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S.D. SEC. OF STATE

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HAND DELIVERED

July 14, 2015

Hon. Shantel Krebs  
Secretary of State  
500 E. Capitol  
Pierre, SD 57501

Re: **Attorney General's Statement—State legislative redistricting by a commission**

Dear Secretary Krebs,

This Office received an initiated constitutional amendment regarding state legislative redistricting by a commission. The sponsor is Doug Sombke on behalf of the South Dakota Farmers Union. Enclosed is a copy of the constitutional amendment, in final form, that was submitted to this Office. In accordance with SDCL 12-13-25.1, I hereby submit the Attorney General's Statement with respect to this amendment.

By copy of this letter, I am providing a copy of the Attorney General's Statement to the sponsor pursuant to SDCL 12-13-25.1.

Very truly yours,

Marty J. Jackley  
ATTORNEY GENERAL

MJJ/PA/lde  
Enc.

cc w/enc.: Doug Sombke  
Jason Hancock, Director of LRC

Filed this 14<sup>th</sup> day of  
July 2015  
  
SECRETARY OF STATE

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INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated amendment to the South Dakota Constitution to provide for state legislative redistricting by a commission

Explanation:

State senators and representatives are elected from within legislative districts. The South Dakota Constitution currently requires the Legislature to establish these legislative districts every ten years. This measure removes that authority from the Legislature and grants it to a redistricting commission.

The commission is made up of nine registered voters selected each redistricting year by the State Board of Elections from a pool of up to 30 applicants. This pool consists of applicants registered with South Dakota's two largest political parties (ten from each), and ten not registered with either of those parties. A commission member must have the same party registration, or be registered as unaffiliated with a party, for three continuous years immediately prior to appointment.

No more than three commission members may belong to the same political party. For three years immediately prior to and three years immediately after appointment, commission members may not hold office in certain state or local public offices, or in a political party organization.

The commission will redistrict in 2017, in 2021, and every ten years thereafter. The commission must produce a draft map and allow for public comment. The districts must be drawn in compliance with state and federal law.

Filed this 14<sup>th</sup> day of  
July 2015  
*Shantel Krebs*  
SECRETARY OF STATE

An initiated measure submitted to the electors at the next general election an amendment to Article III, section 5 of the Constitution of the State of South Dakota, relating to non-partisan legislative redistricting.

Section 1. That at the next general election held in the state, the following amendment to Article III, section 5 of the Constitution of the State of South Dakota, as set forth in section 2, shall be submitted to the electors of the state for approval.

Section 2. That Article III, Section 5 of the Constitution of the State of South Dakota, be amended to read as follows:

~~§ 5. The Legislature shall apportion its membership by dividing the state into as many single member, legislative districts as there are state senators. House districts shall be established wholly within senatorial districts and shall be either single member or dual member districts as the Legislature shall determine.~~

~~Legislative districts shall consist of compact, contiguous territory and shall have population as nearly equal as is practicable, based on the last preceding federal census. An apportionment shall be made by the Legislature in 1983 and in 1991, and every ten years after 1991. Such apportionment shall be accomplished by December first of the year in which the apportionment is required. If any Legislature whose duty it is to make an apportionment shall fail to make the same as herein provided, it shall be the duty of the Supreme Court within ninety days to make such apportionment.~~

**Definition of Terms.** Terms used in this section mean:

1. "Commission" or "commission" means the independent redistricting commission established pursuant to this section.

2. "Political party" means a party whose candidate for Governor at the last preceding general election at which a Governor was elected received at least two and one-half percent of the total votes cast for Governor.

3. "Political party office" means an office of a political party organization as distinct from a public office.

4. "State public office" means

- (a) An elective office in the executive or legislative branch of the government of this state; or
- (b) An office in the executive or legislative branch of the government of this state which is filled by gubernatorial appointment; or
- (c) An office of a county, city or other political subdivision of this state which is filled by an election process involving nomination and election of candidates on a partisan basis.

The independent redistricting commission is hereby created and shall be composed of nine registered voters in South Dakota, none of whom shall hold a state public office or a political party office. The commission shall prepare the plan for redistricting the state into legislative districts. This redistricting shall be made by the commission in 2017 and 2021, and every ten years after 2021. Such redistricting shall be accomplished by December first of the year in which the redistricting is required.

By January 31 of each year in which the redistricting is required, the board overseeing state

elections and procedures shall accept applications from persons who are willing to serve on and are qualified for appointment to the commission. The pool of candidates shall consist of no more than thirty individuals, ten from each of the two largest political parties in South Dakota based on party registration, and ten not registered with either of the two largest political parties in South Dakota.

By February 28 of each year in which the redistricting is required, the board shall establish a commission to provide for the redistricting of state legislative districts. No more than three members of the commission shall be members of the same political party. The commission shall select by majority vote one of its members to serve as chair and one of its members to serve as vice chair.

Each commission member shall have been continuously registered with the same political party or registered as unaffiliated with a political party for three or more years immediately preceding appointment, and who is committed to applying the provisions of this section in

an honest, independent and impartial fashion and to upholding public confidence in the integrity of the redistricting process.

Within the three years immediately preceding appointment, a commission member shall not have been appointed to, or elected to, any state public office or political party office. Within the three years immediately after appointment, a commission member shall not be appointed to, or elected to, any state public office or political party office.

If a vacancy occurs on the commission, the board shall select a successor who has the same qualifications as the commissioner whose position is being vacated.

The Legislature, under the direction of the commission, shall provide the technical staff and clerical services that the commission needs to prepare its districting plans. Each commission member shall receive per diem and expenses as established by the Legislature.

Five commissioners, including the chair or vice chair, constitute a quorum. Five or more affirmative

votes are required for any official action. If a quorum is present, the commission shall conduct its business in meetings in accordance with South Dakota's open meetings law.

The commission shall establish legislative districts by dividing the state into as many single-member, legislative districts as there are state senators. House districts shall be established wholly within senatorial districts and shall be either single-member or dual-member districts as the commission shall determine in compliance with federal and state law.

The commission shall commence the mapping process for the legislative districts by creating districts of equal population in a grid-like pattern across the state. Adjustments to the districts shall be made as necessary to accommodate the following:

1. Districts shall comply with the United States Constitution, the South Dakota Constitution, and federal statutes, as interpreted by the United States Supreme Court and other courts with jurisdiction;



2. Districts shall have equal population to the extent practicable;

3. Districts shall be geographically compact and contiguous to the extent practicable;

4. District boundaries shall respect communities of interest to the extent practicable; and

5. District lines shall use visible geographic features, municipal and county boundaries, and undivided census tracts to the extent practicable.

Party registration and voting history shall be excluded from the redistricting process. The places of residence of incumbents or candidates shall not be identified or considered.

The commission shall notify the public that a draft map of legislative districts is available for inspection and written comments. The commission shall accept written comments for thirty calendar days following notification to the public. The senate and house of representatives may act within this period to submit written comments to the commission. After the comment period has ended, the commission shall establish final

district boundaries. The commission shall certify to the secretary of state the establishment of legislative districts.

The commission shall have standing in legal actions regarding the redistricting plan and the adequacy of resources provided for the operation of the commission. The commission shall have the authority to determine whether the attorney general or counsel hired or selected by the commission shall represent the people of South Dakota in the legal defense of a redistricting plan.

Each commissioner's duties established by this section expire upon the appointment of the next commission. The commission shall not meet or incur expenses after the redistricting plan is completed, except if litigation or any government approval of the plan is pending, or to revise districts if required by court decisions, or if the number of legislative districts is changed.