2023 SENATE STATE AND LOCAL GOVERNMENT

SCR 4013

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SCR 4013
2/9/2023

Relating to the process for approving initiated constitutional amendments.

3:15 PM Chair Roers opened the hearing. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- Grass roots effort
- People's rights
- Geographic distribution
- On-line signatures

Sen Myrdal, Dist 19, bill sponsor testified in support #20526.

David Hanson, Bismarck, ND, testified neutral #20384.

Dustin Gawrylow, ND Watchdog, testified opposed #20323, #20322.

Kevin Herrmann, Beulah, ND, testified opposed #20138.

Additional written testimony:

Carol Sawicki, League of Women, Fargo, ND opposed #20073
Sharnell, Seaboy, ND Native Vote, Bismarck, ND opposed #20358
Michael Weisbeck, Bismarck, ND opposed #20357
Brianna Weisbeck, Bismarck, ND opposed #20354
Michael Connelly, Bismarck, ND opposed #20342
Ellie Shockley, Mandan, ND opposed #20321

4:00 PM Chair Roers closed the hearing.

Pam Dever, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SCR 4013
2/16/2023

Relating to the process for approving initiated constitutional amendments.

9:35 AM Chair Roers opened committee work. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- 67% language
- Geographic distribution of signatures
- Electors
- Payment

9:47 AM Chair Roers adjourned meeting.

Pam Dever, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SB 4013
2/16/2023

Relating to the process for process for approving initiated constitutional amendment.

11:25 AM Chair Roers opened committee work. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- Qualified electors
- Signatures required
- Single-subject rule

11:25 AM Senator K. Roers proposed amendment 23.3031.01002. #21084

11:37 AM Chair Roers adjourned the meeting.

Pam Dever, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SCR 4013
2/16/2023

Relating to the process for process for approving initiated constitutional amendment.

4:35 PM Chair Roers opened committee work. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- Bill review
- Qualified electors
- Single-subject rule
- Signatures required

4:39 PM Lee Ann Oliver, Secretary State, answered questions.

4:53 PM Dustin Richard, Legislative Council, answered questions.

4:59 PM Chair Roers adjourned the meeting.

Pam Dever, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SCR 4013
2/17/2023

Relating to the process for approving initiated constitutional amendments.

10:11 AM Chair Roers opened committee work. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- Committee action

Sen Estenson moved to Adopt Amendment 23.3031.01003.
Sen Barta seconded the motion.

Roll call vote.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	Y
Senator Judy Lee	AB

VOTE: YES – 5 NO – 0 Absent – 1 Motion PASSED

Sen Barta moved to DO PASS as Amended.
Sen Estenson seconded the motion.

Roll call vote.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	Y
Senator Judy Lee	AB

VOTE: YES – 5 NO – 0 Absent – 1 Motion PASSED

Sen Braunberger will carry the bill.

10:18 AM Chair Roers adjourned the meeting.

Pam Dever, Committee Clerk

Adopted by the Senate State and Local Government Committee
February 17, 2023

2-17-23

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4013

Page 1, line 1, replace "section" with "sections 2, 3, 4, 5, 6, 7, and"

Page 1, line 2, after "the" insert "required number of signatures needed to place a measure on the ballot, the"

Page 1, line 2, replace "constitutional amendments" with "measures, the requirement of a single subject for each petition and measure, the individuals able to circulate a petition, and the requirement that all ballot measures must be voted on at the general election"

Page 1, line 4, after "to" insert "qualified"

Page 1, line 5, remove "who have resided in the state for at least one hundred twenty days, prohibit petition"

Page 1, line 6, remove "circulators from receiving money or items of value for circulating a petition"

Page 1, line 7, after "from" insert "qualified"

Page 1, line 8, after the comma insert "require all petitions and measures to be limited to a single subject,"

Page 1, line 8, remove "approval by sixty-seven percent of the voters"

Page 1, line 9, replace "for the measure to become effective" with "all initiated measures under article III be voted on at the general election"

Page 1, line 12, replace "amendment" with "amendments"

Page 1, line 12, replace "section" with "sections 2, 3, 4, 5, 6, 7, and"

Page 1, line 13, replace "is" with "are"

Page 1, line 14, replace "primary" with "general"

Page 1, line 14, replace "June" with "November"

Page 1, after line 15, insert:

"**SECTION 1. AMENDMENT.** Section 2 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 2. An initiated measure may not embrace or be comprised of more than one subject. A petition to initiate or to refer a measure must be presented to the secretary of state for approval as to form and compliance with the single subject requirement. A request for approval must be presented over the names and signatures of twenty-five or more qualified electors as sponsors, one of whom must be designated as chairman of the sponsoring committee. The secretary of state shall approve the petition for circulation if it is in proper form and contains the names and addresses of the sponsors and the full text of the measure.

The legislative assembly may provide by law for a procedure through which the legislative council may establish an appropriate method for determining the fiscal

impact of an initiative measure and for making the information regarding the fiscal impact of the measure available to the public.

SECTION 2. AMENDMENT. Section 3 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 3. The petition ~~shall~~may be circulated only by qualified electors. ~~They~~An individual circulating a petition shall swear thereon that the qualified electors who have signed the petition did so in their presence. Each qualified elector signing a petition also shall ~~also~~ write in the date of signing and ~~his post-office~~the qualified elector's complete residential address. ~~No~~A law ~~shall~~may not be enacted limiting the number of copies of a petition. The copies ~~shall~~must become part of the original petition when filed.

SECTION 3. AMENDMENT. Section 4 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 4. The petition may be submitted to the secretary of state if signed by qualified electors equal in number to two percent of the resident population of the state at the last federal decennial census.

SECTION 4. AMENDMENT. Section 5 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 5. An initiative petition ~~shall~~must be submitted not less than one hundred twenty days before the ~~statewide~~general election at which the measure is to be voted upon. A referendum petition may be submitted only within ninety days after the filing of the measure with the secretary of state. The submission of a petition ~~shall suspend~~suspends the operation of any measure enacted by the legislative assembly except emergency measures and appropriation measures for the support and maintenance of state departments and institutions. The submission of a petition against one ~~or more items~~item or ~~parts~~part of any measure ~~shall~~does not prevent the remainder from going into effect. A referred measure may be voted upon at a statewide election or at a special election called by the governor.

SECTION 5. AMENDMENT. Section 6 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 6. The secretary of state shall pass upon each petition, and if the secretary of state finds it insufficient, the secretary of state shall notify the "committee for the petitioners" and allow twenty days for correction. All decisions of the secretary of state in regard to any petition are subject to review by the supreme court. ~~But if~~If the sufficiency of the petition is being reviewed at the time the ballot is prepared, the secretary of state shall place the measure on the ballot and no subsequent decision ~~shall~~may invalidate the measure if it is at the election approved by a majority of the votes cast ~~thereon~~on the measure. If proceedings are brought against any petition upon any ground, the burden of proof is upon the party attacking ~~it~~the petition and the proceedings must be filed with the supreme court no later than seventy-five days before the date of the applicable statewide election at which the measure is to be voted upon.

SECTION 6. AMENDMENT. Section 7 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 7. All decisions of the secretary of state in the petition process are subject to review by the supreme court in the exercise of original jurisdiction. A proceeding to review a decision of the secretary of state must be filed with the supreme court no later than seventy-five days before the date of the applicable statewide election at which the measure is to be voted upon. If the decision of the secretary of state is being reviewed at the time the ballot is prepared, the secretary of state shall place the measure on the ballot and no court action ~~shall~~may invalidate the measure if ~~it~~the measure is approved at the election by a majority of the votes cast ~~thereon~~on the measure."

Page 1, line 18, remove "The petition"

Page 1, remove lines 19 and 20

Page 1, line 21, replace "any money or an in-kind item of value for circulating a petition" with "The proposed amendment may not embrace or be comprised of more than one subject, and the secretary of state may not approve the initiative petition for circulation if the proposed amendment comprises more than one subject"

Page 1, line 21, after "by" insert "qualified"

Page 1, line 25, remove "If the measure is approved by at least sixty-seven percent of the voters, the measure"

Page 2, line 1, remove "becomes effective thirty days after the election."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SCR 4013: State and Local Government Committee (Sen. K. Roers, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SCR 4013 was placed on the Sixth order on the calendar. This resolution does not affect workforce development.

Page 1, line 1, replace "section" with "sections 2, 3, 4, 5, 6, 7, and"

Page 1, line 2, after "the" insert "required number of signatures needed to place a measure on the ballot, the"

Page 1, line 2, replace "constitutional amendments" with "measures, the requirement of a single subject for each petition and measure, the individuals able to circulate a petition, and the requirement that all ballot measures must be voted on at the general election"

Page 1, line 4, after "to" insert "qualified"

Page 1, line 5, remove "who have resided in the state for at least one hundred twenty days, prohibit petition"

Page 1, line 6, remove "circulators from receiving money or items of value for circulating a petition"

Page 1, line 7, after "from" insert "qualified"

Page 1, line 8, after the comma insert "require all petitions and measures to be limited to a single subject,"

Page 1, line 8, remove "approval by sixty-seven percent of the voters"

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Page 1, line 14, replace "June" with "November"

Page 1, after line 15, insert:

"**SECTION 1. AMENDMENT.** Section 2 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 2. An initiated measure may not embrace or be comprised of more than one subject. A petition to initiate or to refer a measure must be presented to the secretary of state for approval as to form and compliance with the single subject requirement. A request for approval must be presented over the names and signatures of twenty-five or more qualified electors as sponsors, one of whom must be designated as chairman of the sponsoring committee. The secretary of state shall approve the petition for circulation if it is in proper form and contains the names and addresses of the sponsors and the full text of the measure.

The legislative assembly may provide by law for a procedure through which the legislative council may establish an appropriate method for determining the fiscal

impact of an initiative measure and for making the information regarding the fiscal impact of the measure available to the public.

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SECTION 3. AMENDMENT. Section 4 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 4. The petition may be submitted to the secretary of state if signed by qualified electors equal in number to two percent of the resident population of the state at the last federal decennial census.

SECTION 4. AMENDMENT. Section 5 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 5. An initiative petition ~~shall~~must be submitted not less than one hundred twenty days before the ~~statewide~~general election at which the measure is to be voted upon. A referendum petition may be submitted only within ninety days after the filing of the measure with the secretary of state. The submission of a petition ~~shall suspend~~suspends the operation of any measure enacted by the legislative assembly except emergency measures and appropriation measures for the support and maintenance of state departments and institutions. The submission of a petition against one ~~or more items~~item or ~~parts~~part of any measure ~~shall~~does not prevent the remainder from going into effect. A referred measure may be voted upon at a statewide election or at a special election called by the governor.

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Section 7. All decisions of the secretary of state in the petition process are subject to review by the supreme court in the exercise of original jurisdiction. A proceeding to review a decision of the secretary of state must be filed with the supreme court no later than seventy-five days before the date of the applicable statewide election at which the measure is to be voted upon. If the decision of the secretary of state is being reviewed at the time the ballot is prepared, the secretary of state shall place the measure on the ballot and no court action ~~shall~~may invalidate

the measure if ~~it~~the measure is approved at the election by a majority of the votes cast ~~thereon~~on the measure."

Page 1, line 18, remove "The petition"

Page 1, remove lines 19 and 20

Page 1, line 21, replace "any money or an in-kind item of value for circulating a petition" with "The proposed amendment may not embrace or be comprised of more than one subject, and the secretary of state may not approve the initiative petition for circulation if the proposed amendment comprises more than one subject"

Page 1, line 21, after "by" insert "qualified"

Page 1, line 25, remove "If the measure is approved by at least sixty-seven percent of the voters, the measure"

Page 2, line 1, remove "becomes effective thirty days after the election."

Renumber accordingly

2023 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SCR 4013

2023 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Pioneer Room, State Capitol

SCR 4013
3/9/2023

Relating to the process for approving initiated constitutional amendments, the requirement of a single subject for each petition and measure, the individuals able to circulate a petition, and the requirement that all ballot measures must be voted on at the primary and general election.

Chairman Schauer called the meeting to order at 11:00 AM.

Chairman Austen Schauer, Vice Chairman Bernie Satrom, Reps. Landon Bahl, Claire Cory, Jeff A. Hoverson, Jorin Johnson, Karen Karls, Scott Louser, Carrie McLeod, Karen M. Rohr, Vicky Steiner, Steve Vetter, Mary Schneider. All present.

Discussion Topics:

- Amendment
- Voting on constitutional amendments
- Interpretation of single subject

Sen. Mrydal introduced SCR 4013, speaking in favor and proposed amendment (#23.3031.03001) (#23363).

Michael Howe, North Dakota Secretary of State, answered questions from the committee.

David Hanson, North Dakota citizen from Bismarck, supportive testimony and proposed amendment to SCR 4013 (#23370).

Carol Sawicki, League of Women Voters of North Dakota, opposition testimony (#22910).

David Owen, North Dakota citizen from Grand Forks, spoke in opposition.

Michael Howe, North Dakota Secretary of State, spoke in a neutral position.

Additional written testimony:

Barbara Dunn, North Dakota citizen, opposition testimony (#23032).

Kevin Herrmann, North Dakota citizen, opposition testimony (#23211).

Sharnell Seaboy, Field Organizer at North Dakota Native Vote, opposition testimony (#23361)

Chairman Schauer adjourned the meeting at 11:42 AM.

Phillip Jacobs, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Pioneer Room, State Capitol

SCR 4013
3/9/2023

Relating to the process for approving initiated constitutional amendments, the requirement of a single subject for each petition and measure, the individuals able to circulate a petition, and the requirement that all ballot measures must be voted on at the primary and general election.

Chairman Schauer called the meeting to order at 4:12 PM.

Chairman Austen Schauer, Vice Chairman Bernie Satrom, Reps. Landon Bahl, Claire Cory, Jeff A. Hoverson, Jorin Johnson, Karen Karls, Scott Louser, Carrie McLeod, Karen M. Rohr, Vicky Steiner, Steve Vetter, and Mary Schneider present. All present.

Discussion Topics:

- Amendment
- Committee work

Chairman Schauer called for a discussion on SCR 4013.

Rep. Louser moved to adopt amendment (#23.3031.03001) (#23363) to SCR 4013.

Seconded by Rep. McLeod.

Roll Call Vote:

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	AB
Representative Claire Cory	Y
Representative Jeff A. Hoverson	Y
Representative Jorin Johnson	Y
Representative Karen Karls	Y
Representative Scott Louser	Y
Representative Carrie McLeod	Y
Representative Karen M. Rohr	Y
Representative Mary Schneider	N
Representative Vicky Steiner	AB
Representative Steve Vetter	Y

Motion carries 10-1-2.

Rep. Johnson moved a do pass as amended on SCR 4013.

Seconded by Rep. Rohr.

Roll Call Vote:

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	AB
Representative Claire Cory	Y
Representative Jeff A. Hoverson	Y
Representative Jorin Johnson	Y
Representative Karen Karls	Y
Representative Scott Louser	Y
Representative Carrie McLeod	Y
Representative Karen M. Rohr	Y
Representative Mary Schneider	N
Representative Vicky Steiner	Y
Representative Steve Vetter	N

Motion carries 9-2-2.

Carried by Rep. Cory.

Chairman Schauer adjourned the meeting at 4:22 PM.

Phillip Jacobs, Committee Clerk

23.3031.03001
Title.04000

Prepared by the Legislative Council staff for
Senator Myrdal
March 7, 2023

3-9-23

PROPOSED AMENDMENTS TO REENGROSSED SENATE CONCURRENT RESOLUTION NO. 4013

Page 1, line 8, remove "who have resided in the state for at least one hundred twenty days, prohibit"

Page 1, line 9, remove "petition circulators from receiving money or items of value for circulating a petition"

Page 1, line 21, after "subject" insert ", as determined by the secretary of state"

Page 2, line 23, remove "who have resided in the state for at least one"

Page 2, remove line 24

Page 2, line 25, remove "may not accept any money or an in-kind item of value for circulating a petition"

Page 2, line 26, after "subject" insert ", as determined by the secretary of state"

Page 3, line 2, remove "next"

Page 3, line 2, after "election" insert "immediately following the primary election"

Page 3, line 4, after the underscored period insert "If the measure fails to receive the required number of votes to enact the measure at either the primary election or the general election, the measure is deemed failed."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SCR 4013, as reengrossed: Government and Veterans Affairs Committee (Rep. Schauer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). Reengrossed SCR 4013 was placed on the Sixth order on the calendar.

Page 1, line 8, remove "who have resided in the state for at least one hundred twenty days, prohibit"

Page 1, line 9, remove "petition circulators from receiving money or items of value for circulating a petition"

Page 1, line 21, after "subject" insert ", as determined by the secretary of state"

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Page 3, line 4, after the underscored period insert "If the measure fails to receive the required number of votes to enact the measure at either the primary election or the general election, the measure is deemed failed."

Renumber accordingly

TESTIMONY

SCR 4013

SCR 4013
Senate State and Local Government Committee
February 9, 2023

Chair Roers and members of the Senate State and Local Government Committee, my name is Carol Sawicki, and I am submitting testimony on behalf of the League of Women Voters of North Dakota**.** The League of Women Voters of North Dakota opposes SCR 4013 for the following reasons:

1. The bill requires an unconstitutional 120-day residency qualification for individuals circulating an initiative petition. The bill states that initiative petitions "may be circulated only by electors who have resided in the state for at least one hundred twenty days before the first signature is collected." The North Dakota Constitution (Article II, Section 1)[1] identifies a "qualified elector" as "a citizen of the United States who has attained the age of eighteen years and who is a North Dakota resident." There is no length-of-residency requirement for electors.

Article III, section 3 of the ND Constitution[2] currently places no length-of-residency requirement on an elector who circulates a petition, and doing so violates the First and Fourteenth Amendments to the US Constitution which guarantees the right to engage in political speech.

Residency requirements for petitioners have been struck down in Colorado and Mississippi,[3] and a law in South Dakota,[4] which placed a 30-day residency requirement for ballot initiative petition circulators, was struck down in federal court on January 10, 2023 on the basis of constitutional violations.

2. The bill unfairly singles out initiative petitioners as individuals unable to receive compensation for their time and violates their constitutional rights. Political parties pay people to work on their various campaigns, members of the legislature receive compensation for their time, and lobbyists often receive compensation for their time. There is no logical or equitable reason to make unlawful the compensation of petition circulators who, as with the other individuals and groups just mentioned, are forwarding the work of civic participation to ensure an inclusive democracy.

More importantly, this section of the bill is in violation of the First and Fourteenth Amendments to the US Constitution. In Meyer v. Grant, the US Supreme Court held that a state's "statutory prohibition against the use of paid circulators abridges appellees' right to engage in political speech in violation of the First and Fourteenth Amendments."[5]

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[1] https://ndlegis.gov/constit/a02.pdf
[2] https://ndlegis.gov/constit/a03.pdf
[3] https://www.ncsl.org/elections-and-campaigns/initiative-and-referendum-processes
[4] https://www.lwv.org/newsroom/press-releases/south-dakota-federal-court-strikes-down-residency-requirement-ballot
[5] https://supreme.justia.com/cases/federal/us/486/414/

3. The bill unjustifiably increases the percentage of North Dakota residents (from 4% to 5%) whose signatures are needed before the petition may be submitted to the Secretary of State. Of the 16 states - including North Dakota - that allow initiated constitutional amendments, 14 of them require fewer - some significantly fewer - than 5% of their residents to sign an initiated constitutional amendment petition.[6] The bill's proposed increase in petition signatures is unnecessary and reveals the intent of the bill to impede the ability of the citizens to create an initiated measure.

4. The bill unjustifiably increases from 50% to 67% the percent of voters needed to approve an initiated constitutional amendment. Article III, Section 8 of the ND Constitution[7] states that "If a majority of votes cast upon an initiated or a referred measure are affirmative, it shall be deemed enacted." The people of North Dakota have supported Section 8 by rejecting every proposal to amend the constitutional amendment process since 1978.[8]

North Dakota legislators approve policy with a simple majority. The people of North Dakota, through the initiative process, should also be able to approve policy with the same simple majority.

SCR 4013 will negatively impact citizen-led efforts to participate in the governance of our state and for this reason **the League of Women Voters of North Dakota strongly urges committee members to give SCR 4013 a Do Not Pass recommendation.**

Submitted by Carol Sawicki, LWVND Board Member. nodaklwv@gmail.com

[6] https://ballotpedia.org/Signature_requirements

[7] https://ndlegis.gov/constit/a03.pdf

[8] https://law.und.edu/_files/docs/ndlr/pdf/issues/97/2/97ndlr217.pdf

Written testimony on Senate Concurrent Resolution 4013

Madam Chair and Senate State and Local Government Committee Members

My name is Kevin Herrmann, 300 Fair St. SW, Beulah, ND 58523. I am an independent North Dakota citizen.

I stand oppose to Senate Concurrent Resolution 4013.

Senate Concurrent Resolution 4013 is an attack toward Article III "Powers Reserved to the People" section 9. The last few legislative sessions, there has been resolutions introduced dealing with Article III "Powers Reserved to the People" some legislators continue being upset of initiated petitions making it either on the primary or general election ballot by the citizens of North Dakota. Such as, 2016 ballot- provide certain rights to victims of crime in this state (Marcy's Law), 2016 ballot- medical marijuana use for defined medical conditions, 2018 ballot- establish a state ethic commission and in 2022- term limits. I would hear either in committee hearings or on legislative floor sessions displeasure about forcing the legislators to act on legislation that the supermajority of legislators did not believe in but had too. If the legislators would have passed House Bill 1442 in Sixty-third Legislative session or House Concurrent Resolution 3060 in Sixty-fourth Legislative session creating a state ethic's commission maybe the citizens of North Dakota would not have taken it upon themselves to get the initiated petition on the ballot. House Bill 1430 relating to the use of medical marijuana in 2015 legislative session was defeated which the citizens of North Dakota use their power to get medical marijuana on the ballot.

In 2017-2018 interim, I attended every Initiated and Referred Measures Study Commission meeting. The commission consisted of 1 individual appointed from Chief Justice of the Supreme Court as commission chairman, 6 legislators, 1 individual appointed from Secretary of State Office, 7 citizens appointed by the Governor and 4 individuals appointed by 4 separate organizations. The commission considered a few resolutions and legislative bill drafts. The majority of the commission did not approve some of the drafts from some of the

legislators on the commission. So, in 2019 various legislators introduced legislative bills attacking Article III “Power Reserved to the People”.

So in this 2023 legislative session, here we have Senate Concurrent Resolution 4013. I imagine the reasoning for this bill will be said how easy it is too get an initiative petition on the ballot and out of state influence. I do not believe any of those reasons. How about you as legislators ask the Secretary of State office about how many petitions have not made it to the primary or general election ballot due to lack of signatures on the petition or for other reasons?

