

Finally, the circuit court's reliance on its restrictive interpretation of the technical parsing of definitions falls well short of the requirement that a constitutional violation be "plain and palpable" before an amendment adopted by the voters is overturned. *Barnhart*, 222 N.W.2d at 136). It also runs afoul of the statutory requirement that initiated petitions "shall be liberally construed, so that the real intention of the petitioners may not be defeated by a mere technicality." S.D.C.L. § 2-1-11; *accord Baker v. Atkinson*, 2001 S.D. 49, ¶¶ 18, 19, 22-27, 625 N.W.2d 265, 271-74 (requiring only substantial compliance for initiated measures). Thus, the circuit court erred when it determined that Amendment A was unconstitutional because it referenced hemp and defined that term separately from marijuana.

2. Protecting professional licensing is reasonably germane to the purpose of Amendment A.

The circuit court separately found that the provision in Amendment A relating to professional discipline did not relate to the legalization of marijuana. (App.12.) The circuit court provided no rationale for its decision, stating in conclusory fashion simply that "[m]andating what various professions can and cannot discipline their members for is not a part of the 'general object' of legalizing marijuana." (*Id.*) The circuit court did not try to explain why relieving professionals of potential disciplinary actions is not related to the legalization of marijuana.

For Amendment A to effectively legalize marijuana in South Dakota, including the medical prescription of marijuana and the commercial sale of marijuana, it is easy to anticipate that professional services will be required—doctors will need to prescribe medical marijuana, lawyers will need to advise marijuana businesses, and lawyers will need to draft, review, and interpret the rules and regulations governing the personal use and commercial sale of marijuana. Ensuring that professionals are not subject to professional discipline is reasonably germane to the legalization of marijuana. It is in the public interest that everyone involved in the marijuana industry abides by the laws and regulations. They need the advice of counsel, and other professionals, to do so. This provision is

directly related and necessary to ensuring that legalized marijuana functions according to the law.

The professional-licensing clause does not rise to the level of a "plain and palpable" constitutional violation. The voters' decision to enact Amendment A, including its provision on professional licensing, is entitled to great deference.

3. Providing funding to carry out the provisions of Amendment A is reasonably germane to the purpose of Amendment A.

Finally, the circuit court found that "imposing a tax on marijuana sales and allocating the revenue derived from that tax are not 'reasonably germane' to the overall topic of legalizing marijuana." (App.12.) Again, the circuit court provided no rationale for this sweeping holding, nor did it cite any authority specifically supporting its conclusion.

The circuit court's conclusion is wrong. Indeed, in the same paragraph the circuit court noted that "[t]he Department of Revenue is to receive the revenue necessary to cover the costs of administering Amendment A." (App.12.) Thus, the connection between the imposition of a tax and the accomplishment of Amendment A's purpose is obvious from the text of Amendment A itself. By providing funding for the accomplishment of Amendment A's objectives, the tax is reasonably germane to Amendment A's purpose.

The circuit court's decision is also contrary to the well-reasoned opinion in *Hensley v. Att'y Gen.*, 53 N.E.3d 639 (Mass. 2016). There, the Massachusetts Supreme Court considered whether an initiative petition that would legalize marijuana violated Massachusetts' "related subject" rule. The petition had fourteen sections, that would legalize the possession, use, and cultivation of marijuana and products containing marijuana concentrate by adults over 21. *Id.* at 643-44. The petition also contained provisions for the licensing, operation, and regulation of marijuana-related businesses, created a cannabis control commission and cannabis advisory board within the Department of the State Treasurer, and provided for the taxation of the sale of marijuana. *Id.*

The court explained that "the related subjects requirement is met where "one can identify a common purpose to which each subject of an initiative petition can reasonably be said to be germane." *Id.* at 647 (internal quotations omitted). It held that the petition "easily" satisfied the requirement because the petition's different provisions were all part of an integrated scheme to legalize and regulate marijuana.

So too here. Taxation of marijuana sales, and the corresponding regulation and licensing of sales, are all related to the regulated legalization of marijuana. In fact, the taxation of marijuana could not occur

at all without legalization, and legalization could not occur as a practical matter without regulation and a corresponding source of funding.

The circuit court's finding is also contrary to other decisions that funding mechanisms relate to the subject of an initiated measure. For example, in *Meierhenry*, this Court determined that the establishment and operation of tax-incremental-financing districts was "merely [an] element[] of the larger subject of municipal finance." *See Meierhenry*, 354 N.W.2d at 182. Similarly, in *Christensen v. Gale*, the Nebraska Supreme Court determined that a constitutional amendment expanding Medicaid coverage did not violate Nebraska's single-subject rule—which employs a stricter test than South Dakota law—because "the expansion of Medicaid and its funding have a natural and necessary connection with each other and, thus, a singleness of purpose." 917 N.W.2d 145, 157 (Neb. 2018).

Amendment A legalizes marijuana. Funding that policy, particularly through a tax on the legalized activity itself, is reasonably germane to the purpose of Amendment A. The circuit court erred when it determined that Amendment A's taxation was a plain and palpable violation of the Constitution.

4. Thom and Miller never established logrolling or voter confusion.

Setting aside the lack of logical or legal support for any of the three separate "subjects" the circuit court identified, Thom, Miller and the circuit court never pointed to any evidence of logrolling, voter confusion, or the unintentional passage of a policy provision. *See Kanaly*, 368 N.W.2d at 827-28 (discussing purposes of the single-subject rule).

Logrolling does not occur every time voters consider a ballot measure containing multiple provisions. Rather, logrolling is "a practice wherein several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue." *In re Advisory Op. to Att'y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 795 (Fla. 2014) (citations omitted). It is not a concern where all of the provisions of an amendment relate to the same subject, or constitute "a single plan." *Id.* at 796. Here, as explained above, the provisions of Amendment A all relate to a single purpose: the legalization and regulation of marijuana, including its recreational, medical, and agricultural uses. Each part of Amendment A—including its distinction between recreational marijuana and agricultural marijuana (hemp),[4] its

[4] The South Dakota legislature legalized hemp after the form of Amendment A was finalized but well before the November 2020 election.

professional-licensing provision, and its taxation system—is designed to accomplish the legalization of marijuana in a meaningful and effective way.

"The people are presumed to know what they want, to have understood the proposition submitted to them in all of its implications, and by their approval vote to have determined that [the] amendment is for the public good and expresses the free opinion of a sovereign people." *Larkin v. Gronna*, 285 N.W.59, 63 (N.D. 1939); *see also Watland*, 85 P.3d at 1084 (citing *Larkin*, 285 N.W. at 63). Furthermore, the publicity and scrutiny directed at Amendment A over the year-long campaign preceding its passage minimize any risk of voter confusion. *See Baker*, 2001 S.D. 49 at ¶ 27, 625 N.W.2d at 274. In *Baker*, the Court emphasized that "the circuit court found no evidence of confusion, corruption, or fraud" and noted that the publicity surrounding the petition supported that finding. *Id.* As in *Baker*, the "public attention" directed at Amendment A "dilute[s] the risk of voter confusion or deception." *See id.* Without any evidence of logrolling or voter confusion, the circuit court's decision was an improper remedy to a problem that never existed.

Thus, there is no support for the idea that the inclusion of hemp in Amendment A was an example of logrolling.

In sum, the three reasons the circuit court used to support its conclusion that Amendment A violated the single-subject rule do not enjoy any logical or legal support. The circuit court's decision runs counter to case law in this state and in other states. Thom and Miller have not, and cannot, prove a plain and palpable violation of the Constitution. This Court must, if at all possible, preserve the adoption of Amendment A. *See Barnhart*, 222 N.W.2d at 136. If this Court reaches the merits of the Thom and Miller's claims, it should find that Amendment A consists only of a single subject.

V. Amendment A did not require a constitutional convention.

The circuit court erred when it determined that Amendment A instituted a fundamental change in South Dakota's basic governmental plan. (*See* App.13-16.) In so finding, the circuit court failed to apply the heavy presumption in favor of adopted constitutional amendments, misapplied the law on constitutional revisions, and misinterpreted Amendment A. The circuit court's decision must be reversed.

Article XXIII provides two avenues for altering the Constitution—amendments and by calling a constitutional convention. Under § 1: "Amendments to this Constitution may be proposed by initiative or by a majority vote of all members of each house of the Legislature." Art. XXIII,

§ 1. And under § 2: "A convention to revise this Constitution may be called by a three-fourths vote of all the members of each house." Art. XXIII, § 2.

A. Amendments may add a new article to the Constitution.

As an initial matter, the circuit court properly rejected Thom and Miller's argument that an amendment could not add a new section to the Constitution. (App.13.) Article XXIII does not limit amendments to only amending one or more existing articles of the Constitution. Had the people intended amendments to be so limited, they plainly could have said so. The only limitation Article XXIII places on constitutional amendments is that they must embrace a single subject, which—as discussed above—Amendment A does.

Further, the arbitrary distinction Thom and Miller drew between amendments and revisions is inconsistent with the structure of the South Dakota Constitution. Article XXI, titled "Miscellaneous," includes nine sections, which address everything from the state seal and coat of arms, to the rights of married women, to hail insurance. It makes no sense to require that Amendment A be added as a new section to Article XXI, for example, rather than stand on its own as a separate section. The circuit court properly rejected this overly formalistic approach.

Tellingly, South Dakota has adopted—and repealed—entire constitutional articles by amendment rather than constitutional convention throughout its history. For example, Article XXIV, establishing prohibition in the original constitution, was repealed, re-adopted, and repealed again—all by constitutional amendment rather than a constitutional revision. *See, e.g.*, S.D. Const. art. XXIV, Historical Note; 1915 S.D. Session Laws, ch. 231; 1933 S.D. Session Laws, ch. 128.

In sum, the circuit court correctly concluded that "a proposed amendment is not barred from creating a new article of the Constitution." (App.13.)

B. Amendment A was not a far-reaching change to South Dakota's basic plan of government.

The circuit court next articulated the definition of a constitutional revision as "an enactment which is so extensive in its provisions as to change directly the substantial entirety of the Constitution by the deletion or alteration of numerous existing provisions." (App.13 (citation omitted).) Although the circuit court started down the correct path, it then misapplied the law and misinterpreted Amendment A when it determined that Amendment A instituted "far reaching changes in the nature of our basic governmental plan." (App.14.) In reality, Amendment A does no such thing.

The circuit court stated: "Amendment A is not a drastic rewrite of the South Dakota Constitution. It is also not as extensive as the proposed amendment in *McFadden*. Amendment A does not make any written changes to the existing provisions of the South Dakota Constitution. However, it does institute 'far reaching changes in the nature of our basic governmental plan.' " (App.14 (citations omitted) (quoting *Amador*, 583 P.2d at 1286).)

The circuit court based its conclusion on four separate ways in which it believed Amendment A changed the structure of government in South Dakota: (1) Amendment A removed the ability of the legislature to enact laws relating to marijuana by giving "exclusive power" to the Department of Revenue to perform certain functions; (2) Amendment A removed the ability of the legislature to enact civil penalties; (3) Amendment A removed the power of the executive branch to reallocate authority over the licensing and regulation of marijuana; and (4) Amendment A established a new cause of action against the Department of Revenue. (App.14-15.) Each of these reasons is based on a misreading of Amendment A.

1. Amendment A did not limit the power of the legislature to otherwise enact laws relating to marijuana.

The circuit court agreed with Thom and Miller that the inclusion of the word "exclusive" in relation to the Department of Revenue's authority wrought a fundamental change to South Dakota's structure of government. This is an overblown fear based on an unpersuasive interpretation of Amendment A. "We are mindful of the fact that ballot measure opponents frequently overstate the adverse effects of the challenged measure, and that their 'fears and doubts' are not highly authoritative in construing the measure." *Legislature of Cal. v. Eu*, 816 P.2d 1309, 1315 (Cal. 1991).

Granting the Department of Revenue the authority to promulgate regulations did not fundamentally alter the structure of South Dakota's government. Legislation routinely delegates regulatory authority to agencies. Amendment A's delegation of power also provides sufficient direction for the administrative agency. Amendment A lays out precisely what the Department of Revenue should do. (*See* App.2-3, §§ 6, 7, 8, 13.) The Department of Revenue is subject to the guiding principles and standards in Amendment A. It is also subject to the normal executive and judicial oversight as it would be in administering any other regulatory program. Neither the circuit court nor Thom or Miller ever identified any

manner in which Amendment A did not provide sufficient standards or guidance to the Department of Revenue. Moreover, even if gaps in the delegation of power existed, the legislature can supply additional guidance via future legislation.

Nor is it of any consequence that Amendment A uses the phrase "exclusive" when modifying the Department of Revenue's administrative authority. The word "exclusive" only modifies particular authority: namely, the authority "to license and regulate the cultivation, manufacture, testing, transport, delivery, and sale of marijuana in the state and to administer and enforce this article." (App.2, § 4.) Those functions are classic administrative functions, the exclusive delegation of which does not fundamentally change South Dakota's government. *See, e.g.*, S.D.C.L. § 35-1-2; S.D.C.L. § 35-10-1 (delegating the promulgation of rules relating to the sale, purchase, distribution, and licensing of alcoholic beverages to the secretary of the Department of Revenue).

Thom and Miller speculated that the word "exclusive" transformed the Department of Revenue into a fourth branch of government, unaccountable to any checks and balances. That overblown doomsday scenario is precisely the type of overstated and out-of-context argument

the *Eu* court politely but firmly dismissed. *See Eu*, 816 P.2d at 1315-16. This Court should do the same.

The better interpretation of the word "exclusive" is much simpler: the Department of Revenue is the only administrative agency charged with administering the licensing and regulation requirements set out in Amendment A. Many pieces of legislation will delegate certain administrative authority to one agency and certain authority to another agency. *See, e.g.*, 2020 S.D. Sess. Law ch. 176, 2020 HB 1008 (legalizing the growth, production and transportation of industrial hemp and giving the Department of Agriculture and the Department of Safety authority to promulgate rules). The plain reading of Amendment A's delegation of administrative authority is simply that the Department of Revenue is the only agency with regulatory authority over the administrative issues delegated in Amendment A. It stretches credulity to imagine that Amendment A's delegation of authority to the Department of Revenue fundamentally changed the structure of South Dakota's government. This Court should adopt the interpretation that preserves Amendment A. *Barnhart*, 222 N.W.2d at 136.

Furthermore, the circuit court and Thom and Miller overlooked the fact that the definitions section of Amendment A specifically states that the

"department" means "the Department of Revenue or its successor agency." (App.1, § 1(1) (emphasis added).) Thus, the responsibilities delegated to the Department of Revenue are not irrevocably placed there. The circuit court and Thom and Miller would impermissibly read this phrase out of Amendment A.

Amendment A does not limit the Legislature's ability to pass additional laws, so long as those laws do not conflict with the rights conferred by Amendment A. This is the hierarchical relationship between a constitutional provision and statutes or regulations. No section of Amendment A otherwise limits the powers of the legislature. Section 2 of Amendment A clearly states that Amendment A does not limit or affect a variety of laws, which compels the conclusion that the legislature may continue to legislate in those areas. In fact, the only actions the legislature could not take would be actions to criminalize conduct that Section 4 of Amendment A expressly legalizes.

In addition, Amendment A clearly contemplates that the legislature may take additional action by noting that the legislature may change the tax structure in the future, but not before November 3, 2024. (App.3, § 11.) The legislature must also take action regarding hemp and medical marijuana. (App.3, § 14.) Thom and Miller's claims of usurpation are

inconsistent with the liberal construction of initiated amendments to accomplish the amendment's purpose and preserve the right to act by initiative. These claims are also inconsistent with Article III, § 1 of the South Dakota Constitution, which empowers the legislature to enact legislation and states that the initiative process "shall not be construed so as to deprive the Legislature or any member thereof of the right to propose any measure."

The Legislative Research Council concluded that Amendment A, as submitted to the voters, would not deprive the legislature of the ability to enact legislation. The original version of Amendment A, Section 6, stated that the legislature could legislatively implement Amendment A, provided that the legislation was consistent with the terms of Amendment A. (App.72.) The LRC removed this language because "[t]he Legislature is already constitutionally empowered to enact legislation, and is already required to legislate within the bounds of the Constitution." (App.66.) Thus, in the LRC's view, Amendment A, as revised by the LRC, did not displace or restrict the legislature from exercising its constitutional authority to enact legislation.

Tellingly, the legislature itself appears to agree that it retains the authority to enact legislation relating to marijuana. In this legislative

session alone, the legislature has introduced the following bills relating to marijuana:

- House Bill ("HB") 1061: An Act to prohibit smoking marijuana and its derivatives in a motor vehicle and create a penalty therefore;
- HB 1095: An Act to establish criteria regarding marijuana;
- HB 1160: An Act to prohibit driving a motor vehicle while exceeding the legal limit of delta 9-tetrahydrocannabinol;
- HB 1203: An Act to authorize banks to engage in business with industrial hemp or marijuana licensees and associated persons;
- HB 1225: An Act to establish provisions concerning the sale of adult-use retail marijuana;
- Senate Bill ("SB") 35: An Act to make an appropriation to implement provisions concerning the legalization, regulation, and taxation of marijuana, and to declare an emergency; and
- SB 187: An Act to establish provisions concerning the sale of adult-use retail marijuana.

Furthermore, whether any future legislative action may, or may not, conflict with Amendment A cannot be decided now. That speculative issue should be left for a future lawsuit, if it ever arises.

The single term "exclusive," used only once and in reference to specific administrative functions, did not limit the ability of the legislature to enact legislation. The circuit court erred when it interpreted Amendment A in such a manner.

2. Amendment A did not change the power of the legislature to enact civil penalties.

The circuit court found that Section 5 of Amendment A, which set various civil penalties, deprived the legislature of the power to enact civil penalties. (App.15.) This is not accurate. Section 5 of Amendment A sets a maximum civil penalty for certain enumerated violations. Nothing in Amendment A prevents the legislature from establishing a civil penalty lower than the maximum. Nothing in Amendment A prohibits the legislature from imposing other civil or criminal penalties relating to marijuana except to the extent such legislative action would conflict with the Constitution—a limitation that always exists on legislative enactments.

Moreover, this argument is circular. True, the legislature generally has the authority to enact civil penalties. But the people enjoy that power too; their power is concurrent with the power of the legislature. *Brendtro v.*

Nelson, 2006 S.D. 71, ¶ 35, 720 N.W.2d 670, 682 ("Indeed, while article III, § 1 gives the legislature power in areas excluded from the scope of the referendum, the power is not exclusive. It is concurrent with the people's right to initiate measures."); *Byre v. City of Chamberlain*, 362 N.W.2d 69, 79 (S.D. 1985) ("The purpose of the initiative is not to curtail or limit legislative power to enact laws, but rather to compel enactment of measures desired by the people, and to empower the people, in the event the legislature fails to act, to enact such measures themselves."). The fact that the people exercised their power to enact something that the legislature could also enact does not deprive the legislature of anything. Otherwise, every initiated measure or amendment would fall to the same argument.

Finally, even if Amendment A displaced the ability of the legislature to address civil penalties relating to marijuana, the circuit court never explained how that would result in a fundamental change to South Dakota's system of government. After all, such a limitation would only apply to the specific civil penalties set forth in Section 5 of Amendment A. It would not limit the ability of the legislature to set civil penalties in any other area. Therefore, Amendment A did not enact any type of sweeping change to the structure of government.

3. Amendment A did not limit the power of the executive branch to reassign authority.

As noted above, the definitions section of Amendment A specifically states that the "department" means "the Department of Revenue or its successor agency." (App.1, § 1(1) (emphasis added).) The circuit court did not consider this portion of Amendment A when it determined that Amendment A deprived the governor's office of the ability to reallocate powers among executive agencies. Based on the plain language of Amendment A, the executive may assign the powers of the "department" to a successor agency.

Other portions of the South Dakota Constitution confer powers on specific entities. Article XII, § 5, commit certain investments to the "South Dakota Investment Council or its successor." This "successor" language is similar to the language used in Amendment A. Article XIII, § 20, creates a trust fund deposited by the South Dakota Cement Commission. Notably, there is no successor organization designated here. Similarly, the Colorado Constitution defined the "Department" as "the department of revenue or its successor agency"—language identical to that used in Amendment A. *See* Colo. Const. art. XVIII, § 16(2)(c).

Even if Amendment A did cement the administration of marijuana within the Department of Revenue, the circuit court never explained how

this would enact a far-reaching change to the nature of South Dakota's basic system of government. Such a change would only apply to the regulation and taxation of marijuana, and would not impact any other administrative agency or any other functioning of the governor's office. This single provision did not create a sweeping change in South Dakota's governmental structure, much less a fundamental change that is plain and palpable.

4. Amendment A did not improperly create a new cause of action.

Section 12 of Amendment A states that if the department fails to promulgate the rules required by Amendment A or adopts rules inconsistent with Amendment A, a resident "may commence a mandamus action in circuit court to compel performance by the department in accordance with this article." (App.3.) The circuit court concluded that this established a new cause of action, and that only the legislature could direct the manner in which the State may be sued. (App.15.) This conclusion is wrong.

First, a writ of mandamus is not a new cause of action. It is long-established in South Dakota, and exists to compel the performance of a definite legal obligation when a petitioner has a clear right to that performance. *See, e.g.*, *Sorrels v. Queen of Peace Hosp.*, 1998 S.D. 12, ¶ 6, 575

N.W.2d 240, 242. Thus, Amendment A did not establish anything new, it simply recognized the application of an existing remedy. The legislature has already prescribed the means by which a mandamus action is available. S.D.C.L. ch. 21-29. Moreover, a writ of mandamus is already available against the state and public officers. *See, e.g.*, *S.D. Trucking Ass'n, Inc. v. S.D. Dep't of Transp.*, 305 N.W.2d 682, 684-87 (S.D. 1981) (discussing mandamus standards and affirming the issuance of a writ of mandamus against the state Department of Transportation). Thus, Amendment A did not include a new waiver of sovereign immunity. It simply recognized the proposition that compliance with the Constitution by state officials is mandatory.

Second, the people do not infringe on the power of the legislature when they exercise their reserved power to legislate by initiative. *See Brendtro*, 2006 S.D. 71 at ¶ 35, 720 N.W.2d at 682 (holding that the power of the people to initiate law is concurrent with the power of the legislature); *Byre*, 362 N.W.2d at 79. The people simply exercised their reserved legislative power. If the legislature could authorize mandamus, or waive sovereign immunity, then the people can do so also.

Finally, Amendment A's specific reference to the availability of a writ of mandamus does not alter the fundamental structure of South

Dakota's government. Writs of mandamus already exist. S.D.C.L. ch. 21-29. State officers and departments are already bound to follow the law and act according to the Constitution. The circuit court erred when it found that Amendment A fundamentally changed South Dakota's system of government.

5. The voters may decide what to put in their constitution.

The voters could have enacted Amendment A as an initiated statute, but they were not required to do so. South Dakota's Constitution expressly reserves to the voters the ability to change the Constitution. S.D. Const. art. XXIII, § 1 (authorizing constitutional amendments by initiative). When exercising their right to initiate ballot measures and amendments, the people may make policy determinations, just as the Legislature itself may do. *See Byre*, 362 N.W.2d at 79.

The decision of South Dakota's voters to place legalized marijuana in their Constitution is understandable, and is the best way to ensure that the rights they want to secure to themselves are not immediately undone by a state government hostile to those rights. For example, in 2016, voters adopted Initiated Measure 22, which enacted certain campaign finance and

ethics reforms.[5] The legislature promptly repealed that law, and included an emergency clause in the repeal so that the voters could not refer the repeal to another vote. 2017 S.D. Sess. Laws, HB 1069. Voters could reasonably have feared that Amendment A would share the same fate if enacted only as a statute. If the initiative process is to remain an effective vehicle through which voters can enact policies that the legislature is unwilling or unable to enact, the voters must be able to enshrine those laws in their Constitution, if they so desire.

Enshrining rights relating to marijuana in a state constitution is also consistent with the approach in other states. Six other states (Colorado, Missouri, Florida, New Jersey, Arkansas, and Mississippi) have amended their constitutions to include either recreational or medical marijuana—or in Colorado's case, both. The example of Colorado in particular, which added medical marijuana to its Constitution in 2000 and recreational marijuana to its Constitution in 2012, illustrates that Amendment A is not the type of government-altering document that Thom and Miller suggested, or that the circuit court found.

[5] S.D. Sec'y of State, *Past South Dakota ballot question titles and election returns from 1890 – 2016*, page 25, *available at* https://sdsos.gov/elections-voting/upcoming-elections/ballot-question-information/general-ballot-question-information.aspx (last accessed March 3, 2021).

Courts do not, and should not, overturn enacted constitutional amendments lightly. A challenged enactment must plainly and palpably violate the law before it can be struck down. *See Barnhart*, 222 N.W.2d at 136. Court challenges are not an opportunity for public officials like Thom and Miller to substitute their judgment for the judgment of the voters.

6. Overturning Amendment A as a constitutional revision would have serious ramifications for other constitutional amendments, both past and future.

Accepting the circuit court's determination here causes long-term policy problems. First, under the guise of protecting the constitution, the circuit court's decision hamstrings the ability of the voters to initiate constitutional amendments. There is no reason to limit one of the foundational rights the voters enjoy.

Second, it will call into serious question the validity of past amendments that implemented much more far-reaching changes to the structure of government than Amendment A did. For example, in 1972, South Dakota voters significantly overhauled the state constitution. They did so in a series of four amendments, rather than a constitutional revision. One amendment altered the entirety of Article IV, relating to the executive department, by reorganizing it, deleting sections, and making "numerous" other substantive changes throughout. S.D. Const. art. IV, Historical Note;

1972 S.D. Session Laws, ch. 1. Another amendment that same year made significant changes to Article V, relating to South Dakota's judicial system. It established a unified judicial system, reorganized the entire article, and made other substantive changes to more than a dozen sections. S.D. Const. art. V, Historical Note; 1972 S.D. Session Laws, ch. 2. A third amendment in 1972 combined Article IX and Article X into a new Article IX—which addresses the organization of local government—and repealed Article X in full. S.D. Const. art. X, Historical Note; 1972 S.D. Session Laws, ch. 3. And the fourth rewrote Article XXIII, splitting up one section into two, adding a provision for proposal of amendments by initiative, and making other substantive changes to the law regarding constitutional amendments and revisions. S.D. Const. art. XXIII, § 1, Historical Note; 1972 S.D. Session Laws, ch. 4.

Separately and together, the 1972 amendments made changes far more significant to the structure of government, separation of powers, and rights of the people of South Dakota than Amendment A—all without a constitutional convention. If this Court affirms the decision of the circuit court, it would create precedent that would almost certainly invalidate the 1972 amendments. The Court should not, and need not, open the door to such challenges.

VI. Even if Amendment A is unconstitutional, the circuit court erred when it failed to separate and sever the unconstitutional provisions.

After determining that Amendment A involved multiple subjects (which conclusion is wrong for the reasons stated above), and that Amendment A made sweeping changes to South Dakota's governmental plan (which it did not, for the reasons stated above), the circuit court concluded that it did not "have authority to assume which subject the voters intended to adopt" and accordingly declined to reach the issue of separability. (App.16.) Even assuming that Amendment A was unconstitutional, the circuit court erred when it did not address separability.

Separability of a voter-initiated constitutional amendment is a matter of first impression in South Dakota. But this Court has routinely addressed separability, sometimes referred to as severability, in the legislative context. "The 'doctrine of separability' requires this court to uphold the remaining sections of a statute if they can stand by themselves and if it appears that the legislature would have intended the remainder to take effect without the invalidated section." *S.D. Educ. Ass'n/NEA v. Barnett*, 1998 S.D. 84, ¶ 32, 582 N.W.2d 386, 394 (quoting *Simpson v. Tobin*, 367 N.W.2d 757, 768 (S.D. 1985)).

This Court favors separability over non-separability, and the burden to establish non-separability is on the party challenging the enactment. *Id.* at ¶ 33, 582 N.W.2d at 394 ("[T]he burden to show that the legislature would not have enacted the statute without the severed portion is on the shoulders of the person arguing against severability."). In *Dakota Systems, Inc. v. Viken*, 2005 S.D. 27, ¶ 20, 694 N.W.2d 23, 32, this Court reaffirmed that the proper remedy for violation of the South Dakota constitution's single-subject rule is to separate and sever any unconstitutional provisions.

Here, the Court did not make an attempt to separate and sever any provisions it found unconstitutional. Instead, it concluded that it did not have the authority to determine which portions of Amendment A should be separated. (App.16.) That conclusion is contrary to the holding in *Viken*. Not only did the circuit court have the authority to separate any unconstitutional portions of Amendment A, it was required to do so if possible, and Thom and Miller bore the burden of proving non-separability. The circuit court erred when it did not consider whether to separate any unconstitutional portions of Amendment A.

South Dakota voters explicitly included a separability provision in Amendment A:

> This article shall be broadly construed to accomplish its purposes and intents. . . . If any provision in this article . . . is

> held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of the article that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this article are severable.

(App.3 § 15.) The intent of the voters is clear and undisputed. Therefore, the only question remains whether different sections of Amendment A can stand by themselves.

When considering whether sections of a law can stand by themselves, this Court has looked at whether the provisions require the existence of others to function properly or to be effective. *See Viken*, 2005 S.D. 27, ¶ 21, 694 N.W.2d 23, 32 ("The non-appropriation provisions in no way require the co-existence of the appropriations provisions in order to function properly or be effective. Thus, the first prong of the separability test is easily met."). Each of the alleged constitutional infirmities identified by the circuit court could be severed.

Here, the circuit court found that the subject of Amendment A was the legalization of marijuana, including its possession, use, growth, consumption, and regulation. (App.11.) It then found that various portions of Amendment A—specifically, the definition of hemp, professional licensing, and taxation—were so unrelated that their inclusion plainly and palpably violated the Constitution. (App.11-12.) That holding compels the

conclusion that Amendment A can function properly without those purportedly separate subjects. Thus, each provision the circuit court identified could be separated and severed without impairing the effective functioning of the provisions of Amendment A that legalize marijuana.

The circuit court concluded that Amendment A implemented a fundamental and sweeping change to South Dakota's government based on a single use of the word "exclusive" in Section 6 of Amendment A, the civil penalties established in Section 5, and the acknowledgement of the mandamus remedy in Section 12. (App.14-15.) As above, those provisions (or words) could also be separated and severed without impacting the functioning of the provisions legalizing marijuana.

