Introduction: I am Brian Murphy, a combat wounded, retired Marine Corps Gunnery Sergeant. I am a licensed attorney in the State of South Dakota and I am writing as a private citizen.

I am writing against House Bill 1200 because I believe the bill betrays a foundational principle our country was founded on, which is that government derives its power from the people and the powers of the government should be limited by the people, the government should not unduly limit the powers of the people.

This bill seeks to unconstitutionally place an unwarranted burden on citizens' rights to initiate a Constitutional Amendment.

The application of this bill fails procedurally. This bill seeks to change the function of S.D. Const. Article 23 §1 by changing SDCL 2-1-1, a law that is subordinate to the authority of the Constitution. For this reason and others, the proposed law is procedurally flawed and must be rejected.

1. Self-Governance as tradition.

South Dakota has a strong pioneer history, in our lifestyles, our culture, and in our laws. South Dakota was the first state in the union to adopt an initiative and referendum process at the state level in 1898. The right to amend the State Constitution through ballot initiative process was not extended to the voters of South Dakota until 1972, after South Dakota revised the Constitution under Governor Kneip. South Dakota has a proud history of empowering its citizens to manifest control over the laws which govern them and allows them to jealously guard that power against any that would seek to diminish the rights of free citizens of the State.

Federalist 49 provides guidance on this situation stating:

> People are the only legitimate source of power. The Constitution, under which the branches of government hold their power, is derived from the people. It seems in line with republican theory to return to the original authority, the people, not only whenever it is necessary to enlarge, diminish or remodel the powers of the government, but also whenever any of the branches encroach on the Constitutional authority of others. (Federalist Papers in Modern Language- Mary E. Webster 1999)

Limiting the free exercise of the people to Amend the Constitution is an affront to the very freedoms and concepts our forefathers fought to give the citizens of this country. Adding onerous apportionment requirements to the Initiated Amendment process as defined in our Constitution places another roadblock in the path of citizens seeking to exercise their Constitutional rights. The right to amend the Constitution should be decided at the ballot box, where the people can vote their conscience and not be limited by administrative procedure.

The People of this State voted to ratify Amendments to our Constitution in 1972, and again in 2018 by amending Article 23 §1 of the State Constitution. The Amendment was brought according to the Joint Rules of the Legislature and proposed as a Joint resolution and submitted to the voters of the State for approval at general election as required by the Constitution. The

people voted and adopted the changes to our Constitution, giving us our present form of S.D. Const. Article 23.

2. Procedural Failure.

Initiated measures are subordinate to the Constitution. SDCL 2-1-1 contemplates measures proposed by initiative, and sets a signature threshold for initiated measures. The threshold is set at five percent (5%) of qualified electors of the state.

Measures contemplated by Title 2 will become Codified Laws that are subordinate to the Constitution. The distinction between initiated measures and initiated amendments is present in Title 12 Chapter 12-13. The requirements for submission of initiated measures are different than submitting initiated amendment changes. Title 12 Chapter 12-13 makes distinctions between initiated Amendments, Initiated Measures and ballot questions by setting forth different requirements unique to each.

For submission to a ballot initiated amendments to the Constitution require a threshold of ten percent (10%) of voters that voted in the latest gubernatorial election. Initiated measures require a threshold of (5%) of qualified electors of the state.

The conclusion that can be drawn from this distinction is that as a matter of controlling law the threshold of ten percent (10%) to change the Constitution is set at a higher rate because the Constitution subordinates state law and should be a higher threshold to initiate changes than what is set for subordinate or codified law.

A law that is subordinate to the Constitution cannot bind or change the Constitution. A law that purports to be subordinate to the Constitution but proposes changes to the function of the Constitution, as is the case here, is by functional definition a constitutional amendment.

The title of HB 1200 demonstrates an attempt to change the Constitutional standard for bringing an initiated Amendment. **"An act to require a percentage of signatures on a petition to initiate a Constitutional amendment to be obtained from each legislative district."** This improperly places an apportionment standard on S.D. Const. Article 23 § 1. The constitution places no apportionment limit in Article 23 § 1 and sets only one standard for the percentage of voters needed to bring forth an initiated amendment.

<u>The only methods to amend or revise the Constitution are in S.D. Const. Article 23 §1-3.</u>

S.D. Const. Article 23 §1 defines the threshold for number of signatures for an amendment to the Constitution proposed by initiative. That is 10% of voters in last gubernatorial election. **There is no other standard**. No subordinate law may change that standard. Only an amendment to the Constitution may change that standard.

As a related matter referencing a Constitutional change petition, SDCL 2-1-1.1 Lays out the required contents of a petition but does not change the Constitutional threshold for number of signatories required. The contents of the petition may be changed by changing State Law, but without a constitutional amendment the petition threshold remains the same.

S.D. Const. Article 23 § 1-3 lays out the requirements for properly amending the Constitution.

1. An amendment may be brought by initiative or by a majority vote of **all** members of each house of the legislature.
2. The amendment must be submitted to the voters of the state at a general election.
3. Ratification: a proposed amendment shall become a part of the Constitution only when approved by a majority of the votes cast thereon.

This bill is an amendment to the Constitution and seeks to change the requirements of S.D. Const. Article 23 §1 and is fatally flawed for not having followed the amendment process required by the Constitution.

HB 1200 was not voted on by all members of the House. A member was excused from the vote. If this bill is forwarded as an amendment in its present form, not having ALL members of the house vote on the bill is a constitutional violation.

The Joint legislative rules lay out the method to bring forth a constitutional amendment by the legislature. That methodology was not followed here.

This bill makes no provision to be sent to the voters of the state for ratification in a general election.

This bill attempts to adopt the power of the Constitution by shoe horning a section of the constitution into the body of the bill. This attempt at granting constitutional authority to add an apportionment standard is improper. Simply quoting the constitution as a precursor to the suggested change does not grant authority to change the function of the constitution and is an illusory attempt to add authority to the bill where none exists.

If passed by the senate in this form the law is ineffective as a matter of law because it was not properly brought as an amendment via the Constitutional process, and was not submitted to the people for ratification as required by the Constitution. A proposed amendment or revision that does not follow the requirements of the Constitution is void and has no legal affect or authority as against the People of South Dakota. Additionally, SDCL 2-1-1 is subordinate to the Constitution. Accordingly, SDCL 2-1-1 cannot bind the constitution by laying an additional apportionment requirement to S.D. Const. Article 23 § 1.

I urge you to reject this bill, and if pursuit of this subject is continued, to do so by a lawful amendment to the Constitution to be voted on, and either accepted or rejected by the People of this state as our Constitution unequivocally demands.