So where is the proof of out of state influence on the initiative petition process? I have seen out of state influence with campaign contribution toward to some candidates on their campaign contribution report. There has always been out of state influence on some legislative bill introduced in each session. I will give three examples. In 2019 legislative session, House Bill 1193 passed relating to a living wage prohibition for political subdivisions. The reason for House Bill 1193, there was individuals in very high population out of state petitioning to get living wage provision on the ballot at their local political subdivision. House Bill 1193 took my constitution right to file a petition to my local political subdivision. In 2021 legislative session, House Bill 1398 passed relating to a mandate prohibition on regulating paid family leave on political subdivision which was out of state influence for the bill which took my constitution right to file a petition to a political subdivision. Also, House Bill 1207 relating to asbestos liability was totally out of state influence which affected workers who work around asbestos.

Shouldn’t all legislative bills in both North Dakota Senate and House of Representative floor sessions have to pass with 67 percent of the votes as the same concept of Senate Concurrent Resolution 4013 if this bill passes?

I am asking the Senate State and Local Government committee to give Senate Concurrent Resolution a DO NOT PASS recommendation.

Kevin Herrmann

Testimony on SCR 4013 ▪ Senate State and Local Government Committee ▪ Feb. 9, 2023

From Ellie Shockley, Ph.D. ▪ Social Scientist & Writer
ellie.shockley@gmail.com ▪ 701-347-1148

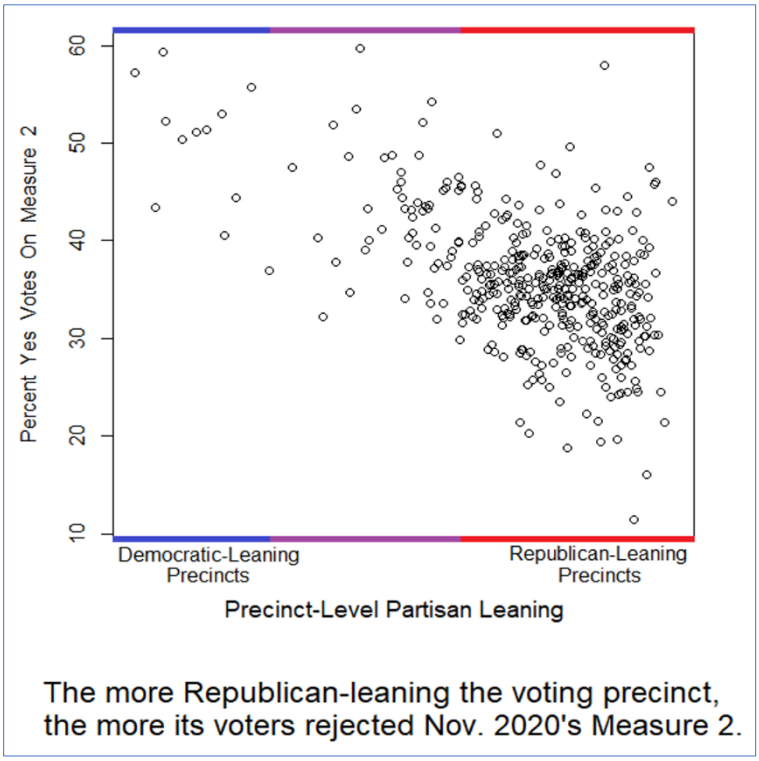
Senator Roers and other committee members:

My name is Ellie Shockley, and I am a social scientist and writer living in Mandan, North Dakota. I have earned a Ph.D. from the University of Chicago with a particular emphasis on political psychology and research methods/statistics. During my time at UChicago and in my years in North Dakota that have followed, I have studied the voter experience, and voter decisions, when it comes to ballot measures. I have published on the topic in a peer-reviewed academic journal[1] as well as in several of my columns in the Bismarck Tribune.[2] I also provided my social-scientific perspective on these issues as a panelist during the 2021 GNDC Policy Summit.

I share testimony today to highlight reasons that SCR 4013 should receive a "Do Not Pass" designation from your committee. These reasons stem from my empirical research but also from the spirit of our state constitution and the representational nature of our state government.

First, I can tell you that the idea of modifying our initiated measure process to make it more difficult for citizens to shape our laws and government – including constitutional amendments via initiatives – is unpopular among constituents.

For instance, Measure 2 from 2020 was defeated with 61.61% 'No' votes. This measure came from SCR 4001 in the 2019 legislative session. It sought to require that an initiated constitutional measure must pass in *two* separate general elections, unless both chambers of the legislature approve the measure after its first election. **Worth noting, 2020's Measure 2 was *especially* unpopular among voters in the most strongly Republican precincts. This is illustrated in the graph to the right.**



The more Republican-leaning the voting precinct, the more its voters rejected Nov. 2020's Measure 2.

Ultimately, the North Dakota State Senate is a representational body. Given your representational roles, I ask you to vote "Do Not Pass" on SCR 4013 because it makes it harder for citizens to enact constitutional measures, especially given the resolution's requirement that 67% 'Yes' votes should be required for such measures to pass. This is *not* what the people of North Dakota want.

I ask that you protect the rights of North Dakota citizens to enact legislation and constitutional amendments via the initiative process. Our state constitution is clear that the initiative is a foundational element of our state's governance,[3] and the people of North Dakota clearly value maintaining these petition rights. Please contact me if you have any questions regarding my testimony or research. Thank you for your time.

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[1] https://journals.sagepub.com/doi/10.1177/1948550614568159
[2] Find columns at https://www.ellieshockley.com/
[3] Article III of our state constitution: https://www.ndlegis.gov/constit/a03.pdf

Archive of North Dakota Watchdog Networks' Efforts To Protect The Powers Reserved To The People

Dustin Gawrylow
Apr 22, 2022

April 22, 2022

Today, the petition to increase the threshold on constitutional measures submitted paperwork to the Secretary of State to gain ballot access approval for their measure.

This proposed measure does two things:

1) requires a 60% vote for all constitutional ballot measures (both initiated, and those placed on the ballot by the legislature), and;

2) declares a "single-subject rule" for constitutional measures (but does not define the meaning of "single-subject, which varies from state to state).

This proposed measure is such an attack on the process, that the Fargo Forum wrote a scathing editorial against it as soon as it was proposed a year ago:

From the Fargo Forum on April 15th, 2021:

By law, an initiated ballot measure that is supported by a simple majority is enough to amend the constitution. That's a threshold that has been in place for decades.

But this group aiming to erode voters' authority wants you to believe that a simple majority sets the bar too low, making it "almost trivialized" to amend the state constitution.

They want to persuade voters to weaken their voice by requiring a 60% supermajority to amend the constitution. In effect, they're advocating allowing a minority of voters to have veto power over amendments.

That's a very bad idea. We should leave it to the collective wisdom of voters to decide whether a proposed constitutional amendment is sound, unwise or unnecessary. A simple majority should be trusted to make that decision.

After all, the overwhelming majority of issues decided by the North Dakota Legislature and local governments are decided by a simple majority vote. By requiring a supermajority, it would become much more difficult to alter the constitution to change with the times.

As you know, the North Dakota Watchdog Network has defended the initiated measure process from every legislative and special interest attack going back to the 2013 legislative session. Most recently, we led the effort to defeat Measure 2 in 2022.

This time around, we've made the decision to join forces in a bi-partisan effort to protect the Powers Reserved To The People in North Dakota's state constitution.

A coalition campaign named "Conserve Our Rights" has been registered with the State of North Dakota to defeat this measure.

The current members include (this list is expected to grow):

North Dakota Watchdog Network
North Dakota Voters First
Jared Hendrix (conservative political operator)

Coalition: Secretary of State Must Hold 60% Measure to the Same Scrutiny as Term Limits

BISMARCK, N.D. - Following today's submission of petitions by the deceptively named political committee attempting to make it harder for current and future generations of North Dakotans to affect change to their government via initiated constitutional measure, an opposition coalition released the following statement.

"With the last-minute submission of the proposed curtailing of the initiated measure process, we hope that the North Dakota Secretary of State's office will hold the "60% rule" to the same standard of scrutiny as they have held the term limits measure," said Dustin Gawrylow, managing director of the North Dakota Watchdog Network.

"For months, there have been rumors of questionable hirings and lost paperwork regarding the 60% measure group," said Rick Gion, executive director of North Dakota Voters First. "With all the chatter and the last-minute filing, it should be obvious that this petition verification won't be any easier than the term limits measure."

Supporters of making the citizen's process for setting the terms and conditions by which their government operates more difficult claim that the initiated measure process is too easy and too susceptible to abuse.

"Based on all the rumblings, it's pretty clear that the premise of the process being too easy is itself faulty by the simple fact that the proponents of this new measure have had so many troubles getting it done," Gawrylow said. "One only needs to look at the year-end filing to see how much the political committee promoting this measure has spent to see it's no more cheap than it is easy."

"This initiative, organized by an elite special interest group, would damage North Dakota's people-powered initiated measure process and would set a dangerous precedent for the voting system in our state. In the past, voters rejected similar proposals multiple times for good reason," Gion said.

The Following Are Archived Communications From the Successful Campaign To Defeat 2020's Measure 2

Ed Schafer: Measure 2 Does Not Solve The Problem

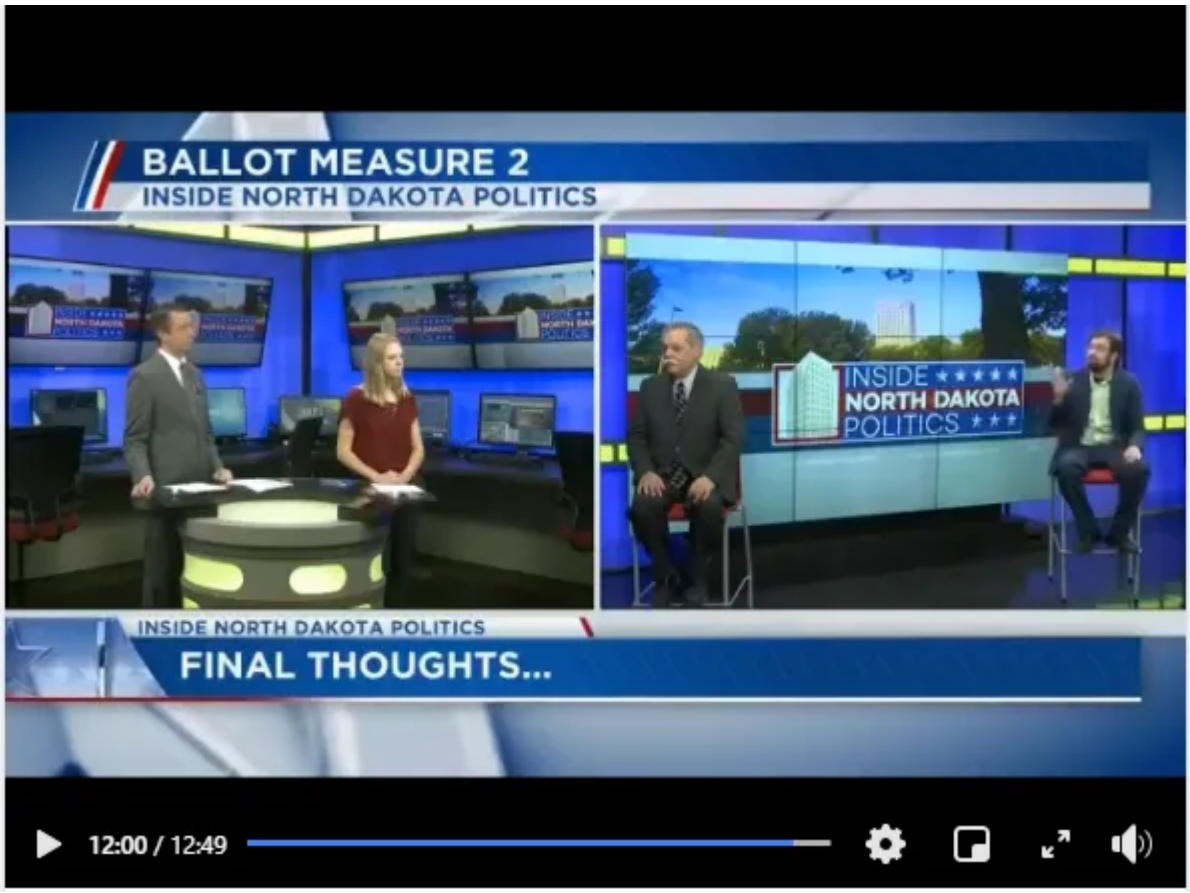
Click to listen to Former Governor Ed Schafer's latest plea that North Dakotans Reject Measure 2

When I was growing up, our family conversations around the dinner table often ended with, "You always have to trust the people." This is one of the beliefs that led me to the Governor's office and my desire to serve the people of North Dakota.

I cut my political teeth on the 1989 tax referrals and gained a healthy respect for this method for our citizens to shape their own government policy.

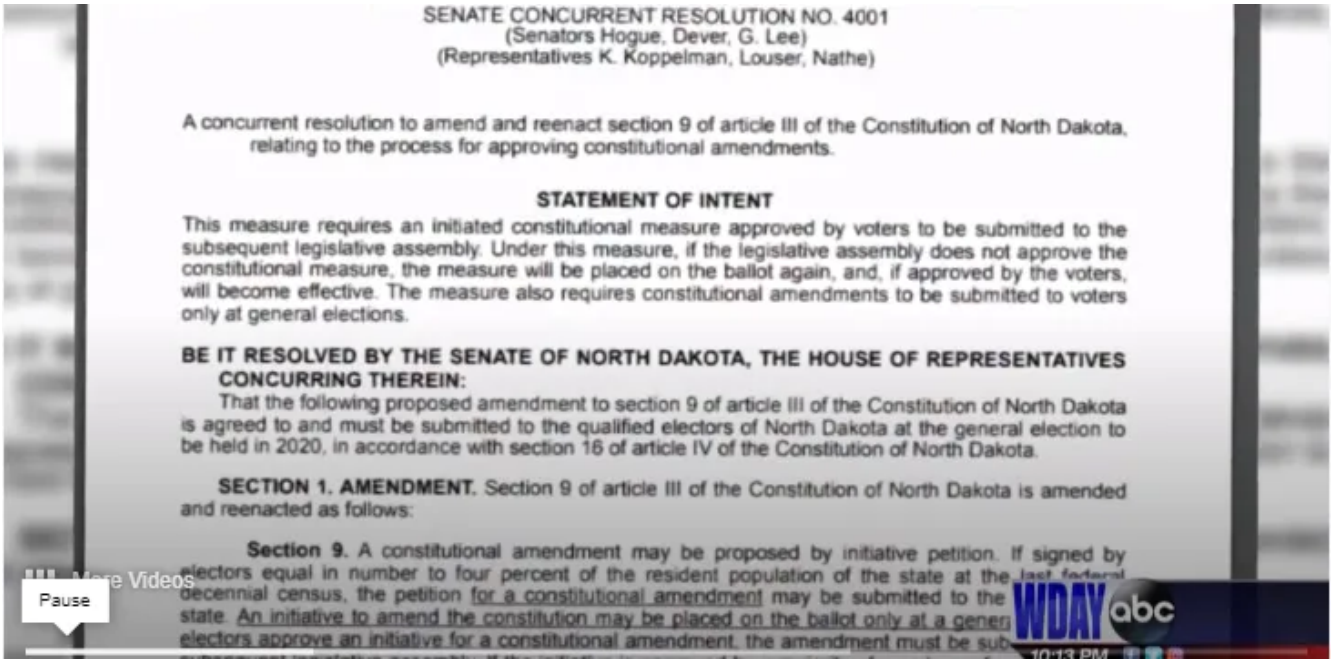
Dustin Gawrylow and State Representative Kim Koppelman debate Measure 2 with Chris Berg

Article III of the North Dakota state constitution is entitled "Powers Reserved to the People". These powers initiate both statutory law and constitution changes, the power to refer legislation, and the power to recall elected officials. As people have engaged in referral efforts, our state is better off because of the citizens who have exercised these powers.



State Senator Dick Dever and Dustin Gawrylow debate Measure 2 on KXNews

Measure #2 would insert the legislature into the process of approving constitutional measures, effectively allowing the legislature to veto the voters. If our elected officials shoot down a citizen approved constitutional measure, we'd have to start all over again. Asking the voters of North Dakota to relinquish the powers their constitution reserves to them is a dangerous and misguided proposition that was set forth by our legislative body.



WDAY Segment on Measure 2

Advocates of granting this veto power to the legislature are citing the need to counteract the recent influx of out-of-state campaign money. Yet, what they are not saying is that Measure #2 will do nothing about the money issue, and in fact this proposed change could result in more money flooding into North Dakota because these campaigns could go before the voters twice instead of only once. Also, because of required legislative action, time and resource will be spent on trying to convince elected leaders to follow the will of the people.

One of the tenets of the Schafer Administration was "solve the problem." Measure #2 does not keep the out-of-state coastal elite from trying to tell us what to do and trying to buy elections.

Our representatives in the legislature should seek ways to solve the problem and protect our constitution by requiring measures to be of a single subject matter, granting citizens access to legislative council to develop more concise and effective language, requiring 24-hour reporting of out-of-state dollars and including money origin in advertising.

It is not the job of the legislature to save voters from themselves or "give them the opportunity" to vote away their own rights. It is the job of the legislature to make it

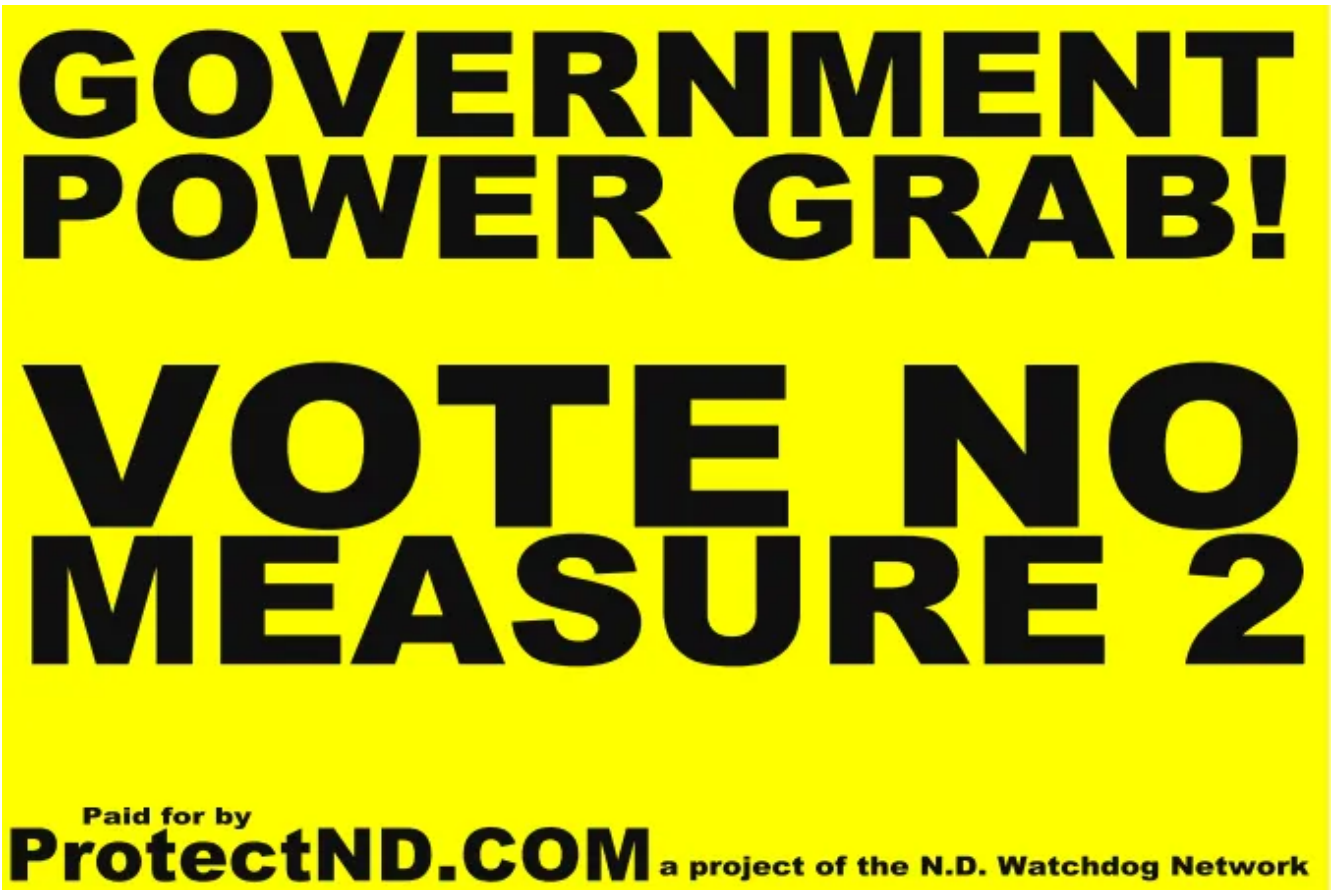
easier for true grassroot citizen efforts to operate without the need for out-of-state money, and to put a better product in front of voters. Let's find ways to help citizens cultivate our laws in better ways.

We have better government when citizens are empowered to hold elected officials accountable, and we have the opportunity to shape a government by the people and for the people.

Keep power with the people and vote NO on Measure #2 on November 3rd.

Former Governor Ed Schafer, The Bismarck Tribune, and The Fargo Forum All Agree: Vote No On Measure 2!

October 15th, 2020



Click here to request your yard sign!

Today, the Fargo Forum Editorial Board came out to urge North Dakota voters to reject both Measures 1 & 2 on their ballots.

With regard to Measure 2 specifically they stated:

Measure 2 is even worse — a naked power grab by the Legislature to usurp voters' ability to alter the constitution by initiative petition.

The Legislature is seeking to gut voters' authority by requiring legislative approval of any initiated measure to amend the constitution passed by voters. If legislators approve the measure, it becomes law. If not, it goes back to the voters at the next general election.

It practically gives legislators veto power over the voters who elected them. It allows legislators to interfere with the will of voters. North Dakota voters in 1914 rejected that form of meddling.

Legislators — and all other elected officials — are accountable to the voters. Measure 2 seeks to turn that upside down and make the will of the voters accountable to legislators.

That's outrageous.

Measure 2 is a misguided effort by the Legislature to guard against the influence of outside money in influencing attempts to amend the constitution. That's a valid concern, given passage of Marsy's Law, the horribly written victim's rights law.

But inserting legislators into a decision that belongs to the voters isn't the solution. Voters alone have the authority to amend the North Dakota Constitution. Protect the will of the voters and vote no on Measure 2.