The circuit court was "required" to separate the extra material in Amendment A. *See Barnett*, 1998 S.D. 84 at ¶ 32, 582 N.W.2d at 394. The circuit court erred when it failed to carry out this step. If this Court concludes that Amendment A violated the Constitution, the proper remedy is for this Court to separate the unconstitutional words or provisions from the remainder of Amendment A, thereby preserving to the maximum extent possible the will of the voters.

CONCLUSION

In order to rule in favor of Thom and Miller, this Court must find (1) that they had standing to sue the State in their official capacities; (2) that pre-election procedural challenges are barred as a matter of law; and (3) that Amendment A plainly and palpably violated the Constitution. Each step of that process is contrary to the law and would create damaging precedent going forward.

South Dakotans have the fundamental power to amend their Constitution. When they adopt an amendment, it may not be overturned unless no other result is possible. Here, it is plainly possible to uphold the will of the voters. This Court should reverse the ruling of the circuit court and remand for entry of judgment in favor of the Proponents.

Appellants respectfully request oral argument.

Respectfully,

DATED: March 10, 2021

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Certificate of Compliance

The undersigned hereby certifies that the foregoing brief complies with the page limitation set by this Court's February 26, 2021 order. This brief was prepared and printed in a proportionally spaced typeface using Microsoft Word 2016 in Book Antiqua font, size 13. This brief contains 14,681 words, including headings, footnotes, and quotations, but excluding the table of contents, table of cases, jurisdictional statement, statement of legal issues, and certificates of counsel.

Dated this 10th day of March, 2021

/s/ Timothy W. Billion
Timothy W. Billion

Certificate of Service

The undersigned hereby certifies that on March 10, 2021, the foregoing brief was filed electronically with the South Dakota Supreme Court and that the original and two copies of the same were filed by mailing the same to:

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APPENDIX

INITIATED CONSTITUTIONAL AMENDMENT PETITION

WE, THE UNDERSIGNED qualified voters of the state of South Dakota, petition that the following section or sections and article or articles of the South Dakota Constitution be amended and that this proposal be submitted to the voters of the state of South Dakota at the general election on November 3, 2020 for their approval or rejection.

Title: **An amendment to the South Dakota Constitution to legalize, regulate, and tax marijuana; and to require the Legislature to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use.**

Attorney General Explanation:

This constitutional amendment legalizes the possession, use, transport, and distribution of marijuana and marijuana paraphernalia by people age 21 and older. Individuals may possess or distribute one ounce or less of marijuana. Marijuana plants and marijuana produced from those plants may also be possessed under certain conditions.

The amendment authorizes the State Department of Revenue ("Department") to issue marijuana-related licenses for commercial cultivators and manufacturers, testing facilities, wholesalers, and retailers. Local governments may regulate or ban the establishment of licensees within their jurisdictions.

The Department must enact rules to implement and enforce this amendment. The amendment requires the Legislature to pass laws regarding medical use of marijuana. The amendment does not legalize hemp; it requires the Legislature to pass laws regulating the cultivation, processing, and sale of hemp.

The amendment imposes a 15% tax on marijuana sales. The tax revenue will be used for the Department's costs incurred in implementing this amendment, with remaining revenue equally divided between the support of public schools and the State general fund.

Judicial clarification of the amendment may be necessary. The amendment legalizes some substances that are considered felony controlled substances under current State law. Marijuana remains illegal under Federal law.

That the Constitution of the State of South Dakota be amended to add a new Article to read as follows:

§ 1. Terms used in this article mean:

(1) "Department," the Department of Revenue or its successor agency;

(2) "Hemp," the plant of the genus cannabis, and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis;

(3) "Local government," means a county, municipality, town, or township;

(4) "Marijuana," the plant of the genus cannabis, and any part of that plant, including, the seeds, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including hash and marijuana concentrate. The term includes an altered state of marijuana absorbed into the human body. The term does not include hemp, or fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products;

(5) "Marijuana accessory," any equipment, product, material, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marijuana into the human body.

§2. Notwithstanding the provisions of this article, this article does not limit or affect laws that prohibit or otherwise regulate:

(1) Delivery or distribution of marijuana or marijuana accessories, with or without consideration, to a person younger than twenty-one years of age;

(2) Purchase, possession, use, or transport of marijuana or marijuana accessories by a person younger than twenty-one years of age;

(3) Consumption of marijuana by a person younger than twenty-one years of age;

(4) Operating or being in physical control of any motor vehicle, train, aircraft, motorboat, or other motorized form of transport while under the influence of marijuana;

(5) Consumption of marijuana while operating or being in physical control of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport, while it is being operated;

(6) Smoking marijuana within a motor vehicle, aircraft, motorboat, or other motorized form of transport, while it is being operated;

(7) Possession or consumption of marijuana or possession of marijuana accessories on the grounds of a public or private preschool, elementary school, or high school, in a school bus, or on the grounds of any correctional facility;

(8) Smoking marijuana in a location where smoking tobacco is prohibited;

(9) Consumption of marijuana in a public place, other than in an area licensed by the department for consumption;

(10) Consumption of marijuana as part of a criminal penalty or a diversion program;

(11) Conduct that endangers others;

(12) Undertaking any task under the influence of marijuana, if doing so would constitute negligence or professional malpractice; or

(13) Performing solvent-based extractions on marijuana using solvents other than water, glycerin, propylene glycol, vegetable oil, or food grade ethanol, unless licensed for this activity by the department.

§3. Notwithstanding the provisions of this article, this article does not:

(1) Require that an employer permit or accommodate conduct allowed by this article;

(2) Affect an employer's ability to restrict the use of marijuana by employees;

(3) Limit the right of a person who occupies, owns, or controls private property from prohibiting or otherwise regulating conduct permitted by this article on or in that property; or

(4) Limit the ability of the state or a local government to prohibit or restrict any conduct otherwise permitted under this article within a building owned, leased, or occupied by the state or the local government.

§4. Subject to the limitations in this article, the following acts are not unlawful and shall not be an offense under state law or the laws of any local government within the state or be subject to a civil fine, penalty, or sanction, or be a basis for detention, search, or arrest, or to deny any right or privilege, or to seize or forfeit assets under state law or the laws of any local government, if the person is at least twenty-one years of age:

(1) Possessing, using, ingesting, inhaling, processing, transporting, delivering without consideration, or distributing without consideration one ounce or less of marijuana, except that not more than eight grams of marijuana may be in a concentrated form;

(2) Possessing, planting, cultivating, harvesting, drying, processing, or manufacturing not more than three marijuana plants and possessing the marijuana produced by the plants, provided:

(a) The plants and any marijuana produced by the plants in excess of one ounce are kept at one private residence, are in a locked space, and are not visible by normal, unaided vision from a public place;

(b) Not more than six plants are kept in or on the grounds of a private residence at one time; and

(c) The private residence is located within the jurisdiction of a local government where there is no licensed retail store where marijuana is available for purchase pursuant to this article.

(3) Assisting another person who is at least twenty-one years of age, or allowing property to be used, in any of the acts permitted by this section; and

(4) Possessing, using, delivering, distributing, manufacturing, transferring, or selling to persons twenty-one years of age or older marijuana accessories.

§5.

(1) A person who, pursuant to §4 of this article, cultivates marijuana plants that are visible by normal, unaided vision from a public place is subject to a civil penalty not exceeding two-hundred and fifty dollars.

(2) A person who, pursuant to §4 of this article, cultivates marijuana plants that are not kept in a locked space is subject to a civil penalty not exceeding two-hundred and fifty dollars.

(3) A person who, pursuant to §4 of this article, cultivates marijuana plants within the jurisdiction of a local government where marijuana is available for purchase at a licensed retail store is subject to a civil penalty not exceeding two-hundred and fifty dollars, unless the cultivation of marijuana plants is allowed through local ordinance or regulation pursuant to §10.

(4) A person who smokes marijuana in a public place, other than in an area licensed for such activity by the department, is subject to a civil penalty not exceeding one-hundred dollars.

(5) A person who is under twenty-one years of age and possesses, uses, ingests, inhales, transports, delivers without consideration or distributes without consideration one ounce or less of marijuana or possesses, delivers without consideration, or distributes without consideration marijuana accessories is subject to a civil penalty not to exceed one-hundred dollars. The person shall be provided the option of attending up to four hours of drug education or counseling in lieu of the fine.

§ 6. The department shall have the exclusive power, except as otherwise provided in § 10, to license and regulate the cultivation, manufacture, testing, transport, delivery, and sale of marijuana in the state and to administer and enforce this article. The department shall accept applications for and issue, in addition to any other types of licenses the department deems necessary:

(1) Licenses permitting commercial cultivators and manufacturers of marijuana to cultivate, process, manufacture, transport, and sell marijuana to marijuana wholesalers;

(2) Licenses permitting independent marijuana testing facilities to analyze and certify the safety and potency of marijuana;

(3) Licenses permitting marijuana wholesalers to package, process, and prepare marijuana for transport and sale to retail sales outlets; and

(4) Licenses permitting retail sales outlets to sell and deliver marijuana to consumers.

§ 7. Not later than April 1, 2022, the department shall promulgate rules and issue regulations necessary for the implementation and enforcement of this article. The rules shall be reasonable and shall include:

(1) Procedures for the issuance, renewal, suspension, and revocation of licenses;

(2) Application, licensing, and renewal fees, not to exceed the amount necessary to cover the costs to the department of implementing and enforcing this article;

(3) Time periods, not to exceed ninety days, by which the department must issue or deny an application;

(4) Qualifications for licensees;

(5) Security requirements, including lighting and alarm requirements, to prevent diversion;

(6) Testing, packaging, and labeling requirements, including maximum tetrahydrocannabinol levels, to ensure consumer safety

and accurate information;

(7) Restrictions on the manufacture and sale of edible products to ensure consumer and child safety;

(8) Health and safety requirements to ensure safe preparation and to prohibit unsafe pesticides;

(9) Inspection, tracking, and record-keeping requirements to ensure regulatory compliance and to prevent diversion;

(10) Restrictions on advertising and marketing;

(11) Requirements to ensure that all applicable statutory environmental, agricultural, and food and product safety requirements are followed;

(12) Requirements to prevent the sale and diversion of marijuana to persons under twenty-one years of age; and

(13) Civil penalties for the failure to comply with rules adopted pursuant to this article.

§ 8. In determining the appropriate number of licenses to issue, as required under this article, the department shall:

(1) Issue enough licenses to substantially reduce the illicit production and sale of marijuana throughout the state; and

(2) Limit the number of licenses issued, if necessary, to prevent an undue concentration of licenses in any one municipality.

§ 9. Actions and conduct by a licensee, a licensee's employee, and a licensee's agent, as permitted pursuant to a license issued by the department, or by those who allow property to be used by a licensee, a licensee's employee, or a licensee's agent, as permitted pursuant to a license issued by the department, are not unlawful and shall not be an offense under state law, or the laws of any local government within the state, or be subject to a civil fine, penalty, or sanction, or be a basis for detention, search, or arrest, or to deny any right or privilege, or to seize or forfeit assets under state law, or the laws of any local government within the state. No contract is unenforceable on the basis that marijuana is prohibited by federal law. A holder of a professional or occupational license is not subject to professional discipline for providing advice or services related to marijuana licensees or applications on the basis that marijuana is prohibited by federal law.

§10. A local government may enact ordinances or regulations governing the time, place, manner, and number of licensees operating within its jurisdiction. A local government may ban the establishment of licensees or any category of licensee within its jurisdiction. A local government may allow for cultivation at private residences within its jurisdiction that would otherwise not be allowed under §4(2)(c) so long as the cultivation complies with §4(2)(a) and §4(2)(b) and the other requirements of this article. A local government may not prohibit the transportation of marijuana through its jurisdiction on public roads by any person licensed to do so by the department or as otherwise allowed by this article.

§11. An excise tax of fifteen percent is imposed upon the gross receipts of all sales of marijuana sold by a person licensed by the department pursuant to this article to a consumer. The Legislature may adjust this rate after November 3, 2024. The department shall by rule establish a procedure for the collection of this tax and shall collect the tax. The revenue collected under this section shall be appropriated to the department to cover costs incurred by the department in carrying out its duties under this article. Fifty percent of the remaining revenue shall be appropriated by the Legislature for the support of South Dakota public schools and the remainder shall be deposited into the state general fund.

§ 12. Any rule adopted by the department pursuant to this article must comply with chapter 1-26 of the South Dakota Codified Laws. Any person aggrieved by a decision of the department is entitled to appeal the decision in accordance with chapter 1-26 of the South Dakota Codified Laws. If by April 1, 2022, the department fails to promulgate rules required by this article, or if the department adopts rules that are inconsistent with this article, any resident of the state may commence a mandamus action in circuit court to compel performance by the department in accordance with this article.

§13. The department shall publish an annual report that includes the number and type of licenses issued, demographic information on licensees, a description of any enforcement or disciplinary action taken against licensees, a statement of revenues and expenses of the department related to the implementation, administration, and enforcement of this article, and a statement of taxes collected in accordance with this article, and an accounting for how those revenues were disbursed.

§14. Not later than April 1, 2022, the Legislature shall pass laws to:

(1) Ensure access to marijuana beyond what is set forth in this article by persons who have been diagnosed by a health care provider, acting within the provider's scope of practice, as having a serious and debilitating medical condition and who are likely to receive therapeutic or palliative benefit from marijuana; and

(2) Regulate the cultivation, processing, and sale of hemp.

§15. This article shall be broadly construed to accomplish its purposes and intents. Nothing in this article purports to supersede any applicable federal law, except where allowed by federal law. If any provision in this article or the application thereof to any person or circumstance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of the article that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this article are severable.

INSTRUCTIONS TO SIGNERS:

1. Signers of this petition must individually sign their names in the form in which they are registered to vote or as they usually sign their names.

2. Before the petition is filed, each signer or the circulator must add the residence address of the signer and the date of signing. If the signer is a resident of a second or third class municipality, a post office box may be used for the residence address.

3. Before the petition is filed, each signer or the circulator must print the name of the signer in the space provided and add the county of voter registration.

4. Abbreviations of common usage may be used. Ditto marks may not be used.

5. Failure to provide all information requested may invalidate the signature.

NAME	RESIDENCE	DATE/COUNTY
SIGN 1 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 2 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 3 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 4 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 5 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 6 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 7 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 8 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 9 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 10 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION

RECEIVED
SEP 11 2019
S.D. SEC. OF STATE

Filed this 17th day of September 2019
Steve Barnett
SECRETARY OF STATE

VERIFICATION BY PERSON CIRCULATING PETITION

INSTRUCTIONS TO CIRCULATOR: This section **must** be completed following circulation and before filing.

Print name of the circulator _____ Residence Address _____ City _____ State _____

I, under oath, state that I circulated the above petition, that each signer personally signed this petition in my presence, that I am not attesting to any signature obtained by any other person, that I am a resident of South Dakota, that I made reasonable inquiry and to the best of my knowledge each person signing the petition is a qualified voter in the county indicated on the signature line, that no state statute regarding petition circulation was knowingly violated, and that either the signer or I added the printed name, the residence address of the signer, the date of signing, and the county of voter registration.

_____
Signature of Circulator

Sworn to before me this _____ day of _____, _____.
(Seal)

_____
Signature of Officer Administering Oath

My Commission Expires _____

_____
Title of Officer Administering Oath

Form Revised 2018 - 5:02:08:07

CIRCUIT COURT OF SOUTH DAKOTA
SIXTH JUDICIAL CIRCUIT

HUGHES COUNTY COURTHOUSE
P.O. BOX 1238
PIERRE, SOUTH DAKOTA 57501-1238

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February 8, 2021

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RE: 32CIV20-187: Kevin Thom, Pennington County Sheriff, Rick Miller, Superintendent of the South Dakota Highway Patrol vs. Steve Barnett, Secretary of State

FACTUAL BACKGROUND

The facts surrounding this matter are uncontested.

Amendment A was a proposed constitutional amendment that was voted on in the General Election, held November 3, 2020. The ballot text described Amendment A as: "An amendment to the South Dakota Constitution to legalize, regulate, and tax marijuana; and to require the Legislature to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use." The amendment contains fifteen primary sections and numerous subsections. The plain language of Amendment A includes: legalizing marijuana, taxing of marijuana, regulating marijuana, enacting civil penalties for marijuana, and allocating power to the Department of Revenue to "administer and enforce" the licensing and regulation of marijuana, among other things. In addition, § 14 compels the Legislature to pass laws regarding multiple

aspects of hemp. Marijuana and hemp are specifically defined as two different terms in § 1 of Amendment A.

Amendment A was timely submitted to the South Dakota Secretary of State for validation on November 4, 2019. The South Dakota Secretary of State announced on January 6, 2020 that Amendment A had received a sufficient number of signatures and would be placed on the ballot for the 2020 General Election. Amendment A passed with 225,260 votes while 190,477 voters opposed it. The 2020 General Election returns were officially canvassed on November 10, 2020.

Kevin Thom, Pennington County Sheriff (Sheriff Thom), and Colonel Rick Miller, South Dakota Highway Patrol Superintendent (Colonel Miller) (together, referred to as Plaintiffs), filed this declaratory judgment action in their official capacities on November 20, 2020. South Dakotans for Better Marijuana Laws, Melissa Mentele, Charles Parkinson, Randolph Seiler, and William Stocker (Intervenors) officially intervened in this action on December 8, 2020. Plaintiffs filed a Joint Motion for Summary Judgment on December 23, 2020. Defendant and Intervenors each filed a separate Motion for Judgment on the Pleadings on December 23, 2020. A Motions Hearing on the above matters was held on January 27, 2021.

ISSUES

1. **Whether Plaintiffs have standing to commence this action.**
2. **Whether Plaintiffs timely commenced this action.**
3. **Whether Amendment A violates the South Dakota Constitution.**

STANDARD OF REVIEW

A motion for judgment on the pleadings provides an "expeditious remedy to test the legal sufficiency, substance, and form of pleadings." *Burlington N. R. Co. v. Strackbein*, 398 N.W.2d 144, 145 (S.D. 1986) (further citations omitted). "It is a proper remedy only when no issue of fact is raised" and deals with "only questions of law arising from the pleadings." *Id.*

A motion for summary judgment is appropriate if "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." SDCL 15-6-56(c). The standard for a motion for summary judgment is clear:

> Summary judgment is proper where, the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. We will affirm only when no genuine issues of material fact exist and the law was applied correctly. We make all reasonable inferences drawn from the facts in the light most favorable to the non-moving party.

Stromberger Farms, Inc. v. Johnson, 2020 S.D. 22, ¶ 31, 942 N.W.2d 249, 258. When additional evidence outside of the pleadings is considered without objection, a motion for judgment on the pleadings is considered as a motion for summary judgment. *Tiede v. CorTrust Bank, N.A.*, 2008 S.D. 31, ¶¶ 5-6, 748 N.W.2d 748, 750. The Court has considered evidence outside of the

pleadings in this matter. At the hearing, the parties agreed they received notice the Motions for Judgment on the Pleadings would be considered as Motions for Summary Judgment.

"Constitutional interpretation is a question of law." *Steinkruger v. Miller*, 2000 S.D. 83, ¶ 8, 612 N.W.2d 591, 595. "When considering a constitutional amendment after its Adoption by the people, the question is not whether it is possible to Condemn the amendment, but whether it is possible to Upheld [sic] it." *Barnhart v. Herseth*, 88 S.D. 503, 512, 222 N.W.2d 131, 136 (1974). An amendment has a strong presumption of constitutionality after it is passed by the people. *Id.* A constitutional amendment passed by the people should be sustained unless it "plainly and palpably appear(s) to be invalid." *Id.* "Legislative action is accorded a presumption in favor of validity and propriety and should not be held unconstitutional . . . unless its infringement of constitutional restrictions is so plain and palpable as to admit of no reasonable doubt." *Meierhenry v. City of Huron*, 354 N.W.2d 171, 176 (S.D. 1984).

ANALYSIS

a. Standing

Intervenors argue neither Plaintiff has standing to commence this action because they brought this action in their official capacities. Plaintiffs contend they are able to sue in their official capacities. Sheriff Thom cites the fact that in his oath of office, he swore to uphold the South Dakota Constitution. Colonel Miller argues he has standing because of Governor Noem's issuance of Executive Order 2021-02[1] as well as having sworn to uphold the South Dakota Constitution.

"The real party in interest rule is satisfied 'if the one who brings the suit has a real, actual, material, or substantial interest in the subject matter of the action.'" *Ellingson v. Ammann*, 2013 S.D. 32, ¶ 6, 830 N.W.2d 99, 101 (quoting *Biegler v. Am. Family Mut. Ins. Co.*, 2001 S.D. 13, ¶ 27, 621 N.W.2d 592, 600). When Sheriff Thom took his oath of office, he swore to uphold the South Dakota Constitution.[2] A sheriff's duties include enforcing the laws of the State of South Dakota. SDCL 7-12-4. This naturally includes making DUI stops as well as enforcement of other laws on the roads and highways. Commencing an action on Amendment A, on the grounds it is unconstitutional, falls within Sheriff Thom's duty to uphold the South Dakota Constitution. In addition, Amendment A affects Sheriff Thom's ability to carry out his duties in enforcing the laws and keeping intoxicated drivers off of roads. Based on this, Sheriff Thom has standing because he has a "real, actual, material or substantial interest" in the subject matter of the current action. *Ammann*, 2013 S.D. 32, ¶ 6, 830 N.W.2d at 101.

Colonel Miller has a "substantial" and "real" interest in this suit. *Id.* Amendment A § 6, vests the "exclusive power" in the Department of Revenue to "administer and enforce" rules

[1] S.D. Exec. Order No. 2021-02 (Jan. 8, 2021), https://sdsos.gov/general-information/executive-actions/executive-orders/assets/2021-02%20-%20.pdf.

[2] All law enforcement officers must take an oath of office as required by SDCL 9-14-7 or 3-1-5. ARSD 02:01:02:01(8). SDCL 3-1-5 provides, in relevant part, "Every person elected or appointed to any civil office shall, before entering upon the duties thereof, qualify by taking an oath or affirmation to support the Constitution of the United States and of this state, and faithfully discharge the duties of his office, naming it; ...".

regarding marijuana. This is contrary to authority given to the Division of Highway Patrol by the Legislature under SDCL 32-2-1, 32-2-1.1 and 32-2-7. SDCL 32-2-7 vests the Department of Public Safety with the authority to assist in the enforcement of all laws, police regulations, and rules governing motor vehicles and motor carriers over and upon the highways of this state."[3] Amendment A gives the Department of Revenue the "exclusive" authority to enforce regulations that govern the transport of marijuana in § 6. This directly interferes with the Division of Highway Patrol's ability to carry out its duty under South Dakota law.

In addition, Colonel Miller took an oath as a law enforcement officer to support the South Dakota Constitution. This duty to support the South Dakota Constitution includes commencing an action against Amendment A on the grounds it is unconstitutional. The consequences Amendment A would have for the Division of Highway Patrol to carry out its duties under the law, as well as Colonel Miller's duty to support South Dakota's Constitution, give him a "real, actual" interest in this suit. *Ammann*, 2013 S.D. 32, ¶ 6, 830 N.W.2d at 101.

Under the Uniform Declaratory Judgment Act, South Dakota courts are permitted to declare legal rights or relation before an actual injury happens. *Boever v. S. Dakota Bd. of Accountancy*, 526 N.W.2d 747, 749 (S.D. 1995). However, four jurisdictional requirements must be met:

> (1) There must exist a justiciable controversy; that is to say, a controversy in which a claim of right is asserted against one who has an interest in contesting it; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy, that is to say, a legally protectible interest; and (4) the issue involved in the controversy must be ripe for judicial determination.

Id. at 749-750 (citing *Danforth v. City of Yankton*, 25 N.W.2d 50, 53 (S.D. 1946) (further citations omitted)). These four elements are satisfied in the case at hand. Plaintiffs have a claim of right in assuring the Constitution is not violated by Amendment A and have asserted that claim against a proper party: the Secretary of State. The interests of the parties are adverse. Plaintiffs also have a legally protectible interest in the case: their interests in upholding the South Dakota Constitution. Finally, the controversy is ripe. Amendment A has been passed by the voters and will become effective on July 1, 2021. Since standing exists for both Sheriff Thom and Colonel Miller, the parties' remaining arguments on standing are moot and will not be addressed by this court.

b. Timeliness

Intervenors argue Plaintiffs did not timely commence this action. They argue this action was required to have been brought prior to the election. Plaintiffs and Defendant both assert timeliness was not an issue for Plaintiffs, stating courts cannot enjoin the submission of a constitutional amendment to the people of South Dakota.

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[3] Under SDCL 32-2-1 and SDCL 32-2-1.1, the Division of Highway Patrol is within the Department of Public Safety.

Intervenors first argue SDCL 2-1-17.1 and 2-1-18 require challenges to Amendment A to have been brought by February 5, 2020. SDCL 2-1-17.1 details the procedure to challenging deficiencies of the petition that was submitted to the Secretary of State. Plaintiffs are not challenging the sufficiency of the petition itself, but rather are challenging provisions of the petition as unconstitutional.[4] SDCL 2-1-17.1 does not address constitutional challenges to the substantive provisions of the petition and is therefore, not applicable to this case.

SDCL 2-1-18 likewise is not applicable to this case. SDCL 2-1-18 addresses challenges to the signatures on a petition, the "veracity of the petition circulator's attestation, or any other information required on a petition." Plaintiffs are not challenging matters related to the signatures, the petition circulator's attestation, or other required information. They are challenging whether provisions of Amendment A are constitutional, not the sufficiency of items on the petition.

The South Dakota Supreme Court has stated challenges to the adoption of a constitutional amendment may not be heard until after it has been voted on. *State ex rel. Cranmer v. Thorson*, 9 S.D. 149, 68 N.W. 202, 202–03 (1896); *State ex rel. Evans v. Riiff*, 73 S.D. 348, 42 N.W.2d 887, 889 (1950). In *State ex. rel. Evans v. Riiff*, the Court opined:

> We think the delay incident to the requirement that litigation await the completion of the legislative process is a small price to pay to maintain inviolate the vital principle of separation of powers peculiar to our polity. And we think this principle of noninterference is as valid when applied to lawmaking at the highest level, viz., in the constitutional field, and in lawmaking under the powers reserved to the people by the initiative provisions of the constitution, as it is when applied to the functions of the legislature.

Riiff, 73 S.D. 348, 352, 42 N.W.2d at 889 (further citations omitted). Further, South Dakota's courts do not answer hypothetical questions, nor do they provide advisory opinions. *In re Estate of Ricard*, 2014 S.D. 54, ¶ 16, 851 N.W.2d 753, 758 (further citations omitted).

Based on the South Dakota Supreme Court's precedent, courts could not hear a pre-election challenge on the constitutionality of Amendment A. It would have violated the "principle of noninterference" in the initiative process. *Riiff*, 73 S.D. at 352, 42 N.W.2d at 889. Further, there was no guarantee that Amendment A would be approved by South Dakota voters. Any litigation on the constitutionality of Amendment A prior to the 2020 General Election would have required a court to provide what would amount to an advisory opinion or to answer hypothetical questions on the constitutionality of Amendment A. South Dakota courts are not allowed to provide these advisory opinions. *Ricard*, 2014 S.D. 54, ¶ 16, 851 N.W.2d at 758. Accordingly, Plaintiffs' current challenge was timely.

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[4] An election contest, according to South Dakota Supreme Court precedent, is the proper procedure with which to challenge procedural issues in an election, including statutory requirements of a petition. *See* the court's memorandum decision in 32CIV20-186.

c. *Constitutionality*

i. *History*

South Dakota adopted its original constitution on October 1, 1889. *State v. Wilson*, 2000 S.D. 133, ¶ 8, 618 N.W.2d 513, 516. Between 1889 and 1970, the South Dakota Constitution was amended seventy-nine times, each amendment adding more complexity to it. *Id.* These amendments created inconsistencies within the Constitution and often addressed minor problems, leaving larger issues untouched. *Id.* (further citations omitted). The Legislature created a Constitutional Revision Commission in 1969 to study the Constitution and "determine ways and means to improve and simplify the constitution." *Id.* (further citations omitted). In drafting the 1972 Constitution, the commission sought to avoid any inconsistencies between provisions. *In re Daugaard*, 2011 S.D. 44, ¶ 13, 801 N.W.2d 438, 442.

A new version of Article XXIII was adopted in November of 1972. *Barnhart*, 88 S.D. 503, 222 N.W.2d at 135 n.16. Article XXIII was most recently amended in 2018, when South Dakota voters passed Constitutional Amendment Z.[5] The effect of Amendment Z was to amend Article XXIII § 1, making it so proposed amendments to the South Dakota Constitution cannot "embrace more than one subject." S.D. Const. Art. XXIII, § 1; *see also*, 2018 General Election Canvass, 20 (explaining the purpose of Amendment Z). Single subject rules for proposed constitutional amendments are often adopted in part to prevent logrolling. *State ex rel. Wagner v. Evnen*, 948 N.W.2d 244, 253 (Neb. 2020). "Logrolling is the practice of combining dissimilar propositions into one voter initiative so that voters must vote for or against the whole package even though they only support certain of the initiative's propositions." *Id.*

ii. *Single Subject Rule*

The single subject rule as it applies to Article XXIII, § 1 of the South Dakota Constitution is an issue of first impression in South Dakota. Although other states have interpreted their own versions of the single subject rule, this Court will rely upon the guidance of the South Dakota Supreme Court in approaching this question.[6] The South Dakota Supreme Court has interpreted Article III, § 21 of the South Dakota Constitution, which contains a single subject rule pertaining to legislative enactments. It states: "No law shall embrace more than one subject, which shall be expressed in its title." S.D. Const. Art. III, § 21. Counties have a similar statutory rule for ordinances. "An ordinance shall embrace only one subject, which shall be expressed in its title." SDCL 7-18A-3. Article XXIII, § 1 of the South Dakota Constitution states, in relevant part: "A proposed amendment may amend one or more articles and related subject matter in other articles as necessary to accomplish the objectives of the amendment;

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[5] *2018 General Election Canvass*, 20. South Dakota Secretary of State (November 13, 2018) https://sdsos.gov/elections-voting/assets/2018GeneralElectionCanvassPDF.pdf.

[6] Other states that have interpreted their own single subject rule include Nebraska (*State ex rel. Wagner v. Evnen*, 163, 948 N.W.2d 244, 260 (2020) (holding that a proposed amendment to the Nebraska constitution violated the Nebraska single subject rule)), Florida (*In re Advisory Opinion to Atty. Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 797 (Fla. 2014) (holding that a proposed Constitutional amendment did not violate Florida's single subject rule)), and Oklahoma (*Oklahoma Indep. Petroleum Ass'n v. Potts*, 414 P.3d 351, 360, as amended (Mar. 21, 2018) (holding a proposed amendment violated Oklahoma's single subject rule)).

however, no proposed amendment may embrace more than one subject." S.D. Const. Art. XXIII, § 1.

