1. **Review of currently submitted ballot measures. (Viken)**

The Secretary of State's office maintains a current listing of all the ballot measures that are pending. The listing is available on the Secretary's website and includes the measure's text as it was submitted to the Legislative Research Council, the review and comment of the measure provided by the director of the Legislative Research Council, the final language as it was submitted to the attorney general's office, the attorney general's statement, and any prison cost estimate.

http://sdsos.gov/elections-voting/upcoming-elections/general-information/2018-ballot-questions.aspx

2. **Audit of out-of-state contributions for Ballot Question Committees vis-à-vis candidates. (Nesiba)**

The Secretary of State's office maintains the database of all financial filings that are required of both candidate and ballot question committees under South Dakota campaign finance law. All of the filings are available to be accessed via the Secretary's website. The filings will provide information regarding contributions and expenditures for each committee, whether a candidate committee or a ballot question committee.

http://sdsos.gov/elections-voting/campaign-finance/Search.aspx

3. **Amendments to the state constitution, including the percentage of the vote regarding pass and fail. (Nesiba & Reed)**

The Secretary of State's office maintains a comprehensive listing of all ballot measures that have appeared on all ballots since the state's beginning. The listing is available on the Secretary's website.

Prior to 1970, the listing refers to each ballot measure as follows: a "C" refers to a constitutional amendment, an "I" refers to a voter-initiated measure, and an "R" refers to a referendum. There were no voter-initiated constitutional amendments in South Dakota prior to 1972.

After 1970, a letter references a constitutional amendment and a number references an initiated measure/referendum. Distinctions between voter-initiated and Legislature-initiated amendments are noted.

https://sdsos.gov/elections-voting/assets/BallotQuestions.pdf

4. **History of deadline for completed initiated measure petitions due to the Secretary of State. (Nesiba)**

Until 1988, the initiative process in South Dakota was indirect, meaning voter initiative petitions had to be considered first by the Legislature to be placed on the ballot. After the voters adopted an amendment to the Constitution in November 1988 to change the process from indirect to direct, the Legislature overhauled the applicable statutes regarding the process.

When the process was indirect, completed petitions were filed with the office of the Secretary of State. No specific due date was provided by statute, but the law did require "[a]ll signatures on the petition shall have been collected within one year immediately preceding the filing of the petition." Because the law did not specify a due date for a petition to be filed with the Secretary of State, petitions were allowed to be filed at any time, including during the Legislative Session, and then forwarded by the Secretary to both houses of the Legislature for enactment and referral to the people for a vote.

In 1989, when the Legislature first met following the change from an indirect to a direct system, the law was changed to provide for a due date of "the first Tuesday in May of a general election year for submission to the electors at the next general election." In 2006, the due date was changed from the first Tuesday in May to the first Tuesday in April. (S.B. 78, 81st Legislative Session (2006)). The Legislature changed the date again in 2010 to the current "first Tuesday in November of the year prior to a general election." (H.B. 1184, 84th Legislative Session (2010)).

5. **Guidance from the South Dakota Supreme Court regarding the use of an emergency clause by the Legislature. (Nesiba & Viken)**

On multiple occasions the South Dakota Supreme Court has been asked to determine whether the Legislature improperly attached an emergency clause to legislation in order to preclude a referendum. On each of those occasions the Court has abstained from making any determination regarding whether or not an actual emergency existed such that the clause was appropriate. Most recently, in 2001, the Court stated as follows:

> "Whether an act falls within one of the two classes of laws that are excepted from the referendum by art. III, § 1 is a matter subject to judicial review. Whether an emergency exists within the meaning of art. III, § 22 is a matter solely for the Legislature to decide, however, so long as the law to which the emergency clause is attached in fact falls within one of the two excepted classes." *Breck v. Janklow*, 623 N.W.2d 449, 460 (2001).

For a more detailed discussion of what the Court has determined to be adequate within the two excepted classes, refer to Research Request #1 regarding the compendium of cases on that subject.

Without any further guidance from the Supreme Court, the ultimate determination of whether or not an emergency exists rests solely within the purview of the Legislature. This determination, however, does not directly affect whether or not legislation is precluded from a referendum. The presence or absence of an emergency clause *only* determines whether or not a law takes effect either immediately upon the Governor's signature or at least 90 days following the Legislative Session in which it is passed (be it a Regular Session or a Special Session).

Whether or not one of the two excepted classes is adequately cited by the Legislature *does* directly affect a potential referendum, and this determination *is* subject to court challenge. This would be the case whether the Legislature attaches an emergency clause to the legislation or not.

6. **Review of other Circuit Courts of Appeals on the issue of residency requirements for petition circulators. (Nesiba)**

As noted in Research Request #3 regarding durational residency requirements for petition circulators, the Supreme Court of the United States has so far abstained from making any determination directly on the subject. See *Buckley v. American Const. Law Found., Inc.*, 525 U.S. 182 (1999). A durational residency requirement for petition circulators would implicate a petition circulator's Freedom of Speech. This is a different analysis than would occur with regard to a durational residency requirement for an individual's fundamental right to vote. Therefore, they cannot be equated and should be discussed separately.

Without further direction from the Supreme Court, the 8th Circuit Court of Appeals in *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614, 616-7 (2001), determined North Dakota's durational residency requirement of 30 days within the applicable precinct to be a valid compelling interest for the state in the prevention of fraud without unduly restricting speech. Individuals who would not fit North Dakota's durational residency requirement, the court said, may still engage in public discourse regarding the initiative measure through "many alternative means," including by speaking to voters regarding the measures and training residents on the issues involved as well as the best ways to collect signatures. See *Jaeger*, 241 F.3d at 617. They may even accompany circulators in the collection of signatures. See id.

To date, only one other circuit court of appeals has addressed the issue of a residency requirement for initiative petition circulators and found it to be unconstitutional:

> *Chandler v. City of Arvada, CO*, 292 F.3d 1236 (10th Cir. 2002), finding home rule municipality's residency requirement for ballot measure petition circulators to be an unconstitutional burden on the circulator's Freedom of Speech, explicitly distinguishing the decision from the decision reached by the 8th Circuit in *Jaeger*.

Three other circuit courts of appeals have found residency requirements for *candidate* petition circulators to be unconstitutional, but because those cases implicate the *candidate's* freedoms of speech and association as protected by the First Amendment, the analysis for those three decisions is not the same as was conducted for initiated measure petition circulators.