Ed Schafer: Vote No On Measure 2

October 1st, 2020

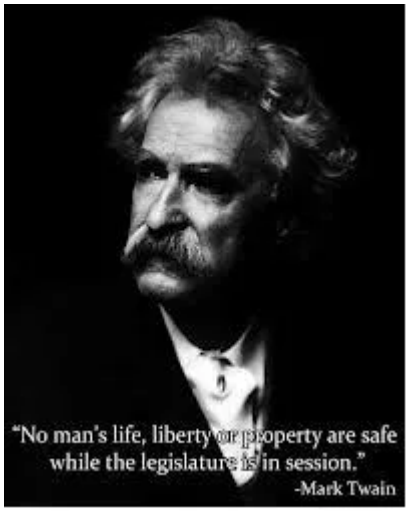
Former Governor Ed Schafer appeared on News and Views with Joel Heitkamp this morning on KFGO radio in Fargo.

You can listen to the audio by clicking here.

Bismarck Tribune Editorial: Reject Effort To Sabotage Initiatives

September 21st, 2020

Yesterday, the Bismarck Tribune Editorial Board came out swinging on behalf of citizens:



Once again there's an attempt by the Legislature to weaken the state's initiated measure process. Voters should reject Measure 2 placed on the November ballot.

The measure sends any voter-approved initiated constitutional measure to the Legislature for approval. If legislators don't approve the measure, it goes back to the voters for another vote.

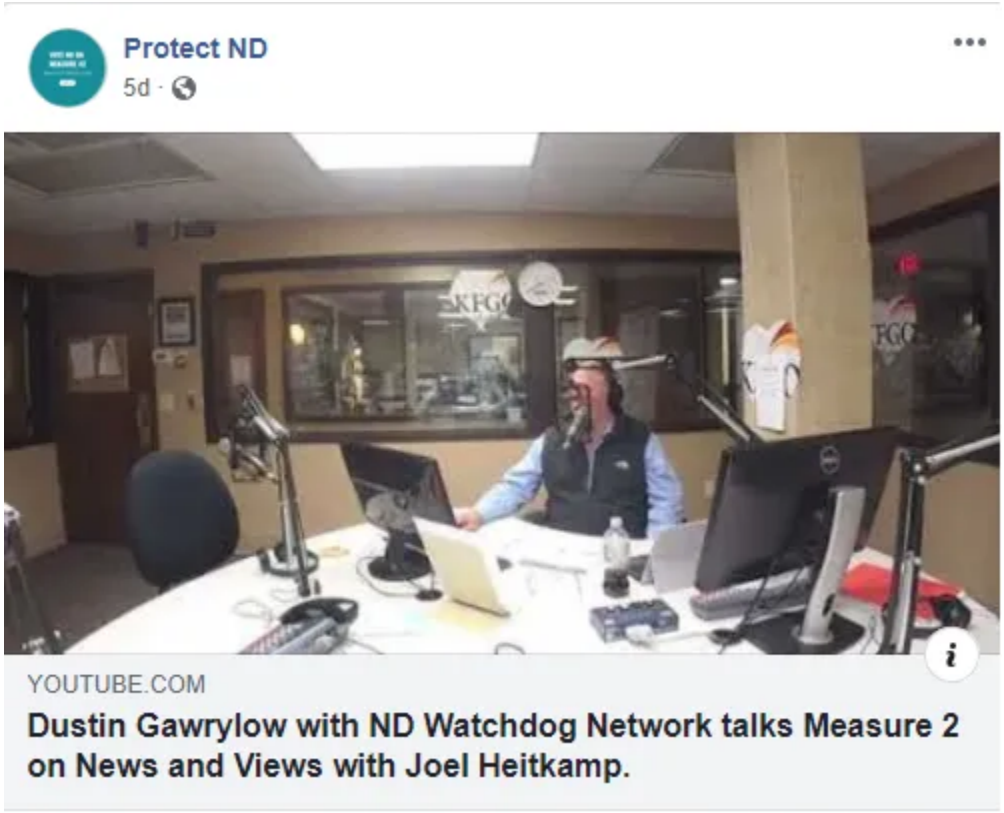
The measure essentially gives the Legislature veto power over the initiative process. Even if a measure wins approval on its second ballot appearance, it's going to take supporters more time to achieve their goals.

Supporters of the measure argue it's needed because out-of-state interests are pouring money into the state to influence voters. They cite approval of a medical marijuana measure, Marsy's Law and a wide-ranging ethics revamp.

There's no doubt supporters of the measures have received financial support from outside sources. But with the possible exception of Marsy's Law, the measures have been launched and successfully presented by North Dakotans.

Legislators griping about the initiative process isn't anything new, though in recent years the attacks have become more aggressive.

The initiative process gives a voice and power to the public. It allows them to place proposed laws and constitutional measures on the ballot if they collect enough signatures. There are safeguards built into the system.



The Tribune editorial board believes what bothers legislators is the loss of power. They don't like voters telling them what to do. At times, though, the Legislature doesn't reflect the will of the people.

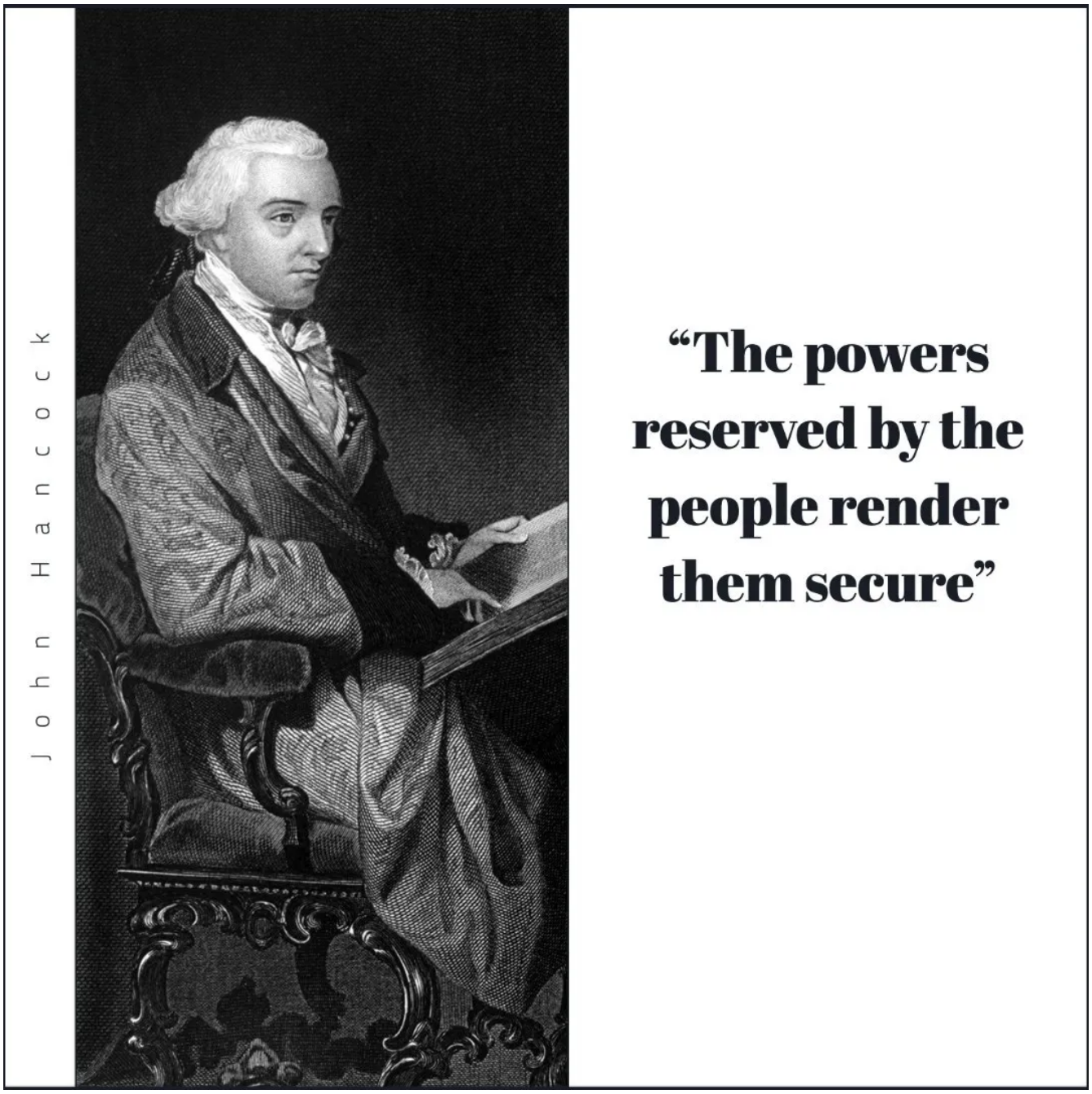
The odds of the Legislature approving a medical marijuana bill was more than slim, so voters took action. While legislators reworked the marijuana measure after it passed, voters eventually got medical marijuana. Without the initiative process it's unlikely it would have happened.

Ballot measures also can generate a storm of opposition. A few years ago a measure to abolish property taxes was placed on the ballot. Opponents got organized and it was easily defeated.

A group called ProtectND has been formed to fight the initiative measure. Another group, North Dakotans for the Protection of Our Constitution, has begun campaigning for passage of the measure.

It's democracy in action, with opposing groups making their arguments to the voters. The Tribune believes the measure should be rejected because it limits the rights and power of the public.

The initiative and referral processes have been messy in North Dakota. Over the years, some individuals have almost made a career out of putting measures on the ballot. They often influenced how bills were written because legislators knew otherwise they could be placed before the voters.



The Tribune is a believer in the process even when we don’t like the results. We feel Marsy’s Law was a bad measure and hope some day it will be challenged in court. The problem wasn’t that it got on the ballot, but the opposition didn’t convince the public to reject it.

Legislators or other elected officials shouldn’t always have the final say. The public deserves the right to change the constitution or make other changes. If legislators expect the public to trust their judgment, then they must respect the rights of the public.

The Legislature needs to quit trying to whittle away at the initiative process. It's messy at times, but it's grass-roots democracy.

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Comments

Write a comment...

SCR 4013 - Testimony by Dustin Gawrylow, ND Watchdog Network (#266)

Mr. Chairman and Members of the Committee,

Here we go again, with yet another attempt to hamper, restrict and impair the Powers Reserved to the People. Since 2013, I have opposed efforts to make the initiated measure process as a whole more difficult. The most recent battle was in 2020 where the legislature tried to inject itself in the process with a veto over the people. Fortunately over 60% of voters rejected that idea.

The provisions in this bill attempt to fix a problem that I will admit is there.

Out-of-state influence with money is a problem for initiated measure, as it is for all of politics.

Out-of-state money puts the grassroots without access to sizable budgets, including myself, at an extreme disadvantage.

First to address this bill's provisions:

The legislature's attempts to make the process harder, including in SCR 4013 really only makes it harder for the grassroots with the 67% approval requirement.

The prohibition on paid circulators would likely be challenged in court.

The requirement on circulators being residents for 120 days might have issues if that is a different threshold than for other political activities.

Our opposition is primarily on the basis of the threshold level.

However, I am currently working with Representative Steve Vetter of Grand Forks to develop a compromise ballot measure to be introduced later this session.

I've attached the draft language that Representative Vetter has submitted to legislative council.

I would urge those members of both the House and Senate to consider that approach over this one.

Very briefly: That measure would: create electroning petitioning which eliminates the need for paid circulators, increase the number of signature needed once the electronic petition system is created, require that constitutional measures EITHER get a simply majority during both the Primary and General election, OR 60% during the general election, and prevent future legislative changes to Article III (to change the process signatures would have to be gathered.

If this committee would like to relace the language in SCR 4013 with this concept, I will fully support it.

If you would like to help Representive Vetter with a co-sponsorship of that proposal, I am taking names and keeping a list.

SCR 4013 as is represents another attack on the Powers Reserved To The People, and should be defeated.

Proposed Compromise to ARTICLE III POWERS RESERVED TO THE PEOPLE

Section 2. A petition to initiate or to refer a measure must be presented to the secretary of state for approval as to form. A request for approval must be presented over the names and signatures of twenty-five or more electors as sponsors, one of whom must be designated as chairman of the sponsoring committee. The secretary of state shall approve the petition for circulation if it is in proper form and contains the names and addresses of the sponsors and the full text of the measure.

The legislative assembly may provide by law for a procedure through which the legislative council may establish an appropriate method for determining the fiscal impact of an initiative measure and for making the information regarding the fiscal impact of the measure available to the public.

The legislative assembly shall appropriate to the Secretary of State appropriations necessary to establish a secure electronic petition signature gathering system to be hosted on the Secretary of State's website. The Secretary of State shall procure the technical resources to allow any North Dakota resident with a valid drivers license, or other proof of residency, to electronically sign any and all legal forms of petitions at the state and local level including those for initiated measures, initiated constitutional measures, referendum, recall, or candidate nominations. This provision shall be implemented by December 31st, 202X.

Section 4. The petition may be submitted to the secretary of state if signed by electors equal in number to two percent of the resident population of the state at the last federal decennial census. **Upon implementation of an electronic signature collection process, this requirement shall be increased to six-percent of the resident population of the state at the last federal decennial census.**

Section 8. If a majority of votes cast upon an initiated **statutory measure** or a referred measure are affirmative, it shall be deemed enacted. **If a majority of votes cast upon an initiated constitution measure in both the primary and general election, or sixty-percent of the votes cast in the general election, it shall be deemed enacted.** An initiated or referred measure which is approved shall become law thirty days after the election, and a referred measure which is rejected shall be void immediately. If conflicting measures are approved, the one receiving the highest number of affirmative votes shall be law. A measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house.

Section 9. A constitutional amendment may be proposed by initiative petition. If signed by electors equal in number to four percent of the resident population of the state at the last federal decennial census, the petition may be submitted to the secretary of state. **Upon implementation of an electronic signature collection process, this requirement shall be increased to fifteen-percent of the resident population of the state at the last federal decennial census.** All other provisions relating to initiative measures apply hereto.

Section 11. All changes to these Powers Reserved To The People shall originate within the petitioning powers granted to the people in this Article. Article III of this constitution is hereby exempt from the legislative assembly's Article IV Section 16 powers.

ARTICLE III
POWERS RESERVED TO THE PEOPLE

Section 1. While the legislative power of this state shall be vested in a legislative assembly consisting of a senate and a house of representatives, the people reserve the power to propose and enact laws by the initiative, including the call for a constitutional convention; to approve or reject legislative Acts, or parts thereof, by the referendum; to propose and adopt constitutional amendments by the initiative; and to recall certain elected officials. This article is self-executing and all of its provisions are mandatory. Laws may be enacted to facilitate and safeguard, but not to hamper, restrict, or impair these powers.

Section 2. A petition to initiate or to refer a measure must be presented to the secretary of state for approval as to form. A request for approval must be presented over the names and signatures of twenty-five or more electors as sponsors, one of whom must be designated as chairman of the sponsoring committee. The secretary of state shall approve the petition for circulation if it is in proper form and contains the names and addresses of the sponsors and the full text of the measure.

The legislative assembly may provide by law for a procedure through which the legislative council may establish an appropriate method for determining the fiscal impact of an initiative measure and for making the information regarding the fiscal impact of the measure available to the public.

Section 3. The petition shall be circulated only by electors. They shall swear thereon that the electors who have signed the petition did so in their presence. Each elector signing a petition shall also write in the date of signing and his post-office address. No law shall be enacted limiting the number of copies of a petition. The copies shall become part of the original petition when filed.

Section 4. The petition may be submitted to the secretary of state if signed by electors equal in number to two percent of the resident population of the state at the last federal decennial census.

Section 5. An initiative petition shall be submitted not less than one hundred twenty days before the statewide election at which the measure is to be voted upon. A referendum petition may be submitted only within ninety days after the filing of the measure with the secretary of state. The submission of a petition shall suspend the operation of any measure enacted by the legislative assembly except emergency measures and appropriation measures for the support and maintenance of state departments and institutions. The submission of a petition against one or more items or parts of any measure shall not prevent the remainder from going into effect. A referred measure may be voted upon at a statewide election or at a special election called by the governor.

Section 6. The secretary of state shall pass upon each petition, and if the secretary of state finds it insufficient, the secretary of state shall notify the "committee for the petitioners" and allow twenty days for correction. All decisions of the secretary of state in regard to any petition are subject to review by the supreme court. But if the sufficiency of the petition is being reviewed at the time the ballot is prepared, the secretary of state shall place the measure on the ballot and no subsequent decision shall invalidate the measure if it is at the election approved by a majority of the votes cast thereon. If proceedings are brought against any petition upon any ground, the burden of proof is upon the party attacking it and the

proceedings must be filed with the supreme court no later than seventy-five days before the date of the statewide election at which the measure is to be voted upon.

Section 7. All decisions of the secretary of state in the petition process are subject to review by the supreme court in the exercise of original jurisdiction. A proceeding to review a decision of the secretary of state must be filed with the supreme court no later than seventy-five days before the date of the statewide election at which the measure is to be voted upon. If the decision of the secretary of state is being reviewed at the time the ballot is prepared, the secretary of state shall place the measure on the ballot and no court action shall invalidate the measure if it is approved at the election by a majority of the votes cast thereon.

Section 8. If a majority of votes cast upon an initiated or a referred measure are affirmative, it shall be deemed enacted. An initiated or referred measure which is approved shall become law thirty days after the election, and a referred measure which is rejected shall be void immediately. If conflicting measures are approved, the one receiving the highest number of affirmative votes shall be law. A measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house.

Section 9. A constitutional amendment may be proposed by initiative petition. If signed by electors equal in number to four percent of the resident population of the state at the last federal decennial census, the petition may be submitted to the secretary of state. All other provisions relating to initiative measures apply hereto.

Section 10. Any elected official of the state, of any county or of any legislative or county commissioner district shall be subject to recall by petition of electors equal in number to twenty-five percent of those who voted at the preceding general election for the office of governor in the state, county, or district in which the official is to be recalled.

The petition shall be filed with the official with whom a petition for nomination to the office in question is filed, who shall call a special election if he finds the petition valid and sufficient. No elector may remove his name from a recall petition.

The name of the official to be recalled shall be placed on the ballot unless he resigns within ten days after the filing of the petition. Other candidates for the office may be nominated in a manner provided by law. When the election results have been officially declared, the candidate receiving the highest number of votes shall be deemed elected for the remainder of the term. No official shall be subject twice to recall during the term for which he was elected.

Residency requirements for petition circulators

Residency requirements for petition circulators are laws that require that petition circulators, also referred to as signature gatherers, legally reside in a particular political jurisdiction if the signatures they collect are to be considered valid.

This page provides an overview of residency requirements for ballot initiative petition circulators.

Ballot law

State laws

Initiative law

Recall law

Changes to law

Court cases and lawsuits

Local laws

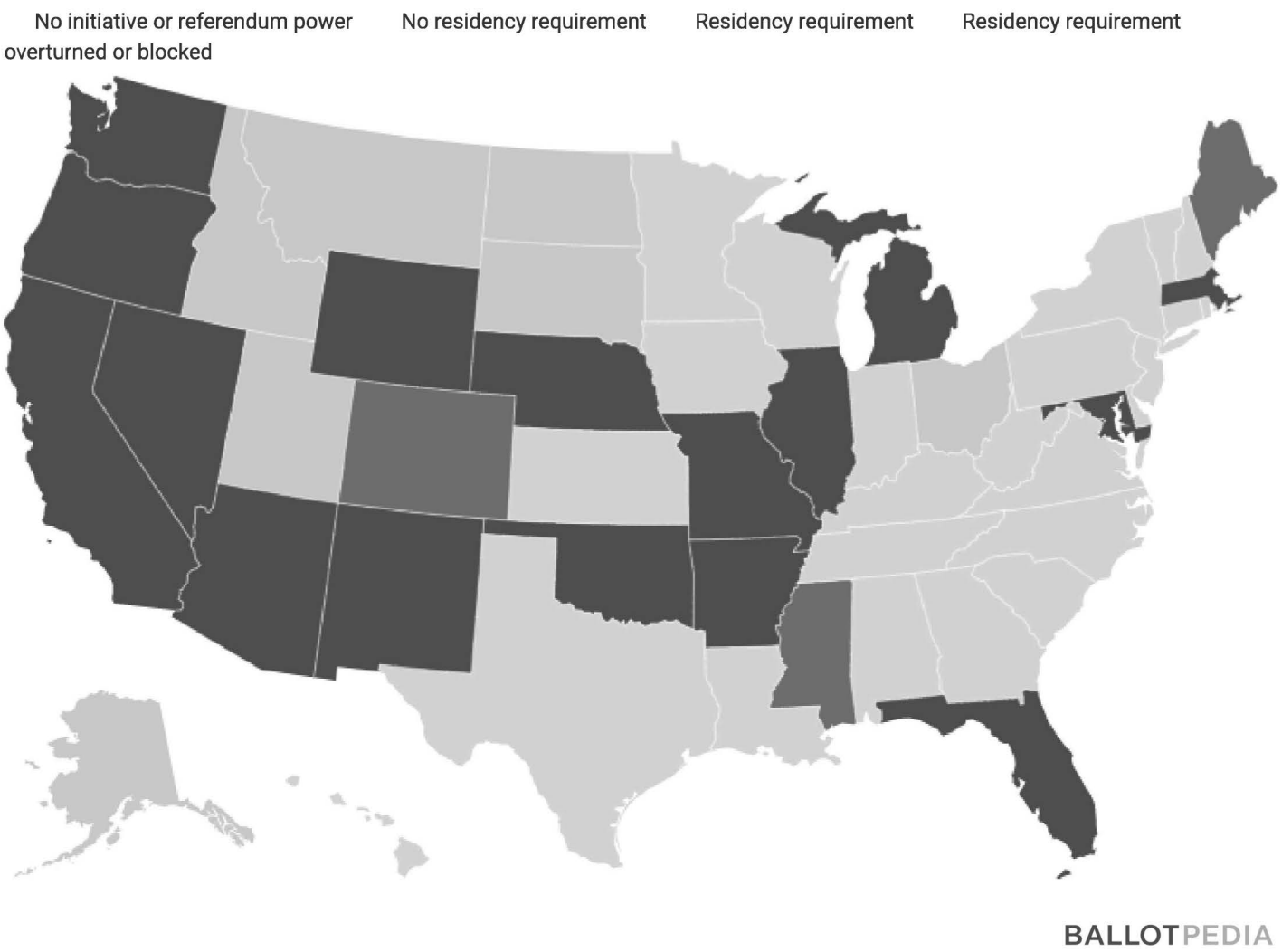
Local ballot measure laws

Ballotpedia's election legislation tracker

States with residency requirements

As of February 2021, seven states out of 26 with statewide initiative or veto referendum processes had residency requirements for ballot initiative and veto referendum petition circulators. An additional three states—Colorado, Maine, and Mississippi—had requirements in statute, but courts had invalidated or blocked the enforcement of the statutes. The map below illustrates which states have residency requirements for ballot initiative and veto referendum petition circulators:

Residency requirements for initiative and referendum petition circulators



Alaska

See also: Laws governing the initiative process in Alaska

In Alaska, an individual who collects signatures for ballot initiatives must be a U.S. citizen, 18 years of age or older, and a resident of the state.[1]

Sec. 15.45.105. Qualifications of circulator.
To circulate a petition booklet, a person shall be

(1) a citizen of the United States;
(2) 18 years of age or older; and
(3) a resident of the state as determined under AS 15.05.020.