One of the purposes of a single subject rule is to "'minimize[s] the risk of voter confusion and deception' by requiring that a petition has only one subject." *Baker v. Atkinson*, 2001 S.D. 49, ¶ 24, 625 N.W.2d 265, 273 (citing *Amador Val. Joint Union H. Sch. Dist. v. State Bd. Of Equalization*, 583 P.2d 1281, 1291 (Cal. 1978)). The *Baker* Court noted that the single subject rule "has its foundation in both the South Dakota Constitution and statutory law." *Baker,* 2001 S.D. 49, ¶ 24, 625 N.W.2d at 273. A single subject provision should not be construed narrowly or technically in all cases; it is to be given a liberal construction to uphold proper legislation, '*all parts of which are reasonably germane* . . . Numerous provisions, having *one general object*, if fairly indicated in the title, may be united in one act. Provisions governing projects so related and interdependent as to constitute a *single scheme* may be properly included within a single act." *Id.* at ¶ 25 (citing *Amador*, 583 P.2d at 1290) (italics in original). The subject of a law is the public or private concern for which it is enacted, and "all provisions of the Act must relate directly to the same subject, have a natural connection, and not be foreign to the subject as stated in the title." *Meierhenry*, 354 N.W.2d at 182 (citing *McMacken v. State,* 320 N.W.2d 131, 138 (S.D. 1982)) (internal quotations omitted).

"Generally speaking, principles of construction applicable to statutes are also applicable to constitutions, but not to the extent of defeating the purposes for which a constitution is drawn." *S. Dakota Auto. Club, Inc. v. Volk*, 305 N.W.2d 693, 697 (S.D. 1981) (internal quotations omitted) (further citations omitted). Given the similarities between the three "single subject" provisions (Article XXIII, § 1, Article III, § 21, and SDCL 7-18A-3) and the South Dakota Supreme Court's guidance on the application of those provisions, this Court will apply the "reasonably germane" standard as adopted in *Baker. Baker,* 2001 S.D. 49, ¶ 25, 625 N.W.2d at 273. Provisions of an act are "reasonably germane" if they are "governing projects so related and interdependent as to constitute a *single scheme* may be properly included within a single act." *Id.* (citing *Amador,* 583 P.2d at 1290).

The subject of Amendment A is: the legalization of marijuana. When applying the reasonably germane test, the question is whether the provisions of Amendment A are related and interdependent as to constitute a single scheme. The provisions of Amendment A that are related and interdependent as to constitute a single scheme with legalization of marijuana are: being able to possess and use marijuana, as defined in § 1 of Amendment A, at any point from its growth through consumption. Regulation of marijuana is also covered under this subject.

The title of Amendment A contains two distinct subjects: the legalization of marijuana and hemp. Amendment A defines marijuana and hemp as separate terms in § 1. Within Amendment A, § 14(2) provides "Not later than April 1, 2022, the Legislature shall pass laws to: . . . Regulate the cultivation, processing, and sale of hemp." Defendant and Intervenors argue Amendment A's main subject is cannabis, which would encompass both marijuana and hemp. However, neither the title of Amendment A nor the Attorney General's Explanation mention the word "cannabis." The only time "cannabis" appears in the entirety of Amendment A is in the definitions of "marijuana" and "hemp" in § 1. Although marijuana and hemp both originate from the cannabis plant, Amendment A clearly defines them as different subjects. "Cannabis" cannot

be retroactively inserted as the main subject of Amendment A. Based on Amendment A's definition, marijuana and hemp are two distinct subjects. Thus, hemp is not reasonably germane to the subject of legalization of marijuana. *Baker,* 2001 S.D. 49, ¶ 25, 625 N.W.2d at 273.

Amendment A contains several sections related to marijuana which are not "reasonably germane" to the legalization of marijuana. *Baker*, 2001 S.D. 49, ¶ 25, 625 N.W.2d 265, 273. Amendment A, § 5 sets civil penalties for violations included in § 4. These penalties range from monetary fines to an option for a person under twenty-one years of age to attend drug education or counseling. Specific penalties, such as those set forth in § 5 of Amendment A are not reasonably germane to the legalization of marijuana. *Id.*

Amendment A addresses discipline of professional or occupational licenses. Amendment A, § 9 mandates an individual "with a professional or occupational license is not subject to professional discipline for providing advice or services related to marijuana licensees or applications on the basis that marijuana is prohibited by federal law." Amdt. A, § 9. Mandating what various professions can and cannot discipline their members for is not a part of the "general object" of legalizing marijuana. *Baker,* 2001 S.D. 49, ¶ 25, 625 N.W.2d 265, 273.

Amendment A addresses taxation. Amendment A, § 11 imposes a fifteen percent excise tax on the "gross receipts of all sales of marijuana sold by a person licensed by the Department pursuant to this article to a consumer." This section also allocates the revenue from said excise tax. The Department of Revenue is to receive the revenue necessary to cover the costs of administering Amendment A. *Id.* The remaining revenue is to be allocated evenly between supporting South Dakota public schools and being allocated to the state's general fund. Imposing a tax on marijuana sales and allocating the revenue derived from that tax are not "reasonably germane" to the overall topic of legalizing marijuana. *Baker*, 2001 S.D. 49, ¶ 25, 625 N.W.2d at 273. Allocating revenue from an excise tax on marijuana sales is not part of the same "single scheme" as legalizing marijuana and does not constitute the same "scheme" as legalizing marijuana. *Id.*

While there may be more subjects contained within Amendment A, the identification of multiple subjects above is sufficient to determine the subjects contained within Amendment A are not reasonably germane to the legalization of marijuana. Allocating revenue from an excise tax of marijuana sales, forbidding differing professions from disciplining their members, and including a provision compelling the legislature to pass hemp, which is different than marijuana, are not part of the "single scheme" of legalizing marijuana. *Baker*, 2001 S.D. 49, ¶ 25, 625 N.W.2d at 273. As a result, Amendment A violates the single subject provision of Article XXIII § 1 of the South Dakota Constitution and is invalid. *See Barnhart*, 88. S.D. 503, 222 N.W.2d at 135 (discussing a proposed amendment's potential invalidity under Article XXIII § 1). Despite the strong presumption of constitutionality and presumption in favor of validity and propriety Amendment A receives, the infringement of the single subject rule in Article XXIII, § 1 is so plain and palpable as to admit no reasonable doubt Amendment A is invalid. *Barnhart*, 88 S.D. 503, 222 N.W.2d at 136; *Meierhenry*, 354 N.W.2d at 176 (further citations omitted).

Although this finding invalidates the amendment, this court will consider further argument on the issue of whether Amendment A was an amendment or revision in the interest of efficiency and the public importance.

iii. *Amendment/Revision*

Article XXIII outlines the procedures for both amendments and revisions to the South Dakota Constitution. S.D. Const. art. XXIII, §§ 1, 2. "A proposed amendment may amend one or more articles and related subject matter in other articles as necessary to accomplish the objectives of the amendment; however, no proposed amendment may embrace more than one subject." S.D. Const. art. XXIII, § 1. An amendment can be proposed either through the initiative process, or by a majority vote of the Legislature. *Id.* What constitutes a constitutional "amendment" is not specifically defined. *Id.*

A revision requires a constitutional convention, which must be approved by three fourths of both houses of the Legislature. S.D. Const. art. XXIII, § 2. The revision itself must be approved by a majority of both houses of the Legislature as well as the electorate. *Id.* The revision "shall be submitted to the electorate at a special election in a manner to be determined by the convention." *Id.* The term "revision" is not specifically defined. *Id.*

Plaintiffs argue an amendment to the South Dakota Constitution may not incorporate a new article to the constitution, pursuant to Article XXIII, § 1. "In the absence of ambiguity, the language in the constitution must be applied as it reads . . .." *Brendtro v. Nelson*, 2006 S.D. 71, ¶ 34, 720 N.W.2d 670, 681 (further citations omitted). A court is "obligated to apply its plain meaning." *Id.* (internal quotations omitted). Under the "plain meaning" of the text of Article XXIII, § 1, a proposed amendment is not barred from creating a new article of the Constitution. *Id.* As Intervenors state: "The plain language of Article XXIII does not limit amendments to only amending one or more existing articles of the Constitution." (Intervenors' Reply Br., 10).

Plaintiffs next contend that Amendment A is a revision to the Constitution, rather than an amendment. They argue Amendment A would result in substantial changes to certain functions of South Dakota's three branches of government. Defendants and Intervenors argue Amendment A does not drastically change functions of the branches of government and does not make extensive changes to the constitution.

The South Dakota Supreme Court has never directly ascertained the difference between an amendment and a revision. The two are clearly distinct terms; it is presumed that there is no surplusage inserted into constitutional provisions. *Wilson*, 2000 S.D. 133, ¶ 13, 618 N.W.2d at 518. To gain a better understanding of these terms, outside authority will be examined. An amendment to the constitution implies "such an addition or change within the lines of the original instrument as will effect an improvement, or better carry out the purpose for which it was framed." *Amador*, 583 P.2d at 1285 (internal quotations omitted).

A revision may be "an enactment which is so extensive in its provisions as to change directly the substantial entirety of the Constitution by the deletion or alteration of numerous existing provisions . . .." *Amador*, 583 P.2d at 1286. A revision may also be a simpler enactment,

as long as the enactment "may accomplish such far reaching changes in the nature of our basic governmental plan . . .." *Id.* In determining whether a constitutional enactment is a revision or an amendment, a court must examine both the quantitative and qualitative aspects of the enactment. *Amador*, 583 P.2d at 1286.

In *McFadden v. Jordan*, the Supreme Court of California dealt with the question of whether a proposed constitutional amendment was an amendment or a revision. 196 P.2d 787, 788 (Cal. 1948). The proposed amendment was nearly half as big as the California Constitution itself. *Id.* at 790. One of the sections of the proposed amendment created a "California Pension Commission." *Id.* The commission was to be delegated "far reaching and mixed powers" which were almost entirely "unchecked." *Id.* at 798. The California court considered the amendment a revision of their constitution. *Id.* at 799. In its reasoning, the court discussed the implications of what having a commission with such power would mean for the system of checks and balances that characterized California's governmental plan. *Id.* at 798.

Amendment A is not a drastic rewrite of the South Dakota Constitution. It is also not as extensive as the proposed amendment in *McFadden*. *McFadden*, 196 P.2d at 793-96. Amendment A does not make any written changes to the existing provisions of the South Dakota Constitution. However, it does institute "far reaching changes in the nature of our basic governmental plan." *Amador*, 583 P.2d at 1286. "The doctrine of separation of powers has been a fundamental bedrock to the successful operation of our state government since South Dakota became a state in 1889." *Gray v. Gienapp*, 2007 S.D. 12, ¶ 19, 727 N.W.2d 808, 812. Amendment A proposes far reaching changes that would change the nature of this governmental plan. *Amador*, 583 P.2d at 1286.

Under Article III, § 1, the "legislative power of the state shall be vested in a Legislature which shall consist of a senate and house of representatives." S.D. Const. art. III, § 1. "The Legislature cannot abdicate its essential power to enact basic policies into law or delegate such power to any other department." *State v. Outka*, 2014 S.D. 11, ¶ 25, 844 N.W.2d 598, 606 (citing *State v. Moschell*, 2004 S.D. 35, ¶ 15, 677 N.W.2d 551, 558). Once broad policy is created by the legislature, it may delegate certain powers to executive agencies, but it must adopt standards to "guide those officers or agencies in the exercise of such powers." *Outka,* 2014 S.D. 11, ¶ 25, 844 N.W.2d at 606. The Department of Revenue was established in 2011 through Executive Order, with approval from the Legislature. SDCL 10-1-1.

Amendment A, § 6 grants the Department of Revenue the "exclusive power" to license and regulate aspects of marijuana and to "administer and enforce" the rest of the article. Defendants and Intervenors argue this still leaves the Legislature with some power. "Exclusively" has been defined by the South Dakota Supreme Court as "only, solely, purely, wholly, to the exclusion of other things" and "to the exclusion of all others." *Volk*, 305 N.W.2d at 700 (internal citations omitted). Constitutions "should receive a consistent and uniform interpretation, so that they shall not ... be taken to mean one thing at one time and another thing at another time, even though the circumstances may have changed as to make a different rule seem desirable. *Id.* (further citations omitted). Being as the South Dakota Supreme Court has defined the word "exclusively" in Article XI, § 8, this Court will apply that meaning to Amendment A. *Id.* The word "exclusive," as used in § 6, gives the Department of Revenue the

exclusive power to license and regulate aspects of marijuana. This means it has the sole authority to do so. Amendment A removes the Legislature's ability to create broad policy relating to the regulation of and licensing of marijuana and their ability to delegate authority over these matters to any other agency. This is a "far reaching" change to the "nature" of South Dakota's "governmental plan." *Amador*, 583 P.2d at 1286.

Amendment A, § 5 also removes power from the Legislature; it removes the ability of the Legislature to enact civil penalties to regulate § 4. The Legislature is not able to "abdicate its essential power to enact basic policies into law or delegate such power to any other department." *Outka*, 2014 S.D. 11, ¶ 25, 844 N.W.2d at 606. § 5 removes the ability of the legislature to implement civil penalties into law to regulate § 4, because there are already penalties in the Amendment. Further, the penalties in § 5 cannot be changed by anything other than another proposed constitutional amendment. If the Legislature wanted to reduce or increase the civil penalty for an individual who smokes marijuana in a public place, they would not be allowed to do so. Even the Department of Revenue is not able to change the penalties, as they are part of Amendment A. This changes the nature of the "basic governmental plan," as the Legislature now cannot delegate authority to the Department of Revenue to enact penalties pertaining to marijuana use. *Amador*, 583 P.2d at 1286.

Amendment A alters and removes the power of the Executive Branch to reallocate authority over the licensing and regulation of marijuana. Under Article IV, § 8 of the South Dakota Constitution, the Governor has the ability to make "changes in organization of the offices, boards, commission, agencies, and instrumentalities, and in *allocation of their functions, powers and duties*, as he considers necessary for efficient administration." (Italics added). Amendment A, § 6 gives the Department of Revenue the "exclusive" authority over licensing and regulating aspects of marijuana. This removes the ability of the Governor to transfer this authority to another agency, one that may be better fit for these tasks. Amendment A's § 6 is in direct conflict with the duties given to the Governor by the South Dakota Constitution under Article IV, § 8, and is a far-reaching change in the "nature of our basic governmental system." *Amador*, 583 P.2d at 1286.

Amendment A, § 12 establishes a new cause of action against the Department of Revenue. If the Department of Revenue fails to promulgate rules consistent with or required by Amendment A by April 1, 2022, any South Dakota resident would be able to commence a mandamus action to compel the department to do so. "The Legislature shall direct by law in what manner and in what courts suits may be brought against the state." S.D. Const. art. III, § 27. "The [S]tate may ... waive sovereign immunity by legislative enactment identifying the conditions under which lawsuits of a specified type would be permitted." *Hallberg v. S. Dakota Bd. of Regents*, 2019 S.D. 67, ¶ 12, 937 N.W.2d 568, 573 (further citations omitted). Amendment A unconstitutionally waives the State's sovereign immunity. This is in direct conflict with Article III, § 27, which specifically gives the Legislature the power to direct in what manner and court the State may be sued.

Although it does not make any written changes to other Articles of the South Dakota Constitution, Amendment A provides far-reaching changes to the nature of South Dakota's governmental plan and is therefore a revision. Several provisions of Amendment A implement

"far reaching changes" in the basic nature of South Dakota's governmental system by taking authority given to the Legislative and Executive branches and allocating it to the Department of Revenue. *Amador*, 583 P.2d at 1286. Despite the strong presumption of constitutionality that Amendment A has been given, its infringement of restrictions placed in Article XXIII is so "plain and palpable" that there is no reasonable doubt. *Barnhart*, 88 S.D. 503, 222 N.W.2d at 136; *Meierhenry*, 354 N.W.2d at 176 (further citations omitted).

iv. *Severance*

The Intervenors argued that if Amendment A was found to be unconstitutional, the proper remedy was to sever the unconstitutional sections. Despite this argument, the Intervenors failed to cite valid legal authority supporting the theory that this court has the authority to sever an amendment, effectively choosing which sections of the amendment it believes the voters intended to adopt. Due to the intermingling of multiple subjects within Amendment A, it is not possible for this court to ascertain which sections of the amendment the South Dakota voters supported. For example, the title itself contains two separate subjects – marijuana and hemp. Article XXIII, § 1 of the South Dakota Constitution prohibits a proposed amendment from embracing more than on subject. When more than one subject is included in an amendment, this court does not have authority to assume which subject the voters intended to adopt. As a result, this court cannot sever Amendment A in a manner that assures compliance with the intentions of the South Dakota voters.

CONCLUSION

Based on the analysis set forth above, Amendment A is unconstitutional as it includes multiple subjects in violation of Article XXIII, § 1and it is therefore void and has no effect. Furthermore, Amendment A is a revision as it has far-reaching effects on the basic nature of South Dakota's governmental system. As a result, Amendment A was required to be submitted to the voters through the constitutional convention process set forth in Article XXIII, § 2. The failure to submit Amendment A through the proper constitutional process, voids the amendment and it has no effect. Accordingly, Plaintiffs' Motion for Summary Judgment in this matter is granted.

BY THE COURT
Christina Klinger

Christina Klinger
Circuit Court Judge

STATE OF SOUTH DAKOTA) : SS COUNTY OF HUGHES)	IN CIRCUIT COURT SIXTH JUDICIAL CIRCUIT
SHERIFF KEVIN THOM, IN HIS OFFICIAL CAPACITY AS PENNINGTON COUNTY SHERIFF, and COLONEL RICK MILLER, IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF THE SOUTH DAKOTA HIGHWAY PATROL, Plaintiffs, v. STEVE BARNETT, IN HIS OFFICIAL CAPACITY AS SOUTH DAKOTA SECRETARY OF STATE, and SOUTH DAKOTANS FOR BETTER MARIJUANA LAWS, RANDOLPH SEILER, WILLIAM STOCKER, CHARLES PARKINSON, and MELISSA MENTELE, Defendants.	32CIV20-000187 **NOTICE OF ENTRY OF JUDGMENT**

Notice is hereby given that a Judgment, a true and correct copy of which is attached hereto and by this reference made a part hereof as fully as if set forth at length and in detail herein, was entered and filed by the Court on the 10th day of February, 2021, in the office of the Clerk of Courts of Hughes County.

Dated this 11th day of February, 2021.

Filed: 2/11/2021 2:36 PM CST Hughes County, South Dakota 32CIV20-000187

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CERTIFICATE OF SERVICE

The undersigned hereby certifies on this 11th day of February, 2021, I caused the foregoing document to be filed electronically with the Clerk of Court through Odyssey File & Serve, and that a copy of the same will be served electronically upon the following:

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STATE OF SOUTH DAKOTA) : SS COUNTY OF HUGHES)	IN CIRCUIT COURT SIXTH JUDICIAL CIRCUIT
SHERIFF KEVIN THOM, IN HIS OFFICIAL CAPACITY AS PENNINGTON COUNTY SHERIFF, and COLONEL RICK MILLER, IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF THE SOUTH DAKOTA HIGHWAY PATROL, Plaintiffs, v. STEVE BARNETT, IN HIS OFFICIAL CAPACITY AS SOUTH DAKOTA SECRETARY OF STATE, and SOUTH DAKOTANS FOR BETTER MARIJUANA LAWS, RANDOLPH SEILER, WILLIAM STOCKER, CHARLES PARKINSON, and MELISSA MENTELE, Defendants.	32CIV20-000187 **JUDGMENT**

This Court, having previously entered its Order granting Plaintiffs' Motion for Summary Judgment, and denying the separate motions for judgment on the pleadings filed by the Defendants,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Constitutional Amendment A was submitted to the South Dakota electorate in violation of Article XXIII of the South Dakota Constitution.

Filed: 2/11/2021 2:36 PM CST Hughes County, South Dakota 32CIV20-000187

2. Constitutional Amendment A is not part of the South Dakota Constitution and is void and of no effect.

3. The Court's Memorandum Decision and Order dated February 8, 2021 is incorporated herein.

Dated this ____ day of February, 2021.

BY THE COURT:

Signed: 2/10/2021 3:15:15 PM

Christina Klinger

Honorable Christina Klinger
Circuit Court Judge

Attest:
Deuter-Cross, TaraJo
Clerk/Deputy

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF HUGHES	)	SIXTH JUDICIAL CIRCUIT

KEVIN THOM, PENNINGTON COUNTY SHERIFF and RICK MILLER, SUPERINTENDENT OF THE SOUTH DAKOTA HIGHWAY PATROL,	)	32CIV20-187
PLAINTIFFS	)	
vs.	)	
STEVE BARNETT, SECRETARY OF STATE,	)	**ORDER**
DEFENDANT.	)	

On the 27th day of January 2021, a Motions Hearing was held on Defendant's and Intervenors' separate Motions for Judgment on the Pleadings and Plaintiffs' Motion for Summary Judgment. Bob Morris appeared on behalf of Kevin Thom, Pennington County Sherriff. Lisa Prostrollo and Matthew McCaulley appeared on behalf of Rick Miller, South Dakota Highway Patrol Superintendent. Grant Flynn and Matthew Templar appeared on behalf of Defendant Jason Ravnsborg, Attorney General. Brendan Johnson and Timothy Billion appeared on behalf of Intervenors Melissa Mentele, Charles Parkinson, Randolph Seiler, South Dakotans for Better Marijuana Laws and William Stocker. Randolph Seiler personally attended the hearing. All parties were allowed to attend the hearing via audio Zoom. The Court, having considered the written submissions of the parties, the pleadings in this matter, the argument of counsel, and being fully advised, it is hereby

ORDERED that Amendment A is unconstitutional in violation of Article XXIII, § 1 of the South Dakota Constitution and therefore is void and has no effect; it is further

ORDERED that Amendment A is a revision and submitted through an improper constitutional process and is therefore void and has no effect; it is further

ORDERED that Plaintiffs' Motion for Summary Judgment in this matter is GRANTED; it is further

ORDERED that the Memorandum Decision of even date with this Order is incorporated herein.

Dated this 8th day of February 2021.

BY THE COURT:

Christina Klinger

Hon. Christina L. Klinger
Circuit Court Judge

Attest:
Deuter-Cross, TaraJo
Clerk/Deputy

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO
FILED
FEB 08 2021
Kelli Sitzman Clerk
By TDC Deputy

STATE OF SOUTH DAKOTA) : SS COUNTY OF HUGHES)	IN CIRCUIT COURT SIXTH JUDICIAL CIRCUIT
SHERIFF KEVIN THOM, IN HIS OFFICIAL CAPACITY AS PENNINGTON COUNTY SHERIFF, and COLONEL RICK MILLER, IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF THE SOUTH DAKOTA HIGHWAY PATROL, Plaintiffs, v. STEVE BARNETT, IN HIS OFFICIAL CAPACITY AS SOUTH DAKOTA SECRETARY OF STATE, Defendant.	32CIV20- **COMPLAINT FOR DECLARATORY RELIEF**

COMES NOW, Plaintiffs Kevin Thom, in his official capacity as the Pennington County Sheriff, and Colonel Rick Miller, in his official capacity as the Superintendent of the South Dakota Highway Patrol (collectively, "Plaintiffs"), by and through their counsel of record, and for their Complaint for Declaratory Relief, state and allege as follows:

INTRODUCTION AND CASE SUMMARY

The South Dakota Constitution can only be revised or amended in the manner prescribed in the Constitution itself. A purported amendment or revision that fails to adhere to the requirements set forth in the Constitution is void and of no effect. Constitutional Amendment A, as submitted to the South Dakota electorate on November 3, 2020, proposed a drastic revision to the Constitution that could not be proposed by

initiative under Article XXIII because it addressed multiple subjects and purported to add an entirely new article to the Constitution. Constitutional Amendment A was therefore void at its inception and could never be ratified by South Dakota voters.

No challenge is made to Initiated Measure 26 (marijuana for medical purposes).

PARTIES

1. Plaintiff Kevin Thom is an individual who resides in Pennington County, South Dakota, is registered to vote in the state of South Dakota, was entitled to vote on Amendment A in the South Dakota general election held on November 3, 2020, and is the duly elected Sheriff of Pennington County, South Dakota.

2. Colonel Rick Miller is an individual who resides in Hughes County, South Dakota, is registered to vote in the state of South Dakota, was entitled to vote on Amendment A in the South Dakota general election held on November 3, 2020, and is the duly appointed superintendent of the South Dakota Highway Patrol.

3. Sheriff Thom and Colonel Miller bring this action in their official capacities in connection with a separate election contest to provide for full, complete, and expedited relief.

JURISDICTION AND VENUE

4. This Court has the jurisdiction and authority to declare Amendment A unconstitutional and void pursuant to SDCL chapter 21-24.

5. Venue is proper because Defendant is a State official located in Hughes County, South Dakota.

BACKGROUND

6. On or about September 11, 2019, Brendan Johnson filed with Defendant a

form for an "Initiated Constitutional Amendment Petition" ("Petition"), seeking approval to circulate a Petition proposing a change to the South Dakota Constitution entitled, "An amendment to the South Dakota Constitution to legalize, regulate, and tax marijuana; and to require the Legislature to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use." A copy of the Petition is attached hereto as Exhibit 1.

7. On or about November 4, 2019, Brendan Johnson submitted petitions to Defendant for validation.

8. On or about January 6, 2020, Defendant announced that the Petition received 36,707 valid signatures, which allowed the Petition to be validated and submitted to South Dakota voters for approval. The Petition was titled Constitutional Amendment A ("Amendment A") and was certified by Defendant to be placed on the 2020 General Election ballot to be conducted on November 3, 2020.

9. Amendment A, as it was submitted to South Dakota voters, purports to add a new article to the South Dakota Constitution. The first page of the Amendment A Petition states, in part, as follows:

> **That the Constitution of the State of South Dakota be amended to add a new Article to read as follows:**

10. The new Article is comprised of 15 sections and 55 subsections prescribing detailed and extensive rules and regulations across a multitude of different subjects, including:

a. Decriminalizing the possession, use, ingestion, inhalation, processing, transporting, delivery of without consideration, or distribution of without consideration less than 1 ounce of marijuana or less than 8 grams of marijuana in a concentrated form;

b. Decriminalizing the possession, planting, cultivation, harvesting, drying, processing, or manufacturing of up to 3 marijuana plants, subject to certain

specific restrictions;

c. Imposing civil penalties for various violations of certain portions of Amendment A;

d. Granting the Department of Revenue the exclusive power "to license and regulate the cultivation, manufacture, testing, transport, delivery, and sale of marijuana," and requiring the Department of Revenue to promulgate specific rules and regulations to implement Amendment A;

e. Decriminalizing actions of a licensee pursuant to a license;

f. Granting political subdivisions the authority to regulate certain operations of licensees or prohibit the establishment of licensees entirely;

g. Precluding political subdivisions from prohibiting the transportation of marijuana;

h. Imposing a 15% excise tax on all commercial sales of marijuana, appropriating tax revenue to the Department of Revenue to cover its costs related to marijuana, requiring the Legislature to appropriate 50% of the remaining revenue to support public schools, and appropriating the remainder to the general fund;

i. Creating a civil cause of action for any resident to compel the Department of Revenue to promulgate rules;

j. Requiring the Department of Revenue to publish annual reports relative to licenses, enforcement, disciplinary actions, revenues, and expenses;

k. Requiring the Legislature to pass laws ensuring access to medical marijuana; and

l. Requiring the Legislature to pass laws regulating the cultivation, processing, and sale of hemp.

11. At least five separate subjects are identified in the title alone, which describes Amendment A as "An amendment to the South Dakota Constitution to": (a) "legalize marijuana"; (b) "regulate recreational marijuana"; (c) "tax marijuana"; (d) "require the Legislature to pass laws regarding hemp"; and (e) "require the Legislature to pass laws . . . ensuring access to marijuana for medical use."

12. According to the official canvass dated November 10, 2020, Amendment A was approved by a majority of voters during the 2020 general election, receiving a total

of 225,260 "Yes" votes and 190,477 "No" votes. A copy of the official canvass is attached hereto as Exhibit 2.

13. Amendment A will purportedly go into effect on July 1, 2021.

14. For historical context, prior to the 2020 general election, South Dakotans rejected separate initiated measures that addressed some of the many subjects that were packaged together in Amendment A. For example:

a. Initiated Measure 1 regarding Hemp was rejected by South Dakota voters in 2002;

b. Initiated Measure 4 regarding Medical Marijuana was rejected by South Dakota voters in 2006; and

c. Initiated Measure 13 regarding Medical Marijuana was rejected by South Dakota voters in 2010.

15. Since the right to amend the Constitution by the initiative process was granted to voters in 1972, the voters have not ratified any proposed initiated constitutional amendment that purported to create an entirely new article.[1]

Count I: Declaratory Judgment

16. Plaintiffs reallege the allegations of each of the above paragraphs as though fully set forth herein and incorporate the same by reference.

17. Article XXIII of the South Dakota Constitution provides that the Constitution may be changed by (1) amendments or (2) revisions. The South Dakota Constitution makes a substantive distinction between "amendments" and "revisions," and it sets forth an entirely separate procedure for adopting each type of constitutional change.

18. Purported revisions or amendments that fail to adhere to the procedures for ratification as set forth in the Constitution are void and of no effect.

[1] In 2018, the South Dakota voters rejected proposed Amendment W, which attempted to amend the Constitution to add a new article.

19. Amendments to the Constitution may be proposed either by initiative or by the Legislature. Article XXIII, § 1 of the Constitution describes the requirements that must be met for a constitutional change to qualify as an "amendment." It states that a "proposed amendment may amend one or more articles and related subject matter in other articles as necessary to accomplish the objectives of the amendment; however, no proposed amendment may embrace more than one subject."

20. While an amendment can be used to change existing articles of the Constitution, it cannot be used to adopt an entirely new article, effectuate broad changes to the Constitution, or make changes that address entirely new subjects not encompassed within pre-existing articles.

21. Only a proposed amendment that meets the requirements of Article XXIII, § 1 can be submitted to the South Dakota electorate for ratification.

22. Constitutional changes that do not qualify as "amendments" may be "revisions" to the Constitution. Revisions are separately addressed under Article XXIII, § 2 of the Constitution. Because revisions involve more comprehensive changes to the Constitution that often have obscure implications, Article XXIII, § 2 imposes a more stringent procedure for presenting them to the public for a vote. This procedure, which is both public and transparent, is designed to ensure that revisions are properly scrutinized and the integrity of the Constitution is preserved.

