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MARTY J. JACKLEY
ATTORNEY GENERAL

RECEIVED

JUL 26 2017

S.D. SEC. OF STATE

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

HAND DELIVERED

July 26, 2017

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

RE: **Attorney General's Statement for initiated constitutional amendment
(legislative redistricting by a commission)**

Dear Secretary Krebs,

This Office received a proposed constitutional amendment that the sponsor will seek to place on the November 2018 general election ballot. 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 the amendment. The title is: "An initiated amendment to the South Dakota Constitution providing for state legislative redistricting by a commission."

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

Very truly yours,

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

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc w/enc.: Drey Samuelson
Jason Hancock, Director of LRC

CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: An initiated amendment to the South Dakota Constitution providing 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 amendment removes that authority from the Legislature and grants it to a redistricting commission.

Under the amendment, the commission is made up of nine registered voters selected each redistricting year by the State Board of Elections. 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.

Commission members may not hold certain state or local public offices, nor hold office in a political party organization. This restriction also applies for three years immediately prior to appointment to the commission, and three years immediately after appointment.

The commission will redistrict in 2021 and every ten years thereafter. The commission must make a draft redistricting map available for public inspection, and must accept written comments for thirty days. The commission will then establish final legislative district boundaries. The districts must be drawn in compliance with state and federal law.

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An Amendment to the Constitution to provide for **S.D. SEC. OF STATE** legislative redistricting by a nonpartisan commission.

Section 1. 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.~~

Terms used in this section mean:

(1) "Commission," the independent redistricting
commission established pursuant to this section;

(2) "Political party," 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," an office of a political
party organization as distinct from a state public
office;

(4) "State public office," an elective office in the
executive or legislative branch of the government of this
state; or an office in the executive or legislative
branch of the government of this state which is filled by
gubernatorial appointment; or an office of a county,
municipality 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 may 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 plan shall be completed by the commission in 2021 and every ten years after 2021. Redistricting shall be accomplished by December first of the year in which the redistricting is required.

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

Each commission member must 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.

Within the three years immediately preceding appointment, no commission member may have been appointed to or elected to any state public office or political party office. Within the three years immediately after

appointment, no commission member may 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 shall provide the technical staff and clerical services that the commission needs to prepare its redistricting plan. Each commission member shall receive per diem and expenses in the same manner and amount as paid to members of the Legislature.

Five commissioners, including the chair or vice chair, constitute a quorum. Five or more affirmative votes are required for any official action.

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 determines 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 legislative districts shall be made to:

(1) Comply with the United States Constitution, the South Dakota Constitution, and federal laws, as interpreted by the United States Supreme Court and other courts of competent jurisdiction;

(2) Have equal population to the extent practicable;

(3) Be geographically compact and contiguous to the extent practicable;

(4) Respect communities of interest to the extent practicable; and

(5) 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 place of residence of any legislative incumbent or candidate may 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 Legislature 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 Office of the Secretary of State the establishment of each legislative district.

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 may determine whether the Attorney General or other legal counsel shall be used or selected by the commission to represent the commission in any matter relating to a redistricting plan.

The duties of each commission member expire upon the appointment of the next commission. The commission may not meet or incur expense 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 decision.