Idaho

See also: Laws governing the initiative process in Idaho

In Idaho, an individual who collects signatures for ballot initiatives must be 18 years of age or older and a resident of the state.[2]

34-1807. Circulation of Petitions
Any person who circulates any petition for an initiative or referendum shall be a resident of the state of Idaho and at least eighteen (18) years of age. ...

Maine

See also: Laws governing the initiative process in Maine

BP *This article contains a developing news story. Ballotpedia staff are checking for updates regularly. To inform us of new developments, email us at editor@ballotpedia.org.*

Article IV, part 3, section 20, of the state constitution and a 2015 law in Maine required an individual who collects signatures for ballot initiatives to be a state resident who is a registered voter.[3]

A district court ruling in 2021 said the provisions of the state constitution and the 2015 law violated the right to political speech. The ruling blocked the enforcement of the law.[4]

§903-A. Circulation
Petitions issued under this chapter may be circulated by any Maine resident who is a registered voter acting as a circulator of a petition. ...

Article IV, part 3, section 20
"circulator" means a person who solicits signatures for written petitions, and who must be a resident of this State and whose name must appear on the voting list of the city, town or plantation of the circulator's residence as qualified to vote for Governor;

Montana

See also: Laws governing the initiative process in Montana

In Montana, an individual who collects signatures for ballot initiatives must be a state resident.[5] The requirement was added in 2007, when the legislature passed SB 96.

13-27-102. Who may petition and gather signatures.
(2) A person gathering signatures for the initiative, the referendum, or to call a constitutional convention:

(a) must be a resident, as provided in 1-1-215, of the state of Montana; and
(b) may not be paid anything of value based upon the number of signatures gathered.

North Dakota

See also: Laws governing the initiative process in North Dakota

In North Dakota, an individual who collects signatures for ballot initiatives must be an elector, which requires them to be a state resident. The United States Court of Appeals for the Eighth District upheld North Dakota's requirement in the case of Initiative & Referendum Institute v. Jaeger.

North Dakota Constitution, Article III, Section 3
The petition shall be circulated only by electors. ...

Ohio

Main article: Laws governing the initiative process in Ohio

In Ohio, an individual who collects signatures for ballot initiatives must 18 years of age or older and a resident of the state.[6]

3503.06 Registration as elector - circulation or signing of petition.
(C)(1)(a) Except for a nominating petition for presidential electors, no person shall be entitled to circulate any petition unless the person is a resident of this state and is at least eighteen years of age.

South Dakota

See also: Laws governing the initiative process in South Dakota

In South Dakota, an individual who collects signatures for ballot initiatives must 18 years of age or older and a resident of the state.[7]

12-1-3. Definition of terms used in title.
(11) "Petition circulator," a resident of the State of South Dakota as defined under § 12-1-4, who is at least eighteen years of age who circulates nominating petitions or other petitions for the purpose of placing candidates or issues on any election ballot;

Utah

Main article: Laws governing the initiative process in Utah

In Utah, an individual who collects signatures for ballot initiatives must 18 years of age or older and a resident of the state.[8]

20A-7-205. Obtaining signatures -- Verification -- Removal of signature.
(2) (a) The sponsors shall ensure that the person in whose presence each signature sheet was signed:

(i) is at least 18 years old and meets the residency requirements of Section 20A-2-105; and
(ii) verifies each signature sheet by completing the verification printed on the last page of each initiative packet.

States without residency requirements

As of February 2021, the following 19 states out of the 26 with statewide initiative or veto referendum processes either did not have a residency requirement, or their residency requirement was overturned or blocked from enforcement by a court ruling.

- Arizona
- Arkansas
- California
- Colorado
- Florida
- Illinois
- Maine
- Massachusetts
- Maryland
- Michigan
- Mississippi
- Missouri
- Nebraska
- Nevada
- New Mexico
- Oklahoma
- Oregon
- Washington
- Wyoming

Court rulings on residency requirements

The following is a list of court rulings addressing residency requirements for petition circulators.

- *We the People Pac v. Bellows*: On Feb. 16, U.S. District Court Judge John Woodcock enjoined the state from enforcing provisions of the Maine Constitution and a 2015 law requiring petition circulators to be registered voters, and, therefore, state residents. The ruling also said, "The Court framed its opinion as a prelude to a challenge to the Court of Appeals for the First Circuit for a more authoritative ruling."[9][10]
- *Yes on Term Limits v. Savage*: On December 18, 2008, the Tenth Circuit Court of Appeals overturned Oklahoma's residency requirement.[11][12][13]
- *Bogaert v. Land*: In September 2008, Sixth Circuit Court of Appeals overturned Michigan's residency requirements in recall petition drives.
- *Nader v. Brewer*: On July 7, 2008, a three-judge panel of the Ninth Circuit Court of Appeals overturned Arizona's residency requirement. Brewer filed a petition with the U.S. Supreme Court asking it to hear an appeal of the Ninth Circuit's ruling. The Supreme Court of the United States announced on March 9, 2009, that it was declining to hear an appeal of the case.[14][15][16]
- *Preserve Shorecliff Homeowners v. City of San Clemente*: In 2008, the California Court of Appeals overturned a California requirement related to residency.
- *Frami v Ponto*: In 2003, the United States District Court for the Western District of Wisconsin overturned Wisconsin's requirement that petition circulators be residents of

the state.

- *Chandler v. City of Arvada*: In 2002, the 10th Circuit Court of Appeals overturned a residency requirement in Arvada, Colorado.
- *Buckley v. American Constitutional Law Foundation*: In 1999, the U.S. Supreme Court overturned a Colorado requirement related to residency.
- *Initiative & Referendum Institute v. Jaeger*: In 1998, the Eight Circuit Court of Appeals upheld North Dakota's residency requirement.

Changes to laws governing the initiative process

- Changes in 2009 to laws governing ballot measures
- Changes in 2008 to laws governing ballot measures
- Changes in 2007 to laws governing ballot measures
- Changes in 2010 to laws governing ballot measures
- Changes in 2011 to laws governing ballot measures
- Changes in 2012 to laws governing ballot measures
- Changes in 2013 to laws governing ballot measures
- Changes in 2014 to laws governing ballot measures
- Changes in 2016 to laws governing ballot measures
- Changes in 2015 to laws governing ballot measures
- Changes in 2017 to laws governing ballot measures
- Changes to laws governing ballot measures
- Changes in 2018 to laws governing ballot measures
- Changes in 2019 to laws governing ballot measures
- Changes in 2020 to laws governing ballot measures
- Changes in 2021 to laws governing ballot measures
- Changes in 2022 to laws governing ballot measures

See also

- Laws governing ballot measures
- Laws governing petition circulators
- History of restrictions on paid circulators

Footnotes

1. *Alaska Statutes*, "AS 15.45.105," accessed March 13, 2019
2. *Idaho Statutes*, "34.18.1807," accessed March 13, 2019
3. *Maine Revised Statutes*, "21-A §903-A.," accessed March 13, 2019
4. *Bangor Daily News*, "Federal judge puts key Maine referendum law on hold amid GOP lawsuit," February 17, 2021
5. *Montana Code Annotated*, "13-27-102," accessed March 13, 2019
6. *Ohio Laws and Rules*, "3503.06," accessed March 13, 2019

Laws governing petition circulators

The initiative states regulate petition circulators in a variety of ways. These include residency requirements, age requirements, requiring circulators to disclose whether they are paid or volunteer circulators, requiring the circulator to personally witness each act of signing the petition, bans on payment of petitioners per signature, and restrictions on where circulators are allowed to collect signatures.

Laws governing petition circulators are an active area of legislative and legal action. In general, proponents of additional restrictions on circulations say that the laws work to guard the integrity of the petition process, while opponents of additional regulations say that the laws are (a) unconstitutional and (b) an attempt by powerful politicians to put a veneer of respectability on recurrent and multi-faceted attempts to squelch the initiative process.

Ballot law

State laws

Initiative law

Recall law

Changes to law

Court cases and lawsuits

Local laws

Local ballot measure laws

Ballotpedia's election legislation tracker

Residency requirements

For residency requirements, see Residency requirements for petition circulators

Age requirements

In the 1999 U.S. Supreme Court case Buckley v. American Constitutional Law Foundation, the Supreme Court upheld the right of Colorado to impose an age restriction on petition circulators.

More than half of the 24 I&R states require that petition circulators be eligible to vote in the state. The requirement that a circulator be eligible to vote also has the consequence that the circulator be at least 18. In states where there is no eligibility requirement, people who are under 18 are allowed to circulate petitions.

Disclosure of paid status

Seven states require circulators to disclose whether they are a paid or a volunteer circulator to potential petition signers. These states are Arizona, California, Nebraska, Ohio, Oregon and Wyoming--all of which require that a prominent notice be placed on the petition form stating whether the circulator is paid or volunteer--and Missouri, where the circulator must submit a written statement to the Missouri Secretary of State.

In Oregon, as of January 1, 2008, paid circulators must carry a registration form with them indicating that they have taken the state's mandatory training program for paid circulators. Also as of January 1, 2008, the color of volunteer circulator petition sheets and paid circulator petition sheets is required to be different.

Identification badges

In Buckley v. American Constitutional Law Foundation, the U.S. Supreme Court invalidated a Colorado law that required circulators to wear a badge disclosing their name and status. In its decision, the court wrote:

> *District Court found from evidence ACLF presented that compelling circulators to wear identification badges inhibits participation in the petitioning process.*

See also: Badge requirements.

Witness and affidavit requirements

Eighteen of the 24 initiative states require that circulators must personally witness each petition signature and sign an oath or affidavit stating that he or she personally witnesses the signing of the signature. States with these requirements include Alaska, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Maine, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington and Wyoming.

In Florida, the law specifically says that petitions may be signed outside the presence of a circulator.

In Buckley v. American Constitutional Law Foundation, the U.S. Supreme Court upheld a Colorado law requiring circulator affidavits on petition forms.

Signature payment

Payment-per-signature

In Nebraska,[1]North Dakota, Oregon, South Dakota, Montana, and Wyoming initiative sponsors are banned from paying petition circulators per signature. An 2005 Ohio law banning payment-per-signature was struck down by a federal judge in the case of Citizens for Tax Reform v. Deters. (Ohio is appealing the decision.)

North Dakota's law banning pay-per-signature was upheld by the 8th circuit court in the case of Initiative & Referendum Institute v. Jaeger. Oregon's law was upheld in 2005 by a federal district judge in the case of Prete v. Bradbury.

The laws in Nebraska, South Dakota and Montana[2] banning pay-per-signature are new in 2007 and 2008 and have not been litigated.[3]

New in 2008

Main article: Changes in 2008 to laws governing the initiative process

State legislator DiAnna Schimek sponsored Nebraska Legislative Bill 39, which forbids paying people who circulate petitions for each signature they collect. Vetoed by Gov. Dave Heineman, the Nebraska legislature narrowly overrode the veto. Violating the new law is a Class III misdemeanor punishable with a $500 fine and three months in jail.

New in 2009

Main article: Changes in 2009 to laws governing the initiative process

HB 2642 was introduced in the Virginia House of Delegates by Robert Orrick, a Republican, to make it illegal to pay petition circulators on a per-signature basis. (This bill doesn't apply to ballot initiatives, since Virginia doesn't allow them. It applies to petition circulation for political candidates.)[4]

Bans found unconstitutional

Pay-per-signature provisions in Idaho, Maine, Mississippi, Ohio and Washington have been struck down as unconstitutional in federal district courts.

Ceiling on amount that can be paid

In Alaska, the maximum amount that a petition sponsor can pay a circulator per signature is $1.00.

Mandatory state-administered training

In Oregon as of January 1, 2008, paid petition circulators must take a government-administered training class before they are allowed to collect signatures.

See also

- History of restrictions on paid circulators
- Prete v. Bradbury, the U.S. Eighth Circuit judgment upholding Oregon's ban on pay-per-signature.
- Citizens for Tax Reform v. Deters, a November 2006 case that found Ohio's ban on pay-per-signature unconstitutional.
- Idaho Coalition United for Bears v. Cenarrusa, the 2001 federal decision invalidating Idaho's ban on pay-per-signature.
- On Our Terms '97 PAC v. Maine Secretary of State, the 1999 federal decision invalidating Maine's ban.
- LIMIT v. Maleng, the 1994 federal decision invalidating Washington's ban
- Term Limits Leadership Council v. Clark, the judicial decision invalidating Mississippi's ban

Petitioner access

Although states typically do not have statutory provisions regarding where a circulator is allowed to stand or physically locate himself or herself when soliciting signatures, several of the initiative states have judicial rulings regulating this aspect of the petition process.

California

In 1979, in the case of Robins v. Pruneyard Shopping Center, the California Supreme Court determined that "soliciting signatures for a petition to the government" is an activity protected by the California Constitution. Subsequent cases pulled back from that level of certainty, but in December 2007, by a slim margin in the case of Fashion Valley Mall v. National Labor Relations Board, that court appears to have asserted that free speech rights supersede private property rights.

Washington

In 1999, the Supreme Court of the State of Washington ruled in favor of Waremart, a regional discount grocery chain, against PCI Consultants, Inc. in the case of Waremart v. PCI Consultants, Inc.. The ruling enjoined PCI from collecting signatures at Waremart on the grounds that Waremart stores were not the functional equivalent of public gathering places.

Laws governing paid blockers

Although the initiative states have a number of laws governing petition drives and circulators, there are few if a[P] restrictions governing paid blockers and petition blocking campaigns.

See also

- Residency requirements for petition circulators
- History of restrictions on paid circulators
- Distribution requirement
- Changes in 2007 to laws governing the initiative process
- Changes in 2008 to laws governing the initiative process
- Changes in 2009 to laws governing the initiative process

External links

- Free to Speak

Footnotes

1. A law passed in Nebraska in 2008 forbids pay-per-signature; initiatives that had already been filed for the 2008 ballot were not affected by this new legislation (they were grandfathered in under the old laws).
2. *Montana law forbidding pay-per-signature*
3. *Pay per signatures laws*
4. *Ballot Access News*, "Virginia Bill to Ban Paying Circulators on a Per-Signature Basis," February 4, 2009

Michael Connelly

1821 East Ave E

Bismarck, ND resident

Bill: SCR4013

Members of the Committee,

I am in strong opinion that at the very least this bill should be amended to remove the 67% majority of votes for a measure to pass. This should remain at the simple majority. I would prefer that signature requirement remain at 4%, but think 5% is not so significant to make this seem like a power grab. I am in agreement as to how money is used to promote the initiative measure but not sure if this is the right means to curtail that as we should find a better way to have North Dakota money pay for such efforts and not large investments made by people outside the state that fundamentally want to change who we are.

Most directly though the power grab is in making the change to 67% of the electorate vote. We are a conservative Republican state for a reason and we should not be moving the goal posts of government at the expense of the representative republic we all enjoy and have an investment in. Nationally we heard talk of Democrats wanting to add more Supreme Court justices above the 9 in order to gain back the majority of judges that think like they do. Their was also talk of adding D.C., Porta Rico, and Guam in as States to leverage the electoral collage in their favor. This is a power grab from the “We the People” so respected in our founding documents in regard to American Citizens. So

why as a conservative Republican majority state would we allow for moving the “goal posts” to handcuff the rights of our North Dakoka citizens. As a Republican myself, I hope that our other Republican and Democrat legislators do not behave like our liberal counterparts in D.C. and move the goal posts on the Initiated measure process so much that it becomes a theft of the “Power of the People” in regards to the citizens of North Dakota!

Sincerely

Mike Connelly

Please do NOT support and put this powerplay of an act into effect. North Dakotans need to have a fair majority and to be able to have more of a say. We as citizens already struggle keeping up with so much information and getting the community involved that a 17% increase in majority needed from where it is now is vastly over the top and very difficult to over turn. Please make overturning the constitution difficult and not just who can pay people off for votes from the legislature. Please amend to 51% of votes and take out 67% majority OR completely take this bill out! Thank you for your time and attention, Brianna

Greetings, my name is Mike and I am a ND citizen in the district of 58501 area code. I am writing in OPPOSITION to this bill. Please do NOT support and put this powerplay of an act into effect. North Dakotans need to have a fair majority and to be able to have more of a say. We as citizens already struggle keeping up with so much information and getting the community involved that a 17% increase in majority needed from where it is now is vastly over the top and very difficult to over turn. Please make overturning the constitution difficult and not just who can pay people off for votes from the legislature. Please amend to 51% of votes and take out 67% majority OR completely take this bill out! Thank you for your time and attention, Mike

North Dakota Native Vote
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Bismarck, North Dakota 58504
1-888-425-1483
info@ndnativevote.org

Testimony of North Dakota Native Vote regarding Senate Concurrent Resolution 4013
By Sharnell Seaboy
February 9, 2023
Senate State and Local Government Committee

Chairman and members of the Senate State and Local Government Committee, thank you for the opportunity to testify today on the importance of protecting democracy. My name is Sharnell Seaboy, I am an enrolled citizen of the Mni Wakan Oyate (Spirit Lake Nation). I am a Field Organizer at North Dakota Native Vote and am here to testify in opposition of Senate Concurrent Resolution 4013 on behalf of North Dakota Native Vote.

North Dakota Native Vote is a non-partisan grassroots organization. Our mission is to create and affect policy to promote equitable representation for the Native people of North Dakota.

North Dakota Native Vote opposes Senate Concurrent Resolution 4013 for the following reasons:

- The bill states that initiative petitions “may be circulated only by electors who have resided in the state for at least one hundred twenty days before the first signature is collected.” The North Dakota Constitution (Article II, Section 1)1 identifies a “qualified elector” as “a citizen of the United States who has attained the age of eighteen years and who is a North Dakota resident.” As we have testified before in 2021, the requirement for durational residency violates both the North Dakota Constitution and the United States Constitution. The United States Supreme Court in Dunn v. Blumstein found that state laws requiring voters to have been residents in the State for a year and the county for three months did not further any compelling state interest and violated the equal protection clause of the Fourteenth Amendment. I am providing a copy of the United States Supreme Court case Dunn v. Blumstein, 405 U.S. 330 (1972) for inclusion in the record. This durational residency requirement has been struck down as a violation of the equal protection clause and therefore is unconstitutional.
- SCR 4013 is an attack on citizen-led government by increasing the percentage of voters needed to approve an initiated amendment from 50% to 67%. It's a right and responsibility of each and every citizen to participate in state policy-making, especially when legislators can not or will not.
- A similar measure was put on the ballot in 2020 that would have required the legislative body’s approval for constitutional initiated measures, if approved would have to be

placed on the ballot two times in order to pass. That initiative was overwhelmingly defeated by the people of North Dakota.

- SCR 4013 undermines the will of the people and will diminish their decision making power.

North Dakota Native Vote recommends a DO NOT PASS on Senate Concurrent Resolution 4013.

Pidamiya-ye (Thank you).

92 S.Ct. 995
Supreme Court of the United States

Winfield DUNN, Governor of the
State of Tennessee, et al., Appellants,
v.
James F. BLUMSTEIN.

No. 70—13.
|
Argued Nov. 16, 1971.
|
Decided March 21, 1972.

Synopsis

Action was brought challenging state durational residence laws for voter. A three-judge District Court, 337 F.Supp. 323, held the laws invalid and state officials appealed. The Supreme Court, Mr. Justice Marshall, J., held that state laws requiring would-be voter to have been resident for year in state and three months in county do not further any compelling state interest and violate the equal protection clause of the Fourteenth Amendment.

Affirmed.

Mr. Justice Blackmun concurred and filed opinion.

Mr. Chief Justice Burger dissented and filed opinion.

Mr. Justice Powell and Mr. Justice Rehnquist took no part in consideration or decision of case.

Procedural Posture(s): On Appeal.

West Headnotes (13)

[1] **Election Law** Duration of residency

Durational residence laws penalize those persons who have traveled from one place to another to establish new residence during qualifying period. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

66 Cases that cite this headnote

[2] **Constitutional Law** Rational Basis Standard; Reasonableness

To decide whether law violates equal protection clause, court looks to character of classification in question, individual interests affected by classification, and governmental interests asserted in support of classification. U.S.C.A.Const. Amend. 14.

235 Cases that cite this headnote

[3] **Election Law** Duration of residency

State must show substantial and compelling reason for imposing durational residence requirements on voters. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

31 Cases that cite this headnote

[4] **Election Law** Duration of residency

By denying some citizens the right to vote, durational residence law deprived such citizens of fundamental political right which is preservative of all rights. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

68 Cases that cite this headnote

[5] **Election Law** Right to vote effectively

Election Law In general; power to regulate qualifications

Equal right to vote is not absolute and states have power to impose voter qualifications, and to regulate access to franchise in other ways. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

62 Cases that cite this headnote

[6] **Election Law** Power to Restrict or Extend Suffrage

Before right to vote can be restricted, purpose of restriction and assertedly overriding interests served by it must meet close constitutional scrutiny. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

49 Cases that cite this headnote

[7] **Constitutional Law** Residency requirements

Election Law Duration of residency

Durational residence requirement directly impinges on exercise of right to travel. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

136 Cases that cite this headnote

[8] **Election Law** Duration of residency

Durational residence laws are unconstitutional unless state can demonstrate that such laws are necessary to promote compelling governmental interest. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

152 Cases that cite this headnote

[9] **Election Law** Duration of residency

To uphold durational residence law, it is not sufficient for state to show that requirements further a very substantial state interest.

31 Cases that cite this headnote

[10] **Constitutional Law** Overbreadth in General

In pursuing substantial state interest, state cannot choose means which unnecessarily burden or restrict constitutionally protected activity.

70 Cases that cite this headnote

[11] **Election Law** Duration of residency

Period of 30 days' voters' residence would be ample for state to complete whatever administrative task may be needed to prevent fraud and insure purity of ballot box.

32 Cases that cite this headnote

[12] **Election Law** Duration of residency

State may not conclusively presume nonresidence from failure to satisfy waiting period requirements of durational residency laws. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

27 Cases that cite this headnote

[13] **Constitutional Law** Qualification of voters

Election Law Duration of residency

State laws requiring would-be voter to have been resident for year in state and three months in county do not further any compelling state interest and violate the equal protection clause of the Fourteenth Amendment. Voting Rights Act of 1965, § 202(a) (2) as amended 42 U.S.C.A. § 1973aa–1(a) (2); T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

351 Cases that cite this headnote

****996** ***330** Syllabus [*]

Tennessee closes its registration books 30 days before an election, but requires residence in the State for one year and in the county for three months as prerequisites for registration to vote. Appellee challenged the constitutionality of the durational residence requirements, and a three-judge District Court held ****997** them unconstitutional on the grounds that they impermissibly interfered with the right to vote and created a 'suspect' classification penalizing some Tennessee residents because of recent interstate movement. Tennessee asserts that the requirements are needed to insure the purity of the ballot box and to have knowledgeable voters. Held: The durational residence requirements are violative of the Equal Protection Clause of the Fourteenth Amendment, as they are not necessary to further a compelling state interest. Pp. 999—1012.