23. While an amendment may be proposed by initiative through a petition signed by the requisite number of qualified voters, a revision cannot be adopted unless it is approved by members of a constitutional convention in accordance with Article XXIII, § 2 of the Constitution.

24. Specifically, Article XXIII, § 2 states that a convention to "revise" the Constitution may be called by "a three-fourths vote of all the members of each house," or it may be "initiated and submitted to the voters in the same manner as an amendment." Once a constitutional convention has been called, its members must be elected "on a nonpolitical ballot in the same districts and in the same number as the house of representatives." Article XXIII, § 2. The elected members of the constitutional convention must then approve proposed revisions "by a majority" before the proposed revision can be "submitted to the electorate at a special election in a manner to be determined by the convention." Article XXIII, § 2.

25. Approval of constitutional revisions through a constitutional convention preserves the integrity of the Constitution and the system of government that it creates by promoting transparency, public input, and informed debate and discussion.

Amendment A was not Constitutionally Ratified

26. Plaintiffs reallege the allegations of each of the above paragraphs as though fully set forth herein and incorporate the same by reference.

27. Amendment A is a revision to the Constitution and does not qualify as an amendment under Under Article XXIII, § 1 for the following reasons:

a. It embraces more than one subject;

b. It establishes an entirely new article of the Constitution, rather than amending an existing article or articles;

c. It addresses new subjects that are not related to the subjects of any existing article;

d. It imposes broad and comprehensive changes to the Constitution that will have vast implications for our system of government; and

e. It results in a fundamental alteration to the structure of the Constitution and

the powers afforded to each respective branch of government.

28. Amendment A is a drastic revision of the Constitution with implications that extend far beyond the legalization of marijuana.

29. The 15 sections and 55 subsections that comprise Amendment A set forth a complicated web of rules and regulations covering an array of subjects that voters were forced to consider as a whole.

30. The provisions of Amendment A are so pervasive that even certain fines are constitutionally decreed, meaning that even a minor adjustment to the amount of these fines could not be made without the ratification of yet another Constitutional amendment.

31. Rather than embracing the separate powers afforded to the legislative and executive branches of our government under the Constitution, Amendment A grants the Department of Revenue the "exclusive power" to "regulate the cultivation, manufacture, testing, transport, delivery, and sale of marijuana in the state," with only limited exceptions applicable to local governments. Not only is the Department of Revenue granted the exclusive power to "promulgate rules and issue regulations," it is also granted sole authority to "administer and enforce" those rules. If Amendment A is upheld, it will result in a fundamental alteration of the governmental structure previously defined by the Constitution.

32. Because Amendment A was a revision to the Constitution submitted in violation of Article XXIII, Amendment A could not have been initiated and submitted to the voters when it bypassed the constitutionally required convention. Proponents of Amendment A failed to follow the proper constitutional procedure and deprived South

Dakota voters of the opportunity to have a substantial revision to the Constitution properly scrutinized and presented for ratification. Therefore, the election as to Amendment A is a nullity, did not result in a free and fair expression of the will of the voters, and must be stricken from the South Dakota Constitution.

Amendment A Violates the One-Subject Rule

33. Plaintiffs reallege the allegations of each of the above paragraphs as though fully set forth herein and incorporate the same by reference.

34. In 2018, South Dakota voters ratified Amendment Z, which amended Article XXIII, § 1 of the Constitution. Amendment Z provides as follows (excerpt below from the Senate Engrossed version of 2018 HJR 1006):[2]

> articles as necessary to accomplish the objectives of the amendment; however, no proposed amendment may embrace more than one subject. If more than one amendment is submitted at the same election, each amendment shall be so prepared and distinguished that it can be voted upon separately.

35. With the ratification of Amendment Z, the South Dakota Constitution now prohibits proposed amendments from embracing more than one subject, regardless of whether the amendment is proposed by the Legislature or by initiative. A proposed amendment that embraces more than one subject violates Article XXIII, § 1, and cannot be approved by the electorate.

36. This rule, known as the "one-subject rule," was approved by South Dakota voters through Amendment Z and became part of the Constitution in 2018. A major purpose of the one-subject rule is to avoid requiring voters to accept part of a proposed amendment that they oppose in order to obtain a change in the constitution that they

[2] https://mylrc.sdlegislature.gov/api/Documents/50375.pdf

support, resulting in votes that do not accurately reflect the electorate's approval of the proposed amendment.

37. The one-subject rule ensures that the voters are able to express their will in one vote as to only one subject.

38. Amendment A violates the one-subject rule because it embraces at least five separate subjects, including, but not limited to:

a. Legalization of recreational marijuana;

b. Regulation, licensing, and taxation of the commercial sale of recreational marijuana;

c. Regulation and licensing of recreational marijuana by political subdivisions;

d. Regulation of marijuana for strictly medicinal use as prescribed by a medical professional; and

e. Regulation of hemp.

39. Amendment A purports to confer personal rights upon individuals to use medical and recreational marijuana, while simultaneously conferring property rights upon private entities to grow and sell marijuana to others. These personal and private rights are fundamentally distinct.

40. Amendment A was submitted to the electorate in violation of Article XXIII, § 1 because it embraced multiple subjects that should have been presented as separate amendments that voters could evaluate separately.

41. Because Amendment A was submitted in violation of Article XXIII, § 1, Amendment A could never be initiated and submitted to the voters for approval. Therefore, the election as to Amendment A is a nullity, did not result in a free and fair expression of the will of the voters, and must be stricken from the South Dakota Constitution.

WHEREFORE, Petitioners pray that the Court enter a judgment as follows:

1. Declaring that Constitutional Amendment A was unconstitutionally submitted to the South Dakota electorate and is void and of no effect;
2. Declaring that Amendment A has not been ratified and is not part of the South Dakota Constitution; and
3. Such other and further relief as the Court deems just and equitable.

Dated this 20th day of November, 2020.

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Exhibit 1

INITIATED CONSTITUTIONAL AMENDMENT PETITION

WE, THE UNDERSIGNED qualified voters of the state of South Dakota, petition that the following section or sections and article or articles of the South Dakota Constitution be amended and that this proposal be submitted to the voters of the state of South Dakota at the general election on November 3, 2020 for their approval or rejection.

Title: **An amendment to the South Dakota Constitution to legalize, regulate, and tax marijuana; and to require the Legislature to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use.**

Attorney General Explanation:

This constitutional amendment legalizes the possession, use, transport, and distribution of marijuana and marijuana paraphernalia by people age 21 and older. Individuals may possess or distribute one ounce or less of marijuana. Marijuana plants and marijuana produced from those plants may also be possessed under certain conditions.

The amendment authorizes the State Department of Revenue ("Department") to issue marijuana-related licenses for commercial cultivators and manufacturers, testing facilities, wholesalers, and retailers. Local governments may regulate or ban the establishment of licensees within their jurisdictions.

The Department must enact rules to implement and enforce this amendment. The amendment requires the Legislature to pass laws regarding medical use of marijuana. The amendment does not legalize hemp; it requires the Legislature to pass laws regulating the cultivation, processing, and sale of hemp.

The amendment imposes a 15% tax on marijuana sales. The tax revenue will be used for the Department's costs incurred in implementing this amendment, with remaining revenue equally divided between the support of public schools and the State general fund.

Judicial clarification of the amendment may be necessary. The amendment legalizes some substances that are considered felony controlled substances under current State law. Marijuana remains illegal under Federal law.

That the Constitution of the State of South Dakota be amended to add a new Article to read as follows:

§ 1. Terms used in this article mean:

(1) "Department," the Department of Revenue or its successor agency;

(2) "Hemp," the plant of the genus cannabis, and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis;

(3) "Local government," means a county, municipality, town, or township;

(4) "Marijuana," the plant of the genus cannabis, and any part of that plant, including, the seeds, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including hash and marijuana concentrate. The term includes an altered state of marijuana absorbed into the human body. The term does not include hemp, or fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products;

(5) "Marijuana accessory," any equipment, product, material, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marijuana into the human body.

§2. Notwithstanding the provisions of this article, this article does not limit or affect laws that prohibit or otherwise regulate:

(1) Delivery or distribution of marijuana or marijuana accessories, with or without consideration, to a person younger than twenty-one years of age;

(2) Purchase, possession, use, or transport of marijuana or marijuana accessories by a person younger than twenty-one years of age;

(3) Consumption of marijuana by a person younger than twenty-one years of age;

(4) Operating or being in physical control of any motor vehicle, train, aircraft, motorboat, or other motorized form of transport while under the influence of marijuana;

(5) Consumption of marijuana while operating or being in physical control of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport, while it is being operated;

(6) Smoking marijuana within a motor vehicle, aircraft, motorboat, or other motorized form of transport, while it is being operated;

(7) Possession or consumption of marijuana or possession of marijuana accessories on the grounds of a public or private preschool, elementary school, or high school, in a school bus, or on the grounds of any correctional facility;

(8) Smoking marijuana in a location where smoking tobacco is prohibited;

(9) Consumption of marijuana in a public place, other than in an area licensed by the department for consumption;

(10) Consumption of marijuana as part of a criminal penalty or a diversion program;

(11) Conduct that endangers others;

(12) Undertaking any task under the influence of marijuana, if doing so would constitute negligence or professional malpractice; or

(13) Performing solvent-based extractions on marijuana using solvents other than water, glycerin, propylene glycol, vegetable oil, or food grade ethanol, unless licensed for this activity by the department.

§3. Notwithstanding the provisions of this article, this article does not:

(1) Require that an employer permit or accommodate conduct allowed by this article;

(2) Affect an employer's ability to restrict the use of marijuana by employees;

(3) Limit the right of a person who occupies, owns, or controls private property from prohibiting or otherwise regulating conduct permitted by this article on or in that property; or

(4) Limit the ability of the state or a local government to prohibit or restrict any conduct otherwise permitted under this article within a building owned, leased, or occupied by the state or the local government.

§4. Subject to the limitations in this article, the following acts are not unlawful and shall not be an offense under state law or the laws of any local government within the state or be subject to a civil fine, penalty, or sanction, or be a basis for detention, search, or arrest, or to deny any right or privilege, or to seize or forfeit assets under state law or the laws of any local government, if the person is at least twenty-one years of age:

(1) Possessing, using, ingesting, inhaling, processing, transporting, delivering without consideration, or distributing without consideration one ounce or less of marijuana, except that not more than eight grams of marijuana may be in a concentrated form;

(2) Possessing, planting, cultivating, harvesting, drying, processing, or manufacturing not more than three marijuana plants and possessing the marijuana produced by the plants, provided:

(a) The plants and any marijuana produced by the plants in excess of one ounce are kept at one private residence, are in a locked space, and are not visible by normal, unaided vision from a public place;

(b) Not more than six plants are kept in or on the grounds of a private residence at one time; and

(c) The private residence is located within the jurisdiction of a local government where there is no licensed retail store where marijuana is available for purchase pursuant to this article.

(3) Assisting another person who is at least twenty-one years of age, or allowing property to be used, in any of the acts permitted by this section; and

(4) Possessing, using, delivering, distributing, manufacturing, transferring, or selling to persons twenty-one years of age or older marijuana accessories.

§5.

(1) A person who, pursuant to §4 of this article, cultivates marijuana plants that are visible by normal, unaided vision from a public place is subject to a civil penalty not exceeding two-hundred and fifty dollars.

(2) A person who, pursuant to §4 of this article, cultivates marijuana plants that are not kept in a locked space is subject to a civil penalty not exceeding two-hundred and fifty dollars.

(3) A person who, pursuant to §4 of this article, cultivates marijuana plants within the jurisdiction of a local government where marijuana is available for purchase at a licensed retail store is subject to a civil penalty not exceeding two-hundred and fifty dollars, unless the cultivation of marijuana plants is allowed through local ordinance or regulation pursuant to §10.

(4) A person who smokes marijuana in a public place, other than in an area licensed for such activity by the department, is subject to a civil penalty not exceeding one-hundred dollars.

(5) A person who is under twenty-one years of age and possesses, uses, ingests, inhales, transports, delivers without consideration or distributes without consideration one ounce or less of marijuana or possesses, delivers without consideration, or distributes without consideration marijuana accessories is subject to a civil penalty not to exceed one-hundred dollars. The person shall be provided the option of attending up to four hours of drug education or counseling in lieu of the fine.

§ 6. The department shall have the exclusive power, except as otherwise provided in § 10, to license and regulate the cultivation, manufacture, testing, transport, delivery, and sale of marijuana in the state and to administer and enforce this article. The department shall accept applications for and issue, in addition to any other types of licenses the department deems necessary:

(1) Licenses permitting commercial cultivators and manufacturers of marijuana to cultivate, process, manufacture, transport, and sell marijuana to marijuana wholesalers;

(2) Licenses permitting independent marijuana testing facilities to analyze and certify the safety and potency of marijuana;

(3) Licenses permitting marijuana wholesalers to package, process, and prepare marijuana for transport and sale to retail sales outlets; and

(4) Licenses permitting retail sales outlets to sell and deliver marijuana to consumers.

§ 7. Not later than April 1, 2022, the department shall promulgate rules and issue regulations necessary for the implementation and enforcement of this article. The rules shall be reasonable and shall include:

(1) Procedures for the issuance, renewal, suspension, and revocation of licenses;

(2) Application, licensing, and renewal fees, not to exceed the amount necessary to cover the costs to the department of implementing and enforcing this article;

(3) Time periods, not to exceed ninety days, by which the department must issue or deny an application;

(4) Qualifications for licensees;

(5) Security requirements, including lighting and alarm requirements, to prevent diversion;

(6) Testing, packaging, and labeling requirements, including maximum tetrahydrocannabinol levels, to ensure consumer safety

and accurate information;

(7) Restrictions on the manufacture and sale of edible products to ensure consumer and child safety;

(8) Health and safety requirements to ensure safe preparation and to prohibit unsafe pesticides;

(9) Inspection, tracking, and record-keeping requirements to ensure regulatory compliance and to prevent diversion;

(10) Restrictions on advertising and marketing;

(11) Requirements to ensure that all applicable statutory environmental, agricultural, and food and product safety requirements are followed;

(12) Requirements to prevent the sale and diversion of marijuana to persons under twenty-one years of age; and

(13) Civil penalties for the failure to comply with rules adopted pursuant to this article.

§ 8. In determining the appropriate number of licenses to issue, as required under this article, the department shall:

(1) Issue enough licenses to substantially reduce the illicit production and sale of marijuana throughout the state; and

(2) Limit the number of licenses issued, if necessary, to prevent an undue concentration of licenses in any one municipality.

§ 9. Actions and conduct by a licensee, a licensee's employee, and a licensee's agent, as permitted pursuant to a license issued by the department, or by those who allow property to be used by a licensee, a licensee's employee, or a licensee's agent, as permitted pursuant to a license issued by the department, are not unlawful and shall not be an offense under state law, or the laws of any local government within the state, or be subject to a civil fine, penalty, or sanction, or be a basis for detention, search, or arrest, or to deny any right or privilege, or to seize or forfeit assets under state law, or the laws of any local government within the state. No contract is unenforceable on the basis that marijuana is prohibited by federal law. A holder of a professional or occupational license is not subject to professional discipline for providing advice or services related to marijuana licensees or applications on the basis that marijuana is prohibited by federal law.

§10. A local government may enact ordinances or regulations governing the time, place, manner, and number of licensees operating within its jurisdiction. A local government may ban the establishment of licensees or any category of licensee within its jurisdiction. A local government may allow for cultivation at private residences within its jurisdiction that would otherwise not be allowed under §4(2)(c) so long as the cultivation complies with §4(2)(a) and §4(2)(b) and the other requirements of this article. A local government may not prohibit the transportation of marijuana through its jurisdiction on public roads by any person licensed to do so by the department or as otherwise allowed by this article.

§11. An excise tax of fifteen percent is imposed upon the gross receipts of all sales of marijuana sold by a person licensed by the department pursuant to this article to a consumer. The Legislature may adjust this rate after November 3, 2024. The department shall by rule establish a procedure for the collection of this tax and shall collect the tax. The revenue collected under this section shall be appropriated to the department to cover costs incurred by the department in carrying out its duties under this article. Fifty percent of the remaining revenue shall be appropriated by the Legislature for the support of South Dakota public schools and the remainder shall be deposited into the state general fund.

§ 12. Any rule adopted by the department pursuant to this article must comply with chapter 1-26 of the South Dakota Codified Laws. Any person aggrieved by a decision of the department is entitled to appeal the decision in accordance with chapter 1-26 of the South Dakota Codified Laws. If by April 1, 2022, the department fails to promulgate rules required by this article, or if the department adopts rules that are inconsistent with this article, any resident of the state may commence a mandamus action in circuit court to compel performance by the department in accordance with this article.

§13. The department shall publish an annual report that includes the number and type of licenses issued, demographic information on licensees, a description of any enforcement or disciplinary action taken against licensees, a statement of revenues and expenses of the department related to the implementation, administration, and enforcement of this article, and a statement of taxes collected in accordance with this article, and an accounting for how those revenues were disbursed.

§14. Not later than April 1, 2022, the Legislature shall pass laws to:

(1) Ensure access to marijuana beyond what is set forth in this article by persons who have been diagnosed by a health care provider, acting within the provider's scope of practice, as having a serious and debilitating medical condition and who are likely to receive therapeutic or palliative benefit from marijuana; and

(2) Regulate the cultivation, processing, and sale of hemp.

§15. This article shall be broadly construed to accomplish its purposes and intents. Nothing in this article purports to supersede any applicable federal law, except where allowed by federal law. If any provision in this article or the application thereof to any person or circumstance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of the article that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this article are severable.

INSTRUCTIONS TO SIGNERS:

1. Signers of this petition must individually sign their names in the form in which they are registered to vote or as they usually sign their names.

2. Before the petition is filed, each signer or the circulator must add the residence address of the signer and the date of signing. If the signer is a resident of a second or third class municipality, a post office box may be used for the residence address.

3. Before the petition is filed, each signer or the circulator must print the name of the signer in the space provided and add the county of voter registration.

4. Abbreviations of common usage may be used. Ditto marks may not be used.

5. Failure to provide all information requested may invalidate the signature.

NAME	RESIDENCE	DATE/COUNTY
SIGN 1 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 2 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 3 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 4 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 5 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 6 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 7 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 8 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 9 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 10 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION

RECEIVED
SEP 11 2019
S.D. SEC. OF STATE

Filed this 17th day of September 2019
Steve Barnett
SECRETARY OF STATE

VERIFICATION BY PERSON CIRCULATING PETITION
INSTRUCTIONS TO CIRCULATOR: This section **must** be completed following circulation and before filing.

Print name of the circulator | Residence Address | City | State

I, under oath, state that I circulated the above petition, that each signer personally signed this petition in my presence, that I am not attesting to any signature obtained by any other person, that I am a resident of South Dakota, that I made reasonable inquiry and to the best of my knowledge each person signing the petition is a qualified voter in the county indicated on the signature line, that no state statute regarding petition circulation was knowingly violated, and that either the signer or I added the printed name, the residence address of the signer, the date of signing, and the county of voter registration.

Signature of Circulator

Sworn to before me this _____ day of _____, _____.
(Seal)

Signature of Officer Administering Oath

My Commission Expires _____

Title of Officer Administering Oath

Form Revised 2018 - 5:02:08:07

Exhibit 2

STATE OF SOUTH DAKOTA)
)
COUNTY OF HUGHES)

CERTIFICATE

We, Steve Barnett, Shirley Jameson-Fergel, Katie Hruska and Jeff Tronvold, the Board of Canvassers in the State of South Dakota for the General Election held in said state on November 3, 2020, hereby certify that the attached is a true and correct record of the votes for the candidates as shown by returns certified to the Secretary of State of South Dakota.

Steve Barnett
Secretary of State

Shirley Jameson-Fergel
for the Supreme Court

Katie Hruska
for the Governor

Jeff Tronvold
for the Attorney General

Sworn to before me this 10th day of November, 2020.

Christine Lehrkamp
Notary Public

My commission expires 1.21.21

CHRISTINE LEHRKAMP NOTARY SEAL PUBLIC STATE OF SOUTH DAKOTA

County	Presidential Electors		
	Donald J. Trump and Michael R. Pence - REP	Jo Jorgensen and Jeremy "Spike" Cohen - LIB	Joseph R. Biden and Kamala Harris - DEM
Aurora	1,052	36	317
Beadle	4,808	166	2,107
Bennett	694	23	466
Bon Homme	2,235	45	721
Brookings	8,000	457	6,110
Brown	10,580	429	6,538
Brule	1,750	67	673
Buffalo	183	14	352
Butte	3,731	132	939
Campbell	747	9	117
Charles Mix	2,552	54	1,177
Clark	1,373	40	437
Clay	2,456	159	3,083
Codington	8,958	366	3,837
Corson	647	14	622
Custer	3,852	170	1,522
Davison	5,613	193	2,648
Day	1,869	43	1,052
Deuel	1,699	42	609
Dewey	790	45	1,131
Douglas	1,468	23	216
Edmunds	1,538	30	417
Fall River	2,878	111	1,053
Faulk	964	20	198
Grant	2,618	71	1,056
Gregory	1,771	32	455
Hanlon	1,026	6	105
Hamlin	2,372	64	647
Hand	1,433	30	373
Hanson	1,793	38	557
Harding	748	16	49
Hughes	5,522	248	2,953
Hutchinson	2,944	61	762
Hyde	564	10	136
Jackson	738	18	359
Jerauld	721	15	270
Jones	498	11	90
Kingsbury	1,904	56	819
Lake	3,681	124	2,068
Lawrence	8,753	538	4,537
Lincoln	19,617	798	11,981
Lyman	1,042	30	525
Marshall	1,287	33	858
McCook	2,068	63	769
McPherson	1,075	27	222
Meade	9,875	510	3,285
Mellette	449	22	298
Miner	787	31	320
Minnehaha	49,249	2,595	40,482
Moody	1,951	76	1,179
Oglala Lakota	297	74	2,879
Pennington	35,063	1,849	20,606
Perkins	1,401	29	239
Potter	1,139	14	227
Roberts	2,404	75	1,828
Sanborn	905	23	257
Spink	2,104	61	998
Stanley	1,203	28	421
Sully	726	19	185
Todd	532	44	1,963
Tripp	2,161	40	495
Turner	3,290	119	1,139
Union	5,944	186	2,725
Walworth	1,966	49	565
Yankton	6,581	303	4,016
Ziebach	404	21	481
Total	**261,043**	**11,095**	**190,471**

	United States Senator	
County	Mike Rounds - REP	Dan Ahlers - DEM
Aurora	1,002	403
Beadle	5,104	1,906
Bennett	729	437
Bon Homme	2,156	834
Brookings	8,792	5,746
Brown	11,168	6,283
Brule	1,735	756
Buffalo	223	322
Butte	3,809	961
Campbell	745	172
Charles Mix	2,542	1,259
Clark	1,397	450
Clay	2,857	2,807
Codington	9,479	3,626
Corson	681	583
Custer	3,973	1,483
Davison	5,893	2,540
Day	1,895	1,069
Deuel	1,714	620
Dewey	884	1,062
Douglas	1,469	235
Edmunds	1,539	448
Fall River	3,009	993
Faulk	975	213
Grant	2,723	1,026
Gregory	1,766	488
Haakon	1,032	106
Hamlin	2,413	657
Hand	1,480	378
Hanson	1,796	564
Harding	727	73
Hughes	6,217	2,546
Hutchinson	2,982	772
Hyde	568	143
Jackson	756	357
Jerauld	720	277
Jones	487	99
Kingsbury	1,970	809
Lake	3,816	2,069
Lawrence	9,385	4,358
Lincoln	21,221	11,013
Lyman	1,066	533
Marshall	1,331	853
McCook	2,072	835
McPherson	1,086	235
Meade	10,355	3,176
Mellette	468	303
Miner	807	339
Minnehaha	52,773	38,799
Moody	1,877	1,343
Oglala Lakota	510	2,691
Pennington	37,694	19,184
Perkins	1,395	249
Potter	1,160	224
Roberts	2,529	1,767
Sanborn	898	281
Spink	2,178	986
Stanley	1,274	378
Sully	759	168
Todd	706	1,796
Tripp	2,188	502
Turner	3,416	1,126
Union	6,364	2,407
Walworth	2,040	525
Yankton	6,994	3,848
Ziebach	450	458
Total	276,232	143,987

	United States Representative	
County	Dusty Johnson - REP	Randy "Ulah" Luallin - IIB
Aurora	1,224	141
Beadle	5,857	936
Bennett	807	288
Bon Homme	2,519	359
Brookings	10,741	2,791
Brown	13,706	2,841
Brule	2,073	338
Buffalo	306	196
Butte	3,977	672
Campbell	790	64
Charles Mix	2,921	703
Clark	1,571	222
Clay	3,750	1,378
Codington	10,685	1,881
Corson	755	365
Custer	4,336	902
Davison	7,101	1,069
Day	2,336	485
Deuel	2,005	294
Dewey	1,065	693
Douglas	1,568	185
Edmunds	1,741	184
Fall River	3,142	735
Faulk	1,065	90
Grant	3,164	462
Gregory	2,009	179
Haakon	1,061	59
Hamlin	2,644	359
Hand	1,647	159
Hanson	1,938	275
Harding	747	48
Hughes	7,148	1,276
Hutchinson	3,301	351
Hyde	678	68
Jackson	809	253
Jerauld	847	115
Jones	528	65
Kingsbury	2,314	361
Lake	4,717	834
Lawrence	10,481	2,521
Lincoln	25,298	5,290
Lyman	1,228	312
Marshall	1,670	364
McCook	2,479	369
McPherson	1,181	114
Meade	10,983	2,178
Mellette	548	198
Miner	964	133
Minnehaha	65,473	19,600
Moody	2,425	631
Oglala Lakota	855	1,865
Pennington	41,987	11,679
Perkins	1,427	176
Potter	1,255	102
Roberts	3,100	934
Sanborn	1,016	129
Spink	2,645	400
Stanley	1,399	180
Sully	807	92
Todd	961	1,247
Tripp	2,360	267
Turner	3,885	541
Union	6,862	1,345
Walworth	2,222	267
Yankton	8,404	1,887
Ziebach	531	297
Total	**321,984**	**75,748**

	Public Utilities Commissioner		
County	Gary Hanson - REP	Devin Saxon - LIB	Reml W. B. Bald Eagle - DEM
Aurora	1,073	55	207
Beadle	5,131	301	1,372
Bennett	631	51	429
Bon Homme	2,193	137	491
Brookings	8,523	735	4,389
Brown	11,118	814	4,531
Brule	1,774	174	486
Buffalo	174	15	340
Butte	3,577	294	737
Campbell	734	26	75
Charles Mix	2,532	97	1,036
Clark	1,382	95	275
Clay	2,778	252	2,299
Codington	9,285	646	2,352
Corson	605	33	605
Custer	3,692	301	1,243
Davison	6,010	406	1,631
Day	1,999	127	666
Deuel	1,704	115	416
Dewey	694	63	1,149
Douglas	1,475	36	171
Edmunds	1,533	71	280
Fall River	2,789	254	836
Faulk	942	39	133
Grant	2,721	163	671
Gregory	1,732	60	358
Haakon	1,015	18	62
Hamlin	2,384	113	421
Hand	1,485	58	245
Hanson	1,758	76	404
Harding	690	32	50
Hughes	6,155	337	2,002
Hutchinson	3,002	107	449
Hyde	559	19	105
Jackson	708	34	334
Jerauld	752	24	186
Jones	481	26	68
Kingsbury	2,034	91	541
Lake	4,014	234	1,347
Lawrence	8,818	916	3,433
Lincoln	21,904	1,460	7,421
Lyman	1,043	52	445
Marshall	1,422	85	555
McCook	2,140	117	486
McPherson	1,074	43	133
Meade	9,489	967	2,468
Mellette	437	32	275
Miner	836	52	200
Minnehaha	55,106	4,569	27,568
Moody	2,041	116	915
Oglala Lakota	257	78	2,824
Pennington	34,684	3,697	15,847
Perkins	1,302	85	191
Potter	1,155	37	133
Roberts	2,593	144	1,410
Sanborn	874	42	197
Spink	2,229	132	634
Stanley	1,234	48	308
Sully	735	29	133
Todd	479	68	1,915
Tripp	2,125	79	377
Turner	3,474	184	707
Union	6,013	375	1,941
Walworth	1,978	81	420
Yankton	6,737	573	2,748
Ziebach	361	52	473
Total	**272,378**	**20,022**	**107,494**

	State Senator District 01	
County	Michael H. Rohl - REP	Susan Wismer - DEM
Brown	1,130	672
Day	1,663	1,218
Marshall	1,117	1,043
Roberts	2,141	2,030
Total	**6,051**	**4,913**

	State Senator District 02
County	Brock L. Greenfield - REP
Brown	2,602
Clark	1,305
Hamlin	2,286
Spink	1,961
Total	**8,154**

	State Senator District 03
County	Al Novstrup - NFP
Brown	7,496
Total	**7,496**

	State Senator District 04	
County	John Wiik - REP	Daryl Root - LIB
Brookings	3,365	774
Codington	1,405	250
Deuel	1,851	371
Grant	2,917	612
Total	**9,538**	**2,007**

	State Senator District 05	
County	Lee Schoenbeck - REP	Adam Jewell - LIB
Codington	8,272	2,193
Total	**8,272**	**2,193**

	State Senator District 06	
County	Herman Otten - REP	Nancy Klisteln - DEM
Lincoln	10,194	5,081
Total	**10,194**	**5,081**

	State Senator District 07
County	V. J. Smith - REP
Brookings	6,650
Total	**6,650**

	State Senator District 08
County	Casey Crabtree - REP
Lake	4,218
Miner	788
Moody	2,000
Sanborn	823
Total	**7,829**

	State Senator District 09	
County	Wayne H. Steinhauer - REP	Suzanne "Suzie" Jones Pranger - DEM
Minnehaha	7,694	5,552
Total	**7,694**	**5,552**

	State Senator District 10	
County	Maggie Sutton - REP	Nichole Cauwels - DEM
Minnehaha	7,205	4,261
Total	**7,205**	**4,261**

	State Senator District 11	
County	Jim Stalzer - REP	Tom Cool - DEM
Minnehaha	8,244	5,389
Total	**8,244**	**5,389**

	State Senator District 12	
County	R Blake Curd - REP	Jessica Meyers - DEM
Lincoln	3,219	2,178
Minnehaha	3,380	3,428
Total	**6,599**	**5,606**

