

Unified Judicial System
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**Decision Issued in *Thom, Miller v. Barnett and
In re Election Contest as to Amendment A***

The South Dakota Supreme Court has issued the decision in *Thom, Miller v. Barnett and In re Election Contest as to Amendment A*. In a four-to-one decision, the Court held that Amendment A, as submitted to the voters in the November 2020 general election, violated the single subject requirement in the South Dakota Constitution. As a result of the constitutional violation, the Court has declared the amendment invalid.

The Court determined that the provisions of Amendment A embraced three separate and distinct subjects:

- (1) Recreational Marijuana—by creating a comprehensive plan to constitutionally legalize, regulate, and tax marijuana for all persons at least twenty-one years of age;
- (2) Hemp—by constitutionally mandating that the Legislature pass laws regarding hemp; and
- (3) Medical Marijuana—by constitutionally mandating that the Legislature pass laws ensuring access to marijuana for limited medical use for qualifying persons.

In reaching its decision, the majority opinion explained that the provisions involving recreational marijuana, hemp, and medical marijuana each have separate objects and purposes, which were not dependent upon or connected with each other.

The drafters' failure to comply with the single subject requirement in the South Dakota Constitution Article XXIII, § 1 meant that voters were unable to separately vote on each distinct subject embraced in Amendment A. The Court noted in its decision that the Proponents of Amendment A failed to identify a single "instance when voters in another state have been asked to approve a constitutional amendment to legalize recreational marijuana, medical marijuana, and hemp in a single vote." One member of the Court issued a special writing joining the majority in finding a violation of the single subject rule, and

expressing the view that a violation of the single subject requirement is not necessarily fatal in all instances; but adding that here there was no argument or proof that South Dakota voters would have adopted Amendment A in the absence of the medical marijuana and hemp provisions.

A separate opinion was filed by another member of the Court, concurring in part and dissenting in part, that focused on the long history of the initiative in South Dakota, the deference to be paid to initiated constitutional amendments passed by the voters, and the belief that Amendment A appropriately contains parts of a comprehensive plan addressing the related issues of recreational marijuana, medical marijuana, and hemp. Based on the conclusion that there was no single subject violation, the writing also addressed whether Amendment A is a constitutional revision that should have been submitted to the voters through a constitutional convention rather than by an initiative and concluded that it was not a constitutional revision.

Finally, the Court unanimously held that (1) the circuit court properly dismissed the election contest filed by Thom and Miller; (2) neither Thom nor Miller had standing to challenge Amendment A, but Governor Noem's written ratification of Miller's declaratory judgment action allowed for the action to proceed as if it had been commenced by the Governor; and (3) the challenge to Amendment A was not required to be brought before the election.

The Court's opinion can be accessed on the UJS website at <https://uj.s.sd.gov>.