(a) Since the requirements deny some citizens the right to vote, 'the Court must determine whether the exclusions are necessary to promote a compelling state interest.' Kramer v. Union Free School District No. 15, 395 U.S. 621, 627, 89 S.Ct. 1886, 1890, 23 L.Ed.2d 583 (emphasis added). Pp. 999—1000.

(b) Absent a compelling state interest, Tennessee may not burden the right to travel by penalizing those bona fide residents who have recently traveled from one jurisdiction to another. Pp. 1001—1003.

(c) A period of 30 days appears to be ample to complete whatever administrative tasks are needed to prevent fraud and insure the purity of the ballot box. Pp. 1004—1007.

(d) Since there are adequate means of ascertaining bona fide residence on an individualized basis, the State may not conclusively presume nonresidence from failure to satisfy the waiting-period requirements of durational residence laws. Pp. 1006—1009.

(e) Tennessee has not established a sufficient relationship between its interest in an informed electorate and the fixed durational residence requirements. Pp. 1009—1012.

Affirmed.

Attorneys and Law Firms

***331** Robert H. Roberts, Nashville, Tenn., for appellants.

James F. Blumstein, pro se.

Opinion

Mr. Justice MARSHALL delivered the opinion of the Court.

Various Tennessee public officials (hereinafter Tennessee) appeal from a decision by a three-judge federal court holding that Tennessee's durational residence requirements for voting violate the Equal Protection Clause of the United States Constitution. The issue arises in a class action for declaratory and injunctive relief brought by appellee James Blumstein. Blumstein moved to Tennessee on June 12, 1970, to begin employment as an assistant professor of law at Vanderbilt University in Nashville. With an eye toward voting in the upcoming August and November elections, he attempted to register to vote on July 1, 1970. The county registrar refused to register him, on the ground that Tennessee law authorizes the registration of only those persons who, at the time of the next election, will have been residents of the State for a year and residents of the county for three months.

After exhausting state administrative remedies, Blumstein brought this action challenging these residence requirements ***332** on federal constitutional grounds.[1] A ****998** three-judge court, convened pursuant to 28 U.S.C. ss 2281, 2284, concluded that Tennessee's durational residence ***333** requirements were unconstitutional (1) because they impermissibly interfered with the right to vote and (2) because they created a 'suspect' classification penalizing some Tennessee residents because of recent interstate movement.[2] Blumstein v. Ellington, 337 F.Supp. 323 (MD Tenn.1970). We noted probable jurisdiction, 401 U.S. 934, 91 S.Ct. 920, 28 L.Ed.2d 213 (1971). For the reasons that follow, we affirm the decision below.[3]

****999** ***334** I

The subject of this lawsuit is the durational residence requirement. Appellee does not challenge Tennessee's power to restrict the vote to bona fide Tennessee residents. Nor has Tennessee ever disputed that appellee was a bona fide resident of the State and county when he attempted to register.[4] But Tennessee insists that, in addition to being a resident, a would-be voter must have been a resident for a year in the State and three months in the county. It is this additional durational residence requirement that appellee challenges.

[1] Durational residence laws penalize those persons who have traveled from one place to another to establish a new residence during the qualifying period. Such laws divide residents into two classes, old residents and new residents, and discriminate against the latter to the extent ***335** of totally denying them the opportunity to vote.[5] the constitutional question presented is whether the Equal Protection Clause of the Fourteenth Amendment permits a State to discriminate in this way among its citizens.

[2] **[3]** To decide whether a law violates the Equal Protection Clause, we look, in essence, to three things: the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification. Cf. Williams v. Rhodes, 393 U.S. 23, 30, 89 S.Ct. 5, 10, 21 L.Ed.2d 24 (1968). In considering laws challenged under

the Equal Protection Clause, this Court has evolved more than one test, depending upon the interest affected or the classification involved. [6] First, then, we must determine what standard of review is appropriate. In the present case, whether we look to the benefit withheld by the classification (the opportunity to vote) or the basis for the classification (recent interstate travel) we conclude that the State must show a substantial and compelling reason for imposing durational residence requirements.

***336** A

[4] **[5]** **[6]** Durational residence requirements completely bar from voting all residents not meeting the fixed durational standards. By denying some citizens the right to vote, such laws deprive them of "a fundamental political right, . . . preservative of all rights." Reynolds v. Sims, 377 U.S. 533, 562, 84 S.Ct. 1362, 1381, 12 L.Ed. 506 (1964). There is no ****1000** need to repeat now the labors undertaken in earlier cases to analyze this right to vote and to explain in detail the judicial role in reviewing state statutes that selectively distribute the franchise. In decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction. See, e.g., Evans v. Cornman, 398 U.S. 419, 421—422, 426, 90 S.Ct. 1752, 1754—1755, 1756, 26 L.Ed.2d 370 (1970); Kramer v. Union Free School District No. 15, 395 U.S. 621, 626—628, 89 S.Ct. 1886, 1889—1890, 23 L.Ed.2d 583 (1969); Cipriano v. City of Houma, 395 U.S. 701, 706, 89 S.Ct. 1897, 1900, 23 L.Ed.2d 647 (1969); Harper v. Virginia State Board of Elections, 383 U.S. 663, 667, 86 S.Ct. 1079, 1081, 16 L.Ed.2d 169 (1966); Carrington v. Rash, 380 U.S. 89, 93—94, 85 S.Ct. 775, 778, 779, 13 L.Ed.2d 675 (1965); Reynolds v. Sims, supra. This 'equal right to vote,' Evans v. Cornman, supra, 398 U.S., at 426, 90 S.Ct., at 1756 is not absolute; the States have the power to impose voter qualifications, and to regulate access to the franchise in other ways. See, e.g., Carrington v. Rash, supra, 380 U.S., at 91, 85 S.Ct., at 777, Oregon v. Mitchell, 400 U.S. 112, 144, 91 S.Ct. 260, 274, 27 L.Ed.2d 272 (opinion of Douglas, J.), 241, 91 S.Ct. 323 (separate opinion of Brennan, White, and Marshall, JJ.), 294, 91 S.Ct. 349 (opinion of Stewart, J., concurring and dissenting, with whom Burger, C.J., and Blackmun, J., joined). But, as a general matter, 'before that right (to vote) can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny.' Evans v. Cornman, supra, 398 U.S., at 422, 90 S.Ct., at 1755; see Bullock v. Carter, 405 U.S. 134, at 143, 92 S.Ct. 849, at 855—856, 31 L.Ed.2d 92.

***337** Tennessee urges that this case is controlled by Drueding v. Devlin, 380 U.S. 125, 85 S.Ct. 807, 13 L.Ed.2d 792 (1965). Drueding was a decision upholding Maryland's durational residence requirements. The District Court tested those requirements by the equal protection standard applied to ordinary state regulations: whether the exclusions are reasonably related to a permissible state interest. 234 F.Supp. 721, 724—725 (Md.1964). We summarily affirmed per curiam without the benefit of argument. But if it was not clear then, it is certainly clear now that a more exacting test is required for any statute that 'place(s) a condition on the exercise of the right to vote.' Bullock v. Carter, supra, 405 U.S., at 143, 92 S.Ct., at 856. This development in the law culminated in Kramer v. Union Free School District No. 15. supra. There we canvassed in detail the reasons for strict review of statutes distributing the franchise, 395 U.S., at 626—630, 89 S.Ct., at 1889—1891, noting inter alia that such statutes 'constitute the foundation of our representative society.' We concluded that if a challenged statute grants the right to vote to some citizens and denies the franchise to others, 'the Court must determine whether the exclusions are necessary to promote a compelling state interest.' Id., at 627, 89 S.Ct., at 1890 (emphasis added); Cipriano v. City of Houma, supra, 395 U.S., at 704, 89 S.Ct., at 1899; City of Phoenix v. Kolodziejski, 399 U.S. 204, 205, 209, 90 S.Ct. 1990, 1992, 1994, 26 L.Ed.2d 523 (1970). Cf. Harper v. Virginia State Board of Elections, supra, 383 U.S., at 670, 86 S.Ct., at 1083. This is the test we apply here. [7]

****1001** ***338** B

[7] This exacting test is appropriate for another reason, never considered in Drueding: Tennessee's durational residence laws classify bona fide residents on the basis of recent travel, penalizing those persons, and only those persons, who have gone from one jurisdiction to another during the qualifying

period. Thus, the durational residence requirement directly impinges on the exercise of a second fundamental personal right, the right to travel.

'(F)reedom to travel throughout the United States has long been recognized as a basic right under the Constitution.' United States v. Guest, 383 U.S. 745, 758, 86 S.Ct. 1170, 1178, 16 L.Ed.2d 239 (1966). See Passenger Cases (Smith v. Turner), 7 How. 283, 492, 12 L.Ed. 702 (1849) (Taney, C.J.); Crandall v. Nevada, 6 Wall. 35, 43—44, 18 L.Ed. 744 (1868); Paul v. Virginia, 8 Wall. 168, 180, 19 L.Ed. 357 (1869); Edwards v. California, 314 U.S. 160, 62 S.Ct. 164, 86 L.Ed. 119 (1941); Kent v. Dulles, 357 U.S. 116, 126, 78 S.Ct. 1113, 1118, 2 L.Ed.2d 1204 (1958); Shapiro v. Thompson, 394 U.S. 618, 629—631, 634, 89 S.Ct. 1322, 1328—1330, 1331, 22 L.Ed.2d 600 (1969); Oregon v. Mitchell, 400 U.S., at 237, 91 S.Ct., at 321 (separate opinion of Brennan, White, and Marshall, JJ.), 285—286, 91 S.Ct. 345 (Stewart, J., concurring and dissenting, with whom Burger, C.J., and Blackmun, J., joined). And it is clear that the freedom to travel includes the 'freedom to enter and abide in any State in the Union,' id., at 285, 91 S.Ct., at 345. Obviously, durational residence laws single out the class of bona fide state and county residents who have recently exercised this constitutionally protected right, and penalize such travelers directly. We considered such a durational residence requirement in Shapiro v. Thompson, supra, where the pertinent statutes imposed a one-year waiting period for interstate migrants as a condition to receiving welfare benefits. Although in Shapiro we specifically did not decide whether durational residence requirements could be used to determine voting eligibility, ***339** id., 394 U.S., at 638 n. 21, 89 S.Ct., at 1333, we concluded that since the right to travel was a constitutionally protected right, 'any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional.' Id., at 634, 89 S.Ct., at 1331. This compelling-state-interest test was also adopted in the separate concurrence of Mr. Justice Stewart. Preceded by a long line of cases recognizing the constitutional right to travel, and repeatedly reaffirmed in the face of attempts to disregard it, see Wyman v. Bowens, 397 U.S. 49, 90 S.Ct. 813, 25 L.Ed.2d 38 (1970), and Wyman v. Lopez, 404 U.S. 1055, 92 S.Ct. 736, 30 L.Ed.2d 743 (1972), Shapiro and the compelling-state-interest test it articulates control this case.

Tennessee attempts to distinguish Shapiro by urging that 'the vice of the welfare statute in Shapiro . . . was its objective to deter interstate travel.' Brief for Appellants 13. In Tennessee's view, the compelling-state-interest test is appropriate only where there is 'some evidence to indicate a deterrence of or infringement on the right to travel . . ..' Ibid. Thus, Tennessee seeks to avoid the clear command of Shapiro by arguing that durational residence requirements for voting neither seek to nor actually do deter such travel. In essence, Tennessee argues that the right to travel is not abridged here in any constitutionally relevant sense.

This view represents a fundamental misunderstanding of the law.[8] It is irrelevant whether disenfranchisement or ***1002** denial of welfare is the more potent deterrent to travel. Shapiro did not rest upon a finding that denial of welfare actually deterred travel. Nor have other 'right to travel' ***340** cases in this Court always relied on the presence of actual deterrence.[9] In Shapiro we explicitly stated that the compelling state interest test would be triggered by 'any classification which serves to penalize the exercise of that right (to travel) . . ..' Id., at 634, 89 S.Ct., at 1331 (emphasis added); see id., at 638 n. 21, 89 S.Ct., at 1333.[10] While noting the frank legislative purpose to deter migration by the poor, and speculating that '(a)n indigent who desires to migrate . . . will doubtless hesitate if he knows that he must risk' the loss of benefits, id., at 629, 89 S.Ct., at 1328, the majority found no need to dispute the 'evidence that few welfare recipients have in fact been deterred (from moving) by residence requirements.' Id., at 650, 89 S.Ct., at 1340 (Warren, C.J., dissenting); see also id., at 671—672, 89 S.Ct., at 1351 (Harlan, J., dissenting). Indeed, none of the litigants had themselves been deterred. Only last Term, it was specifically noted that because a durational ***341** residence requirement for voting 'operates to penalize those persons, and only those persons, who have exercised their constitutional right of interstate migration . . ., (it) may withstand constitutional scrutiny only upon a clear showing that the burden imposed is necessary to protect a compelling and substantial governmental interest.' Oregon v. Mitchell, 400 U.S., at 238, 91 S.Ct., at 321, 27 L.Ed.2d 272 (separate opinion of Brennan, White, and Marshall, JJ.) (emphasis added).

Of course, it is true that the two individual interests affected by Tennessee's durational residence requirements are affected in different ways. Travel is permitted, but only at a price; voting is prohibited. The right to travel is merely penalized, while the right to vote is absolutely denied. But these differencess are irrelevant for present purposes. Shapiro implicitly realized what this Court has made explicit elsewhere:

'It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution. . . . 'Constitutional rights would be of little value if they could be . . . indirectly denied,' . . ..' Harman v. Forssenius, 380 U.S. 528, 540, 85 S.Ct. 1177, 1185, 14 L.Ed.2d 50 (1965). [11]

**1003 See also Garrity v. New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967), and cases cited therein; Spevack v. Klein, 385 U.S. 511, 515, 87 S.Ct. 625, 628, 17 L.Ed.2d 574 (1967). The right to travel is an 'unconditional personal right,' a right whose exercise may not be conditioned. Shapiro v. Thompson, 394 U.S., at 643, 89 S.Ct., at 1331 (Stewart, J., concurring) (emphasis added); Oregon v. Mitchell, supra, 400 U.S., at 292, 91 S.Ct., at 348 (Stewart, J., concurring and dissenting, *342 Burger, C.J., and Blackmun, J., joined). Durational residence laws impermissibly condition and penalize the right to travel by imposing their prohibitions on only those persons who have recently exercised that right. [12] In the present case, such laws force a person who wishes to travel and change residences to choose between travel and the basic right to vote. Cf. United States v. Jackson, 390 U.S. 570, 582—583, 88 S.Ct. 1209, 1216—1217, 20 L.Ed.2d 138 (1968). Absent a compelling state interest, a State may not burden the right to travel in this way. [13]

[8] In sum, durational residence laws must be measured by a strict equal protection test: they are unconstitutional unless the State can demonstrate that such laws are 'necessary to promote a compelling governmental interest.' Shapiro v. Thompson, 394 U.S., at 634, 89 S.Ct., at 1331 (first emphasis added); Kramer v. Union Free School District No. 15, 395 U.S., at 627, 89 S.Ct., at 1889. Thus phrased, the constitutional question may sound like a mathematical formula. But legal 'tests' do not have the precision of mathematical *343 formulas. The key words emphasize a matter of degree: that a heavy burden of justification is on the State, and that the statute will be closely scrutinized in light of its asserted purposes.

[9] [10] It is not sufficient for the State to show that durational residence requirements further a very substantial state interest. In pursuing that important interest, the State cannot choose means that unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with 'precision,' NAACP v. Button, 371 U.S. 415, 438, 83 S.Ct. 328, 340, 9 L.Ed.2d 405 (1963); United States v. Robel, 389 U.S. 258, 265, 88 S.Ct. 419, 424, 19 L.Ed.2d 508 (1967), and must be 'tailored' to serve their legitimate objectives. Shapiro v. Thompson, supra, 394 U.S., at 631, 89 S.Ct., at 1329. And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means.' Shelton v. Tucker, 364 U.S. 479, 488, 81 S.Ct. 247, 252, 5 L.Ed.2d 231 (1960).

II

We turn, then, to the question of whether the State has shown that durational residence requirements are needed to further a sufficiently substantial state interest. We emphasize again the difference between bona fide residence requirements and durational residence requirements. **1004 We have in the past noted approvingly that the States have the power to require that voters be bona fide residents of the relevant political subdivision. E.g., Evans v. Cornman, 398 U.S., at 422, 90 S.Ct., at 1754; Kramer v. Union Free School District No. 15, supra, 395 U.S., at 625, 89 S.Ct., at 1888; Carrington v. Rash, 380 U.S., at 91, 85 S.Ct., at 777; Pope v. Williams, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904). [14] An appropriately defined and uniformly applied requirement *344 of bona fide residence may be necessary to preserve the basic conception of a political community, and therefore could withstand close constitutional scrutiny. [15] But Durational residence requirements, representing a separate voting qualification imposed on bona fide residents, must be separately tested by the stringent standard. Cf. Shapiro v. Thompson, supra, 394 U.S., at 636, 89 S.Ct., at 1332.

It is worth noting at the outset that Congress has, in a somewhat different context, addressed the question whether durational residence laws further compelling state interests. In s 202 of the Voting Rights Act of 1965, added by the Voting Rights Act Amendments of 1970, Congress outlawed state durational residence requirements for presidential and vice-presidential elections, and prohibited the States from closing registration more than 30 days before such elections. 42 U.S.C. s 1973aa—1. In doing so, it made a specific finding that durational residence requirements and more restrictive registration practices do 'not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections.' 42 U.S.C. s 1973aa—1(a)(6). We upheld this portion of the Voting Rights Act in Oregon v. Mitchell, supra. In our present case, of course, we deal with congressional, state, and local elections, in which the State's interests are arguably somewhat different; and, in addition, our function is not merely to determine whether there was a reasonable basis for Congress' findings. However, the congressional finding which forms the basis for the Federal Act is a useful background for the discussion that follows.

***345** Tennessee tenders 'two basic purposes' served by its durational residence requirements:
'(1) INSURE PURITY OF BALLOT BOX—Protection against fraud through colonization and inability to identify persons offering to vote, and

'(2) KNOWLEDGEABLE VOTER—Afford some surety that the voter has, in fact, become a member of the community and that as such, he has a common interest in all matters pertaining to its government and is, therefore, more likely to exercise his right more intelligently.' Brief for Appellants 15, citing 18 Am.Jur., Elections, s 56, p. 217.

We consider each in turn.

A

Preservation of the 'purity of the ballot box' is a formidable-sounding state interest. The impurities feared, variously called 'dual voting' and 'colonization,' all involve voting by nonresidents, either singly or in groups. The main concern is that nonresidents will temporarily invade the State or county, falsely swear that they are residents to become eligible to vote, and, by voting, allow a candidate to win by fraud. Surely the prevention of such fraud is a legitimate and compelling government goal. But it is impossible to view durational residence requirements as necessary to achieve that state interest.

Preventing fraud, the asserted evil that justifies state lawmaking, means keeping nonresidents from voting. But, by definition, a durational residence law ****1005** bars newly arrived residents from the franchise along with nonresidents. The State argues that such sweeping laws are necessary to prevent fraud because they are needed to identify bona fide residents. This contention is particularly ***346** unconvincing in light of Tennessee's total statutory scheme for regulating the franchise.

Durational residence laws may once have been necessary to prevent a fraudulent evasion of state voter standards, but today in Tennessee, as in most other States, [16] this purpose is served by a system of voter registration. Tenn. Code Ann. s 2Tenn. Code Ann. s 2—301 et seq. (1955 and Supp. 1970); see State v. Weaver, 122 Tenn. 198, 122 S.W. 465 (1909). Given this system, the record is totally devoid of any evidence that durational residence requirements are in fact necessary to identify bona fide residents. The qualifications of the would-be voter in Tennessee are determined when he registers to vote, which he may do until 30 days before the election. Tenn. Code Ann. s 2Tenn. Code Ann. s 2—304. His qualifications—including bona fide residence—are established then by oath. Tenn. Code Ann. s 2Tenn. Code Ann. s 2—309. There is no indication in the record that Tennessee routinely goes behind the would-be voter's oath to determine his qualifications. Since false swearing is no obstacle to one intent on fraud, the existence of burdensome voting qualifications like durational residence requirements cannot prevent corrupt nonresidents from fraudulently registering and voting. As long as the State relies on the oath-swearing system to establish qualifications, a durational residence requirement adds nothing to a simple residence requirement in the effort to stop fraud. The nonresident intent on committing election fraud will as quickly and effectively swear that he has been a resident for the requisite period of time as he would swear that he was simply a resident. Indeed, the durational residence requirement becomes an effective voting obstacle ***347** only to residents who tell the truth and have no fraudulent purposes.

Moreover, to the extent that the State makes an enforcement effort after the oath is sworn, it is not clear what role the durational residence requirement could play in protecting against fraud. The State closes the registration books 30 days before an election to give officials an opportunity to prepare for the election. before the books close, anyone

may register who claims that he will meet the durational residence requirement at the time of the next election. Although Tennessee argues that this 30-day period between registration and election does not give the State enough time to verify this claim of bona fide residence, we do not see the relevance of that position to this case. As long as the State permits registration up to 30 days before an election, a lengthy durational residence requirement does not increase the amount of time the State has in which to carry out an investigation into the sworn claim by the would-be voter that he is in fact a resident.

[11] Even if durational residence requirements imposed, in practice, a preelection waiting period that gave voting officials three months or a year in which to confirm the bona fides of residence, Tennessee would not have demonstrated that these waiting periods were necessary. At the outset, the State is faced with the fact that it must defend two separate waiting periods of different lengths. It is impossible to see how both could be 'necessary' to fulfill the pertinent state objective. If the State itself has determined that a three-month period is enough time in which to confirm bona fide residence in the State and county, obviously a one-year period cannot also be justified as 'necessary' to achieve the same purpose.[17] ***348** Beyond ****1006** that, the job of detecting nonresidents from among persons who have registered is a relatively simple one. It hardly justifies prohibiting all newcomers from voting for even three months. To prevent dual voting, state voting officials simply have to cross-check lists of new registrants with their former jurisdictions. See Comment, Residence Requirements for Voting in Presidential Elections, 37 U.Chi.L.Rev. 359, 364 and n. 34, 374 (1970); cf. Shapiro v. Thompson, 394 U.S., at 637, 89 S.Ct., at 1333. Objective information tendered as relevant to the question of bona fide residence under Tennessee law—places of dwelling, occupation, car registration, driver's license, property owned, etc.[18]—is easy to doublecheck, especially in light of modern communications. Tennessee itself concedes that '(i)t might well be that these purpose can be achieved under requirements of shorter duration than that imposed by the State of Tennessee . . ..' Brief for Appellants 10. Fixing a constitutionally acceptable period is surely a matter of degree. It is sufficient to note here that 30 days appears to be an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud—and a year, or three months, too much. This was the judgment of Congress in the context of presidential elections.[19] And, on the basis of the statutory ***349** scheme before us, it is almost surely the judgment of the Tennessee lawmakers as well. As the court below concluded, the cutoff point for registration 30 days before an election.