	State Senator District 13	
County	Jack Kolbeck - REP	Elizabeth "Liz" Larson - DEM
Lincoln	3,969	2,017
Minnehaha	3,521	3,802
Total	**7,490**	**5,819**

	State Senator District 14	
County	Larry P. Zikmund - REP	Timothy Reed - DEM
Minnehaha	7,391	5,808
Total	**7,391**	**5,808**

	State Senator District 15	
County	Thor Dardon - REP	Reynold F. Nesiba - DEM
Minnehaha	3,411	4,127
Total	**3,411**	**4,127**

	State Senator District 16
County	Jim Bolin - REP
Lincoln	3,383
Union	6,582
Total	**9,965**

	State Senator District 17		
County	Arthur Rusch - REP	Gregory Baldwin - LIB	Alice Johns - DEM
Clay	3,065	218	2,250
Turner	3,220	216	872
Total	**6,285**	**434**	**3,122**

	State Senator District 18	
County	Jean Hunhoff - REP	Jordan Foos - DEM
Yankton	6,342	4,255
Total	**6,342**	**4,255**

	State Senator District 19
County	Kyle Schoenfish - REP
Bon Homme	1,395
Douglas	1,403
Hanson	1,750
Hutchinson	3,111
McCook	2,107
Total	**9,766**

	State Senator District 20	
County	Joshua Klumb - REP	Alexander Martin - LIB
Aurora	1,165	156
Davison	6,567	1,215
Jerauld	784	121
Total	**8,516**	**1,492**

	State Senator District 21	
County	Erin Tobin - REP	Dan Kerner Andersson - DFM
Bon Homme	892	208
Charles Mix	2,593	1,003
Gregory	1,874	335
Tripp	2,270	356
Total	**7,629**	**2,002**

	State Senator District 22
County	David Wheeler - REP
Beadle	5,417
Kingsbury	1,980
Total	**7,397**

	State Senator District 23	
County	Bryan J. Breitling - REP	CJ Abernathey - LIB
Campbell	756	57
Edmunds	1,679	170
Faulk	938	106
Hand	1,557	198
McPherson	1,117	117
Potter	1,166	110
Spink	266	45
Walworth	2,040	307
Total	**9,519**	**1,110**

	State Senator District 24
County	Mary Duvall - REP
Hughes	6,656
Hyde	565
Stanley	1,242
Sully	791
Total	**9,254**

	State Senator District 25		
County	Marsha Symens - REP	Seth William Van't Hof - IND	Rick W Knobe - IND
Minnehaha	7,580	1,093	4,205
Total	**7,580**	**1,093**	**4,205**

	State Senator District 26	
County	Joel Koskan - REP	Troy Heinert - DEN
Brule	1,505	898
Buffalo	158	381
Jones	457	133
Lyman	918	635
Mellette	404	357
Todd	504	2,012
Total	**3,941**	**4,416**

	State Senator District 27	
County	Judd W Schomp - REP	Red Dawn Foster - DLM
Bennett	618	511
Haakon	1,013	81
Jackson	713	361
Oglala Lakota	324	2,842
Pennington	310	34
Total	**2,978**	**3,829**

	State Senator District 28
County	Ryan M. Maher - REP
Butte	2,915
Corson	788
Dewey	1,071
Harding	743
Perkins	1,439
Ziebach	547
Total	**7,506**

	State Senator District 29	
County	Gary L. Cammack - REP	Kent Wilsey - LIB
Butte	811	171
Meade	7,919	2,177
Pennington	620	308
Total	**9,350**	**2,656**

	State Senator District 30	
County	Julie Frye-Mueller - REP	A. Gideon Oakes - LIB
Custer	3,506	1,542
Fall River	2,728	1,058
Pennington	3,809	1,446
Total	**10,043**	**4,046**

	State Senator District 31
County	Timothy R. Johns - REP
Lawrence	9,911
Total	**9,911**

	State Senator District 32	
County	Helene Duhamel - REP	Michael Calabrese - DEM
Pennington	7,397	4,143
Total	**7,397**	**4,143**

	State Senator District 33	
County	David Johnson - REP	Ryan A. Ryder - DEM
Meade	1,960	692
Pennington	9,409	4,625
Total	**11,369**	**5,317**

	State Senator District 34	
County	Michael G Diedrich - REP	George Nelson - DEM
Pennington	8,079	4,470
Total	**8,079**	**4,470**

	State Senator District 35	
County	Jessica Castleberry - REP	Brian Gentry - IND
Pennington	6,012	3,747
Total	**6,012**	**3,747**

	State Representative District 01		
County	Tamara St. John - REP	Jennifer Healy Keintz - DEM	Steven D. McCleerey - DEM
Brown	1,126	595	599
Day	1,607	1,304	1,031
Marshall	1,107	1,110	807
Roberts	2,310	1,493	1,812
Total	**6,150**	**4,502**	**4,249**

	State Representative District 02	
County	Kaleb W. Weis - REP	Lana Greenfield - REP
Brown	2,200	2,025
Clark	945	1,071
Hamlin	1,769	1,739
Spink	1,467	1,593
Total	**6,381**	**6,428**

	State Representative District 03			
County	Drew Deonert - REP	Carl E Perry - REP	Leslie McLaughlin - DEM	Justin Roemmick - DEM
Brown	7,108	6,087	3,843	3,720
Total	**7,108**	**6,087**	**3,843**	**3,720**

	State Representative District 01		
County	Fred Deutsch - REP	John Mills - REP	Becky Holquist - DEM
Brookings	2,842	2,800	1,369
Codington	1,201	865	460
Deuel	1,497	1,380	663
Grant	2,472	1,956	1,150
Total	**8,012**	**7,001**	**3,642**

	State Representative District 05	
County	Hugh M. Bartels - REP	Nancy York - REP
Codington	7,311	6,182
Total	**7,311**	**6,182**

	State Representative District 06		
County	Emile Otten - REP	Aaron Aylward - REP	Cody Ingle - DEM
Lincoln	9,504	6,504	5,084
Total	**9,504**	**6,504**	**5,084**

	State Representative District 07			
County	Timothy Reed - REP	Larry Tidemann - REP	Louise Snodgrass - DEM	Bill Adamson - DEM
Brookings	5,821	5,235	3,635	2,786
Total	**5,821**	**5,235**	**3,635**	**2,786**

	State Representative District 08			
County	Marli Wiese - REP	Randy Gross - REP	John P. Kessinger - DEM	Val Parsley - DEM
Lake	3,921	3,163	1,095	2,264
Miner	700	641	188	404
Moody	1,682	1,795	685	1,291
Sanborn	726	728	194	301
Total	**7,029**	**6,327**	**2,162**	**4,260**

	State Representative District 09			
County	Rhonda Milstead - REP	Bethany Soye - REP	Michael Saba - DEM	Toni Miller - DEM
Minnehaha	7,656	6,720	4,679	4,368
Total	**7,656**	**6,720**	**4,679**	**4,368**

	State Representative District 10		
County	Steven Haugaard - REP	Doug Barthel - REP	Michelle L. Hentschel - DEM
Minnehaha	6,527	6,188	4,736
Total	**6,527**	**6,188**	**4,736**

	State Representative District 11			
County	Mark Wilhelsen - REP	Chris Karr - REP	Sheryl Johnson - DEM	Margaret M Kulpers - DEM
Minnehaha	7,172	7,253	5,900	4,429
Total	**7,172**	**7,253**	**5,900**	**4,429**

	State Representative District 12		
County	Greg Jamison - REP	Arch Beal - REP	Erin Royer - DEM
Lincoln	3,217	2,750	2,152
Minnehaha	3,582	2,871	3,403
Total	**6,799**	**5,621**	**5,555**

	State Representative District 13			
County	Richard L Thomason - REP	Sue Peterson - REP	Norman B. Bliss - DEM	Kelly A. Sullivan - DEM
Lincoln	3,346	3,605	1,766	2,078
Minnehaha	2,869	3,141	3,328	3,768
Total	**6,215**	**6,746**	**5,094**	**5,846**

	State Representative District 14			
County	Taylor Rae Rehfeldt - REP	Tom Holmes - REP	Mike Huber - DEM	Erin Healy - DEM
Minnehaha	6,933	5,782	5,228	6,388
Total	**6,933**	**5,782**	**5,228**	**6,388**

	State Representative District 15			
County	Matt Rosburg - REP	Cole Heisey - REP	Jamie Smith - DEM	Linda Duba - DEM
Minnehaha	2,943	2,987	3,727	3,918
Total	**2,943**	**2,987**	**3,727**	**3,918**

	State Representative District 16	
County	David L. Anderson - REP	Kevin D. Jensen - REP
Lincoln	2,784	2,253
Union	5,599	4,257
Total	**8,383**	**6,510**

	State Representative District 17			
County	Richard Vasgaard - REP	Sydney Davis - REP	Caitlin F. Collier - DEM	Al Leber - DEM
Clay	1,989	2,521	2,374	2,708
Turner	2,797	2,757	807	937
Total	**4,786**	**5,278**	**3,181**	**3,645**

	State Representative District 18	
County	Mike Stevens - REP	Ryan Cwach - DEM
Yankton	6,778	5,109
Total	**6,778**	**5,109**

	State Representative District 19	
County	Kent Peterson - REP	Marty Overweg - REP
Bon Homme	1,188	842
Douglas	991	1,249
Hanson	1,559	1,183
Hutchinson	2,695	1,953
McCook	2,070	1,337
Total	**8,503**	**6,564**

	State Representative District 20	
County	Paul R Miskimins - REP	Lance Koth - REP
Aurora	974	693
Davison	5,860	4,804
Jerauld	569	567
Total	**7,403**	**6,064**

	State Representative District 21		
County	Rocky Blare - REP	Caleb Finck - REP	Jessica Hegge - DEM
Bon Homme	615	794	260
Charles Mix	1,898	1,645	1,620
Gregory	1,595	1,226	537
Tripp	2,222	1,173	496
Total	**6,330**	**5,038**	**2,911**

	State Representative District 22			
County	Roger Chase - REP	Lynn Schneider - REP	Mark S Smith - DEM	C. John McEnelly - DEM
Beadle	4,409	4,310	1,910	1,734
Kingsbury	1,756	1,545	730	614
Total	**6,165**	**5,855**	**2,640**	**2,348**

	State Representative District 23	
County	Spencer Gosch - REP	Charlie Hoffman - REP
Campbell	729	566
Edmunds	1,337	1,211
Faulk	806	715
Hand	1,214	1,045
McPherson	907	989
Potter	1,032	837
Spink	212	186
Walworth	2,088	1,242
Total	**8,325**	**6,791**

	State Representative District 24		
County	Will D Mortenson - REP	Mike Weisgram - REP	Amanda Bachmann - DEM
Hughes	6,012	5,736	2,421
Hyde	526	401	155
Stanley	1,186	1,067	331
Sully	686	582	172
Total	**8,410**	**7,786**	**3,079**

	State Representative District 25			
County	Tom Pischke - REP	Jon Hansen - REP	Jeff Barth - DEM	Jared Nieuwenhuis - DEM
Minnehaha	7,784	7,826	4,460	3,720
Total	**7,784**	**7,826**	**4,460**	**3,720**

	State Representative District 26A
County	Shawn Bordeaux - DEM
Mellette	387
Todd	1,867
Total	**2,254**

	State Representative District 26B	
County	Rebecca L Reimer - REP	Tim Feliciano - DEM
Brule	1,826	597
Buffalo	200	338
Jones	491	75
Lyman	1,061	492
Total	**3,578**	**1,502**

	State Representative District 27		
County	Liz May - REP	Ernest Weston Jr - DEM	Perl Pourier - DEM
Bennett	778	320	397
Haakon	1,013	104	92
Jackson	765	212	331
Oglala Lakota	448	1,814	7,380
Pennington	316	30	34
Total	**3,320**	**2,480**	**3,234**

	State Representative District 28A
County	Oven Lee Lesmeister - DEM
Corson	732
Dewey	1,215
Ziebach	638
Total	**2,585**

	State Representative District 28B
County	Sam Marty - REP
Butte	2,745
Harding	731
Perkins	1,371
Total	**4,847**

	State Representative District 29		
County	Dean Wink - REP	Kirk J. Chaffee - REP	Jade Addison - IND
Butte	679	571	194
Meade	6,911	5,356	2,634
Pennington	577	454	346
Total	**8,167**	**6,381**	**3,174**

	State Representative District 30	
County	Trish Ladner - REP	Tim R. Goodwin - REP
Custer	3,039	3,075
Fall River	2,372	2,156
Pennington	3,257	3,204
Total	**8,668**	**8,435**

	State Representative District 31		
County	Scott Odenbach - REP	Mary Fitzgerald - REP	Brooke Abdallah - DEM
Lawrence	8,104	6,920	4,590
Total	**8,104**	**6,920**	**4,590**

	State Representative District 32			
County	Chris Johnson - REP	Becky Drury - REP	Toni Diamond - DEM	James Preston - DEM
Pennington	6,391	5,587	3,826	3,932
Total	**6,391**	**5,587**	**3,826**	**3,932**

	State Representative District 33	
County	Phil Jensen - REP	Taffy Howard - REP
Meade	1,711	1,337
Pennington	8,540	6,565
Total	**10,251**	**7,902**

	State Representative District 34			
County	Mike Derby - REP	Jess Olson - REP	Nick Anderson - DEM	Rick Stracqualursi - DEM
Pennington	7,225	6,756	3,776	3,806
Total	**7,225**	**6,750**	**3,776**	**3,806**

	State Representative District 35			
County	Tina L. Mulally - REP	Tony Randolph - REP	David A. Hubbard - DEM	Pat Cromwell - DEM
Pennington	5,777	5,375	2,916	2,740
Total	**5,777**	**5,375**	**2,916**	**2,740**

	SUPREME COURT RETENTION: SHALL JUSTICE STEVEN JENSEN REPRESENTING THE FIRST SUPREME COURT DISTRICT, WHOSE TERM EXPIRES JANUARY 1, 2021, BE RETAINED IN OFFICE?	
County	Yes	No
Aurora	1,074	181
Beadle	5,239	940
Bennett	726	291
Bon Homme	2,272	391
Brookings	10,069	1,957
Brown	12,450	2,517
Brule	1,860	381
Buffalo	308	179
Butte	3,611	675
Campbell	665	86
Charles Mix	2,670	744
Clark	1,368	226
Clay	3,935	1,053
Codington	9,161	1,716
Corson	759	383
Custer	3,882	852
Davison	6,466	1,138
Day	2,135	448
Deuel	1,718	307
Dewey	1,145	590
Douglas	1,330	159
Edmunds	1,474	274
Fall River	2,777	730
Faulk	897	128
Grant	2,743	500
Gregory	1,745	303
Haakon	872	126
Hamlin	2,261	335
Hand	1,450	184
Hanson	1,758	274
Harding	608	83
Hughes	7,019	1,019
Hutchinson	2,872	390
Hyde	561	71
Jackson	769	231
Jerauld	757	133
Jones	477	71
Kingsbury	2,098	293
Lake	4,363	746
Lawrence	9,685	2,308
Lincoln	23,388	4,650
Lyman	1,107	311
Marshall	1,576	317
McCook	2,163	393
McPherson	1,009	174
Meade	9,682	2,271
Mellette	536	145
Miner	846	126
Minnehaha	61,774	16,025
Moody	2,302	554
Oglala Lakota	1,397	1,537
Pennington	38,701	10,395
Perkins	1,232	185
Potter	1,098	143
Roberts	2,977	834
Sanborn	922	114
Spink	2,391	386
Stanley	1,337	173
Sully	729	116
Todd	1,259	1,012
Tripp	2,053	386
Turner	3,443	596
Union	6,681	1,169
Walworth	1,977	357
Yankton	7,746	1,668
Ziebach	526	265
Total	**296,824**	**67,717**

	James River Water Development District Director James River WDD 4	
County	Leroy Braun - NON	Robert J. Raeber - NON
Beadle	731	509
Spink	1,510	856
Total	**2,241**	**1,365**

	West Dakota Water Development District Director West Dakota WDD 6	
County	James A. Kammert Sr. - NON	Cheryl Rowe - NON
Pennington	1,266	2,370
Total	**1,266**	**2,370**

	Constitutional Amendment A: An amendment to the South Dakota Constitution to legalize, regulate, and tax marijuana; and to require the Legislature to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use.	
County	Yes	No
Aurora	531	850
Beadle	3,432	3,536
Bennett	637	510
Bon Homme	1,269	1,647
Brookings	8,056	6,280
Brown	9,666	7,632
Brule	1,141	1,301
Buffalo	366	162
Butte	2,221	2,524
Campbell	344	507
Charles Mix	1,678	2,036
Clark	751	1,058
Clay	3,742	1,891
Codington	6,603	6,355
Corson	665	573
Custer	2,617	2,794
Davison	4,135	4,228
Day	1,419	1,479
Deuel	920	1,373
Dewey	1,222	685
Douglas	460	1,195
Edmunds	796	1,158
Fall River	2,065	1,881
Faulk	413	751
Grant	1,649	2,027
Gregory	876	1,337
Haakon	305	809
Hamlin	1,114	1,933
Hand	619	1,195
Hanson	1,037	1,245
Harding	251	541
Hughes	4,348	4,346
Hutchinson	1,267	2,408
Hyde	264	430
Jackson	515	578
Jerauld	392	594
Jones	220	376
Kingsbury	1,234	1,490
Lake	3,001	2,818
Lawrence	7,934	5,813
Lincoln	17,741	14,432
Lyman	808	777
Marshall	1,121	1,073
McCook	1,327	1,531
McPherson	475	810
Meade	6,998	6,525
Mellette	376	387
Miner	514	614
Minnehaha	54,663	36,018
Moody	1,667	1,529
Oglala Lakota	2,523	582
Pennington	32,991	23,367
Perkins	616	1,020
Potter	530	825
Roberts	2,297	1,916
Sanborn	535	620
Spink	1,349	1,724
Stanley	788	849
Sully	402	526
Todd	1,906	562
Tripp	999	1,651
Turner	1,975	2,512
Union	5,090	3,609
Walworth	1,032	1,478
Yankton	5,839	4,870
Ziebach	522	366
Total	**225,260**	**190,477**

	Constitutional Amendment B: An Amendment to the South Dakota Constitution authorizing the Legislature to allow sports wagering in Deadwood.	
County	Yes	No
Aurora	637	735
Beadle	3,627	3,251
Bennett	644	504
Bon Homme	1,456	1,426
Brookings	8,062	6,044
Brown	9,914	7,138
Brule	1,291	1,137
Buffalo	297	221
Butte	2,580	2,141
Campbell	411	419
Charles Mix	1,867	1,832
Clark	880	890
Clay	3,422	2,077
Codington	7,068	5,595
Corson	623	612
Custer	2,893	2,477
Davison	4,669	3,625
Day	1,491	1,374
Deuel	1,127	1,154
Dewey	1,124	765
Douglas	653	988
Edmunds	1,037	889
Fall River	2,224	1,696
Faulk	562	583
Grant	1,857	1,758
Gregory	1,031	1,158
Haakon	491	620
Hamlin	1,254	1,759
Hand	838	950
Hanson	1,194	1,062
Harding	423	367
Hughes	5,010	3,630
Hutchinson	1,714	1,947
Hyde	352	333
Jackson	581	505
Jerauld	477	499
Jones	265	320
Kingsbury	1,345	1,350
Lake	3,243	2,518
Lawrence	8,484	5,139
Lincoln	19,848	11,668
Lyman	938	633
Marshall	1,136	977
McCook	1,566	1,273
McPherson	538	730
Meade	8,082	5,280
Mellette	419	340
Miner	553	561
Minnehaha	55,388	33,472
Moody	1,845	1,310
Oglala Lakota	2,106	974
Pennington	33,966	21,609
Perkins	754	875
Potter	709	643
Roberts	2,217	1,955
Sanborn	629	516
Spink	1,648	1,414
Stanley	1,016	623
Sully	520	402
Todd	1,610	822
Tripp	1,332	1,315
Turner	2,409	2,035
Union	5,653	2,944
Walworth	1,269	1,228
Yankton	5,827	4,730
Ziebach	506	374
Total	**239,620**	**170,191**

	Initiated Measure 26: An initiated measure to legalize marijuana for medical use	
County	Yes	No
Aurora	793	598
Beadle	4,577	2,409
Bennett	786	374
Bon Homme	1,749	1,180
Brookings	10,454	3,947
Brown	12,442	4,952
Brule	1,624	835
Buffalo	403	123
Butte	2,888	1,875
Campbell	466	381
Charles Mix	2,317	1,426
Clark	1,157	662
Clay	4,466	1,180
Codington	9,000	4,029
Corson	800	445
Custer	3,464	1,970
Davison	5,563	2,818
Day	1,916	998
Deuel	1,402	913
Dewey	1,431	489
Douglas	734	926
Edmunds	1,213	746
Fall River	2,472	1,385
Faulk	648	515
Grant	2,416	1,277
Gregory	1,260	961
Haakon	494	628
Hamlin	1,665	1,388
Hand	991	829
Hanson	1,480	824
Harding	361	433
Hughes	5,802	2,922
Hutchinson	1,977	1,770
Hyde	400	298
Jackson	635	464
Jerauld	589	404
Jones	324	269
Kingsbury	1,748	990
Lake	4,058	1,792
Lawrence	9,712	4,077
Lincoln	23,476	8,718
Lyman	1,070	519
Marshall	1,591	570
McCook	1,862	1,009
McPherson	672	619
Meade	8,952	4,571
Mellette	496	269
Miner	741	387
Minnehaha	69,052	22,036
Moody	2,734	973
Oglala Lakota	2,668	443
Pennington	40,732	15,813
Perkins	840	803
Potter	773	602
Roberts	3,035	1,202
Sanborn	751	417
Spink	1,956	1,147
Stanley	1,097	550
Sully	536	388
Todd	2,063	410
Tripp	1,472	1,194
Turner	2,939	1,571
Union	6,483	2,244
Walworth	1,432	1,095
Yankton	7,539	3,216
Ziebach	615	275
Total	**291,754**	**125,488**

STATE OF SOUTH DAKOTA) : SS COUNTY OF HUGHES)	IN CIRCUIT COURT SIXTH JUDICIAL CIRCUIT
SHERIFF KEVIN THOM, IN HIS OFFICIAL CAPACITY AS PENNINGTON COUNTY SHERIFF, and COLONEL RICK MILLER, IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF THE SOUTH DAKOTA HIGHWAY PATROL, Plaintiffs, v. STEVE BARNETT, IN HIS OFFICIAL CAPACITY AS SOUTH DAKOTA SECRETARY OF STATE, and SOUTH DAKOTANS FOR BETTER MARIJUANA LAWS, RANDOLPH SEILER, WILLIAM STOCKER, CHARLES PARKINSON, and MELISSA MENTELE, Defendants.	32CIV20-000187 **PLAINTIFFS' JOINT STATEMENT OF UNDISPUTED MATERIAL FACTS**

Pursuant to SDCL 15-6-56(c), Plaintiffs hereby submit this Joint Statement of Undisputed Material Facts in support of their Joint Motion for Summary Judgment. These facts are based upon the evidence in the record, along with the pleadings on file in this matter. These undisputed facts establish that Plaintiffs are entitled to judgment as a matter of law.

1. Kevin Thom is an individual who resides in Pennington County, South Dakota, is registered to vote in the state of South Dakota, and was entitled to vote on

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Amendment A in the South Dakota general election held on November 3, 2020. (Compl., ¶ 1.)

2. Kevin Thom is the duly elected Sheriff of Pennington County, South Dakota. (Compl., ¶ 1.)

3. Rick Miller is an individual who resides in Hughes County, South Dakota, is registered to vote in the state of South Dakota, and was entitled to vote on Amendment A in the South Dakota general election held on November 3, 2020. (Compl., ¶ 2.)

4. Rick Miller is the duly appointed superintendent of the South Dakota Highway Patrol. (Compl., ¶ 2.)

5. South Dakotans for Better Marijuana Laws ("SDBML") is a statewide ballot question committee based on Sioux Falls, South Dakota. (Motion to Intervene, ¶ 1).

6. Randolph Seiler is an individual who resides in Stanley County, South Dakota, is registered to vote in the state of South Dakota, and was entitled to vote on Amendment A in the South Dakota general election held on November 3, 2020. (Motion to Intervene, ¶ 2).

7. William Stocker is an individual who resides in Minnehaha County, South Dakota, is registered to vote in the state of South Dakota, and was entitled to vote on Amendment A in the South Dakota general election held on November 3, 2020. (Motion to Intervene, ¶ 3).

8. Charles Parkinson is an individual who resides in Pennington County, South Dakota, is registered to vote in the state of South Dakota, and was entitled to vote on Amendment A in the South Dakota general election held on November 3, 2020. (Motion to Intervene, ¶ 4).

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9. Melissa Mentele is an individual who resides in Hanson County South Dakota, is registered to vote in the state of South Dakota, and was entitled to vote on Amendment A in the South Dakota general election held on November 3, 2020. (Motion to Intervene, ¶ 5).

10. Brendan Johnson was the prime sponsor of an initiated constitutional amendment that came to be known as "Amendment A." (Compl., ¶ 8; McCaulley Aff., Ex. A).

11. In May 2019, Johnson submitted a version of Amendment A to the Director of the Legislative Research Council as required by SDCL 12-13-25. (McCaulley Aff., Ex. A).

12. On May 30, 2019, Jason Hancock, Director of the Legislative Research Council, provided written comments on the initiated constitutional amendment to Johnson, the Attorney General, and the Secretary of State. (McCaulley Aff., Ex. A)

13. On August 16, 2019, the Attorney General delivered the Attorney General's Statement and title of the initiated constitutional amendment to the Secretary of State. (McCaulley Aff., Ex. B).

14. On September 11, 2019, Johnson submitted the petition as it was to be circulated for Amendment A to the Secretary of State, which contained the full text of the initiated amendment, the date of the general election at which the amendment would be submitted, the title, and the Attorney General's Statement. (Compl., Ex. 1)

15. On January 6, 2020, the Secretary of State announced that the Petition received a sufficient number of signatures and validated it for placement on the 2020

General Election Ballot with the designation "Constitutional Amendment A." (McCaulley Aff., Ex. D).

16. On May 11, 2020, the Attorney General delivered the Attorney General's Recitation for Constitutional Amendment A to the Secretary of State. (McCaulley Aff., Ex. C).

17. The Board of Canvassers conducted the official canvass and certified the election results on November 10, 2020. (Compl., Ex. 2).

18. According to the official canvass, Amendment A received 225,260 "Yes" votes and 190,477 "No" votes. (Compl., Ex. 2).

19. South Dakota voters have never before ratified an initiated constitutional amendment that added a new article to the Constitution. (McCaulley Aff., Ex. E).

Dated this 23rd day of December, 2020.

REDSTONE LAW FIRM LLP

/s/ Lisa M. Prostrollo

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Attorneys for Plaintiff Rick Miller

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Dated this 23rd day of December, 2020.

MORRIS LAW FIRM, PROF. LLC

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bobmorris@westriverlaw.com
Attorneys for Plaintiff Kevin Thom

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STATE OF SOUTH DAKOTA) : SS COUNTY OF HUGHES)	IN CIRCUIT COURT SIXTH JUDICIAL CIRCUIT
IN THE MATTER OF ELECTION CONTEST AS TO AMENDMENT A, AN AMENDMENT TO THE SOUTH DAKOTA CONSTITUTION TO LEGALIZE, REGULATE, AND TAX MARIJUANA; AND TO REQUIRE THE LEGISLATURE TO PASS LAWS REGARDING HEMP AS WELL AS LAWS ENSURING ACCESS TO MARIJUANA FOR MEDICAL USE.	32CIV20-000186 **AFFIDAVIT OF MATTHEW S. MCCAULLEY**

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF MINNEHAHA)

I, Matthew S. McCaulley, being first duly sworn on oath, deposes and states:

1. I am one of the attorneys for Contestant Rick Miller.

2. This Affidavit is submitted in support of Contestants' Joint Brief in Support of Motion for Summary Judgment.

3. Attached hereto as Exhibit A is a true and correct copy of the letter and comments regarding the proposed draft of Amendment A by the Legislative Research Council and filed with the South Dakota Secretary of State. This document was obtained from the South Dakota Secretary of State's website.

4. Attached hereto as Exhibit B is a true and correct copy of the Attorney General's Statement and cover letter submitted by the Attorney General's Office and filed

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with the South Dakota Secretary of State. This document was obtained from the South Dakota Secretary of State's website.

5. Attached hereto as Exhibit C is a true and correct copy of the Attorney General's Recitation and cover letter submitted by the Attorney General's Office and filed with the South Dakota Secretary of State. This document was obtained from the South Dakota Secretary of State's website.

6. Attached hereto as Exhibit D is a true and correct copy of the Press Release dated January 6, 2020 by the Secretary of State announcing the certification of Amendment A to be placed on the general election ballot. This document was obtained from the South Dakota Secretary of State's website.

7. Attached hereto as Exhibit E is a summary of proposed changes to the South Dakota Constitution from 1889 to 2018, including the title of the proposed changes, the vote totals for each proposed change, and the sources of the proposed changes. Affiant further states that to the best of his knowledge, Exhibit E is an accurate and complete representation of every proposed constitutional change submitted to South Dakota voters. Affiant further states that Exhibit E was prepared with the assistance of staff at Redstone Law Firm LLP using information available in the public records provided by the South Dakota Secretary of State, that such information is generally known within South Dakota, and that such information can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Dated this 23rd day of December, 2020.

Matthew S. McCaulley

Subscribed and sworn to before me this 23rd day of December, 2020.

Diane M. Burns

Notary Public – State of South Dakota
My Commission Expires: 2-1-25

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REPRESENTATIVE STEVEN G. HAUGAARD, CHAIR | SENATOR BROCK L. GREENFIELD, VICE CHAIR
JASON HANCOCK, DIRECTOR | SUE CICHOS, DEPUTY DIRECTOR | DOUG DECKER, CODE COUNSEL
500 EAST CAPITOL AVENUE, PIERRE, SD 57501 | 605-773-3251 | SDLEGISLATURE.GOV

SOUTH DAKOTA
LEGISLATURE
LEGISLATIVE RESEARCH COUNCIL

May 30, 2019

Mr. Brendan Johnson
Robins Kaplan LLP
140 North Phillips Ave., Ste 307
Sioux Falls, SD 57104

Dear Mr. Johnson:

This office is required by SDCL section 12-13-24 to review each initiated constitutional amendment for the purpose of determining whether the amendment is written in a clear and coherent manner that reflects the style and form of other legislation and for the purpose of ensuring that the amendment is not misleading or likely to cause confusion among the voters. In accordance with SDCL section 12-13-25, this office is required to provide written comments for the purpose of assisting the amendment's sponsor in meeting the requirements of SDCL section 12-13-24. This includes providing assistance regarding the substantive content of the measure in order to minimize any conflict with existing law and to ensure the amendment's effective administration. While there is no obligation to accept any of the suggestions contained in this letter, you are asked to keep in mind the legal standards established in sections 12-13-24 and 12-13-25.

