

APR 20 2022



PRESIDENT PRO TEMPORE LEE SCHOENBECK, CHAIR | SPEAKER SPENCER GOSCH, VICE CHAIR  
REED HOLWEGNER, DIRECTOR | SUE CICHOS, DEPUTY DIRECTOR | JOHN MCCULLOUGH, CODE COUNSEL

500 EAST CAPITOL AVENUE, PIERRE, SD 57501 | 605-773-3251 | SDLEGISLATURE.GOV

April 19, 2022

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

**Re: LRC Review of Proposed Constitutional Amendment Regarding Elections**

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 purpose of a constitution is to provide a basic structure within which a government can function. The Constitution, in general terms, prescribes and limits the powers to be exercised by that government and sets forth the rights of the governed. As submitted via e-mail on December 15, 2021, this proposal to establish a chapter of the South Dakota Constitution would specify several measures that must be taken in state elections. These are not general terms. For example, the five crimes prescribed in the draft would be the first crimes specified in the Constitution. The Constitution is not a compilation of policy statutes and as such, should not be amended to incorporate what ought to be statutory material. Doing so only increases the risk of a successful challenge of this proposal, if approved, for failure to adhere to the single subject rule. (Please review the case of *Thom & Miller v. Barnett et al*, 2021 S.D. 65, 967 N.W.2d 261, for more information on this concern.) Therefore, this office recommends that the proposed constitutional provision be re-written so that it would amend the South Dakota Codified Laws as an initiated measure, rather than impact the South Dakota Constitution.

In addition, there are several edits to the proposed text that this office encourages you to consider. We recommend the edits for 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 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:

Generally:

- Proposed catchlines were struck, reflecting the fact that catchlines are not law, but are indexing that is set by the LRC's Code Counsel on authority delegated by law from the Code Commission.