'reflects the judgment of the Tennessee Legislature that thirty days is an adequate period in which Tennessee's election officials can effect whatever measures may be necessary, in each particular case confronting them, to insure purity of the ballot and prevent dual registration and dual voting.' 337 F.Supp., at 330.

[12] It has been argued that durational residence requirements are permissible because a person who has satisfied the waiting-period requirements is conclusively presumed to be a bona fide resident. In other words, durational residence requirements are justified because they create an administratively useful conclusive presumption that recent arrivals are not residents and are ****1007** therefore properly ***350** barred from the franchise.[20] This presumption, so the argument runs, also prevents fraud, for few candidates will be able to induce migration for the purpose of voting if fraudulent voters are required to remain in the false locale for three months or a year in order to vote on election day.[21]

In Carrington v. Rash, 380 U.S. 89, 85 S.Ct. 775, this Court considered and rejected a similar kind of argument in support of a similar kind of conclusive presumption. There, the State argued that it was difficult to tell whether persons moving to Texas while in the military service were in fact bona fide residents. Thus, the State said, the administrative convenience of avoiding difficult factual determinations justified a blanket exclusion of all servicemen stationed in Texas. The presumption created there was conclusive —"incapable of being overcome by proof of the most positive character." Id., at 96, 85 S.Ct., at 780, citing Heiner v. Donnan, 285 U.S. 312, 324, 52 S.Ct. 358, 360, 76 L.Ed. 772 (1932). The ***351** Court rejected this 'conclusive presumption' approach as violative of the Equal Protection Clause. While many servicemen in Texas were not bona fide residents, and therefore properly ineligible to vote, many servicemen clearly were bona fide residents. Since 'more precise tests' were available 'to winnow successfully from the ranks . . . those whose residence in the State is bona fide,' conclusive presumptions were impermissible in light of the individual interests affected. id., 380 U.S., at 95, 85 S.Ct., at 780. 'States may not casually deprive a class of individuals

of the vote because of some remote administrative benefit to the State.' Id., at 96, 85 S.Ct., at 780.

Carrington sufficiently disposes of this defense of durational residence requirements. The State's legitimate purpose is to determine whether certain persons in the community are bona fide residents. A durational residence requirement creates a classification that may, in a crude way, exclude nonresidents from that group. But it also excludes many residents. Given the State's legitimate purpose and the individual interests that are affected, the classification is all too imprecise. See supra, at 1003—1004. In general, it is not very difficult for Tennessee to determine on an individualized basis whether one recently arrived in the community is in fact a resident, although of course there will always be difficult cases. Tennessee has defined a test for bona fide residence, and appears prepared to apply it on an individualized basis in various legal contexts.[22] That test ***352** could easily be ****1008** applied to new arrivals. Furthermore, if it is unlikely that would-be fraudulent voters would remain in a false locale for the lengthy period imposed by durational residence requirements, it is just as unlikely that they would collect such objective indicia of bona fide residence as a dwelling, car registration, or driver's license. In spite of these things, the question of bona fide residence is settled for new arrivals by conclusive presumption, not by individualized inquiry. Cf. Carrington v. Rash, supra, 380 U.S., at 95—96, 85 S.Ct., at 779—780. Thus, it has always been undisputed that appellee Blumstein is himself a bona fide resident of Tennessee within the ordinary state definition of residence. But since Tennessee's presumption from failure to meet the durational residence requirements is conclusive, a showing of actual bona fide residence is irrelevant, even though such a showing would fully serve the State's purposes embodied in the presumption and would achieve those purposes with far less drastic impact on constitutionally protected interests.[23] The Equal Protection Clause places a limit on government by classification, and that limit has been exceeded here. Cf. Shapiro v. Thompson, 394 U.S., at 636, 89 S.Ct., at 1332; Harman v. Forssenius, 380 U.S., at 542—543, 85 S.Ct., at 1186—1187; Carrington v. Rash, supra, 380 U.S., at 95—96, 85 S.Ct., at 779—780; Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942).

***353** Our conclusion that the waiting period is not the least restrictive means necessary for preventing fraud is bolstered by the recognition that Tennessee has at its disposal a variety of criminal laws that are more than adequate to detect and deter whatever fraud may be feared.[24] At least six separate sections of the Tennessee Code define offenses to deal with voter fraud. For example, Tenn. Code Ann. s 2Tenn. Code Ann. s 2—324 makes it a crime 'for any person to register or to have his name registered as a qualified voter . . . when he is not entitled to be so registered . . . or to procure or induce any other person to register or be registered . . . when such person is not legally qualified to be registered as such . . .'[25] In addition to the various ****1009** criminal penalties, Tennessee permits the bona fides of a voter to be challenged on election day. Tenn. Code Ann. s 2Tenn. Code Ann. s 2—1309 et seq. (1955 and Supp.1970). Where a State has available such remedial action ***354** to supplement its voter registration system, it can hardly argue that broadly imposed political disabilities such as durational residence requirements are needed to deal with the evils of fraud. Now that the Federal Voting Rights Act abolishes those residence requirements as a precondition for voting in presidential and vice-presidential elections, 42 U.S.C. s 1973aa—1, it is clear that the States will have to resort to other devices available to prevent nonresidents from voting. Especially since every State must live with this new federal statute, it is impossible to believe that durational residence requirements are necessary to meet the State's goal of stopping fraud.[26]

B

The argument that durational residence requirements further the goal of having 'knowledgeable voters' appears to involve three separate claims. The first is that such requirements 'afford some surety that the voter has, in fact, become a member of the community.' But here the State appears to confuse a bona fide residence requirement with a durational residence requirement. As already noted, a State does have an interest in limiting the franchise to bona fide members of the community. But this does not justify or explain the exclusion from the franchise of persons, not because their bona fide residence is questioned, but because they are recent rather than longtime residents.

The second branch of the 'knowledgeable voters' justification is that durational residence requirements assure that the voter 'has a common interest in all matters pertaining to (the community's) government . . ..' By this, presumably, the State means that it may require a period of residence sufficiently lengthy to impress upon ***355** its voters the local viewpoint. This is precisely the sort of argument this Court has repeatedly

rejected. In Carrington v. Rash, for example, the State argued that military men newly moved into Texas might not have local interests sufficiently in mind, and therefore could be excluded from voting in state elections. This Court replied: 'But if they are in fact residents, . . . they, as all other qualified residents, have a right to an equal opportunity for political representation. . . . 'Fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible.' 380 U.S., at 94, 85 S.Ct., at 779.

See 42 U.S.C. s 1973aa—1(a)(4).

Similarly here, Tennessee's hopes for voters with a 'common interest in all matters pertaining to (the community's) government' is impermissible.[27] To paraphrase what we said elsewhere, 'All too often, lack of a ('common interest') might mean no more than a different interest.' Evans v. Cornman, 398 U.S., at 423, 90 S.Ct., at 1755. '(D)ifferences of opinion' may not be the basis for excluding any group or person from the franchise. Cipriano v. City of Houma, 395 U.S., at 705—706, 89 S.Ct., at 1900—1901. '(t)he fact **1010 that newly arrived (Tennesseeans) may have a more national outlook than longtime residents, or even may retain a viewpoint characteristic of the region from which they have come, is a constitutionally impermissible reason for depriving them of their chance to influence the *356 electoral vote of their new home State.' Hall v. Beals, 396 U.S. 45, 53—54, 90 S.Ct. 200, 204, 24 L.Ed. 24 (1969)24 L.Ed. 24 (1969) (dissenting opinion).[28]

Finally, the State urges that a longtime resident is 'more likely to exercise his right (to vote) more intelligently.' To the extent that this is different from the previous argument, the State is apparently asserting an interest in limiting the franchise to voters who are knowledgeable about the issues. In this case, Tennessee argues that people who have been in the State less than a year and the county less than three months are likely to be unaware of the issues involved in the congressional, state, and local elections, and therefore can be barred from the franchise. We note that the criterion of 'intelligent' voting is an elusive one, and susceptible of abuse. But without deciding as a general matter the extent to which a State can bar less knowledgeable or intelligent citizens from the franchise, cf. Evans v. Cornman, 398 U.S., at 422, 90 S.Ct., at 1754; Kramer v. Union Free School District No. 15, 395 U.S., at 632, 89 S.Ct., at 1892; *357 Cipriano v. City of Houma, 395 U.S., at 705, 89 S.Ct., at 1900,[29] we conclude that durational residence requirements cannot be justified on this basis.

In Kramer v. Union Free School District No. 15, supra, we held that the Equal Protection Clause prohibited New York State from limiting the vote in school-district elections to parents of school children and to property owners. The State claimed that since nonparents would be 'less informed' about school affairs than parents, id., at 631, 89 S.Ct., at 1891, the State could properly exclude the class of nonparents in order to limit the franchise to the more 'interested' group of residents. We rejected that position, concluding that a 'close scrutiny of (the classification) demonstrates that (it does) not accomplish this purpose with sufficient precision . . ..' Id., at 632, 89 S.Ct., at 1892. That scrutiny revealed that the classification excluding nonparents from the franchise kept many persons from voting who were **1011 as substantially interested as those allowed to vote; given this, the classification was insufficiently 'tailored' to achieve the articulated state goal. Ibid. See also Cipriano v. City of Houma, supra, 395 U.S., at 706, 89 S.Ct., at 1900.

Similarly, the durational residence requirements in this case founder because of their crudeness as a device for *358 achieving the articulated state goal of assuring the knowledgeable exercise of the franchise. The classifications created by durational residence requirments obviously permit any longtime resident to vote regardless of his knowledge of the issues—and obviously many longtime residents do not have any. On the other hand, the classifications bar from the franchise many other, admittedly new, residents who have become at least minimally, and often fully, informed about the issues. Indeed, recent migrants who take the time to register and vote shortly after moving are likely to be those citizens, such as appellee, who make it a point to be informed and knowledgeable about the issues. Given modern communications, and given the clear indication that compaign spending and voter education occur largely during the month before an election,[30] the State cannot seriously maintain that it is 'necessary' to reside for a year in the State and three months in the county in order to be knowledgeable about congressional, state, or even purely local elections. There is simply nothing in the record to support the conclusive presumption that residents who have lived in the State for less than a year and their county for less than three months are

uninformed about elections. Cf. Shapiro v. Thompson, 394 U.S., at 631, 89 S.Ct., at 1329. These durational residence requirements crudely exclude large numbers of fully qualified people. Especially since Tennessee creates a waiting period by closing registration books 30 days before an election, there can be no basis for arguing that any durational residence requirement is also needed to assure knowledgeability.

It is pertinent to note that Tennessee has never made an attempt to further its alleged interest in an informed electorate in a universally applicable way. Knowledge ***359** or competence has never been a criterion for participation in Tennessee's electoral process for longtime residents. Indeed, the State specifically provides for voting by various type of absentee persons. [31] These provisions permit many longtime residents who leave the county or State to participate in a constituency in which they have only the slighest political interest, and from whose political debates they are likely to be cut off. That the State specifically permits such voting is not consistent with its claimed compelling interest in intelligent, informed use of the ballot. If the State seeks to assure intelligent ****1012** use of the ballot, it may not try to serve this interest only with respect to new arrivals. Cf. Shapiro v. Thompson, supra, at 637—638, 89 S.Ct., at 1333.

It may well be true that new residents as a group know less about state and local issues than older residents; and it is surely true that durational residence requirements will exclude some people from voting who are totally uninformed ***360** about election matters. But as devices to limit the franchise to knowledgeable residents, the conclusive presumptions of durational residence requirements are much too crude. They exclude too many people who should not, and need not, be excluded. They represent a requirement of knowledge unfairly imposed on only some citizens. We are aware that classifications are always imprecise. By requiring classifications to be tailored to their purpose, we do not secretaly require the impossible. Here, there is simply too attenuated a relationship between the state interest in an informed electorate and the fixed requirement that voters must have been residents in the State for a year and the county for three months. Given the exacting standard of precision we require of statutes affecting constitutional rights, we cannot say that durational residence requirements are necessary to further a compelling state interest.

III

[13] Concluding that Tennessee has not offered an adequate justification for its durational residence laws, we affirm the judgment of the court below.

Affirmed.

Mr. Justice POWELL and Mr. Justice REHNQUIST took no part in the consideration or decision of this case.

Mr. Justice BLACKMUN, concurring in the result.

Professor Blumstein obviously could hardly wait to register to vote in his new home State of Tennessee. He arrived in Nashville on June 12, 1970. He moved into his apartment on June 19. He presented himself to the registrar on July 1. He instituted his lawsuit on July 17. Thus, his litigation was begun 35 days after his arrival on Tennessee soil, and less than 30 days after he moved into his apartment. But a primary was coming up on August 6. Usually, such zeal to exercise ***361** the franchise is commendable. The professor, however, encountered—and, I assume, knowingly so—the barrier of the Tennessee durational residence requirement and, because he did, he instituted his test suit.

I have little quarrel with much of the content of the Court's long opinion. I concur in the result, with these few added comments, because I do not wish to be described on a later day as having taken a position broader than I think necessary for the disposition of this case.

1. In Pope v. Williams, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904), Mr. Justice Peckham, in speaking for a unanimous Court that included the first Mr. Justice Harlan and Mr. Justice Holmes, said:
'The simple matter to be herein determined is whether, with reference to the exercise of the privilege of voting in Maryland, the legislature of that state had the legal right to provide that a person coming into the state to reside should make the declaration of intent a year before he should have the right to be registered as a voter of the state.

'. . . The right of a state to legislate upon the subject of the elective franchise as to it may seem good, subject to the conditions already stated, being, as we believe, unassailable, we think it plain that the statute in question violates no right protected by the Federal Constitution.

'The reasons which may have impelled the state legislature to enact the statute in question were matters entirely for

its consideration, and this court has no concern with them.' 193 U.S., at 632, 633—634, 24 S.Ct., at 575.

I cannot so blithely explain Pope v. Williams away, as does the Court, **1013 ante, at 1000, n. 7, by asserting that if that *362 opinion is '(c)arefully read,' one sees that the case was concerned simply with a requirement that the new arrival declare his intention. The requirement was that he make the declaration a year before he registered to vote; time as well as intent was involved. For me, therefore, the Court today really overrules the holding in Pope v. Williams and does not restrict itself, as footnote 7 says, to rejecting what it says are mere dicta.

2. The compelling-state-interest test, as applied to a State's denial of the vote, seems to have come into full flower with Kramer v. Union Free School District, 395 U.S. 621, 627, 89 S.Ct. 1886, 1889, 23 L.Ed.2d 583 (1969). The only supporting authority cited is in the 'See' context to Carrington v. Rash, 380 U.S. 89, 96, 85 S.Ct. 775, 780, 13 L.Ed.2d 675 (1965). But as I read Carrington, the standard there employed was that the voting requirements be reasonable. Indeed, in that opinion Mr. Justice Stewart observed, at 91, 85 S.Ct., at 777, that the State has 'unquestioned power to impose reasonable residence restrictions on the availability of the ballot.' A like approach was taken in McDonald v. Board of Election Commissioners, 394 U.S. 802, 809, 89 S.Ct. 1404, 1408, 22 L.Ed.2d 739 (1969), where the Court referred to the necessity of 'some rational relationship to a legitimate state end' and to a statute's being set aside 'only if based on reasons totally unrelated to the pursuit of that goal.' I mention this only to emphasize that Kramer appears to have elevated the standard. And this was only three years ago. Whether Carrington and McDonald are now frowned upon, at least in part, the Court does not say. Cf. Bullock v. Carter, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92.

3. Clearly, for me, the State does have a profound interest in the purity of the ballot box and in an informed electorate and is entitled to take appropriate steps to assure those ends. Except where federal intervention *363 properly prescribes otherwise, see Oregon v. Mitchell, 400 U.S. 112, 91 S.Ct. 260, 27 L.Ed.2d 272 (1970), I see no constitutional imperative that voting requirements be the same in each State, or even that a State's time requirement relate to the 30-day measure imposed by Congress by 42 U.S.C. s 1973aa—1(d) for presidential elections. I assume that the Court by its decision today does not depart from either of these propositions. I cannot be sure of this, however, for much of the opinion seems to be couched in absolute terms.

4. The Tennessee plan, based both in statute and in the State's constitution, is not ideal. I am content that the one-year and three-month requirements be struck down for want of something more closely related to the State's interest. It is, of course, a matter of line drawing, as the Court concedes, ante, at 1006. But if 30 days pass constitutional muster, what of 35 or 45 or 75? The resolution of these longer measures, less than those today struck down, the Court leaves, I suspect, to the future.

Mr. Chief Justice BURGER, dissenting.

The holding of the Court in Pope v. Williams, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904), is as valid today as it was at the turn of the century. It is no more a denial of equal protection for a State to require newcomers to be exposed to state and local problems for a reasonable period such as one year before voting, than it is to require children to wait 18 years before voting. Cf. Oregon v. Mitchell, 400 U.S. 112, 91 S.Ct. 260, 27 L.Ed.2d 272 (1970). In both cases some informed and responsible persons are denied the vote, while others less informed and less responsible are permitted to vote. Some lines must be drawn. To challenge such lines by the 'compelling state interest' standard is to condemn them all. So far as I am aware, no state law has ever satisfied this seemingly *364 insurmountable standard, and I doubt one ever will, for it demands nothing less than perfection.

**1014 The existence of a constitutional 'right to travel' does not persuade me to the contrary. If the imposition of a durational residency requirement for voting abridges the right to travel, surely the imposition of an age qualification penalizes the young for being young, a status I assume the Constitution also protects.

All Citations

405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1 Involved here are provisions of the Tennessee Constitution, as well as portions of the Tennessee Code. Article IV, s 1, of the Tennessee Constitution, provides in pertinent part:

'Right to vote—Election precincts . . .—Every person of the age of twenty-one years, being a citizen of the United States, and a resident of this State for twelve months, and of the county wherein such person may offer to vote for three months, next preceding the day of election, shall be entitled to vote for electors for President and Vice-President of the United States, members of the General Assembly and other civil officers for the county or district in which such person resides; and there shall be no other qualification attached to the right of suffrage.

'The General Assembly shall have power to enact laws requiring voters to vote in the election precincts in which they may reside, and laws to secure the freedom of elections and the purity of the ballot box.'

Section 2—201. Tenn.Code Ann. (Supp.1970) provides:

'Qualifications of voters.—Every person of the age of twenty-one (21) years, being a citizen of the United States and a resident of this state for twelve (12) months, and of the county wherein he may offer his vote for three (3) months next preceding the day of election, shall be entitled to vote for members of the general assembly and other civil officers for the county or district in which he may reside.'

Section 2Section 2—304, Tenn.Code Ann. (Supp.1970) provides:

'Persons entitled to permanently register—Required time for registration to be in effect prior to election.—All persons qualified to vote under existing laws at the date of application for registration, including those who will arrive at the legal voting age by the date of the next succeeding primary or general election established by statute following the date of their application to register (those who become of legal voting age before the date of a general election shall be entitled to register, and vote in a legal primary election selecting nominees for such general electio(), who will have lived in the state for twelve (12) months and in the county for which they applied for registration for three (3) months by the date of the next succeeding election shall be entitled to permanently register as voters under the provisions of this chapter provided, however, that registration or re-registration shall not be permitted within thirty (30) days of any primary or general election provided for by statute. If a registered voter in any county shall have changed his residence to another county, or to another ward, precinct, or district within the same county, or changed his same by marriage or otherwise, within ninety (90) days prior to the date of an election, he shall be entitled to vote in his former ward, precinct or district of registration.'

2 On July 30, the District Court refused to grant a preliminary injunction permitting Blumstein and members of the class he represented to vote in the August 6 election; the court noted that to do so would be 'so obviously disruptive as to constitute an example of judicial improvidence.' The District Court also denied a motion that Blumstein be allowed to cast a sealed provisional ballot for the election.

At the time the opinion below was filed, the next election was to be held in November 1970, at which time Blumstein would have met the three-month part of Tennessee's durational residency requirements. The District Court properly rejected the State's position that the alleged invalidity of the three-month requirement had been rendered moot, and the State does not pursue any mootness argument here. Although appellee now can vote, the problem to voters posed by the Tennessee residence requirements is "capable of repetition, yet evading review." Moore v. Ogilvie, 394 U.S. 814, 816, 89 S.Ct. 1493, 1494, 23 L.Ed.2d 1 (1969); Southern Pacific Terminal Co. v. ICC, 219 U.S. 498, 515, 31 S.Ct. 279, 283, 55 L.Ed. 310 (1911). In this case, unlike Hall v. Beals, 396 U.S. 45, 90 S.Ct. 200, 24 L.Ed.2d 214 (1969), the laws in question remain

on the books, and Blumstein has standing to challenge them as a member of the class of people affected by the presently written statute.

3 The important question in this case has divided the lower courts. Durational residence requirements ranging from three months to one year have been struck down in Burg v. Canniffe, 315 F.Supp. 380 (Mass.1970); Affeldt v. Whitcomb, 319 F.Supp. 69 (ND Ind.1970); Lester v. Board of Elections for District of Columbia, 319 F.Supp. 505 (DC 1970); Bufford v. Holton, 319 F.Supp. 843 (ED Va.1970); Hadnott v. Amos, 320 F.Supp. 107 (MD Ala.1970); Kohn v. Davis, 320 F.Supp. 246 (Vt.1970); Keppel v. Donovan, 326 F.Supp. 15 (Minn.1970); Andrews v. Cody, 327 F.Supp. 793 (MDNC 1971), as well as this case. Other district courts have upheld durational residence requirements of a similar variety. Howe v. Brown, 319 F.Supp. 862 (ND Ohio 1970); Ferguson v. Williams, 330 F.Supp. 1012 (ND Miss.1971); Cocanower v. Marston, 318 F.Supp. 402 (Ariz.1970); Fitzpatrick v. Board of Election Commissioners (ND Ill.1970); Piliavin v. Hoel, 320 F.Supp. 66 (WD Wis.1970); Epps v. Logan (No. 9137, WD Wash.1970); Fontham v. McKeithen, 336 F.Supp. 153 (ED La.1971). In Sirak v. Brown (Civ. 70—164, SD Ohio 1970), the District Judge refused to convene a three-judge court and summarily dismissed the complaint.