As submitted, this constitutional amendment proposes to decriminalize small amounts of marijuana for one's personal use and rather than directing the Legislature to affect this outcome, it creates a statutory-type structure that it seeks to incorporate into the Constitution of this state. The purpose of a constitution is to provide a basic structure within which a government can function. The Constitution prescribes and limits the powers to be exercised by that government and sets forth the rights of the governed. The Constitution is not a compilation of policy statutes and as such, should not be amended to incorporate what ought to be statutory material. Therefore, this office recommends that the proposed measure be re-written so that it would amend the South Dakota Codified Laws, rather than the South Dakota Constitution. In the event that this recommendation is not accepted, there are a number of changes that this office encourages the sponsors to consider. The section numbers in our comments are based on the revised number we have provided.

As submitted, the amendment contained a section setting forth its title and a section setting forth its purpose. Both have been removed. SDCL section 12-13-25.1 requires the attorney general to prepare an accompanying "statement that consists of a title and explanation."

All catch lines to sections have been removed as that will be added by the code counsel if the amendment is approved.

SECTION 1

The Department of Revenue is not the best state agency to administer and regulate every aspect of activities encompassed by this amendment. The definition of "Department" has been broadened to allow the Legislature to match functions to state departments with the best mission fit.

EXHIBIT
A

SECTION 2

In section 2, the proposed language stated that the amendment "does not authorize" various activities. That language was found to be nebulous, in that it does not clearly prohibit the activities. The language has been changed to address this.

Section 2 includes various activities that are already addressed in state code, but uses language that is not consistent with the SDCL. SDCL section 42-8-45, for instance, prohibits the "operation" of a boat while one is under the influence of marijuana. This would be sufficient to include the prohibition on "navigation," as set forth in the measure. Likewise, the state code prohibits possession in, on, or within one thousand feet of a public or private elementary or secondary school or playground and within five hundred feet of a public or private youth center, public swimming pool, or video arcade. The proposed language would appear to prohibit possession or consumption only on the grounds of schools. This inconsistency with existing statutes could cause confusion. Reconciliation with the state code is encouraged.

Of greater concern is the reiteration of existing statutes. Operating a motor vehicle or a boat while under the influence of marijuana is already a statutorily prohibited activity. If the prohibition is the same, there is no need to have it repeated in the Constitution.

SECTION 4

In section 4, the proposed language articulates certain activities that are "not unlawful." It is not necessary to further indicate that those activities are therefore not offenses, not subject to penalties, and not to be used as the basis for judicial action.

Section 4 provides that it is not unlawful for a person to possess, plant, cultivate, harvest, dry, process, or manufacture not more than three marijuana plants. The reference to manufacturing is appropriate in the case of a pharmaceutical. Applying the term to a living plant is not appropriate verbiage use.

SECTION 5

As proposed, section 5 referenced civil infractions and proposed specific fines for various activities that would constitute such infractions. The phrase "civil infraction" is not, however, found in either the Constitution or the state code. The more widely accepted phrase is "civil penalty." Penalties rightfully belong in the state code, where the Legislature can appropriately make adjustments as inflation and circumstances require. Rather than including specific dollar amounts, it would be preferable to reference "civil penalty, as provided by law."

SECTION 6

As proposed, section 6 provided the Legislature with the authority to implement this amendment, provided such legislation is consistent with the intent and purposes of this measure and its stated requirements. This language has been removed. The Legislature is already constitutionally empowered to enact legislation, and is already required to legislate within the bounds of the Constitution.

SECTION 7

Section 7 enumerates the rules that the department is to promulgate. Among those are rules setting the application, licensing, and renewal fees. The language provides that any fees collected must go to the department to cover the cost of implementing and enforcing the article. Where fees are to go is not an appropriate concept for inclusion in a list of rules to be promulgated. Moreover, section 11 already provides for the department to receive revenues from the marijuana tax to cover costs it incurs in carrying out its duties under the article. The provision for reimbursement of costs was left in section 11 but removed from section 7.

SECTION 8

Section 8 addresses the appropriate number of licenses and directs the department to issue "enough licenses to substantially reduce the illicit production and sale of marijuana" and to limit "the number of licenses . . . to prevent an undue concentration of licenses in any one community." Because terms such as "substantially" and "undue" are nebulous, it is suggested that language be inserted to either define their parameters or indicate that the determinations regarding what constitutes substantial or undue will be established by law.

The language of this section, as submitted, also referenced "communities." This is not a universally understood term. Therefore, it has been replaced by the term "municipality."

SECTION 11

As proposed, section 11 referenced marijuana sold by a "person or entity." The use of the term "person" in statutory drafting encompasses "non-natural" persons – i.e. "entities."

Section 11 proposes the imposition of a tax and its disbursement. In order to avoid any misconception regarding responsibility for the disbursal, it is recommended that the language include a reference to the legislative appropriations process.

SECTION 12

As proposed, section 12 contained language regarding the appeal of decisions made by the department. This has been removed. The procedures are already articulated in SDCL chapter 1-26.

SECTION 14

This section proposes to have the Legislature pass "medical marijuana" on or before November 3, 2021. If enacted this measure would not become effective until July 1, 2021. If the Legislature was unable to affect such a program during the forty day period of the 2021 session, this would trigger a special session and the expenditure of additional funds. In order to ensure that the Legislature has sufficient time to craft a viable program as envisioned, it is recommended that the November 3, 2021, date be extended to at least April 1, 2022, which would represent the approximate conclusion of the 2022 session. This same date has been changed in sections 7 and 12 to match section 14.

CONCLUDING SECTIONS

As proposed, the amendment concluded with several separately numbered and titled sections. The section entitled "Severability" has been removed. South Dakota courts have long recognized the doctrine of severability, also known as the doctrine of separability, and therefore the language is not necessary.

The section entitled "Effective" has likewise been removed. SDCL section 2-1-12 provides that "[e]ach constitutional amendment, initiated measure, or referred law that is approved by a majority of all votes cast is effective on the first day of July after the completion of the official canvass by the State Canvassing Board."

The final section of the proposed amendment included directives in the event that conflicting proposals are enacted. This possibility has already been addressed in statute and is also unnecessary:

> **2-14-16.2** If two or more initiated measures or amendments to the Constitution are approved by the voters at the same election, each initiated measure or amendment shall be given effect, unless the initiated measures or amendments conflict or a contrary intent plainly appears. For purposes of any conflict or the determination of intent under this section, the initiated measure or amendment receiving the greatest number of affirmative votes at the election shall be given effect.

As recognized at the beginning of this letter, this amendment proposes to decriminalize the possession of a limited amount of marijuana for personal use. In so doing, it raises questions about a variety of issues including current drug testing requirements that are imposed as a condition of child placement or return [*see,* SDCL section 26-8A-34] and the parameters of 24/7 sobriety programs [*see,* SDCL section 1-11-17.] The Legislature or the Judiciary will have to address these, should the amendment pass. It should also be noted that the possession of marijuana would still be a crime under federal law.

Against this backdrop, we have prepared and attached a copy of the proposed amendment with our suggested form and style changes. Should you have any questions about these changes, or about the additional recommendations made in this letter, please feel free to contact this office.

It has been determined during this review that this proposed initiated amendment may have an impact on revenues, expenditures, or fiscal liability of the state and its agencies and political subdivisions. Please provide the Legislative Research Council a copy of the initiated amendment as submitted in final form to the Attorney General, so we can develop any fiscal note required by SDCL 2-9-30.

This letter constitutes neither an endorsement of the proposed amendment nor a guarantee of its sufficiency. It is a recognition that your responsibility to submit your draft to this office for review and comment, as required by SDCL section 12-13-25, has been fulfilled. If you proceed with your initiated amendment, please ensure neither your statements nor any advertising imply that this office has endorsed or approved the measure.

Sincerely,

Jason Hancock
Director

JH/DO/ct

Enclosure

CC: The Honorable Steve Barnett, Secretary of State
The Honorable Jason Ravsnborg, Attorney General

Brendan Johnson

~~Section 1. This Amendment shall be known as the Marijuana Legalization, Regulation, and Taxation Amendment.~~

~~Section 2. The purpose of this Amendment is to make marijuana legal under state and local law for adults twenty-one (21) years of age or older, and to control the commercial production and distribution of marijuana under a system that licenses, regulates, and taxes the businesses involved. The intent is to prevent arrest and penalty for personal possession and cultivation of limited amounts of marijuana by adults twenty-one (21) years of age or older; remove the commercial production and distribution of marijuana from the illicit market; prevent revenue generated from commerce in marijuana from going to criminal enterprises or gangs; prevent the distribution of marijuana to persons under twenty-one (21) years of age; prevent the diversion of marijuana to illicit markets; ensure the safety of marijuana and products containing marijuana; and ensure security of marijuana businesses. To the fullest extent possible, this Amendment shall be interpreted in accordance with the purpose and intent set forth in this section.~~

That the Constitution of the State of South Dakota be amended to add a new Article to read as follows:

§ 1. ~~Definitions. As~~ Terms used in this ~~Article~~ article mean:

~~(a)~~ (1) "Department," ~~means the Department of Revenue or its successor agency.~~ a state governmental entity charged by the Legislature with carrying out the provisions of this article;

~~(b)~~ (2) "Hemp," ~~means~~ the plant of the genus cannabis, and any part of that plant, including the seeds ~~thereof~~, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent ~~(0.3%)~~ on a dry weight basis~~.~~;

~~(c)~~ (3) "Local ~~Government~~ government," ~~means~~ a county, municipality, town, or township~~.~~;

~~(d)~~ (4) "Marijuana," ~~means all parts of~~ the plant of the genus cannabis, and any part of that plant, including the seeds ~~thereof~~, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including hash and marijuana concentrate~~, and includes~~. The term includes an altered state of marijuana absorbed into the human body. ~~"Marijuana" does~~ The term does not include hemp~~, nor does it include~~ or fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products~~.~~;

~~(e)~~ (5) "Marijuana ~~accessories~~ accessory," ~~means~~ any equipment, product, or material, ~~or combination of equipment, products, or materials,~~ which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marijuana into the human body.

§2. ~~Limitations~~

~~(a) This Article does not authorize~~ Notwithstanding the provisions of this article, no person may:

~~(1) Delivery or distribution of~~

(1) Deliver or distribute marijuana or marijuana accessories~~, with or without consideration,~~ to a person younger than twenty-one ~~(21) years of age.~~;

~~(2) A person younger than twenty-one (21) years of age to purchase~~

(2) Purchase, possess, use, or transport marijuana or marijuana accessories, ~~or to consume~~ unless the person is at least twenty-one;

(3) Consume marijuana~~.~~, unless the person is at least twenty-one;

~~(3) Operating, navigating, or being~~

(4) Operate or be in physical control of any motor vehicle, train, aircraft, motorboat, or other motorized form of transport while under the influence of marijuana~~.~~;

~~(4) Consuming~~

(5) Consume marijuana while operating~~, navigating,~~ or being in physical control of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport~~, or smoking.~~;

(6) Smoke marijuana within a motor vehicle, aircraft, motorboat, or other motorized form of transport, while it is ~~operating.~~ being operated;

~~(5) Possessing or consuming marijuana or possessing~~

(7) Possess or consume marijuana or possess marijuana accessories on the grounds of a public or private preschool, elementary school, or high school ~~where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12~~, in a school bus, or on the grounds of any correctional facility~~.~~;

~~(6) Smoking~~

(8) Smoke marijuana in a location where smoking tobacco is prohibited ~~or consuming.~~;

(9) Consume marijuana in a public place, other than in an area licensed by the ~~Department to allow~~ department for consumption ~~on the licensed premises.~~

~~(7) Undertaking;~~

(10) Undertake any task under the influence of marijuana ~~when~~, if doing so would constitute negligence or professional malpractice~~.~~; or

~~(8) Solvent-based~~

(11) Perform solvent-based extractions on marijuana using solvents other than water, glycerin, propylene glycol, vegetable oil, or food grade ethanol ~~by a person not~~, unless licensed for this activity by the ~~Department~~ department.

~~(b)~~ §3. This ~~Article~~ article does not ~~require~~:

(1) Require that an employer ~~to~~ permit or accommodate conduct ~~otherwise~~ allowed by this ~~Article or to affect.~~ article;

(2) Affect an employer's ability to restrict the use of marijuana by employees~~.~~;

~~(c) This Article does not prohibit~~

(3) Limit the right of a person ~~or entity~~ who occupies, owns, or controls private property from prohibiting or otherwise regulating conduct ~~permitting~~ permitted by this ~~Article~~ article on or in that property~~.~~; or

~~(d) This Article does not limit~~

(4) Limit the ability of ~~a~~ the state or a local government ~~agency~~ to prohibit or restrict ~~actions or~~ any conduct otherwise permitted under this ~~Article~~ article within a building owned, leased, or occupied by the state or the local government ~~agency~~.

~~§3. Lawful Personal Use of Marijuana~~

§4. ~~(a) Except as subject~~ Subject to the limitations in ~~§2 of~~ this ~~Article~~ article, the following acts are not unlawful ~~and shall not be an offense under South Dakota law or the laws of any local government within South Dakota or be subject to a civil fine, penalty, or sanction, or be a basis for detention, search, or arrest, or to deny any right or privilege, or to seize or forfeit assets under South Dakota law or the laws of any local government for persons,~~ if the person is at least twenty-one ~~(21)~~ ~~years of age or older~~:

(1) Possessing, using, ingesting, inhaling, processing, transporting, delivering without consideration, or distributing without consideration one ~~(1)~~ ounce or less of marijuana, except that not more than eight ~~(8)~~ grams of marijuana may be in a concentrated form~~.~~;

(2) Possessing, planting, cultivating, harvesting, drying, or processing~~, or manufacturing~~ not more than three ~~(3)~~ marijuana plants ~~for the person's own personal use~~, and possessing the marijuana produced by the plants, provided ~~that~~:

~~(A)~~ (a) The plants and any marijuana produced by the plants in excess of one ~~(1)~~ ounce are kept at one private residence, are in a locked space, and are not visible by normal, unaided vision from a public place; and

~~(B)~~ (b) Not more than six ~~(6)~~ plants ~~may be~~ are kept in or on the grounds of a private residence at one time~~.~~;

(3) Assisting another person who is at least twenty-one ~~(21)~~ years of age ~~or older~~, or allowing property to be used, in any of the acts permitted by ~~subsection (a)(1) or (a)(2).~~ this section; and

(4) Possessing, using, delivering, distributing, manufacturing, transferring, or selling to persons twenty-one ~~(21)~~ years of age or older marijuana accessories.

~~(b)~~ § 5. ~~The penalty for:~~

(1) A person who, pursuant to § 4 of this article, cultivates plants ~~pursuant to subsection (a)(2)~~ that are visible by normal, unaided vision from a public place ~~shall be guilty of not more than a civil infraction punishable by fine of not more than a two hundred~~ is subject to a civil penalty not exceeding two hundred and fifty dollars ~~($250)~~.

(2) A person who, pursuant to § 4 of this article, cultivates plants ~~pursuant to subsection (a)(2)~~ that are not kept in a locked space ~~shall be guilty of not more than a civil infraction punishable by fine of not more than a two hundred~~ is subject to a civil penalty not exceeding two hundred and fifty dollars ~~($250)~~.

(3) A person who smokes marijuana in a public place, other than in an area licensed for such activity by the ~~Department, shall be guilty of not more than a civil infraction punishable by fine of not more than a~~ department, is subject to a civil penalty not exceeding one hundred dollars ~~($100)~~.

(4) A person ~~twenty (20)~~ who is under twenty-one years of age ~~or younger who~~ and possesses, uses, ingests, inhales, transports, delivers without consideration or distributes without consideration one ~~(1)~~ ounce or less of marijuana or possesses, delivers without consideration, or distributes without consideration marijuana accessories ~~shall be guilty of not more than a civil infraction with a fine of not more than one hundred~~ is subject to a civil penalty not exceeding one hundred dollars ~~($100.00)~~. The person shall be provided the option of attending up to four ~~(4)~~ hours of drug education or counselling in lieu of the fine.

~~§ 4.~~ § 6. ~~Regulation and Control of Marijuana~~

~~(a) The Legislature may enact legislation to implement this Article provided that the legislation is consistent with the intents and purposes of the Marijuana Legalization, Regulation, and Taxation Amendment and with the requirements set forth in this Article.~~

~~(b)~~ The ~~Department~~ department shall have the exclusive power, except as ~~herein~~ otherwise provided, to license and regulate the cultivation, manufacture, testing, transport, delivery, and sale of marijuana in the ~~State of South Dakota~~ state and to administer and enforce this ~~Article~~ article.

~~(c)~~ The ~~Department~~ department shall accept applications for and issue ~~the following licenses,~~ in addition to any other types of licenses the ~~Department~~ department deems necessary:

(1) Licenses permitting commercial cultivators and manufacturers of marijuana to cultivate, process, manufacture, transport, and sell marijuana to marijuana wholesalers;

(2) Licenses permitting independent marijuana testing facilities to analyze and certify the safety and potency of marijuana.;

(3) Licenses permitting marijuana wholesalers to package, process, and prepare marijuana for transport and sale to retail sales outlets; and

(4) Licenses permitting retail sales outlets to sell and deliver marijuana to consumers.

~~(d)~~ § 7. Not later than ~~November 3, 2021~~ April 1, 2022, the ~~Department~~ department shall ~~issue regulations~~ promulgate rules necessary for the implementation and enforcement of this ~~Article~~ article. ~~Such regulations~~ The rules shall ~~be reasonable and shall~~ include:

(1) Procedures for the issuance, renewal, suspension, and revocation of licenses.;

(2) Application, licensing, and renewal fees, not to exceed the amount necessary to cover the costs to the ~~Department~~ department of implementing and enforcing this ~~Article. The fees collected shall go to the Department to cover the cost of implementing and enforcing this Article.~~ article;

(3) Time periods, not to exceed ~~90~~ ninety days, by which the ~~Department~~ department must issue or deny an application.;

(4) Qualifications for licensees;

(5) Security requirements, including lighting and alarm requirements, to prevent diversion;

(6) Testing, packaging, and labeling requirements, including maximum tetrahydrocannabinol levels, to ensure consumer safety and accurate information;

(7) Restrictions on the manufacture and sale of edible products to ensure consumer and child safety;

(8) Health and safety requirements to ensure safe preparation and to prohibit unsafe pesticides;

(9) Inspection, tracking, and record-keeping requirements to ensure regulatory compliance and to prevent diversion;

(10) Restrictions on advertising and marketing;

(11) Requirements to ensure that all applicable statutory environmental, agricultural, and food and product safety requirements are followed.;

(12) Requirements to prevent the sale and diversion of marijuana to persons under the age of twenty-one ~~(21)~~ years.; and

(13) Civil penalties for the failure to comply with ~~regulations~~ rules adopted pursuant to this ~~Article~~ article.

~~(e)~~ § 8. In determining the appropriate number of licenses to issue, as required under this article, the ~~Department~~ department shall:

(1) Issue enough licenses to substantially reduce the illicit production and sale of marijuana throughout the ~~State of South Dakota~~ state; and

(2) Limit the number of licenses issued, if necessary, to prevent an undue concentration of licenses in any one ~~community~~ municipality.

~~§ 5.~~ § 9. ~~Protections~~

~~(a)~~ Actions and conduct by a licensee, ~~its employees~~ a licensee's employee, and ~~its agents~~ a licensee's agent, as permitted pursuant to a ~~valid~~ license issued by the ~~Department~~ department, or by those who allow property to be used by a licensee, ~~its employees, and its agents~~ a licensee's employee, or a licensee's agent, as permitted pursuant to a ~~valid~~ license issued by the ~~Department~~ department, are not unlawful ~~and shall not be an offense under South Dakota law, or the laws of any local government within South Dakota, or be subject to a civil fine, penalty, or sanction, or be a basis for detention, search, or arrest, or to deny any right or privilege, or to seize or forfeit assets under South Dakota law, or the laws of any local government within South Dakota~~.

~~(b)~~ No contract ~~shall be~~ is unenforceable on the basis that marijuana is prohibited by federal law.

~~(c)~~ A holder of a professional or occupational license ~~shall~~ is not ~~be~~ subject to professional discipline for providing advice or services related to marijuana licensees or applications on the basis that marijuana is prohibited by federal law.

~~§6.~~ § 10. ~~Local Governments~~

~~A local government may:~~

~~(a) Enact~~ A local government may enact ordinances or regulations governing the time, place, manner, and number of licensees operating within its jurisdiction.

~~(b) Ban~~ A local government may ban the establishment of licensees or any category of licensee within its jurisdiction.

~~(c) Not~~ A local government may not prohibit the ~~transporting~~ transportation of marijuana through its jurisdiction on ~~the~~ public roads by ~~persons or entity~~ any person licensed to do so by the ~~Department~~ department.

~~§7.~~ §11. ~~Marijuana Tax~~

An excise tax of fifteen ~~(15)~~ percent ~~shall be~~ is imposed upon the gross receipts of all sales of marijuana sold by a person ~~or entity~~ licensed by the ~~Department~~ department pursuant to this ~~Article~~ article to a consumer. The Legislature ~~is authorized to~~ may adjust this rate after November 3, 2024.

The ~~Department~~ department shall by rule establish a procedure for the collection of this tax and shall collect the tax. The ~~tax~~ revenue ~~shall~~ collected under this section shall be ~~disbursed~~ appropriated to the ~~Department~~ department to cover ~~reasonable~~ costs incurred by the ~~Department for~~ department in carrying out its duties under this ~~Article~~ article. ~~The remainder of the~~ Fifty percent of the remaining

revenue ~~collected~~ shall be ~~disbursed in equal portions to~~ appropriated by the Legislature for the support of South Dakota public schools and ~~to~~ the remainder shall be deposited into the state general fund.

~~§8.~~ §12. ~~Procedure~~

~~(a)~~ ~~All regulations~~ Any rule adopted by the ~~Department~~ department pursuant to this ~~Article~~ article must comply with ~~the South Dakota Administrative Procedure Act, S.D. § 1-26-2.1.~~ chapter 1-26 of the South Dakota Codified Laws.

~~(b) The Department shall establish a procedure for those persons and parties affected by decisions of the Department to protest and appeal those decisions. Any person or party affected by a final decision of the Department may commence a mandamus action in circuit court.~~

Any person aggrieved by a decision of the department is entitled to appeal the decision in accordance with chapter 1-26 of the South Dakota Codified Laws.

~~(c)~~ If by April 1, 2022, the ~~Department~~ department fails to ~~adopt regulations to implement~~ promulgate rules required by this ~~Article by November 3, 2021~~ article, or if the department adopts ~~regulations~~ rules that are ~~unreasonable or that are not consistent~~ inconsistent with this ~~Article~~ article, any ~~citizen~~ resident of the state may commence a mandamus action in circuit court to compel ~~the Department to perform the actions mandated by~~ performance by the department in accordance with this ~~Article~~ article.

~~§9.~~ §13. ~~Annual Statement~~

The ~~Department~~ department shall ~~submit~~ publish an annual report ~~to the Governor that shall be made available to the public and shall include~~ that includes the number and type of licenses issued, demographic information on licensees, a description of any enforcement ~~and~~ or disciplinary ~~actions~~ action taken against licensees, a statement of revenues and expenses of the ~~Department~~ department related to the implementation, administration, and enforcement of this ~~Article, and~~ article, a statement of taxes collected in accordance with this article, and an accounting for how those revenues were disbursed.

~~§10.~~ §14. ~~Legislative Expansion~~

Not later than ~~November 3, 2021~~ April 1, 2022, the Legislature shall pass laws to:

~~(a)~~ (1) Ensure access to marijuana beyond what is set forth in this ~~Article by~~ article for persons who have been diagnosed by a ~~physician with~~ healthcare provider, acting within the provider's scope of practice, as having a serious and debilitating medical condition and who are likely to receive therapeutic or palliative benefit from marijuana~~.~~; and

~~(b)~~ (2) Regulate the cultivation, processing, and sale of hemp.

~~§11. Severability~~

~~This Article shall be broadly construed to accomplish its purposes and intents. Nothing in this Article purports to supersede any applicable federal law, except where allowed by federal law. If any provision in this Article or the application thereof to any person or circumstance is held invalid or unconstitutional,~~

~~such invalidity or unconstitutionality shall not affect other provisions or applications of the Article that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Article are severable.~~

~~§13. Effective~~

~~This Article is self-executing and shall take effect thirty (30) days after approval. Each provision shall be judiciable and enforceable by any circuit court.~~

~~Section 4. In the event that this measure and another initiated constitutional amendment concerning the legalization, control, regulation, or taxation of marijuana appear on the same statewide election ballot, the provisions of the other initiated constitutional amendment shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other initiated constitutional amendment shall be null and void.~~

STATE OF SOUTH DAKOTA

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JASON R. RAVNSBORG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

HAND DELIVERED

August 16, 2019

Filed this 16th day of August 2019
Steve Barnett
SECRETARY OF STATE

RECEIVED
AUG 16 2019
S.D. SEC. OF STATE

Hon. Steve Barnett
Secretary of State
500 E. Capitol
Pierre, SD 57501

Re: **Attorney General's Statement for initiated constitutional amendment**

Dear Secretary Barnett,

This Office received a proposed initiated constitutional amendment that the sponsor may seek to place on the November 2020 ballot. Enclosed is a copy of the amendment, in final form, that the sponsor submitted pursuant to SDCL 12-13-25.1. In accordance with that statute, I hereby file the Attorney General's Statement for this amendment. By copy of this letter, I am providing the Attorney General's Statement to the sponsor as well.

Very truly yours,

JASON R. RAVNSBORG
Attorney General

JRR/lde

Enc.
cc/enc.: Brendan Johnson

EXHIBIT B

CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: An amendment to the South Dakota Constitution to legalize, regulate, and tax marijuana; and to require the Legislature to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use.

Explanation:

This constitutional amendment legalizes the possession, use, transport, and distribution of marijuana and marijuana paraphernalia by people age 21 and older. Individuals may possess or distribute one ounce or less of marijuana. Marijuana plants and marijuana produced from those plants may also be possessed under certain conditions.

The amendment authorizes the State Department of Revenue ("Department") to issue marijuana-related licenses for commercial cultivators and manufacturers, testing facilities, wholesalers, and retailers. Local governments may regulate or ban the establishment of licensees within their jurisdictions.

The Department must enact rules to implement and enforce this amendment. The amendment requires the Legislature to pass laws regarding medical use of marijuana. The amendment does not legalize hemp; it requires the Legislature to pass laws regulating the cultivation, processing, and sale of hemp.

The amendment imposes a 15% tax on marijuana sales. The tax revenue will be used for the Department's costs incurred in implementing this amendment, with remaining revenue equally divided between the support of public schools and the State general fund.

Judicial clarification of the amendment may be necessary. The amendment legalizes some substances that are considered felony controlled substances under current State law. Marijuana remains illegal under Federal law.

Filed this 16th day of
August 2019
Steve Barnett
SECRETARY OF STATE

That the Constitution of the State of South Dakota be amended to add a new Article to read as follows:

§ 1. Terms used in this article mean:

(1) "Department," the Department of Revenue or its successor agency;

(2) "Hemp," the plant of the genus cannabis, and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis;

(3) "Local government," means a county, municipality, town, or township;

(4) "Marijuana," the plant of the genus cannabis, and any part of that plant, including, the seeds, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including hash and marijuana concentrate. The term includes an altered state of marijuana absorbed into the human body. The term does not include hemp, or fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products;

(5) "Marijuana accessory," any equipment, product, material, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marijuana into the human body.

§2. Notwithstanding the provisions of this article, this article does not limit or affect laws that prohibit or otherwise regulate:

(1) Delivery or distribution of marijuana or marijuana accessories, with or without consideration, to a person younger than twenty-one years of age;

(2) Purchase, possession, use, or transport of marijuana or marijuana accessories by a person younger than twenty-one years of age;

(3) Consumption of marijuana by a person younger than twenty-one years of age;

Filed this 16th day of August 2019

Steve Barnett
SECRETARY OF STATE

(4) Operating or being in physical control of any motor vehicle, train, aircraft, motorboat, or other motorized form of transport while under the influence of marijuana;

(5) Consumption of marijuana while operating or being in physical control of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport, while it is being operated;

(6) Smoking marijuana within a motor vehicle, aircraft, motorboat, or other motorized form of transport, while it is being operated;

(7) Possession or consumption of marijuana or possession of marijuana accessories on the grounds of a public or private preschool, elementary school, or high school, in a school bus, or on the grounds of any correctional facility;

(8) Smoking marijuana in a location where smoking tobacco is prohibited;

(9) Consumption of marijuana in a public place, other than in an area licensed by the department for consumption;

(10) Consumption of marijuana as part of a criminal penalty or a diversion program;

(11) Conduct that endangers others;

(12) Undertaking any task under the influence of marijuana, if doing so would constitute negligence or professional malpractice; or

(13) Performing solvent-based extractions on marijuana using solvents other than water, glycerin, propylene glycol, vegetable oil, or food grade ethanol, unless licensed for this activity by the department.

§3. Notwithstanding the provisions of this article, this article does not:

(1) Require that an employer permit or accommodate conduct allowed by this article;

(2) Affect an employer's ability to restrict the use of marijuana by employees;

(3) Limit the right of a person who occupies, owns, or controls private property from prohibiting or otherwise regulating conduct permitted by this article on or in that property; or

(4) Limit the ability of the state or a local government to prohibit or restrict any conduct otherwise permitted under this article within a building owned, leased, or occupied by the state or the local government.

