



April 19, 2022

Arthur Taylor, President  
Families for America, Inc.  
familiesforamerica@gmail.com

**Re: LRC Review of Proposed Constitutional Amendment to Reserve Certain Parental Rights**

Dear Mr. Taylor:

In accordance with SDCL 12-13-24 and 12-13-25, the Legislative Research Council (LRC) is required to review each initiated measure submitted to it by a sponsor for the purpose of determining whether the measure is "written in a clear and coherent manner in the style and form of other legislation" and for the purpose of ensuring that the "effect of the measure is not misleading or likely to cause confusion among voters." Based on this review, the LRC provides written comments to the proposal's sponsor for the purpose of assisting the sponsor in meeting these requirements. This includes providing "assistance . . . to minimize any conflict with existing law and to ensure the [proposal]'s . . . effective administration." While there is no obligation to accept any of the suggestions contained in this letter, including the edits below, you are asked to keep in mind the legal standards established in SDCL 12-13-24 and 12-13-25.

The LRC encourages you to consider edits and suggestions to the proposed text. The edits are recommended for the sake of clarity and to bring the proposed measure into conformance with the style and form of South Dakota legislation. The latter is based upon the Guide to Legislative Drafting (<https://mylrc.sdlegislature.gov/api/Documents/127102.pdf>). Should you have any questions of clarification about the attached edits, or about the suggestions made in this letter, please feel free to contact this office. Please reference the enclosed, marked-up copy while reviewing the bulleted changes:

- A new article of the South Dakota Constitution was proposed for this measure. Insofar as this measure would be intended to protect certain parental rights against state infringement, and would not protect against wholly private actors, this section might be best present as an amendment to Article VI of the South Dakota Constitution, and the bill of rights depicted therein.
- Proposed catchlines were struck, reflecting the fact that catchlines are not law, but are merely indexing that is set by the LRC's Code Counsel on authority delegated by law from the Code Commission.
- In keeping with the above suggestion, it is unclear what "any other institution" means in the context provided in Section 1. Would it be a public institution? Or would it be a private entity? Either "public" or "private" should be specified.
- The law should not both indicate that "all" parental rights are protected under a specific constitutional provision, and then provide a non-exhaustive list of those rights in the provision, as indicated by the phrase "including, but not limited to." LRC recommends for sake of clarity that

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any parental rights protected by the Constitution be specified in the Constitution. Additional fundamental rights of parent and child not specified can be addressed by the courts. For this reason, LRC recommends the edits to the text's first paragraph.

- The remaining edits are stylistic and intended to make the language more concise and readily understood.

Pursuant to SDCL 12-13-25, I am to provide a written opinion "as to whether the initiated amendment embraces only one subject under S.D. Const., Art. XXIII, § 1" and whether the proposed change to the constitution is indeed an "amendment under S.D. Const., Art. XXIII, § 1," or if it is rather a "revision under S.D. Const., Art. XXIII, § 2." The plain language of SDCL 12-13-25 indicates that this opinion has no legal effect. It is my opinion that this proposed constitutional change is an amendment that embraces one subject.

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

Sincerely,



Reed Holwegner  
Director

RH/JM/ct

Enclosure

CC: Chris Curzon, ccurzon9@gmail.com

✓ The Honorable Charles McGuigan, Acting Attorney General  
The Honorable Steve Barnett, Secretary of State

**INITIATED CONSTITUTIONAL AMENDMENT PETITION  
OR  
INITIATED PETITION FOR REPEAL OF CONSTITUTIONAL  
PROVISION**

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 added and that this proposal be submitted to the voters of the state of South Dakota at the general election on November \_\_, \_\_\_\_ for their approval or rejection:

\_\_\_\_ Title: South Dakota Parental Rights  
\_\_\_\_ Attorney General Explanation:

Article XXXIV

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

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

Sec. § 1, Parental Rights.

**Commented [JG1]:** Catchlines, which are not law but are mere indexing, are set by the Code Counsel on authority delegated by the Code Commission.

All The following parental rights are reserved to the parent of a minor child in this state without obstruction or interference from the state, any of its political subdivisions, any other governmental entity, or any other institution including, but not limited to:

**Commented [JG2]:** What is "an institution" for these purposes? Private entities? Can that be specified? Otherwise, that term use is very vague, and may be redundant if the entities targeted are also captured under the term "other governmental entity."

(a)(1) The right to direct the child's education and care of his or her minor child;

(b)(2) The right to direct the child's upbringing and the child's moral or religious training of his or her minor child;

**Commented [JG3]:** This is poor drafting, whether in the constitution or in statute. For sake of clarity, provide a specific set of parental rights, as suggested by these edits.

(c)(3) The right to apply to enroll his or her minor the child in a public school or, as an alternative to public education, a private school, including a religious school, a home education program, or as otherwise authorized by law other available options;

**Commented [JG4]:** Redundant to reference given the lead-in.

(d)(4) The right to access and review all school records relating to his or her minor the child;

~~(e)(5)~~ The right to make health care decisions for ~~his or her minor~~ the child, unless such the decision is prohibited by law; and;

~~(f)(6)~~ The right to access and review all of the child's medical records ~~of his or her minor child~~, unless prohibited by law or if the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released.

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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		STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
1			
PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
2			
PRINT		CITY OR TOWN	COUNTY OF REGISTRATION

-SIGN 1 _____ -PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER _____ CITY OR TOWN	DATE OF SIGNING _____ COUNTY OF REGISTRATION
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**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.

Circulator ID Number (paid circulator only) \_\_\_\_\_ Signature of Circulator \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Seal) \_\_\_\_\_

\_\_\_\_\_  
Signature of Officer Administering Oath

My Commission Expires \_\_\_\_\_

—5.02.08.09—

Form Revised 2020

\_\_\_\_\_  
Title of Officer Administering Oath