4 Noting the lack of dispute on this point, the court below specifically found that Blumstein had no intention of leaving Nashville and was a bona fide resident of Tennessee. 337 F.Supp. 323, 324.

5 While it would be difficult to determine precisely how many would-be voters throughout the country cannot vote because of durational residence requirements, but see Cocanower & Rich, Residency Requirements for Voting, 12 Ariz.L.Rev. 477, 478 and n. 8 (1970), it is worth noting that during the period 1947—1970 an average of approximately 3.3% of the total national population moved interstate each year. (An additional 3.2% of the population moved from one county to another intrastate each year.) U.S. Dept. of Commerce, Bureau of the Census, Current Population Reports, Population Characteristics Series P—20, No. 210, Jan. 15, 1971, Table 1, pp. 7—8.

6 Compare Kramer v. Union Free School District No. 15, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969), and Skinner v. Oklahoma, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942), with Williamson v. Lee Optical Co., 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955); compare McLaughlin v. Florida, 379 U.S. 184, 85 S.Ct. 283, 13 L.Ed.2d 222 (1964), Harper v. Virginia State Board of Elections, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966), and Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed.2d 534 (1971), with Morey v. Doud, 354 U.S. 457, 77 S.Ct. 1344, 1 L.Ed.2d 1485 (1957), and Allied Stores of Ohio v. Bowers, 358 U.S. 522, 79 S.Ct. 437, 3 L.Ed.2d 480 (1959).

7 Appellants also rely on Pope v. Williams, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904). Carefully read, that case simply holds that federal constitutional rights are not violated by a state provision requiring a person who enters the State to make a 'declaration of his intention to become a citizen before he can have the right to be registered as a voter and to vote in the state.' Id., at 634, 24 S.Ct., at 576. In other words, the case simply stands for the proposition that a State may require voters to be bona fide residents. See, infra, at 1003—1004. To the extent that dicta in that opinion are inconsistent with the test we apply or the result we reach today, those dicta are rejected.

8 We note that in the Voting Rights Act of 1965, as amended, Congress specifically found that a durational residence requirement 'denies or abridges the inherent constitutional right of citizens to enjoy their free movement across State lines . . ..' 84 Stat. 316, 42 U.S.C. s 1073aa—1(a)(2).

9 For example, in Crandall v. Nevada, 6 Wall. 35, 18 L.Ed. 744 (1868), the tax imposed on persons leaving the State by commercial carrier was only $1, certainly a minimal deterrent to travel. But in declaring the tax unconstitutional, the Court reasoned that 'if the State can tax a railroad passenger one dollar, it can tax him one thousand dollars,' id., at 46. In Ward v. Maryland, 12 Wall. 418, 20 L.Ed. 449 (1871), the tax

on nonresident traders was more substantial, but the Court focused on its discriminatory aspects, without anywhere considering the law's effect, if any, on trade or tradesmen's choice of residence. Cf. Chalker v. Birmingham & N.W.R. Co., 249 U.S. 522, 527, 39 S.Ct. 366, 367, 63 L.Ed. 748 (1919); but see Williams v. Fears, 179 U.S. 270, 21 S.Ct. 128, 45 L.Ed. 186 (1900). In Travis v. Yale & Towne Mfg. Co., 252 U.S. 60, 79—80, 40 S.Ct. 228, 231—232, 64 L.Ed.2d 460 (1920), the Court held that New York could not deny nonresidents certain small personal exemptions from the state income tax allowed residents. The amounts were certainly insufficient to influence any employee's choice of residence. Compare Toomer v. Witsell, 334 U.S. 385, 68 S.Ct. 1156, 92 L.Ed. 1460 (1948), with Mullaney v. Anderson, 342 U.S. 415, 72 S.Ct. 428, 96 L.Ed. 458 (1952).

10 Separately concurring, Mr. Justice Stewart concluded that quite apart from any purpose to deter, 'a law that so clearly impinges upon the constitutional right of interstate travel must be shown to reflect a compelling governmental interest.' Id., 394 U.S., at 643—644, 89 S.Ct., at 1336 (first emphasis added). See also Graham v. Richardson, 403 U.S., at 375, 91 S.Ct., at 1854.

11 In Harman, the Court held that a Virginia law which allowed federal voters to qualify either by paying a poll tax or by filing a certificate of residence six months before the election 'handicap(ped) exercise' of the right to participate in federal elections free of poll taxes, guaranteed by the Twenty-fourth Amendment. Id., 380 U.S., at 541, 85 S.Ct., at 1185.

12 Where, for example, an interstate migrant loses his driver's license because the new State has a higher age requirement, a different constitutional question is presented. For in such a case, the new State's age requirement is not a penalty imposed solely because the newcomer is a new resident; instead, all residents, old and new, must be of a prescribed age to drive. See Shapiro v. Thompson, 394 U.S. 618, 638 n. 21, 89 S.Ct. 1322, 1333, 22 L.Ed. 600 (1969).

13 As note infra, at 1003—1004, States may show an overriding interest in imposing an appropriate bona fide residence requirement on would-be voters. One who travels out of a State may no longer be a bona fide resident, and may not be allowed to vote in the old State. Similarly, one who travels to a new State may, in some cases, not establish bona fide residence and may be ineligible to vote in the new State. Nothing said today is meant to cast doubt on the validity of appropriately defined and uniformly applied bona fide residence requirements.

14 See n. 7, supra.

15 See Fontham v. McKeithen, 336 F.Supp., at 167—168 (Wisdom, J., dissenting); Pope v. Williams, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904); and n. 7, supra.

16 See, e.g., Cocanower & Rich, 12 Ariz.L.Rev., at 499; MacLeod & Wilberding, State Voting Residency Requirements and Civil Rights, 38 Geo.Wash.L.Rev. 93, 113 (1969).

17 Obviously, it could not be argued that the three-month waiting period is necessary to confirm residence in the county, and the one-year period necessary to confirm residence in the State. Quite apart from the total implausibility of any suggestion that one task should take four times as long as the other, it is sufficient to note that if a person is found to be a bona fide resident of a county within the State, he is by definition a bona fide resident of the State as well.

18 See, e.g., Brown v. Hows, 163 Tenn. 178, 42 S.W.2d 210 (1930); Sparks v. Sparks, 114 Tenn. 666, 88 S.W. 173 (1905). See generally Tennessee Law Revision Commission, Title 2—Election Laws, Tentative Draft of October 1971, s 222 and Comment. See n. 22, infra.

19 In the Voting Rights Act Amendments of 1970, Congress abolished durational residence requirements as a precondition to voting in presidential and vice-presidential elections, and prohibited the States from cutting off registration more than 30 days prior to those elections. These limits on the waiting period a State may impose prior to an election were made 'with full cognizance of the possibility of fraud and administrative difficulty.'

Oregon v. Mitchell, 400 U.S. 112, 238, 91 S.Ct. 260, 322, 27 L.Ed.2d 272 (separate opinion of Brennan, White, and Marshall, JJ.). With that awareness, Congress concluded that a waiting-period requirement beyond 30 days 'does not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections.' 42 U.S.C. s 1973aa—1(a)(6). And in sustaining s 202 of the Voting Rights Act of 1965, we found 'no explanation why the 30-day period between the closing of new registrations and the date of election would not provide, in light of modern communications, adequate time to insure against . . . frauds.'

Oregon v. Mitchell, supra, at 239, 91 S.Ct., at 322 (separate opinion of Brennan, White, and Marshall, JJ.). There is no reason to think that what Congress thought was unnecessary to prevent fraud in presidential elections shoud not also be unnecessary in the context of other elections. See, infra, at 1009.

20 As a technical matter, it makes no sense to say that one who has been a resident for a fixed duration is presumed to be a resident. In order to meet the durational residence requirement, one must, by definition, first establish that he is a resident. A durational residence requirement is not simply a waiting period after arrival in the State; it is a waiting period after residence is established. Thus it is conceptually impossible to say that a durational residence requirement is an administratively useful device to determine residence. The State's argument must be that residence would be presumed from simple presence in the State or county for the fixed waiting period.

21 It should be clear that this argument assumes that the State will reliably determine whether the sworn claims of duration in the jurisdiction are themselves accurate. We have already noted that this is unlikely. See supra, at 1005. Another recurrent problem for the State's position is the existence of differential durational residence requirements. If the State presumes residence in the county after three months in the county, there is no rational explanation for requiring a full 12 months' presence in the State to presume residence in the State.

22 Tennessee's basic test for bona fide residence is (1) an intention to stay indefinitely in a place (in other words, 'without a present intention of removing therefrom,' Brown v. Hows, 163 Tenn., at 182, 42 S.W.2d at 211), joined with (2) some objective indication consistent with that intent, see n. 18, supra. This basic test has been applied in divorce cases, see, e.g., Sturdavant v. Sturdavant, 28 Tenn.App. 273, 189 S.W.2d 410 (1944); Brown v. Brown, 150 Tenn. 89, 261 S.W. 959 (1924); Sparks v. Sparks, 114 Tenn. 666, 88 S.W. 173 (1905); in tax cases, see, e.g., Denny v. Sumner County, 134 Tenn. 468, 184 S.W. 14 (1916); in estate cases, see, e.g., Caldwell v. Shelton, 32 Tenn.App. 45, 221 S.W.2d 815 (1948); Hascall v. Hafford, 107 Tenn. 355, 65 S.W. 423 (1901); and in voting cases, see, e.g., Brown v. Hows, supra; Tennessee Law Revision Commission, Title 2—Election Laws, supra, n. 18.

23 Indeed, in Blumstein's case, the County Election Commission explicitly rejected his offer to treat the waiting-period requirement as 'a waivable guide to commission action, but rebuttable upon a proper showing of competence to vote intelligently in the primary and general election.' Complaint at App. 8. Cf. Skinner v. Oklahoma ex rel. Williamson, 316 U.S., at 544—545, 62 S.Ct., at 1114—1115 (Stone, C.J., concurring).

24 See Harman v. Forssenius, 380 U.S., at 543, 85 S.Ct., at 1186 (filing of residence certificate six months before election in lieu of poll tax unnecessary to insure that the election is limited to bona fide residents in light of 'numerous devices to enforce valid residence requirements'); cf. Schneider v. State of New Jersey, 308 U.S. 147, 164, 60 S.Ct. 146, 152, 84 L.Ed. 155 (1939) (fear of fraudulent solicitations cannot justify permit requests since '(f)rauds may be denounced as offenses and punished by law').

25 Tenn.Code Ann. s 2Tenn.Code Ann. s 2—1614 (Supp.1970) makes it a felony for any person who 'is not legally entitled to vote at the time and place where he votes or attempts to vote . . ., to vote or offer to do so,' or to aid and abet such illegality. Tenn.Code Ann. s 2Tenn.Code Ann. s 2—2207 (1955) makes it a misdemeanor 'for any person knowingly to vote in any political convention or any election held under the Constitution or laws of this state, not being legally qualified to vote . . .,' and Tenn.Code Ann. s 2Tenn.Code Ann. s 2—2208 (1955) makes it a misdemeanor to aid in such an offense. Tenn.Code Ann. s 2Tenn.Code Ann. s 2—202 (Supp.1970) makes it an offense to vote outside the ward or precinct where one resides and is registered. Finally, Tenn.Code Ann. s 2Tenn.Code Ann. s 2—2209 (1965) makes it unlawful to 'bring or aid

in bringing any fraudulent voters into this state for the purpose of practising a fraud upon or in any primary or final election . . .' See, e.g., State v. Weaver, 122 Tenn. 198, 122 S.W. 465 (1909).

26 We note that in the period since the decision below, several elections have been held in Tennessee. We have been presented with no specific evidence of increased colonization or other fraud.

27 It has been noted elsewhere, and with specific reference to Tennessee law, that '(t)he historical purpose of (durational) residency requirements seems to have been to deny the vote to undesirables, immigrants and outsiders with different ideas.' Cocanower & Rich, 12 Ariz.L.Rev., at 484 and nn. 44, 45, and 46. We do not rely on this alleged original purpose of durational residence requirements in striking them down today.

28 Tennessee may be revealing this impermissible purpose when it observes:
'The fact that the voting privilege has been extended to 18 year old persons . . . increases, rather than diminishes, the need for durational residency requirements. . . . It is so generally known, as to be judicially accepted, that there are many political subdivisions in this state, and other states, wherein there are colleges, universities and military installations with sufficient student body or military personnel over eighteen years of age, as would completely dominate elections in the district, county or municipality so located. This would offer the maximum of opportunity for fraud through colonization, and permit domination by those not knowledgeable or having a common interest in matters of government, as opposed to the interest and the knowledge of permanent members of the community. Upon completion of their schooling, or service tour, they move on, leaving the community bound to a course of political expediency not of its choice and, in fact, one over which its more permanent citizens, who will continue to be affected, had no control.' Brief for Appellants 15—16.

29 In the 1970 Voting Rights Act, which added s 201, 42 U.S.C. s 1973aa, Congress provided that 'no citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election . . ..' The term 'test or device' was defined to include, in part, 'any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject . . ..' By prohibiting various 'test(s)' and 'device(s)' that would clearly assure knowledgeability on the part of voters in local elections, Congress declared federal policy that people should be allowed to vote even if they were not well informed about the issues. We upheld s 201 in Oregon v. Mitchell, supra.

30 H. Alexander, Financing the 1968 Election 106—113 (1971); Affeldt v. Whitcomb, 319 F.Supp, at 77; Cocanower & Rich, 12 Ariz.L.Rev., at 498.

31 The general provisions for absentee voting apply in part to '(a)ny registered voter otherwise qualified to vote in any election to be held in this state or any county, municipality, or other political subdivision thereof, who by reason of business, occupation, health, education, or travel, is required to be absent from the county of his fixed residence on the day of the election . . ..' Tenn. Code Ann. s 2Tenn. Code Ann. s 2—1602 (Supp.1970). See generally Teen.Code Ann. s 2—1601 et seq. (Supp.1970). An alternative method of absentee voting for armed forces members and federal personnel is detailed in Tenn. Code Ann. s 2Tenn. Code Ann. s 2—1701 et seq. (Supp.1970). Both those provisions allow persons who are still technically 'residents' of the State or county to vote even though they are not physically present, and even though they are likely to be uninformed about the issues. In addition, Tennessee has an unusual provision that permits persons to vote in their prior residence for a period after residence has been changed. This section provides, in pertinent part: 'If a registered voter in any county shall have changed his residence to another county . . . within ninety (90) days prior to the date of an election, he shall be entitled to vote in his former ward, precinct or district of registration.' Tenn.Code Ann. s 2Tenn.Code Ann. s 2—304 (Supp.1970). See also Tenn.Code Ann. s 2Tenn.Code Ann. s 2—204 (1955).

ND SENATE STATE & LOCAL GOV. COMMITTEE
SCR 4013
February 9TH, 2023

Madam Chairman and members of the committee. My name is David Hanson and I reside in Bismarck. Thank you for allowing me to submit testimony for SCR 4013.

While I am officially neutral concerning this proposal, I do support putting better safeguards in place for protecting our state constitution. This amendment seeks to correct a weakness in our current amendment process. I would also like to thank the sponsors of this amendment for bringing this up for discussion.

Currently, in order to pass an amendment to our constitution, you need to get a simple majority vote of the people. This is a weakness, because the constitution is binding, not only on the people, but the state government. It is the supreme law of our state. In recent years there has been a disturbing trend of bringing constitutional amendments forward and treating the constitution as a super Century Code to prevent initiatives from being quickly amended or repealed. The constitution, as a general rule, ought to be used to set the guidelines and mode of governing our state, not to set policy. Policy setting should be more of the domain of ordinary course of legislation. While there will always be areas in the constitution that individuals may not agree should be there, most of the time we all as a state ought to be united in supporting it. There ought to be a higher threshold to amend the constitution, since it is the highest law. By requiring a higher threshold, it will also demonstrate a greater unity among the people to uphold and support the constitution.

For this amendment, there are aspects that I applaud and appreciate, but there are other parts that I am uncertain that I fully back, but appreciate the intentions behind those nonetheless.

First, I applaud raising the signature threshold to 5%. By requiring a higher threshold, the less serious proposals will be weeded out. In fact, earlier in our state's history we required 10% in order to place initiatives on the ballot.

Secondly, on lines 18-21 on the first page, I appreciate what is intended here to truly make this a grass-roots movement of citizens coming together for a common proposal. However, I am uncertain how this would be practically enforced until after the petitions have been submitted. I imagine the Secretary of State would have to look into every circulator to make sure that these terms of circulating a petition are met. How would this be implemented?

Finally, I appreciate the proposal for raising the percentage threshold for passage, but I think 67% may be too high. I think a more reasonable proposal would be 65% or even 60%. With the higher percent to pass it would also encourage more mobilization and debate, so that an amendment can pass, rather than put it on the ballot without hardly any debate during an election. By requiring a higher threshold, it will demonstrate a greater unity of the people to uphold and support the constitution.

If this committee is not comfortable with the increased vote threshold in order for passage, you may want to consider an amendment to require that a constitutional amendment go to the vote of the people in two different statewide elections. This process is used by many other states and allows for serious reflection and contemplation before final passage. This would cause the people to re-evaluate whether a certain proposal is truly a good idea or not without rushing

something through at the heat of the moment. A good example of this is Nevada. In the last election, the voters passed a constitutional amendment by 52% of the vote to implement a ranked choice voting system. But this has to go to another vote of the people in 2024 before it is finally added to their constitution. Nevada voters have the benefit of observing Alaska's new ranked choice voting system before they finally decide if they want to change their constitution and change the way they choose their leaders. Just like there are two houses in a legislature, it is a good thing in my view to look at something a second time around. That is a feature, not a bug.

I would also like to suggest one more amendment to this proposal. Another section should be added to address Article IV Section 16 of the constitution, so that it is consistent with how amendments are ratified by the initiative method. I suggest that to propose an amendment it requires two thirds vote of both houses of the Legislative Assembly and also a 65% (or 60%) vote of the people (or two separate votes of the people). **Whichever method this committee decides how an amendment should be ratified by the initiative; it should mirror how it is ratified when the legislature places it on the ballot**.

Many other states require supermajorities in their legislatures as well as supermajorities among the people in order to pass amendments to their state constitutions. We can also look to our own U.S. Constitution in the way that it is amended. To amend it you must get two thirds of the House and Senate or two thirds of the states to call a convention to submit amendments to the states. Once the states have the amendments, you must also get 38 (three fourths) to ratify them. With those high thresholds to meet, there is a greater unity of the people and the states to support the Constitution and also a great urge to protect it.

We in North Dakota have a good constitution, let's not let it become something that is treated flippantly. Let's put better safeguards in place to protect it and make it a stable document for years to come. Thank you.

23.3031.01001

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE CONCURRENT RESOLUTION NO. 4013

Introduced by

Senators Myrdal, Hogue

Representatives Cory, Lefor

A concurrent resolution to amend and reenact section 9 of article III of the Constitution of North Dakota, relating to the process for approving initiated constitutional amendments.

STATEMENT OF INTENT

This measure would restrict circulation of petitions for an initiated constitutional amendment to electors who have resided in the state for at least one hundred twenty days, prohibit petition circulators from receiving money or items of value for circulating a petition, and require signatures from electors equal in number to five percent of the population of the state before a petition may be submitted to the secretary of state~~, and require approval by sixty-seven percent of the voters for the measure to become effective~~.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 9 of article III of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in June of 2024, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 9 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 9. A constitutional amendment may be proposed by initiative petition. The petition may be circulated only by electors who have resided in the state for at least one hundred twenty days before the first signature is collected. An individual circulating a petition may not accept any money or an in-kind item of value for circulating a petition. If signed by electors equal in number to ~~four~~five percent of the resident population of the state at the last federal decennial census, the petition may be submitted to the secretary of state. If the secretary of state finds the petition is valid, the secretary of state shall place the measure on the ballot at the next general election. ~~If the measure is approved by at least sixty-seven percent of the voters, the measure~~

~~becomes effective thirty days after the election.~~ All other provisions relating to initiative measures apply ~~hereto~~to initiative measures for constitutional amendments.

23.3031.01002

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE CONCURRENT RESOLUTION NO. 4013

Introduced by

Senators Myrdal, Hogue

Representatives Cory, Lefor

A concurrent resolution to amend and reenact ~~section~~sections 2, 3, 4, 5, 6, 7, and 9 of article III of the Constitution of North Dakota, relating to the required number of signatures needed to place a measure on the ballot, the process for approving initiated ~~constitutional amendments~~measures, the requirement of a single subject for each petition and measure, the individuals able to circulate a petition, and the requirement that all ballot measures must be voted on at the general election.

STATEMENT OF INTENT

This measure would restrict circulation of petitions for an initiated constitutional amendment to qualified electors ~~who have resided in the state for at least one hundred twenty days, prohibit petition circulators from receiving money or items of value for circulating a petition~~, require signatures from qualified electors equal in number to five percent of the population of the state before a petition may be submitted to the secretary of state, require all petitions and measures to be limited to a single subject, and require ~~approval by sixty-seven percent of the voters for the measure to become effective~~all initiated measures under article III be voted on at the general election.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed ~~amendment~~amendments to ~~section~~sections 2, 3, 4, 5, 6, 7, and 9 of article III of the Constitution of North Dakota ~~is~~are agreed to and must be submitted to the qualified electors of North Dakota at the ~~primary~~general election to be held in ~~June~~November of 2024, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 2 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 2. An initiated measure may not embrace or be comprised of more than one subject. A petition to initiate or to refer a measure must be presented to the secretary of state for

approval as to form and compliance with the single subject requirement. A request for approval must be presented over the names and signatures of twenty-five or more qualified electors as sponsors, one of whom must be designated as chairman of the sponsoring committee. The secretary of state shall approve the petition for circulation if it is in proper form and contains the names and addresses of the sponsors and the full text of the measure.

The legislative assembly may provide by law for a procedure through which the legislative council may establish an appropriate method for determining the fiscal impact of an initiative measure and for making the information regarding the fiscal impact of the measure available to the public.

SECTION 2. AMENDMENT. Section 3 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 3. The petition ~~shall~~may be circulated only by qualified electors. ~~They~~An individual circulating a petition shall swear thereon that the qualified electors who have signed the petition did so in their presence. Each qualified elector signing a petition also shall ~~also~~ write in the date of signing and ~~his~~the qualified elector's post-office address. ~~No~~A law ~~shall~~may not be enacted limiting the number of copies of a petition. The copies ~~shall~~must become part of the original petition when filed.

SECTION 3. AMENDMENT. Section 4 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 4. The petition may be submitted to the secretary of state if signed by qualified electors equal in number to two percent of the resident population of the state at the last federal decennial census.