§4. Subject to the limitations in this article, the following acts are not unlawful and shall not be an offense under state law or the laws of any local government within the state or be subject to a

civil fine, penalty, or sanction, or be a basis for detention, search, or arrest, or to deny any right or privilege, or to seize or forfeit assets under state law or the laws of any local government, if the person is at least twenty-one years of age:

(1) Possessing, using, ingesting, inhaling, processing, transporting, delivering without consideration, or distributing without consideration one ounce or less of marijuana, except that not more than eight grams of marijuana may be in a concentrated form;

(2) Possessing, planting, cultivating, harvesting, drying, processing, or manufacturing not more than three marijuana plants and possessing the marijuana produced by the plants, provided:

(a) The plants and any marijuana produced by the plants in excess of one ounce are kept at one private residence, are in a locked space, and are not visible by normal, unaided vision from a public place;

(b) Not more than six plants are kept in or on the grounds of a private residence at one time; and

(c) The private residence is located within the jurisdiction of a local government where there is no licensed retail store where marijuana is available for purchase pursuant to this article.

(3) Assisting another person who is at least twenty-one years of age, or allowing property to be used, in any of the acts permitted by this section; and

(4) Possessing, using, delivering, distributing, manufacturing, transferring, or selling to persons twenty-one years of age or older marijuana accessories.

§5.

(1) A person who, pursuant to §4 of this article, cultivates marijuana plants that are visible by normal, unaided vision from a public place is subject to a civil penalty not exceeding two-hundred and fifty dollars.

(2) A person who, pursuant to §4 of this article, cultivates marijuana plants that are not kept in a locked space is subject to a civil penalty not exceeding two-hundred and fifty dollars.

(3) A person who, pursuant to §4 of this article, cultivates marijuana plants within the jurisdiction of a local government where marijuana is available for purchase at a licensed retail store is subject to a civil penalty not exceeding two-hundred and fifty dollars, unless the

cultivation of marijuana plants is allowed through local ordinance or regulation pursuant to §10.

(4) A person who smokes marijuana in a public place, other than in an area licensed for such activity by the department, is subject to a civil penalty not exceeding one-hundred dollars.

(5) A person who is under twenty-one years of age and possesses, uses, ingests, inhales, transports, delivers without consideration or distributes without consideration one ounce or less of marijuana or possesses, delivers without consideration, or distributes without consideration marijuana accessories is subject to a civil penalty not to exceed one-hundred dollars. The person shall be provided the option of attending up to four hours of drug education or counseling in lieu of the fine.

§ 6. The department shall have the exclusive power, except as otherwise provided in § 10, to license and regulate the cultivation, manufacture, testing, transport, delivery, and sale of marijuana in the state and to administer and enforce this article. The department shall accept applications for and issue, in addition to any other types of licenses the department deems necessary:

(1) Licenses permitting commercial cultivators and manufacturers of marijuana to cultivate, process, manufacture, transport, and sell marijuana to marijuana wholesalers;

(2) Licenses permitting independent marijuana testing facilities to analyze and certify the safety and potency of marijuana;

(3) Licenses permitting marijuana wholesalers to package, process, and prepare marijuana for transport and sale to retail sales outlets; and

(4) Licenses permitting retail sales outlets to sell and deliver marijuana to consumers.

§ 7. Not later than April 1, 2022, the department shall promulgate rules and issue regulations necessary for the implementation and enforcement of this article. The rules shall be reasonable and shall include:

(1) Procedures for the issuance, renewal, suspension, and revocation of licenses;

(2) Application, licensing, and renewal fees, not to exceed the amount necessary to cover the costs to the department of implementing and enforcing this article;

(3) Time periods, not to exceed ninety days, by which the department must issue or deny an application;
(4) Qualifications for licensees;
(5) Security requirements, including lighting and alarm requirements, to prevent diversion;
(6) Testing, packaging, and labeling requirements, including maximum tetrahydrocannabinol levels, to ensure consumer safety and accurate information;
(7) Restrictions on the manufacture and sale of edible products to ensure consumer and child safety;
(8) Health and safety requirements to ensure safe preparation and to prohibit unsafe pesticides;
(9) Inspection, tracking, and record-keeping requirements to ensure regulatory compliance and to prevent diversion;
(10) Restrictions on advertising and marketing;
(11) Requirements to ensure that all applicable statutory environmental, agricultural, and food and product safety requirements are followed;
(12) Requirements to prevent the sale and diversion of marijuana to persons under twenty-one years of age; and
(13) Civil penalties for the failure to comply with rules adopted pursuant to this article.

§ 8. In determining the appropriate number of licenses to issue, as required under this article, the department shall:
(1) Issue enough licenses to substantially reduce the illicit production and sale of marijuana throughout the state; and
(2) Limit the number of licenses issued, if necessary, to prevent an undue concentration of licenses in any one municipality.

§ 9. Actions and conduct by a licensee, a licensee's employee , and a licensee's agent, as permitted pursuant to a license issued by the department, or by those who allow property to be used by a licensee, a licensee's employee, or a licensee's agent, as permitted pursuant to a license issued by the department, are not unlawful and shall not be an offense under state law, or the laws of any local government within the state, or be subject to a civil fine, penalty, or sanction, or be a basis for detention, search, or arrest, or to deny any right or privilege, or to seize

or forfeit assets under state law, or the laws of any local government within the state. No contract is unenforceable on the basis that marijuana is prohibited by federal law. A holder of a professional or occupational license is not subject to professional discipline for providing advice or services related to marijuana licensees or applications on the basis that marijuana is prohibited by federal law.

§10. A local government may enact ordinances or regulations governing the time, place, manner, and number of licensees operating within its jurisdiction. A local government may ban the establishment of licensees or any category of licensee within its jurisdiction. A local government may allow for cultivation at private residences within its jurisdiction that would otherwise not be allowed under §4(2)(c) so long as the cultivation complies with §4(2)(a) and §4(2)(b) and the other requirements of this article. A local government may not prohibit the transportation of marijuana through its jurisdiction on public roads by any person licensed to do so by the department or as otherwise allowed by this article.

§11. An excise tax of fifteen percent is imposed upon the gross receipts of all sales of marijuana sold by a person licensed by the department pursuant to this article to a consumer. The Legislature may adjust this rate after November 3, 2024. The department shall by rule establish a procedure for the collection of this tax and shall collect the tax. The revenue collected under this section shall be appropriated to the department to cover costs incurred by the department in carrying out its duties under this article. Fifty percent of the remaining revenue shall be appropriated by the Legislature for the support of South Dakota public schools and the remainder shall be deposited into the state general fund.

§ 12. Any rule adopted by the department pursuant to this article must comply with chapter 1-26 of the South Dakota Codified Laws. Any person aggrieved by a decision of the department is entitled to appeal the decision in accordance with chapter 1-26 of the South Dakota Codified Laws. If by April 1, 2022, the department fails to promulgate rules required by this article, or if the department adopts rules that are inconsistent with this article, any resident of the state may commence a mandamus action in circuit court to compel performance by the department in accordance with this article.

§13. The department shall publish an annual report that includes the number and type of licenses issued, demographic information on licensees, a description of any enforcement or disciplinary action taken against licensees, a statement of revenues and expenses of the department related to the implementation, administration, and enforcement of this article, and a statement of taxes collected in accordance with this article, and an accounting for how those revenues were disbursed.

§14. Not later than April 1, 2022, the Legislature shall pass laws to:

(1) Ensure access to marijuana beyond what is set forth in this article by persons who have been diagnosed by a health care provider, acting within the provider's scope of practice, as having a serious and debilitating medical condition and who are likely to receive therapeutic or palliative benefit from marijuana; and

(2) Regulate the cultivation, processing, and sale of hemp.

§15. This article shall be broadly construed to accomplish its purposes and intents. Nothing in this article purports to supersede any applicable federal law, except where allowed by federal law. If any provision in this article or the application thereof to any person or circumstance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of the article that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this article are severable.

ATTORNEY GENERAL
2020 BALLOT "YES"/"NO" RECITATION
CONSTITUTIONAL AMENDMENT A

Vote "Yes" to adopt the amendment.

Vote "No" to leave the Constitution as it is.

RECEIVED
MAY 11 2020
S.D. SEC. OF STATE

Filed this 11th day of
May 2020
Steve Barnett
SECRETARY OF STATE

EXHIBIT
C

STATE OF SOUTH DAKOTA

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RECEIVED
MAY 11 2020
S.D. SEC. OF STATE

May 11, 2020

Hon. Steve Barnett
Secretary of State
500 E. Capitol
Pierre, SD 57501

Re: Attorney General's Yes/No recitations for Constitutional Amendment A and Initiated Measure 26

Dear Secretary Barnett:

Pursuant to SDCL 12-13-25.1, I hereby file the Attorney General's recitations of the effect of a "Yes" or "No" vote for the following measures certified to appear on the November general election ballot: Constitutional Amendment A and Initiated Measure 26.

Very truly yours,

Jason R. Ravnsborg
ATTORNEY GENERAL

JRR/lde

Enc.

Filed this 11th day of
May 2020
Steve Barnett
SECRETARY OF STATE

OFFICE OF THE SECRETARY OF STATE

STEVEN J. BARNETT, SECRETARY OF STATE
JASON LUTZ, DEPUTY SECRETARY OF STATE

PRESS RELEASE

FOR IMMEDIATE RELEASE

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January 6, 2020

SECOND BALLOT QUESTION VALIDATED FOR 2020 GENERAL ELECTION

PIERRE – Secretary of State Steve Barnett announced a petition submitted for an amendment to the South Dakota Constitution was validated and filed by his office today. This ballot measure would legalize, regulate, and tax marijuana and require the Legislature to pass laws regarding hemp, including laws to ensure access to marijuana for medical use. The measure will be titled Constitutional Amendment A and will appear on the 2020 General Election ballot on November 3, 2020.

A constitutional amendment currently requires 33,921 valid signatures in order to qualify for the ballot. "As outlined in South Dakota Codified Law § 2-1-16, our office conducted a random sample of the petition signatures and found 68.74 percent to be valid," stated Secretary Barnett. Based on the results of the random sample, 36,707 signatures were deemed valid.

Upon the filing of a ballot measure, any citizen may challenge the Secretary of State's validation of the measure under South Dakota Codified Law § 2-1-17.1. Citizens challenging the validation shall submit an original, signed affidavit to the Office of the Secretary of State no more than 30 days after validation. Electronic submissions of affidavits will not be accepted. For this measure, the deadline to file a challenge is Wednesday, February 5, 2020 at 5:00 p.m. central time.

EXHIBIT D

This measure was the final ballot question submitted by the November 4, 2019 deadline. The South Dakota Legislature has the ability to include constitutional amendments on the 2020 Ballot and South Dakota citizens have the ability to submit a referendum petition concerning laws passed during the 2020 Legislative Session.

Detailed information on specific 2020 Ballot Questions may be found on the Secretary of State's website at https://sdsos.gov/elections-voting/upcoming-elections/general-information/2020-ballot-questions.aspx.

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South Dakota Proposed Constitutional Changes

Year	Title	Yes #	Yes %	No #	No %	Pass/Fail	Source
1889	Minority Representation	24,161	34.34%	46,200	65.66%	Fail	1889 Constitutional Convention
1889	**Prohibition**	**40,234**	**53.83%**	**34,510**	**46.17%**	**Pass**	**1889 Constitutional Convention**
1890	Limiting State Debt	16,787	23.73%	50,742	76.27%	Fail	HB 295 (1890)
1890	Woman suffrage	22,972	33.46%	45,682	66.54%	Fail	HB 9 (1890)
1890	Restrict Indian voting	29,053	43.10%	38,362	56.90%	Fail	HJR 352 (1890)
1892	Legislators' mileage allowance	39,364	77.79%	11,236	22.21%	Pass	HB 81 (1891)
1894	Superintendent of Schools' term	11,241	28.86%	27,705	71.14%	Fail	HJR 71 (1893)
1894	Woman suffrage in school elections	17,010	42.85%	22,682	57.15%	Fail	SJR 52 (1893)
1894	Homesteads exempt from court orders	10,733	26.80%	29,315	73.20%	Fail	SJR 258 (1893)
1896	Increase local debt limit	28,490	65.83%	14,789	34.17%	Pass	SJR 5 (1895)
1896	Abolish Regents' Board of Trustees	31,061	72.66%	11,690	27.34%	Pass	SJR 11 (1895)
1896	Render monopolies illegal	36,763	80.10%	9,136	19.90%	Pass	SJR 14 (1895)
1896	Repeal prohibition	31,901	56.15%	24,910	43.85%	Pass	HJR 7 (1895)
1898	Woman suffrage	19,698	46.15%	22,983	53.85%	Fail	SJR 5 (1897)
1898	**State control of liquor**	**22,170**	**51.89%**	**20,557**	**48.11%**	**Pass**	**SJR 16 (1897)**
1898	Initiative and referendum	23,816	59.10%	16,483	40.90%	Pass	HJR 101 (1897)
1900	**Investment of school funds by counties**	**49,989**	**76.15%**	**15,653**	**23.85%**	**Pass**	**HJR 13 (1899)**
1900	Repeal state control of liquor	48,673	58.93%	33,927	41.07%	Pass	HJR 18 (1899)
1902	County seat relocation	36,436	71.38%	14,612	28.62%	Pass	SJR 13 (1901)
1902	Lower interest rate on school funds	46,472	83.77%	9,001	16.23%	Pass	HJR 2 (1901)
1902	Increase municipal debt for street railways and lighting	32,810	70.70%	13,599	29.30%	Pass	HJR 8 (1901)
1904	Attorney general's salary	32,328	42.37%	43,974	57.63%	Fail	HJR 3 (1903)
1904	Move state capitol to Mitchell	41,155	41.25%	58,617	58.75%	Fail	SJR 1 (1903)
1904	Investment of school money	38,681	64.36%	21,424	35.64%	Pass	HJR 1 (1903)
1906	Qualifications for Superintendent of Schools	35,808	69.16%	15,971	30.85%	Pass	HJR 7 (1905)
1906	Municipal courts in larger cities	29,417	61.07%	18,755	38.93%	Pass	HJR 11 (1905)
1906	Assessments for agricultural drainage	31,151	62.36%	18,799	37.64%	Pass	HJR 8 (1905)
1906	Twine plant at Penitentiary	33,286	62.59%	19,895	37.41%	Pass	SJR 12 (1905)
1908	Revise taxation articles	34,915	42.25%	47,732	57.76%	Fail	SJR 3 (1907)

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1908	Attorney general's salary	43,908	45.57%	52,437	54.43%	Fail	SJR 22 (1907)
1910	School land use	48,152	52.13%	44,220	47.87%	Pass	HJR 6 (1909)
1910	Attorney general's salary	35,932	40.68%	52,397	59.32%	Fail	HJR 3 (1909)
1910	Woman suffrage	35,290	37.95%	57,709	62.05%	Fail	HJR 31 (1909)
1910	Add to debt for school construction	32,613	38.43%	52,243	61.57%	Fail	HJR 36 (1909)
1910	Change state tax structure	29,830	36.04%	52,943	63.96%	Fail	HJR 11 (1909)
1910	People must approve new institutions	36,128	43.14%	47,625	56.86%	Fail	HJR 33 (1909)
1912	Uniform taxation of corporations	70,686	69.44%	31,110	30.56%	Pass	HJR 12 (1911)
1914	Lengthen legislative term to four years	29,746	39.77%	45,051	60.23%	Fail	HJR 2 (1913)
1914	Call constitutional convention	34,832	40.31%	51,585	59.69%	Fail	SJR 5 (1913)
1914	Reduce interest on purchase of school lands	45,554	56.48%	35,102	43.52%	Pass	HJR 6 (1913)
1914	Superintendent of Schools' term	32,092	41.24%	45,733	58.76%	Fail	HJR 21 (1913)
1914	Initiative and referendum in municipalities	28,226	39.54%	43,162	60.46%	Fail	HJR 22 (1913)
1914	Changes in State Institutional Boards	29,601	40.16%	44,107	59.84%	Fail	SJR 22 (1913)
1914	Woman suffrage	39,605	43.46%	51,519	56.54%	Fail	SJR 3 (1913)
1914	Disqualification of Supreme Court judges	36,317	49.84%	36,543	50.16%	Fail	SJR 21 (1913)
1914	State control and promotion of irrigation	32,958	44.89%	40,457	55.11%	Fail	SJR 10 (1913)
1916	State construction and maintenance of irrigation	58,775	57.06%	44,238	42.94%	Pass	HJR 3 (1915)
1916	Increase certain state salaries	39,169	39.02%	61,223	60.98%	Fail	SJR 2 (1915)
1916	Prohibition	65,334	55.03%	53,380	44.97%	Pass	SJR 5 (1915)
1916	Abolish five-year lease limit on school lands	41,379	40.10%	61,798	59.90%	Fail	HJR 10 (1915)
1916	Allow rural credits system on real estate security	57,589	57.84%	41,957	42.16%	Pass	HJR 15 (1915)
1916	Woman suffrage	53,432	47.80%	58,350	52.20%	Fail	HJR 17 (1915)
1916	Change state revenue and finance structure	43,793	44.07%	55,568	55.93%	Fail	HJR 8 (1915)
1916	Change number of members in constitutional convention	35,377	38.53%	56,432	61.47%	Fail	SJR 6 (1915)
1916	Allow state to supply coal and build and maintain roads	75,922	69.37%	33,521	30.63%	Pass	SJR 2 (1916)
1918	Replacement of disqualified Supreme Court judges	41,646	62.70%	24,778	37.30%	Pass	HJR 11 (1917)
1918	Woman suffrage	49,318	63.02%	28,934	36.98%	Pass	SJR 4 (1917), SJR 7 (1918)

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1918	Reduce down payment on sale of school lands	45,809	67.70%	21,855	32.30%	Pass	HJR 14 (1917)
1918	Graduated individual income tax	50,970	67.05%	25,047	32.95%	Pass	HJR 15 (1917)
1918	Allow state works of internal improvement	42,097	63.28%	24,424	36.72%	Pass	HJR 9 (1917)
1918	Allow state to go in debt for state development	34,821	55.53%	27,886	44.47%	Pass	SJR 16 (1917), SJR 6 (1918)
1918	Allow state to develop and supply water power	41,658	63.04%	24,429	36.96%	Pass	SJR 3 (1917), SJR 4 (1918)
1918	Allow state to manufacture and sell cement	38,108	59.72%	25,702	40.28%	Pass	SJR 5 (1917), SJR 3 (1918)
1918	Increase certain state salaries	26,784	38.50%	42,779	61.50%	Fail	HJR 6 (1917)
1918	Allow state to enter hail insurance business	41,162	61.38%	25,896	38.62%	Pass	HJR 13 (1917)
1918	**Allow state to build and operate grain elevators and warehouses and enter flour and meat-packing business**	**41,292**	**61.78%**	**25,545**	**38.22%**	**Pass**	**SJR 15 (1917)**
1918	Allow state to mine and sell coal	40,632	61.05%	25,922	38.95%	Pass	SJR 5 (1918)
1920	Replace State Board of Charities and Corrections	60,763	44.02%	77,285	55.98%	Fail	SJR 6 (1919)
1920	Allow Legislature to fix state salaries	70,831	47.60%	77,987	52.40%	Fail	SJR 3 (1919)
1920	Allow cities to incur added debt for street railways and lighting	66,734	48.02%	72,226	51.98%	Fail	SJR 2 (1920)
1920	Allow state credits for home-building	80,062	56.49%	61,674	43.51%	Pass	HJR 2 (1920)
1920	Provide soldiers' bonus	93,459	62.38%	56,366	37.62%	Pass	SJR 3 (1920)
1922	Increase signatures needed to invoke initiative or referendum	49,019	33.75%	96,201	66.25%	Fail	HJR 1 (1921)
1922	Allow legislature to organize counties	30,110	21.01%	113,170	78.99%	Fail	SJR 1 (1921)
1922	Allow special assessments on land subject to river drainage	33,937	24.23%	106,144	75.77%	Fail	SJR 7 (1921)
1922	Allow legislature to fix state salaries	41,343	27.28%	110,215	72.72%	Fail	SJR 11 (1921)
1924	Call constitutional convention	60,235	33.97%	117,086	66.03%	Fail	SJR 8 (1923)
1926	Increase state salaries	55,670	32.08%	117,866	67.92%	Fail	SJR 3 (1925)
1930	Permit suspension of sentence on first conviction	81,697	51.69%	76,358	48.31%	Pass	SJR 4 (1929)
1930	Give fines to county where collected	88,092	56.28%	68,434	43.72%	Pass	SJR 2 (1929)
1930	Allow legislature to classify property for school taxation	81,870	54.12%	69,414	45.88%	Pass	HJR 6 (1929)
1930	Local taxing districts may tax rural credit lands	101,527	64.82%	55,100	35.18%	Pass	SJR 5 (1929)
1930	Allow Legislature to fix state salaries	67,165	45.09%	81,797	54.91%	Fail	HJR 4 (1929)

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1932	Extend terms of superintendents of schools	98,033	41.41%	138,684	58.59%	Fail	HJR 6 (1931)
1932	Allow Legislature to fix state salaries	106,585	49.63%	108,184	50.37%	Fail	HJR 11 (1931)
1934	Prohibit state from extending credit or engaging in new works of internal improvement, excepting highways	113,717	48.26%	121,918	51.74%	Fail	SJR 2 (1933)
1934	Repeal Prohibition	142,853	56.80%	108,648	43.20%	Pass	SJR 1 (1933)
1936	Reduce Legislature's membership and provide for reapportionment	125,597	57.47%	92,961	42.53%	Pass	SJR 5 (1935)
1936	Limit State Treasurer to two terms and make election of Superintendent of Public Instruction non-partisan	137,247	62.43%	82,611	37.57%	Pass	HJR 4 (1935)
1936	Make election of Superintendents of Schools non-partisan and extend terms	134,636	62.00%	82,647	38.00%	Pass	HJR 3 (1935)
1938	Allow state to engage in internal improvements, with debt limit of 0.5 percent of state properties	109,703	53.70%	94,571	46.30%	Pass	SJR 3 (1935)
1936	Make state bank shareholders and stockholders individually responsible, unless bank is FDIC member	109,154	53.01%	96,760	46.99%	Pass	HJR 5 (1935)
1938	Increase Legislature's membership	60,428	26.65%	166,326	73.35%	Fail	HJR 9 (1937)
1940	Provide that motor vehicle and gasoline taxes go to highways	142,782	56.65%	109,259	43.35%	Pass	SJR 5 (1939)
1940	Allow governor to make appointments to fill legislative vacancies	97,748	41.02%	140,564	58.98%	Fail	HJR 5 (1939)
1940	Reduce interest required on county investment of permanent school funds	93,013	38.36%	149,486	61.64%	Fail	HJR 10 (1939)
1942	Increase salary of governor and judges	55,773	39.64%	84,920	60.36%	Fail	SJR 3 (1941)
1942	Change investment restriction on permanent school funds	40,951	32.28%	85,907	67.72%	Fail	SJR 6 (1941)
1942	Channel endowment land lease money to school districts in proportion to school tax	43,009	34.81%	80,556	65.19%	Fail	HJR 8 (1941)
1942	Channel lease money or land income to school districts in proportion to school tax	44,508	36.35%	77,922	63.65%	Fail	HJR 9 (1941)
1942	Increase salary of Supreme Court judges	39,969	31.93%	85,206	68.07%	Fail	HJR 10 (1941)
1944	Restrict loans on educational funds to one-third of value	77,021	45.34%	92,842	54.66%	Fail	SJR 2 (1943)
1944	Reclassify educational and charitable institutions	66,392	54.46%	72,253	45.54%	Pass	HJR 3 (1943)

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South Dakota Proposed Constitutional Changes

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1946	Allow Legislature to fix state salaries	86,496	63.88%	48,911	36.12%	Pass	HJR 9 (1945)
1946	Include Right to Work in Bill of Rights	93,035	70.33%	39,257	29.67%	Pass	HJR 3 (1945)
1946	Require only two readings before passage of legislative act	85,975	68.57%	39,404	31.43%	Pass	SJR 2 (1945)
1948	Grant World War II veterans' bonus	120,462	61.12%	76,636	38.88%	Pass	HJR 2 (1947)
1948	Provide legislative reapportionment in 1951 and every ten years thereafter	111,874	61.67%	69,402	38.33%	Pass	HJR 8 (1947)
1948	Allow governor to make appointments to fill legislative vacancies	103,396	56.84%	78,505	43.16%	Pass	HJR 6 (1947)
1948	Allow lessees of school and public lands an option on new lease	95,949	52.91%	85,378	47.09%	Pass	HJR 4 (1947)
1948	Allow local units on tax state public shooting areas	106,458	59.67%	71,942	40.33%	Pass	SJR 1 (1947)
1950	Provide legislative reapportionment in 1951 on basis of 1950 census	92,512	46.56%	106,203	53.44%	Fail	HJR 4 (1949)
1950	Limit school district indebtedness to ten percent of assessed property value	75,191	38.52%	120,032	61.48%	Fail	SJR 1 (1949)
1950	Transfer educational fund investments to Commissioner of School and Public Lands	84,804	44.69%	104,960	55.31%	Fail	HJR 3 (1949)
1950	Allow county officials to succeed themselves indefinitely	83,505	42.53%	112,851	57.47%	Fail	HJR 1 (1949)
1952	Reduce voting age to 18 years	128,231	49.87%	128,916	50.13%	Fail	SJR 3 (1951)
1952	Restrict investment of educational funds to governmental bonds	116,463	50.91%	112,290	49.09%	Pass	SJR 1 (1951)
1952	Change composition of Board of Pardons	110,213	49.12%	114,142	50.88%	Fail	SJR 2 (1951)
1954	Pooling of oil, gas and mineral lease money of school and public lands	122,804	65.59%	64,431	34.41%	Pass	SJR 3 (1953)
1954	Increasing school district debt limit to ten percent of assessed property value	96,370	52.48%	87,265	47.52%	Pass	HJR 1 (1953)
1954	Allow county sheriffs to succeed themselves	97,059	51.05%	93,073	48.95%	Pass	HJR 2 (1953)
1954	Assessment and taxation of agricultural lands	75,830	44.00%	96,499	56.00%	Fail	HJR 3 (1953)
1956	Allow county officials to succeed themselves indefinitely	128,447	49.08%	133,273	50.92%	Fail	HJR 4 (1955)
1958	Municipal home rule	94,599	47.60%	104,138	52.40%	Fail	SJR 2 (1957)

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1958	Exempt public highway property from taxation	110,565	55.31%	89,347	44.69%	Pass	SJR 8 (1957)
1958	Change in gubernatorial succession	120,511	61.13%	76,628	38.87%	Pass	SJR 4 (1957)
1958	Reduce voting age to 18 years	71,033	33.99%	137,942	66.01%	Fail	HJR 1 (1957)
1958	Maintain old voting residence in state until new one acquired	127,541	64.02%	71,675	35.98%	Pass	HJR 6 (1957)
1960	Allow county officers to succeed themselves indefinitely	133,954	53.61%	115,915	46.39%	Pass	SJR 2 (1959)
1960	Allow no county more than two senators	112,573	47.49%	124,455	52.51%	Fail	SJR 6 (1959)
1960	Constitute a Board of Pardons and Paroles	131,185	56.79%	99,832	43.21%	Pass	HJR 1 (1959)
1960	Provide for continuity of state operations in event of emergency caused by enemy attack	165,290	71.77%	65,018	28.23%	Pass	SJR 1 (1959)
1962	Taking private property for public use	99,119	50.42%	97,456	49.58%	Pass	SJR 8 (1961)
1962	Annual legislative session	101,548	53.54%	88,118	46.46%	Pass	HJR 5 (1961)
1962	Home rule for municipalities	95,737	52.14%	87,888	47.86%	Pass	SJR 2 (1961)
1964	Amendment notification	117,317	48.72%	123,504	51.28%	Fail	HJR 5 (1963)
1964	County offices	120,998	50.42%	118,973	49.58%	Pass	SJR 4 (1963)
1964	Property classification	98,454	42.68%	132,235	57.32%	Fail	HJR 6 (1964)
1966	Reclassifying farm property	92,235	51.22%	87,833	48.78%	Pass	HJR 6 (1965)
1966	Allowing counties to eliminate county superintendent	101,090	56.29%	78,499	43.71%	Pass	SJR 2 (1966)
1966	Changing county court systems	105,554	60.34%	69,391	39.66%	Pass	HJR 8 (1966)
1968	School land sales	110,327	48.28%	118,202	51.72%	Fail	HJR 9 (1968)
1968	Building authority/debt limit	80,670	36.87%	138,153	63.13%	Fail	SJR 6 (1967)
1968	Powers of retired judges	109,065	49.03%	113,398	50.97%	Fail	SJR 2 (1968)
1968	Reinvestment of school funds	116,403	53.37%	101,884	46.63%	Pass	HJR 11 (1968)
1968	Appointive Superintendent of Public Instruction	72,514	32.79%	148,618	67.21%	Fail	SJR 9 (1968)
1970	Amendment A. Residency Requirements	110,266	54.42%	92,354	45.58%	Pass	HJR 502 (1969)
1970	Amendment B. Initiative and Referendum	58,605	30.59%	132,992	69.41%	Fail	HJR 505 (1969)
1970	Amendment C. Retired Judges	111,040	57.23%	82,980	42.77%	Pass	HJR 503 (1969)
1970	Amendment D. Games of Chance	117,269	58.92%	81,746	41.08%	Pass	SJR 502 (1970)
1970	Amendment E. 4 Year Terms	94,108	48.11%	101,497	51.89%	Fail	HJR 503 (1970)
1970	Amendment F. Voting Age	78,320	40.02%	117,367	59.98%	Fail	SJR 501 (1970)

