



Marty J. Jackley
ATTORNEY GENERAL
STATE OF SOUTH DAKOTA

November 3, 2023

Sponsor Richard P. Weiland
PO Box 2063
Sioux Falls, S.D. 57101-2063
Info@dakotans4health.com

RE: Complaints Relating to the Proposed Initiated Amendment Establishing
A Right To Abortion The State Constitution – Response to letter dated
November 2, 2023

Dear Mr. Weiland,

Thank you for your correspondence of November 2, 2023, wherein you request the opportunity to review the evidence that has been provided to this office on the petition process for the proposed Abortion Amendment you have sponsored. I would be happy to review the evidence personally with you at a time and location, Sioux Falls, Rapid City, or Pierre office, that is convenient for both of our schedules. The complaining party has consented to the release of the information to the media and the public, and I would like to take into consideration your position before any decision is made on its public release from this office.

Finally, if you or your organization is represented by legal counsel, it is important that counsel be present for any viewing. Thank you for your attention to these important matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Marty J. Jackley".

Marty J. Jackley
ATTORNEY GENERAL

MJJ/dd

CC: SD Right to Life



Marty J. Jackley
ATTORNEY GENERAL
STATE OF SOUTH DAKOTA

October 31, 2023

Sponsor Richard P. Weiland
PO Box 2063
Sioux Falls, S.D. 57101-2063
info@dakotans4health.com

RE: Complaints Relating To The Proposed Initiated Amendment Establishing
A Right To Abortion In The State Constitution

Dear Sponsor Weiland:

In your capacity as the sponsor to "An Initiated Amendment Establishing A Right To Abortion In The State Constitution," I am writing regarding complaints and concerns that have been raised during the petition process. I am making you aware of the complaints and to provide you an opportunity to address them in order to avoid or lesson potential challenges during the petition certification process.

The Attorney General's Office has received video and photographic evidence purporting to show unattended petitions. As you are aware, South Dakota law requires each petition circulator to sign a verification attesting among other items that the circulator personally circulated the petition. See SDCL 2-1-10.

The Attorney General's Office has also received evidence including video indicating petition signatories may be signing more than once. As you are aware, SDCL § 2-1-6 makes it a criminal offense for a person, who knows that they have already signed a constitutional amendment, to sign another petition for the same constitutional amendment.

Finally, the Attorney General's Office has received evidence of petition circulators providing misleading information to the public. As you are aware, SDCL 2-1-1.1 sets forth initiated constitutional amendment petition requirements. South Dakota law requires that each petition circulator shall provide to each person who signs a petition, a form containing the title and explanation of the initiated amendment to the constitution as prepared by the

Attorney General. For your convenience, I am providing you a copy of Interim Attorney General Mark Vargo's constitutional amendment statement. His explanation clearly sets forth the affect your proposed constitutional amendment would have on abortion in the first, second, and third trimesters. To suggest otherwise may well result in a challenge to the petition process.

Any suggestion that your proposed abortion amendment makes abortion legal only for the first trimester is contrary to the language of the proposed amendment and Interim Attorney General Vargo's ballot explanation. With respect to the "health of the pregnant woman" as used in your proposed Amendment's regulation in the second and third trimesters, there should further be no confusion as the United States Supreme Court has clearly stated, "medical judgment may be exercised in the light of all factors - physical, emotional, psychological, familial, and woman's age - relevant to the well-being of the patient. All these factors may relate to health." See *Doe v. Bolton*, 410 U.S. 179, 193 (1973).

The purpose of this letter is again to encourage you as the sponsor to work with circulators to comply with the requirements of South Dakota law including SDCL ch. 2-1 and to avoid or limit allegations that petition signatories are being misled. The interest of the Attorney General is to ensure compliance with South Dakota law and the petition process, and the Secretary of State will ultimately be responsible for certifying any petitions before being placed on the ballot. As always, I enjoy working with you on these matters, and please do not hesitate to contact me if you have any questions.

Sincerely,



Marty J. Jackley
ATTORNEY GENERAL

MJJ/dd

Enclosure: Interim Attorney General Vargo Explanation

CC: SD Right to Life

RECEIVED

AUG 24 2022

S.D. SEC. OF STATE

CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: An Initiated Amendment Establishing a Right to Abortion in the State Constitution.

Explanation:

This initiated amendment establishes a constitutional right to an abortion and provides a legal framework for the regulation of abortion. This framework would override existing laws and regulations concerning abortion.

The amendment establishes that during the first trimester a pregnant woman's decision to obtain an abortion may not be regulated nor may regulations be imposed on the carrying out of an abortion.

In the second trimester, the amendment allows the regulation of a pregnant woman's abortion decision, and the regulation of carrying out an abortion. Any regulation of a pregnant woman's abortion decision, or of an abortion, during the second trimester must be reasonably related to the physical health of the pregnant woman.

In the third trimester, the amendment allows the regulation or prohibition of abortion except in those cases where the abortion is necessary to preserve the life or health of the pregnant woman. Whether an abortion is necessary during the third trimester must be determined by the pregnant woman's physician according to the physician's medical judgment.

Judicial clarification of the amendment may be necessary. The Legislature cannot alter the provisions of a constitutional amendment.

Filed this 24th day of
August, 2022
Steve Barnett
SECRETARY OF STATE