SECTION 4. AMENDMENT. Section 5 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 5. An initiative petition ~~shall~~must be submitted not less than one hundred twenty days before the ~~statewide~~general election at which the measure is to be voted upon. A referendum petition may be submitted only within ninety days after the filing of the measure with the secretary of state. The submission of a petition ~~shall suspend~~suspends the operation of any measure enacted by the legislative assembly except emergency measures and appropriation measures for the support and maintenance of state departments and institutions. The submission of a petition against one ~~or more items~~item or ~~parts~~part of any measure ~~shall~~does

not prevent the remainder from going into effect. A referred measure may be voted upon at a statewide election or at a special election called by the governor.

SECTION 5. AMENDMENT. Section 6 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 6. The secretary of state shall pass upon each petition, and if the secretary of state finds it insufficient, the secretary of state shall notify the "committee for the petitioners" and allow twenty days for correction. All decisions of the secretary of state in regard to any petition are subject to review by the supreme court. ~~But if~~If the sufficiency of the petition is being reviewed at the time the ballot is prepared, the secretary of state shall place the measure on the ballot and no subsequent decision ~~shall~~may invalidate the measure if it is at the election approved by a majority of the votes cast ~~thereon~~on the measure. If proceedings are brought against any petition upon any ground, the burden of proof is upon the party attacking ~~it~~the petition and the proceedings must be filed with the supreme court no later than seventy-five days before the date of the applicable statewide election at which the measure is to be voted upon.

SECTION 6. AMENDMENT. Section 7 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 7. All decisions of the secretary of state in the petition process are subject to review by the supreme court in the exercise of original jurisdiction. A proceeding to review a decision of the secretary of state must be filed with the supreme court no later than seventy-five days before the date of the applicable statewide election at which the measure is to be voted upon. If the decision of the secretary of state is being reviewed at the time the ballot is prepared, the secretary of state shall place the measure on the ballot and no court action ~~shall~~may invalidate the measure if ~~it~~the measure is approved at the election by a majority of the votes cast ~~thereon~~on the measure.

SECTION 7. AMENDMENT. Section 9 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 9. A constitutional amendment may be proposed by initiative petition. ~~The petition may be circulated only by electors who have resided in the state for at least one hundred twenty days before the first signature is collected. An individual circulating a petition may not accept any money or an in-kind item of value for circulating a petition~~The proposed amendment may

not embrace or be comprised of more than one subject, and the secretary of state may not approve the initiative petition for circulation if the proposed amendment comprises more than one subject. If signed by qualified electors equal in number to ~~four~~five percent of the resident population of the state at the last federal decennial census, the petition may be submitted to the secretary of state. If the secretary of state finds the petition is valid, the secretary of state shall place the measure on the ballot at the next general election. ~~If the measure is approved by at least sixty-seven percent of the voters, the measure becomes effective thirty days after the election.~~ All other provisions relating to initiative measures apply ~~hereto~~to initiative measures for constitutional amendments.

Reengrossed SCR 4013
House Government and Veterans Affairs Committee
March 9th, 2023

Chair Schauer and members of the House Government and Veterans Affairs Committee:

My name is Carol Sawicki, and I am submitting testimony on behalf of the League of Women Voters of North Dakota**. The League of Women Voters of North Dakota opposes Reengrossed SCR 4013 for the following reasons:**

1. The single-subject rule of SCR 4013 is vague, unnecessary, and will be costly for citizens and the state.
There is no standard or proposed definition of what "single subject" means and, as a result, this bill will cause confusion for petitioners, legislators, and courts. This aspect of SCR 4013 might require petitioners to submit multiple petitions for just one section of a law—an expensive and unnecessary effort – and might also result in costly lawsuits in which the courts attempt to make a determination of what "single subject" actually means. States with single-subject rules have experienced lawsuits related to such rules.[1]

2. SCR 4013 requires an unconstitutional 120-day residency qualification for individuals circulating an initiative petition related to a constitutional amendment.
The bill states that initiative petitions "may be circulated only by electors who have resided in the state for at least one hundred twenty days before the first signature is collected." The North Dakota Century Code (16.1-01-04.) identifies a qualified elector as: "a. A citizen of the United States; b. Eighteen years or older; and c. A resident of this state who has resided in the precinct at least thirty days immediately preceding any election."[2] Article III, section 3 of the ND Constitution[3] places no additional length-of-residency requirement on an elector who circulates a petition, and doing so violates the First and Fourteenth Amendments to the US Constitution which guarantees the right to engage in political speech.

Residency requirements for petitioners have been struck down in Colorado, Mississippi, and Maine,[4] and a law in South Dakota,[5] which placed a 30-day residency requirement for ballot initiative petition circulators, was struck down in federal court on January 10, 2023 on the basis of constitutional violations.

3. The bill unfairly singles out constitutional amendment petitioners as individuals unable to receive compensation for their time, and the bill violates their constitutional rights.

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[1] Single subject rule in the states
[2] ND Century Code, 16.1
[3] ND Constitution, Article III
[4] Residency requirements for petition circulators
[5] Federal court strikes down SD residency requirement

Political parties pay people to work on their various campaigns, members of the legislature receive compensation for their time, and lobbyists often receive reimbursement for their time. There is no logical or equitable reason to make unlawful the compensation of petition circulators who, as with the other individuals and groups mentioned above, are forwarding the work of civic participation to ensure an inclusive democracy.

More importantly, this section of the bill is in violation of the First and Fourteenth Amendments to the US Constitution. In Meyer v. Grant, the US Supreme Court held that a state's "statutory prohibition against the use of paid circulators abridges appellees' right to engage in political speech in violation of the First and Fourteenth Amendments."[6]

4. The bill unjustifiably increases the percentage of North Dakota electors (from 4% to 5% of the state's resident population) whose signatures are needed before the constitutional amendment petition may be submitted to the Secretary of State.
Of the 16 states - including North Dakota - that allow direct initiated constitutional amendments, North Dakota is the only state to tie signature requirements to the total population of the state, as opposed to the percent of individuals who voted in a prior election.[7]

The bill's proposed increase in petition signatures is an arbitrary and unnecessary increase and reveals the intent of the bill to impede the ability of the citizens to create an initiated measure.

5. SCR 4013 unnecessarily requires that an initiated measure be placed on *both* the primary and general election ballots.
No other election in North Dakota requires that an issue be voted on in both the primary and general elections. There is no need for a two-election approval process since citizens are voting on the same measure. Voters in North Dakota understand the significance of a change to the Constitution and do not need to have the same measure placed before them twice.

In addition, a two-election process is being proposed *only* for citizen-led measures, not measures proposed by the Legislature. SCR 4013 appears to be motivated by a distrust in the voters of North Dakota—the same voters who elect the members of the state legislature.

A two-election requirement will create an inordinate cost to citizens and the state, and such a requirement reveals the intent of the bill to impede the ability of citizens to implement an initiated measure.

Citizen-led initiated measures have a long history in North Dakota and play an important role in supporting citizen participation in the governance of the state. SCR 4013 intends to bring an end to that role. For this reason, **the League of Women Voters of North Dakota strongly urges committee members to give SCR 4013 a Do Not Pass recommendation.**

Submitted by Carol Sawicki, LWVND Board Member, nodaklwv@gmail.com

[6] Meyer v. Grant
[7] Signature requirements

Dear Senate State and Local Government Committee,

In re: SCR 4013.

I strongly encourage the Senate not to support this resolution for the following reasons.

There is no reasonable justification for increasing the percentage of voters needed to approve an initiated constitutional amendment from 50% to 67%. To require 67% of voters goes against Article III, Section 8 of the ND Constitution which only requires a majority of of the votes cast be in favor.

The fact that the Resolution requires an increase from 4% to 5% of ND residents sign the petition before it can even be submitted to the Secretary of State shows clearly that the intent behind this Resolution is to limit the right of ND citizens to make an intiated measure, curtailing their right to participate in the democratic process.

The Resolution doesn't follow the ND Constitution, Article II, Section 1 in that it requires that individuals circulating a petition would be required to have resided in the state for at least 120 days. The Constitution does not have this requirement for a qualified elector.

It's unfair (and directly violates the 1st and 14th Amendments to the US Constitution) to require initiative petitioners not be paid for their time when political parties have the legal right to pay people to work on their campaigns. Even lobbyists are often paid for their work.

Thank you for your time and, I hope also, your decision not to support SCR 4013.

--Barbara A Dunn
1329 11th Ave S
Fargo, ND 58103

Written testimony on Reengrossed Senate Concurrent Resolution 4013

Chairman Schauer and House Government and Veterans Affairs Committee Members

My name is Kevin Herrmann, 300 Fair St. SW, Beulah, ND 58523. I am an independent North Dakota citizen. I am not able to testify in person due to prior medical appointment.

I stand oppose to Reengrossed Senate Concurrent Resolution 4013.

Reengrossed Senate Concurrent Resolution 4013 is an attack toward Article III "Powers Reserved to the People" section 9. The last few legislative sessions, there has been resolutions introduced dealing with Article III "Powers Reserved to the People" some legislators continue being upset of initiated petitions making it either on the primary or general election ballot by the citizens of North Dakota. Such as, 2016 ballot- provide certain rights to victims of crime in this state (Marcy's Law), 2016 ballot- medical marijuana use for defined medical conditions, 2018 ballot- establish a state ethic commission and in 2022- term limits. I would hear either in committee hearings or on legislative floor sessions displeasure about forcing the legislators to act on legislation that the supermajority of legislators did not believe in but had too. If the legislators would have passed House Bill 1442 in Sixty-third Legislative session or House Concurrent Resolution 3060 in Sixty-fourth Legislative session creating a state ethic's commission maybe the citizens of North Dakota would not have taken it upon themselves to get the initiated petition on the ballot. House Bill 1430 relating to the use of medical marijuana in 2015 legislative session was defeated which the citizens of North Dakota use their power to get medical marijuana on the ballot.

In 2017-2018 interim, I attended every Initiated and Referred Measures Study Commission meeting. The commission consisted of 1 individual appointed from Chief Justice of the Supreme Court as commission chairman, 6 legislators, 1

individual appointed from Secretary of State Office, 7 citizens appointed by the Governor and 4 individuals appointed by 4 separate organizations. The commission considered a few resolutions and legislative bill drafts. The majority of the commission did not approve some of the drafts from some of the legislators on the commission. So, in 2019 various legislators introduced legislative bills attacking Article III "Power Reserved to the People".

So in this 2023 legislative session, here we have amended version of Senate Concurrent Resolution 4013. The amended version of Senate Concurrent Resolution 4013 will give the citizens of North Dakota more displeasure and lack of trust toward legislators with this propose legislation especially section 4 amendment on page 2 starting on line 22 going to page 3 of this resolution dealing with Section 9 of Article III "Powers Reserved to the People". The main sponsor of this resolution keeps saying how easy it is too get an initiative petition on the ballot and out of state influence showing no proof in Senate Government and Veterans Affairs committee hearing or Senate floor session on this resolution. In fact, the last initiative petition for term limits had no out of state addresses on the term limits sponsoring committee. In fact out of 42 individuals on the sponsoring committee, there were 2 current Republican North Dakota legislators and 5 past Republican North Dakota legislators. So where is the proof of out of state influence on the initiative petition process to Article III "Power Reserved to the People"?

How about you as legislators ask the Secretary of State office about how many petitions have not made it to the primary or general election ballot due to lack of signatures on the petition or for other reasons?

I have seen out of state influence with campaign contribution toward to some candidates on their campaign contribution report. There has always been out of state influence on some legislative bill introduced in each session. I will give three examples. In 2019 legislative session, House Bill 1193 passed relating to a living wage prohibition for political subdivisions. The reason for House Bill 1193, there was individuals in very high population out of state petitioning to get living wage

provision on the ballot at their local political subdivision. House Bill 1193 took my constitution right to file a petition to my local political subdivision. In 2021 legislative session, House Bill 1398 passed relating to a mandate prohibition on regulating paid family leave on political subdivision which was out of state influence for the bill which took my constitution right to file a petition to a political subdivision. Also, House Bill 1207 relating to asbestos liability was totally out of state influence which affected workers who work around asbestos.

I am asking the House Government and Veterans Affairs committee to give Reengrossed Senate Concurrent Resolution 4013 a DO NOT PASS recommendation.

Kevin Herrmann
300 Fair St. SW
Beulah, ND 58523
701-873-4163

North Dakota Native Vote
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1-888-425-1483
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Testimony of North Dakota Native Vote regarding Senate Concurrent Resolution 4013
By Sharnell Seaboy
March 9, 2023
House Government and Veterans Affairs Committee

Chairman and members of the House Government and Veterans Affairs Committee, thank you for the opportunity to testify today on the importance of protecting democracy. My name is Sharnell Seaboy, I am an enrolled citizen of the Mni Wakan Oyate (Spirit Lake Nation). I am a Field Organizer at North Dakota Native Vote and am here to testify in opposition of Senate Concurrent Resolution 4013 on behalf of North Dakota Native Vote.

North Dakota Native Vote is a non-partisan grassroots organization. Our mission is to create and affect policy to promote equitable representation for the Native people of North Dakota.

North Dakota Native Vote opposes Senate Concurrent Resolution 4013 for the following reasons:

- The current version of this bill states that constitutional amendment initiative petitions "may be circulated only by qualified electors who have resided in the state for at least one hundred twenty days before the first signature is collected." The North Dakota Constitution (Article II, Section 1)1 identifies a "qualified elector" as "a citizen of the United States who has attained the age of eighteen years and who is a North Dakota resident." As we have testified before in 2021, the requirement for durational residency violates both the North Dakota Constitution and the United States Constitution. The United States Supreme Court in Dunn v. Blumstein found that state laws requiring voters to have been residents in the State for a year and the county for three months did not further any compelling state interest and violated the equal protection clause of the Fourteenth Amendment. I can provide a copy of the United States Supreme Court case Dunn v. Blumstein, 405 U.S. 330 (1972) for inclusion in the record. This durational residency requirement has been struck down as a violation of the equal protection clause and therefore is unconstitutional.
- SCR 4013 is an attack on citizen-led government by requiring voters to vote in two separate elections to approve an initiated constitutional amendment. This indicates distrust of our state's voters.This is not the first time the legislature has tried to do this. A similar measure was put on the ballot in 2020 that would have required the legislative body's approval for constitutional initiated measures, if approved would have to be

placed on the ballot two times in order to pass. That initiative was overwhelmingly defeated by the people of North Dakota.

- The sponsors and supporters of SCR 2013 say it is needed because so much out-of-state money - often from unknown sources - is being spent to support ballot measures. North Dakota Native Vote agrees that huge amounts of money in campaigns is a problem. However, SCR 4013 does nothing to deal with that problem. In fact, it may make the problem of out-of-state money worse, because even more money will be needed to win two back to back statewide elections. If money, especially out-of-state from unknown sources, is the problem, then we suggest the solution should address that issue rather than making it more difficult for North Dakota citizens.
- SCR 4013 undermines the will of the people and will diminish their decision making power. It's a right and responsibility of each and every citizen to participate in state policy-making, especially when legislators can not or will not. We do not support putting unnecessary roadblocks in the way of citizen efforts to initiate measures.

North Dakota Native Vote recommends a DO NOT PASS on Senate Concurrent Resolution 4013.

Pidamiya-ye (Thank you).

23.3031.03001

Sixty-eighth
Legislative Assembly
of North Dakota

SECOND ENGROSSMENT

REENGROSSED SENATE CONCURRENT RESOLUTION NO. 4013

Introduced by

Senators Myrdal, Hogue

Representatives Cory, Lefor

A concurrent resolution to amend and reenact sections 2, 3, 4, and 9 of article III of the Constitution of North Dakota, relating to the process for approving initiated constitutional amendments, the requirement of a single subject for each petition and measure, the individuals able to circulate a petition, and the requirement that all ballot measures must be voted on at the primary and general election.

STATEMENT OF INTENT

This measure would restrict circulation of petitions for an initiated constitutional amendment to qualified electors ~~who have resided in the state for at least one hundred twenty days, prohibit petition circulators from receiving money or items of value for circulating a petition~~, require all petitions and measures to be limited to a single subject, and require all constitutional initiated measures under article III be voted on at the primary and general election.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendments to sections 2, 3, 4, and 9 of article III of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in November of 2024, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 2 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 2. An initiated measure may not embrace or be comprised of more than one subject, as determined by the secretary of state. A petition to initiate or to refer a measure must be presented to the secretary of state for approval as to form and compliance with the single subject requirement. A request for approval must be presented over the names and signatures of twenty-five or more qualified electors as sponsors, one of whom must be designated as chairman of the sponsoring committee. The secretary of state shall approve the petition for

circulation if it is in proper form and contains the names and addresses of the sponsors and the full text of the measure.

The legislative assembly may provide by law for a procedure through which the legislative council may establish an appropriate method for determining the fiscal impact of an initiative measure and for making the information regarding the fiscal impact of the measure available to the public.

SECTION 2. AMENDMENT. Section 3 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 3. The petition ~~shall~~may be circulated only by qualified electors. ~~They~~An individual circulating a petition shall swear thereon that the qualified electors who have signed the petition did so in their presence. Each qualified elector signing a petition also shall ~~also~~ write in the date of signing and ~~his post-office~~the qualified elector's complete residential address. ~~No~~A law ~~shall~~may not be enacted limiting the number of copies of a petition. The copies ~~shall~~must become part of the original petition when filed.

SECTION 3. AMENDMENT. Section 4 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 4. The petition may be submitted to the secretary of state if signed by qualified electors equal in number to two percent of the resident population of the state at the last federal decennial census.

SECTION 4. AMENDMENT. Section 9 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 9. A constitutional amendment may be proposed by initiative petition. The petition may be circulated only by qualified electors ~~who have resided in the state for at least one hundred twenty days before the first signature is collected. An individual circulating a petition may not accept any money or an in-kind item of value for circulating a petition~~. The proposed amendment may not embrace or be comprised of more than one subject, as determined by the secretary of state, and the secretary of state may not approve the initiative petition for circulation if the proposed amendment comprises more than one subject. If signed by qualified electors equal in number to ~~four~~five percent of the resident population of the state at the last federal decennial census, the petition may be submitted to the secretary of state. If the secretary of state finds the petition is valid, the secretary of state shall place the measure on the

ballot at the next primary election. If the majority of the votes cast on the measure are affirmative in the primary election, the measure must be placed on the ballot at the ~~next~~ general election immediately following the primary election for final consideration. If a majority of votes cast for a proposed constitutional amendment are affirmative in the general election, the measure is deemed enacted. If the measure fails to receive the required number of votes to enact the measure at either the primary election or the general election, the measure is deemed failed. All other provisions relating to initiative measures apply ~~hereto~~to initiative measures for constitutional amendments.

ND HOUSE GOV. & VETERANS AFFAIRS COMMITTEE
SCR 4013
MARCH 9TH, 2023

Mr. Chairman and members of the committee. My name is David Hanson and I reside in Bismarck. Thank you for allowing me to testify in favor of SCR 4013.

I would also like to thank the sponsors of this amendment which seeks to correct weaknesses in our current amendment process by placing better safeguards for protecting our state constitution.

Currently, to pass an amendment to our constitution, you must get a simple majority vote of the people. This is a weakness, because the constitution is binding, not only on the people, but the state government. It is the supreme law of our state. In recent years there has been a disturbing trend of bringing constitutional amendments forward and treating the constitution as a super Century Code to prevent initiatives from being quickly amended or repealed. The constitution, as a general rule, ought to be used to set the guidelines and mode for governing our state, not to set policy. Policy setting should be more of the domain of the ordinary course of legislation. While there will always be areas in the constitution that individuals may not agree should be there, most of the time we all as a state ought to be united in supporting it. There ought to be a higher threshold to amend the constitution, since it is the highest law in the state. By requiring a higher threshold, it will also demonstrate a greater unity among the people to uphold and support the constitution.

For this amendment, there are aspects that I applaud and appreciate, but there are other parts that I question, but appreciate the intentions behind those, nonetheless.

First, I applaud raising the signature threshold to 5%. By requiring a higher threshold, the less serious proposals will be weeded out. In fact, earlier in our state's history we required 10% threshold to place initiatives on the ballot.

Secondly, on lines 23-25 on the second page, I appreciate what is intended here to truly make this a grass-roots movement of citizens coming together for a common proposal. However, I am uncertain how this would be practically enforced until after the petitions have been submitted. I imagine the Secretary of State would have to look into every circulator to make sure that these terms of circulating a petition are met. How would this be implemented?

Thirdly, requiring initiatives to have a single subject will go a long way towards improving the initiative process. With this in place, it will help voters to focus and pay closer attention to what they are voting upon. This will allow voters to express a clear intent on a single issue, thus there being no ambiguity as to what the people truly intended; this will prevent provisions that are popular with voters from being comingled together with provisions that wouldn't otherwise be able to pass on their own merits. The single subject rule will make it uniform with the Legislative Assembly's own requirements that there be single subject bills.

Finally, I appreciate the provision for two separate votes of the people in two different statewide elections. In a sense, this is similar to requiring a bill to be read twice in the Legislative Assembly before final passage. Similar processes are used by many other states. This will allow for serious reflection and contemplation before final passage. This would cause the people to re-evaluate whether a certain proposal is truly a good idea or not without rushing something

through the heat of the moment. A good example of this is Nevada. In the last election, the voters passed a constitutional amendment by 52% of the vote to implement a ranked choice voting system. But this has to go to another vote of the people in 2024 before it is finally added to their constitution. Nevada voters have the benefit of observing Alaska's new ranked choice voting system before they finally decide if they want to change their constitution and change the way they choose their leaders.

I would, however, like to suggest an amendment to this resolution. Instead of having a constitutional amendment be voted upon twice in the primary and general election, I'd suggest it being voted upon in two separate general elections. This would allow a longer period to really study an issue before changing the supreme law of the state, the constitution, instead of a few months of consideration. But whether this committee decides to keep the resolution as it is now or adopt this suggestion, this is a step in the right direction, and it is a good thing in my view to look at something a second time around.

I would also like to suggest one more amendment to this proposal. Another section should be added to address Article IV Section 16 of the constitution, so that it is consistent with how amendments are ratified by the initiative method. I suggest that for the Legislative Assembly to propose an amendment it should require a two thirds vote of both houses and two separate votes of the people. **Whichever method this committee decides how an amendment should be ratified by the initiative; it should mirror how it is ratified when the legislature places it on the ballot**.

Many other states require supermajorities in their legislatures as well as supermajorities or multiple votes among the people in order to pass amendments to their state constitutions. We can also look to our own U.S. Constitution in the way that it is amended. To amend it you must get two thirds of the House and Senate or two thirds of the states to call a convention to submit amendments to the states. Once the states have the amendments, you must also get 38 (three fourths) to ratify them. With those high thresholds to meet, there is a greater unity of the people and the states to support the Constitution and also a great urge to protect it.

We in North Dakota have a good constitution. Let's not let it become something that is treated flippantly. Let's put better safeguards in place to protect it and make it a stable document for years to come. Thank you.