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1970	Amendment G. Presidential Elections	115,292	60.74%	74,528	39.26%	Pass	HJR 513 (1970)
1970	Amendment H. School Lands	65,189	35.53%	118,306	64.47%	Fail	HJR 507 (1970)
1970	Amendment I. Constitutional Revision	69,459	38.40%	111,427	61.60%	Fail	HJR 514 (1970)
1972	Amendment A. Voting Age	206,170	73.13%	75,765	26.87%	Pass	SJR 1 (1971)
1972	Amendment B. Executive Reorganization	182,248	65.28%	96,914	34.72%	Pass	HJR 513 (1972)
1972	Amendment C. Judicial Reorganization	177,235	66.48%	89,358	33.52%	Pass	HJR 512 (1972)
1972	Amendment D. Local Government Reorganization	152,474	58.70%	107,296	41.30%	Pass	HJR 515 (1972)
1972	Amendment E. Constitutional Revision	173,541	67.14%	84,939	32.86%	Pass	HJR 514 (1972)
1974	Amendment A. Legislative Department	86,293	38.37%	138,590	61.63%	Fail	HJR 505 (1974)
1974	Amendment B. Elections & Right of Suffrage	132,120	59.88%	88,524	40.12%	Pass	HJR 507 (1974)
1976	Amendment A. Preamble Change	75,174	29.06%	183,548	70.94%	Fail	SJR 5 (1975)
1976	Amendment B. Bill of Rights	77,771	30.18%	179,936	69.82%	Fail	SJR 4 (1975)
1976	Amendment C. Legislative Article	56,538	22.17%	198,447	77.83%	Fail	HJR 502 (1975), HJR 502 (1976)
1976	Amendment D. Repeal Section 26	45,100	17.76%	208,909	82.24%	Fail	HJR 509 (1976)
1976	Amendment E. School and Public Lands	66,287	26.07%	188,012	73.93%	Fail	SJR 1 (1975)
1976	Amendment F. Arrangement of Constitution	57,710	22.92%	194,039	77.08%	Fail	HJR 507 (1976)
1978	Amendment A. 40 Day Legislative Session, etc.	104,367	46.02%	122,429	53.98%	Fail	HJR 1003 (1978)
1976	Amendment B. Flexibility in Investing School Money	106,461	48.35%	113,742	51.65%	Fail	SJR 5 (1978)
1978	Amendment C. Protects School Land Mineral Rights	115,871	52.64%	104,264	47.36%	Pass	SJR 6 (1978)
1978	Amendment D. Limits Legislature in Tax Increases	116,647	52.96%	103,621	47.04%	Pass	HJR 501 (1977)
1980	Amendment A. Relating to the appointment of Supreme Court justices and circuit court judges	158,490	53.99%	135,062	46.01%	Pass	SJR 4 (1979)
1980	Amendment B. Relating to real property taxation	113,863	37.21%	192,116	62.79%	Fail	Initiated
1980	Amendment C. Prohibiting Legislature from substantially changing or re-enacting any law enacted or defeated by vote of people	126,181	47.29%	140,632	52.71%	Fail	Initiated
1980	Amendment D. Relating to legislative prerogative to amend initiated or referred laws	77,225	35.48%	140,406	64.52%	Fail	HJR 1006 (1980)
1980	Amendment E. Relating to length of legislative session	156,630	56.48%	120,703	43.52%	Pass	HJR 1002 (1980)
1982	Amendment A. amended Sec. 5, Art. III to provide for single member Senate districts in the legislature	122,703	52.24%	112,184	47.76%	Pass	Initiated

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South Dakota Proposed Constitutional Changes

Year	Title	Yes #	Yes %	No #	No %	Pass/Fail	Source
1982	Amendment B. Relating to remittance of fines and establishment of interest rates in Article VIII	130,637	55.57%	104,435	44.43%	Pass	HJR 1001 (1982)
1982	Amendment C. amended Sec. 7, Art. III relating to the opening day of legislature	137,262	58.10%	99,001	41.90%	Pass	SJR 2 (1982)
1982	Amendment D. amended Article III relating to the authorization of certain games of chance	107,552	42.23%	147,146	57.77%	Fail	HJR 1003 (1982)
1984	Amendment A. Amended Art. IV, VIII, XI, and XVIII to combine duties of the treasurer and the commissioner of school and public lands	142,985	49.95%	143,276	50.05%	Fail	HJR 1002 (1984)
1986	Amendment A. Amendment to Article IV, section 5 of the Constitution relating to the duties of the lieutenant governor	122,221	45.74%	144,976	54.26%	Fail	SJR 2 (1985)
1986	Amendment B. Amendment to Article III relating to the authorization of a state lottery	163,005	59.67%	110,153	40.33%	Pass	HJR 1001 (1986)
1986	Amendment C. Amendment to Article VIII relating to the loan of nonsectarian textbooks	148,813	53.85%	127,530	46.15%	Pass	SJR 3 (1986)
1988	Amendment A. Amend Article III, Section 1, relating to initiatives. Removes the legislature from the initiative process.	153,168	52.21%	140,188	47.79%	Pass	HJR 1001 (1987)
1988	Amendment B. Initiated amendment to Article III, section 25 to permit gambling in the city of Deadwood.	191,745	64.30%	106,444	35.70%	Pass	Initiated
1988	Amendment C. Initiated amendment to Article XI to add a section 14 relating to limitation on property taxes.	116,240	38.66%	184,452	61.34%	Fail	Initiated
1988	Amendment D. Amend Article XIV relating to charitable and penal institutions. Removes the Board of Charities and Corrections from the constitution and clears the way for reorganization of those departments.	171,282	58.52%	121,410	41.48%	Pass	HJR 1001 (1988)
1990	Amendment A. Amend Article VI, Section 13, relating to disposition of private property taken for public use.	104,973	43.99%	133,643	56.01%	Fail	SJR 1 (1989)
1990	Amendment B. Amend Article III, Section 12 relating to eligibility for Legislative office.	82,358	35.12%	152,175	64.88%	Fail	SJR 3 (1989)
1990	Amendment C. Adding a new section to Article XI relating to the imposition of an income tax.	114,216	48.97%	119,037	51.03%	Fail	HJR 1002 (1990)
1990	Amendment D. Adding a new section to Article III relating to sessions of Legislature.	117,969	51.64%	110,468	48.36%	Pass	SJR 1 (1990)

Bold items are new articles that were approved by voters

Source: South Dakota Secretary of State and South Dakota State Archives. Titles are noted as they appear in state records.

South Dakota Proposed Constitutional Changes

Year	Title	Yes #	Yes %	No #	No %	Pass/Fail	Source
1990	Amendment E. Adding a new section to Article XI relating to a limit on the growth of taxes on real property.	104,947	45.26%	126,940	54.74%	Fail	HJR 1001 (1990)
1992	Amendment A. Relating to Term Limitations	205,074	63.53%	117,702	36.47%	Pass	Initiated
1994	Amendment A. An amendment to section 9 of Article VIII of the Constitution of the state of South Dakota, relating to the taxation of leased school and public lands.	176,751	58.10%	127,464	41.90%	Pass	SJR 1 (1993)
1994	Amendment B. An amendment to section 2 of Article VII of the Constitution of the state of South Dakota, relating to the minimum age to vote.	76,921	25.19%	228,444	74.81%	Fail	HJR 1001 (1993)
1994	Amendment C. An amendment to section 11 of Article VIII of the Constitution of the state of South Dakota, relating to the investment of permanent educational funds.	130,785	43.74%	168,232	56.26%	Fail	SJR 2 (1993)
1994	Amendment D. An amendment to section 3 of Article III of the Constitution of the state of South Dakota, relating to the qualifications for legislative office.	51,458	16.78%	255,166	83.22%	Fail	HJR 1002 (1994)
1994	Amendment E. An amendment to section 25 of Article III of the Constitution of the state of South Dakota, relating to the state lottery and video games of chance.	165,185	52.80%	147,680	47.20%	Pass	SJR 1 (1994 Special)
1996	Amendment A. An amendment to Article VIII, section 11 of the Constitution of the State of South Dakota, relating to the investment of permanent education funds.	191,771	62.99%	112,659	37.01%	Pass	SJR 1 (1996)
1996	Amendment B. An amendment to Article XI of the Constitution of the State of South Dakota, relating to the vote required to impose or increase taxes.	229,580	74.28%	79,493	25.72%	Pass	HJR 1003 (1996)
1998	Amendment A. Initiated amendment to Article VIII, Section 15 of the South Dakota Constitution concerning the taxation of real property for school purposes.	56,957	22.32%	198,256	77.68%	Fail	Initiated
1998	Amendment B. An Amendment to Article III of the South Dakota Constitution concerning the authority of a special interim legislative committee to approve the transfer of appropriated funds.	81,976	33.01%	166,373	66.99%	Fail	HJR 1001 (1997)
1998	Amendment C. An Amendment to Article III, Section 12 of the South Dakota Constitution concerning legislative conflicts of interest.	53,020	21.40%	194,689	78.60%	Fail	HJR 1004 (1997)

Bold items are new articles that were approved by voters
Source: South Dakota Secretary of State and South Dakota State Archives. Titles are noted as they appear in state records.

South Dakota Proposed Constitutional Changes

Year	Title	Yes #	Yes %	No #	No %	Pass/Fail	Source
1998	Amendment D. An Amendment to Article IX of the South Dakota Constitution authorizing local initiatives to provide for the cooperation and organization of local government.	121,880	49.94%	122,184	50.06%	Fail	HJR 1009 (1997)
1998	Amendment E. Initiated amendment to Article XVII of the South Dakota Constitution concerning ownership and interest in farming.	149,470	58.67%	105,282	41.33%	Pass	Initiated
1998	Amendment F. An amendment to Article VIII of the South Dakota Constitution, concerning the classification of property for purposes of taxation.	92,447	37.63%	153,230	62.37%	Fail	HJR 1008 (1998)
1998	Amendment G. An Amendment to Article VIII of the South Dakota Constitution, permitting the investment of permanent school funds in certain stocks, bonds, mutual funds, and other financial instruments.	96,975	39.12%	150,907	60.88%	Fail	SJR 2 (1998)
1998	Amendment H. Amendments to Article III, Section 3 of the South Dakota Constitution, relating to age qualifications for legislative office, and to Article IV, Section 2 of the South Dakota Constitution, relating to the age qualifications for Governor and lieutenant governor.	150,680	60.15%	99,834	39.85%	Pass	HJR 1002 (1998)
2000	Amendment A. An amendment to Article VIII of the South Dakota Constitution relating to classification of property for purposes of taxation.	167,117	54.94%	137,081	45.06%	Pass	HJR 1005 (1999)
2000	Amendment B. An amendment to Article IX of the South Dakota Constitution authorizing local initiatives to provide for the cooperation and organization of local government.	165,346	55.26%	133,780	44.72%	Pass	HJR 1007 (1999)
2000	Amendment C. An initiated amendment to Article XI of the South Dakota Constitution, concerning the taxation of inheritances.	251,316	80.13%	62,334	19.87%	Pass	Initiated
2000	Amendment D. An initiated amendment to Article III, Section 25 of the South Dakota Constitution repealing the video lottery.	146,428	46.33%	169,642	53.67%	Fail	Initiated
2000	Amendment E. An amendment to Article VIII of the South Dakota Constitution, permitting the investment of permanent school funds in certain stocks, bonds, mutual funds, and other financial instruments and to use a certain portion of the interest and income to increase the principal in the fund.	168,896	56.10%	132,181	43.90%	Pass	SJR 1 (2000)

Bold items are new articles that were approved by voters
Source: South Dakota Secretary of State and South Dakota State Archives. Titles are noted as they appear in state records.

South Dakota Proposed Constitutional Changes

Year	Title	Yes #	Yes %	No #	No %	Pass/Fail	Source
2001	Amendment A. An amendment to Article XIII of the South Dakota Constitution authorizing the creation and administration of a trust fund for proceeds of the sale of the State Cement Plant.	69,309	78.79%	18,657	21.21%	Pass	SJR 1 (2000 Special)
2001	Amendment B. An amendment to Article XII of the South Dakota Constitution authorizing the creation and administration of trust funds for health care and education.	63,484	72.50%	24,086	27.50%	Pass	SJR 4 (2001)
2002	Amendment A. An amendment to Article XVII of the South Dakota Constitution relating to restrictions on corporate farming.	83,320	46.01%	97,755	53.99%	Fail	HJR 1009 (2002)
2002	Amendment A. An initiated amendment to Article VI, Section 7 of the Constitution, relating to the rights of a criminal defendant.	68,659	21.81%	246,097	78.19%	Fail	Initiated
2002	Amendment B. An amendment to Article III, Section 5 of the Constitution to clarify the responsibility of the Legislature to provide for its own apportionment.	116,495	38.35%	187,242	61.65%	Fail	HJR 1007 (2002)
2002	Amendment C. An amendment to Article IV, Section 4 of the Constitution, extending the time allowed for the Governor's review of legislation passed by the Legislature.	166,969	54.16%	141,326	45.84%	Pass	HJR 1010 (2002)
2004	Amendment A. An amendment to Article V, section 7 of the South Dakota Constitution, providing for the merit selection of circuit court judges.	138,368	37.81%	227,577	62.19%	Fail	HJR 1003 (2003)
2004	Amendment B. An amendment to Article VIII, section 20 of the South Dakota Constitution to authorize the provision of certain services to all children of school age.	173,650	46.99%	195,936	53.01%	Fail	HJR 1003 (2004)
2006	Amendment C. An Amendment to Article XXI of the South Dakota Constitution, relating to marriage.	172,305	51.83%	160,152	48.17%	Pass	HJR 1001 (2005)
2006	Amendment D. An Amendment to Article XI, Section 2 of the South Dakota Constitution, relating to real property assessment for taxation.	65,903	20.20%	260,375	79.80%	Fail	Initiated
2006	Amendment E. An Amendment to Article VI of the South Dakota Constitution, relating to judicial decisions.	35,641	10.79%	294,734	89.21%	Fail	Initiated

Bold items are new articles that were approved by voters
Source: South Dakota Secretary of State and South Dakota State Archives. Titles are noted as they appear in state records.

South Dakota Proposed Constitutional Changes

Year	Title	Yes #	Yes %	No #	No %	Pass/Fail	Source
2006	Amendment F. An Amendment to Article III of the South Dakota Constitution, relating to the Legislature.	103,026	32.35%	215,458	67.65%	Fail	HJR 1003 (2006)
2008	Amendment G. An Amendment to the South Dakota Constitution, to repeal certain reimbursement restrictions for travel by legislators to and from a legislative session.	147,763	41.14%	211,413	58.86%	Fail	HJR 1003 (2008)
2008	Amendment H. An Amendment to the South Dakota Constitution, to repeal certain provisions relating to corporations.	103,172	30.97%	229,985	69.03%	Fail	HJR 1001 (2008)
2008	Amendment I. An Amendment to the South Dakota Constitution, to provide for a maximum of forty legislative days each year.	184,722	52.41%	167,751	47.59%	Pass	HJR 1004 (2008)
2008	Amendment J. An Amendment to the South Dakota Constitution, to eliminate term limits for legislators.	87,380	24.27%	272,635	75.73%	Fail	SJR 1 (2008)
2010	Amendment K. An Amendment to Article VI of the South Dakota Constitution relating to the right of individuals to vote by secret ballot.	241,896	79.13%	63,783	20.87%	Pass	SJR 3 (2010)
2010	Amendment L. An Amendment to Article XIII of the South Dakota Constitution relating to the trust fund created from the proceeds of the state cement enterprise sales.	114,321	40.55%	167,694	59.45%	Fail	HJR 1004 (2010)
2012	Amendment M. An Amendment to the South Dakota Constitution regarding certain provisions relating to corporations.	96,187	29.60%	228,720	70.40%	Fail	HJR 1001 (2012)
2012	Amendment N. An Amendment to the South Dakota Constitution repealing certain reimbursement restrictions for travel by legislators to and from a legislative session.	125,715	36.82%	215,675	63.18%	Fail	HJR 1002 (2012)
2012	Amendment O. An Amendment to the South Dakota Constitution changing the method for distribution from the cement plant trust fund.	186,958	56.76%	142,410	43.24%	Pass	HJR 1006 (2012)
2012	Amendment P. An Amendment to the South Dakota Constitution adding balanced budget requirements.	215,659	64.60%	118,165	35.40%	Pass	HJR 1007 (2012)
2014	Amendment Q. An Amendment to the South Dakota Constitution authorizing the Legislature to allow roulette, keno and craps in Deadwood.	152,265	56.69%	116,326	43.31%	Pass	HJR 1001 (2014)

Bold items are new articles that were approved by voters
Source: South Dakota Secretary of State and South Dakota State Archives. Titles are noted as they appear in state records.

South Dakota Proposed Constitutional Changes

Year	Title	Yes #	Yes %	No #	No %	Pass/Fail	Source
2016	Amendment R. An Amendment to the South Dakota Constitution regarding postsecondary technical education institutes.	178,209	50.61%	173,945	49.39%	Pass	HJR 1003 (2015)
2016	Amendment S. An Initiated Amendment to the South Dakota Constitution to expand rights for crime victims.	215,585	59.61%	146,084	40.39%	Pass	Initiated
2016	Amendment T. An initiated Amendment to the South Dakota Constitution to provide for state legislative redistricting by a commission.	149,942	42.97%	198,982	57.03%	Fail	Initiated
2016	Amendment U. An initiated Amendment to the South Dakota Constitution limiting the ability to set statutory interest rates for loans.	130,627	36.74%	224,876	63.26%	Fail	Initiated
2016	Amendment V. An initiated Amendment to the South Dakota Constitution establishing nonpartisan elections.	157,870	44.51%	196,781	55.49%	Fail	Initiated
2018	Amendment W. An initiated Amendment to the South Dakota Constitution changing campaign finance and lobbying laws, creating a government accountability board, and changing certain initiative and referendum provisions.	142,769	45.06%	174,081	54.94%	Fail	Initiated
2018	Amendment X. An Amendment to the South Dakota Constitution increasing the number of votes needed to approve a constitutional amendment.	140,730	45.68%	167,362	54.32%	Fail	SJR 1 (2018)
2018	Amendment Y. An amendment to the South Dakota Constitution revising certain provisions relating to the rights of crime victims.	106,498	79.51%	27,448	20.49%	Pass	HJR 1004 (2018)
2018	Amendment Z. An Amendment to the South Dakota Constitution establishing that a proposed constitutional amendment may embrace only one subject, and requiring the proposed amendments to be presented and voted on separately.	195,790	62.41%	117,947	37.59%	Pass	HJR 1006 (2018)
2020	**Amendment A. An Amendment to the South Dakota Constitution to legalize, regulate, and tax marijuana; and to require the Legislature to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use**	**225,260**	**54.18%**	**190,477**	**45.82%**	**Pass**	**Initiated**
2020	Amendment B. An Amendment to the South Dakota Constitution authorizing the Legislature to allow sports wagering in Deadwood.	239,620	58.47%	170,191	41.53%	Pass	SJR 501 (2020)

Bold items are new articles that were approved by voters
Source: South Dakota Secretary of State and South Dakota State Archives. Titles are noted as they appear in state records.

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	)SS	
COUNTY OF HUGHES	)	SIXTH JUDICIAL CIRCUIT

SHERIFF KEVIN THOM, in his official capacity as Pennington County Sheriff, and COLONEL RICK MILLER, in his official capacity as Superintendent of the South Dakota Highway Patrol,

Plaintiffs,

v.

STEVE BARNETT, in his official capacity as South Dakota Secretary of State,

Defendant,

and

SOUTH DAKOTANS FOR BETTER MARIJUANA LAWS, RANDOLPH SEILER, WILLIAM STOCKER, CHARLES PARKINSON, and MELISSA MENTELE,

Intervenor Defendants.

32 CIV 20-000187

RESPONSE TO STATEMENT OF UNDISPUTED MATERIAL FACTS BY SOUTH DAKOTANS FOR BETTER MARIJUANA LAWS, RANDOLPH SEILER, WILLIAM STOCKER, CHARLES PARKINSON, AND MELISSA MENTELE

Pursuant to S.D.C.L. § 15-6-56(c), Proponents South Dakotans for Better Marijuana Laws, Randolph Seiler, William Stocker, Charles Parkinson, and Melissa Mentele submit the following response to the Plaintiffs' Joint Statement of Undisputed Material Fact.

1. Proponents agree, but contend this fact is not material because Sheriff Thom brought suit in his official capacity only.

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2. Agree.

3. Proponents agree, but contend this fact is not material because Colonel Miller brought suit in his official capacity only.

4. Agree.

5. Agree.

6. Agree.

7. Agree.

8. Agree.

9. Agree.

10. Agree.

11. Agree.

12. Agree.

13. Agree.

14. Agree.

15. Agree.

16. Agree. On June 9, 2020 the South Dakota Legislative Research Council provided the required fiscal note for Amendment A. (Billion Decl., Ex. A.)

17. Agree.

18. Agree.

19. Proponents do not dispute Exhibit E. Proponents further state that, while South Dakota voters have not approved an *initiated* constitutional measure that has added a new article to the Constitution, voters have approved amendments prior to

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1972 that added or repealed whole articles. *See, e.g.*, S.D. Const. art. XXVIII, Historical Note; 1899 S.D. Session Laws, ch. 63; S.D. Const. art. XXIX § 1, Historical Note; 1917 S.D. Session Laws, ch. 168; S.D. Const. art. XXIV, Historical Note; S.D. Const. art. XXIV, Historical Note; 1915 S.D. Session Laws, ch. 231; S.D. Const. art. XXIV, Historical Note; 1933 S.D. Session Laws, ch. 128. Proponents further submit that South Dakota voters have approved of wide-ranging constitutional changes via amendment. *See* 1972 Session Laws, chs. 1-4; Ex. E p. 7. Proponents submit that these legislative records are publicly available records generally known within South Dakota and their accuracy can be readily determined from sources whose accuracy cannot be questioned.

Respectfully,

DATED: January 8, 2021

ROBINS KAPLAN LLP

By: */s/ Timothy W. Billion*

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Attorneys for Proponents

Filed: 1/8/2021 4:33 PM CST Hughes County, South Dakota 32CIV20-000187

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2021 I electronically filed and served the Proponents' foregoing response to the Plaintiffs' statement of undisputed material facts with the Clerk of the Court for the South Dakota Circuit Court for the Sixth Judicial Circuit by using the Odyssey File & Serve system, which constitutes service on:

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By: */s/ Timothy W. Billion*
Timothy W. Billion

Filed: 1/8/2021 4:33 PM CST Hughes County, South Dakota 32CIV20-000187

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	)SS	
COUNTY OF HUGHES	)	SIXTH JUDICIAL CIRCUIT

32 CIV 20-000186

In the Matter of Election Contest as to Amendment A, an Amendment to the South Dakota Constitution to Legalize, Regulate, and Tax Marijuana; and to Require the Legislature to Pass Laws Regarding Hemp as Well as Laws Ensuring Access to Marijuana for Medical Use.

DECLARATION OF TIMOTHY W. BILLION IN OPPPOSITION TO CONTESTANTS' MOTION FOR SUMMARY JUDGMENT

I, Timothy W. Billion, pursuant to S.D.C.L. ch. 18-7, hereby declare as follows:

1. I am an attorney representing the Proponents in this matter.

2. A true and correct copy of the fiscal note relating to Amendment A is attached hereto as Exhibit A.

I declare under penalty of perjury under the law of South Dakota that the foregoing is true and correct.

Executed on January 8, 2021, at Sioux Falls, South Dakota

By: _____
Timothy W. Billion

Filed: 1/8/2021 4:39 PM CST Hughes County, South Dakota 32CIV20-000186

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2021 I electronically filed and served the foregoing declaration and referenced exhibit with the Clerk of the Court for the South Dakota Circuit Court for the Sixth Judicial Circuit by using the Odyssey File & Serve system, which constitutes service on:

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Attorneys for Defendant Jason Ravnsborg

By: */s/ Timothy W. Billion*
Timothy W. Billion

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SOUTH DAKOTA LEGISLATIVE RESEARCH COUNCIL

FISCAL NOTE

INITIATED CONSTITUTIONAL AMENDMENT

AN INITIATED AMENDMENT TO THE SOUTH DAKOTA CONSTITUTION AUTHORIZING THE LICENSING, REGULATION, AND ENFORCEMENT OF CANNABIS IN SOUTH DAKOTA.

Legalizing cannabis would provide revenues from licensing fees, sales tax, and a 15% excise tax. After regulatory costs, the State would distribute 50% of net revenues annually to public schools and 50% to the general fund. Incarceration costs would decrease due to a decriminalization of several current laws.

Estimated Net Revenues:
FY2021: $355,705
FY2022: $10,765,004
FY2023: $19,589,466
FY2024: $29,372,397

Approved: Reed Holwegner Date: June 9, 2020

Director, Legislative Research Council

Filed this 9th day of June 2020

Steve Barnett
SECRETARY OF STATE

STATE OF SOUTH DAKOTA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER 2021-02

Whereas, as Governor of the Great State of South Dakota, I took an oath to uphold the freedoms and liberties of all South Dakotans guaranteed by the Constitutions of our state and of our country; and,

Whereas, Article IV Section 3 of the South Dakota Constitution sets forth some of my powers as Governor, and provides in relevant part:

> *"The Governor shall be responsible for the faithful execution of the law. He may, by appropriate action or proceeding brought in the name of the state, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty or right by any officer, department or agency of the state or any of its civil divisions."*; and,

Whereas, my oath to support and defend the Constitution means ensuring that the Constitution is not violated, and it is part of my duty as Governor to defend it; and,

Whereas, on November 4, 2019, an Initiated Constitutional Amendment Petition was filed for validation with the Secretary of State, purporting to propose "An amendment to the South Dakota Constitution to legalize, regulate, and tax marijuana; and to require the Legislature to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use." The Secretary of State validated the proposed amendment, and it was placed on the ballot for a public vote; and,

Whereas, the initiative process used to place Constitutional Amendment A on the ballot was not proper and violated the procedures set forth in the South Dakota Constitution; and,

Whereas, pursuant to Article IV Section 3 of the South Dakota Constitution and my oath, I may restrain this violation of the Constitution by appropriate action or proceeding brought in the name of the state; and,

Whereas, upon my prior instruction, Colonel Rick Miller, Superintendent of the South Dakota Highway Patrol, commenced the following proceedings (collectively referred to hereinafter as the "Amendment A Litigation"):

> *In the Matter of Election Contest as to Amendment A*, Sixth Circuit Case No. 32CIV20-186;
>
> *Sheriff Kevin Thom, In His Official Capacity as Pennington County Sheriff, and Colonel Rick Miller, In His Official Capacity as Superintendent of the South Dakota Highway Patrol v. Steve Barnett, In His Official Capacity as South Dakota Secretary of State*, Sixth Circuit Case No. 32CIV20-187; and,

Whereas, the claims brought by both Sheriff Kevin Thom, in his official capacity as Sheriff of Pennington County, and Colonel Rick Miller, in his official capacity as Superintendent of the South Dakota Highway Patrol, are claims that the South Dakota Constitution expressly provides I may bring in the name of the State;

NOW THEREFORE, by virtue of the authority vested in me by the Constitution and the laws of the State of South Dakota in my capacity as the duly elected Governor of South Dakota, by this Executive Order, I do hereby **order and declare the following**:

1. Commencement of the Amendment A Litigation is consistent with my executive power, described in Article IV Section 3 of the South Dakota Constitution, which is a power I may properly delegate.

2. On November 20, 2020, I directed Colonel Rick Miller to commence the Amendment A Litigation on my behalf in his official capacity. At all times thereafter, Colonel Rick Miller has acted as petitioner and plaintiff in the Amendment A Litigation under my direction and pursuant to a delegation of my Constitutional authority under Article IV Section 3.

3. Pursuant to SDCL 15-6-17(a), the commencement and continued prosecution of the Amendment A Litigation is hereby ratified and affirmed in all respects.

Dated in Pierre, South Dakota this 8th day of January, 2021.

Kristi Noem
Governor of South Dakota

ATTEST:

Steve Barnett
Secretary of State

ARTICLE XXIII

AMENDMENTS AND REVISIONS OF THE CONSTITUTION

1. Amendments.
2. Revision.
3. Ratification.

---

§ 1. Amendments. Amendments to this Constitution may be proposed by initiative or by a majority vote of all members of each house of the Legislature. An amendment proposed by initiative shall require a petition signed by qualified voters equal in number to at least ten percent of the total votes cast for Governor in the last gubernatorial election. The petition containing the text of the proposed amendment and the names and addresses of its sponsors shall be filed at least one year before the next general election at which the proposed amendment is submitted to the voters. A proposed amendment may amend one or more articles and related subject matter in other articles as necessary to accomplish the objectives of the amendment; however, no proposed amendment may embrace more than one subject. If more than one amendment is submitted at the same election, each amendment shall be so prepared and distinguished that it can be voted upon separately.
History: Amendment proposed by SL 1963, ch 342, rejected Nov. 3, 1964. Amendment proposed by SL 1970, ch 6, rejected Nov. 3, 1970. Amendment proposed by SL 1972, ch 4, approved Nov. 7, 1972. Amendment proposed by SL 2018, ch 4, § 2, approved Nov. 6, 2018.

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§ 2. Revision. A convention to revise this Constitution may be called by a three-fourths vote of all the members of each house. The calling of a constitutional convention may be initiated and submitted to the voters in the same manner as an amendment. If a majority of the voters voting thereon approve the calling of a convention, the Legislature shall provide for the holding thereof. Members of a convention shall be elected on a nonpolitical ballot in the same districts and in the same number as the house of representatives. Proposed amendments or revisions approved by a majority of all the members of the convention shall be submitted to the electorate at a special election in a manner to be determined by the convention.
History: Amendment proposed by SL 1915, ch 236, rejected Nov., 1916; amendment proposed by SL 1972, ch 4, approved Nov. 7, 1972.

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§ 3. Ratification. Any constitutional amendment or revision must be submitted to the voters and shall become a part of the Constitution only when approved by a majority of the votes cast thereon. The Legislature may provide for the withdrawal by its sponsors of an initiated amendment at any time prior to its submission to the voters.

History: 1889 Const., art. XXIII, § 1. Amendment proposed by SL 1963, ch 342, rejected Nov. 3, 1964. Amendment proposed by SL 1970, ch 6, rejected Nov. 3, 1970. Amendment proposed by SL 1972, ch 4, approved Nov. 7, 1972. Amendment proposed by SL 2018, ch 1, § 2, rejected Nov. 6, 2018.

§ 3. Powers and duties of the Governor. The Governor shall be responsible for the faithful execution of the law. He may, by appropriate action or proceeding brought in the name of the state, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty or right by any officer, department or agency of the state or any of its civil divisions. This authority shall not authorize any action or proceedings against the Legislature.

He shall be commander-in-chief of the armed forces of the state, except when they shall be called into the service of the United States, and may call them out to execute the laws, to preserve order, to suppress insurrection or to repel invasion.

The Governor shall commission all officers of the state. He may at any time require information, in writing or otherwise, from the officers of any administrative department, office or agency upon any subject relating to the respective offices.

The Governor shall at the beginning of each session, and may at other times, give the Legislature information concerning the affairs of the state and recommend the measures he considers necessary.

The Governor may convene the Legislature or either house thereof alone in special session by a proclamation stating the purposes of the session, and only business encompassed by such purposes shall be transacted.

Whenever a vacancy occurs in any office and no provision is made by the Constitution or laws for filling such vacancy, the Governor shall have the power to fill such vacancy by appointment.

The Governor may, except as to convictions on impeachment, grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures.

History: 1889 Const., art. IV, §§ 4, 5, 8; amendment of § 5 proposed by SL 1951, ch 294, rejected Nov., 1952; amendment of § 5 proposed by SL 1959, ch 316, approved Nov. 8, 1960; amendment proposed by SL 1972, ch 1, approved Nov. 7, 1972.