

2019 SENATE GOVERNMENT AND VETERANS AFFAIRS

SCR 4001

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Sheyenne River Room, State Capitol

SCR4001
1/10/2019
30669

- Subcommittee
 Conference Committee

Committee Clerk: Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to the process for approving constitutional amendments.

Minutes:

Att #1-#2-Sen Hogue, Att#3-4-Sen Dever;Att#5-Waylon Hedegaard; Att#6-Dustin Gawvylow; Att#7-Tracy Potter; Att#8-Nick Archuleta; Att#9-Willow Hall; Att #10-Kathrin Volochenko; Att#11-Tom Asbridge; Att#12-Ralph Muecke; Att#13-Bruce Bail; Att#14-Pamela Herchlip(email);Att#15-CaseyBuchmann(not speak); Att#16-Sam Wagener(not speak);Att#17-Kristin Klein

Chairman Davison: Let's call the hearing for SCR4001 to order. Welcome all. We are respectful to you and we expect you to be respectful to use and we will have a good discussion. We begin with testimony in favor of SCR4001.

Sen Hogue, Dist. 38, Minot, North Dakota: (1.56) I want to have a serious discussion on how we amend our constitution. This is a proposed amendment to the constitution that changes the way we amend our constitution. I know that this amendment has attracted lots of attention. With the power of search engines, etc. I have taken the time to review most of that information. There are several mistakes and wrong assumptions about this measure that are not true and have been perpetuated in the print media and electronic media. I am compelled to tell what this bill is not about before I tell you what it is about. It has nothing to do with the initiated measure process. It would not affect medical marijuana measure and would not affect a recreational marijuana measure. This has nothing to do with that. It does not affect or propose to change our referral process. If the people do not like legislation passed and governors signs, they can refer it. SCR4001 has nothing to do with referrals. I need to explain the difference between initiated measure that amend our constitution and all other initiated that relate to non-constitutional. There are two distinct processes for amending our constitution. (5.20) Imagine I wanted to impose major reform to our criminal system. That is my goal. I would be sitting in the state of CA. I would hire my CA lawyer to draft that reform. I would hire a ND public agency firm to look at it and hire them to walk it into the Secretary of State's Office. He would look it over as to correct form. Then it would go on the Secretary of State's website and then I would start circulating petitions. If I got the 28,000 signatures, then it goes to the vote of the people. A simple majority wins and our criminal justice reform is accomplished. Here is an alternative process. (6.33) This is a process when someone has an idea and they want to reform the criminal justice process. Maybe we should put it in a

public hearing. Maybe we should call on judges, prosecutors, and law enforcement and ask them what they think of this proposal. We should listen to their testimony and maybe take a vote on it, too. If there are problems with it, maybe we should amend it and vote on it in a public forum. After we vote on it give it to another body and let them go through the same process. This constitution represents our core value gets vetted by the people of North Dakota. SCR4001 attempts to accomplish the latter. It attempts to instill democracy in the way we amend our constitution. SCR4001 is inspired by the way our founders set up our constitution. In olden days, the people of North Dakota could not have initiated measures. It had to go twice to the legislature and voted on and then went to the people. In 1914 they changed it. I have an amendment that I have that is a better way of doing this. Ultimately, when we amend our constitution, the people and their elected representatives in legislature should both look at it and vet it. (9.03) Then vote on it. In 1914 the people wanted to be able to amend themselves. They changed the constitution to say either the legislature or the people can initiate a constitutional amendment. If the people initiate one, it goes to the cote of the legislature and they review it. If the legislature approves it, it becomes law. If the legislature does not approve I what the people proposed, it goes back to a second vote of the people. This way, the people have the last vote. They can always over ride what the legislature did by simple majority vote. That is why I have the amendment to SCR4001. **(see attached #1)** If you look at the Marcy's Law chart. You can see it was 100% funded by out - of -state. I use my resources in CA and amend your constitution in North Dakota. North Dakota Citizens was on ballot in 2018, same thing. 100% funded by out-of-state entities. Measure 1 was the ethics one and some are saying SCR4001 is response to Measure 1. I have long been advocating long before Measure 1 was circulated. You see a similar pattern. 91% funded by out-of-state residents. The Clean Water Act that was on in 2014, same thing. 87% out-of-state funded. All you have to do to have a shot is put up the money to get signatures. The people voted that down. Why should we expose ourselves to that level of risk? I think we need to go back to the founders and what they had in mind for amending our constitution. These pie charts will dispel the notion that this is a power struggle between the people of North Dakota and their elected representatives. I do not agree with that at all. These pie charts show the struggle between ideologues from outside of North Dakota who realize that they can amend our constitution and shape our values in their mold just by writing out a check. (15.54) My final thought and it relates to our job in the legislature. Sometimes as legislators, we don't have the opportunity or time to think statically. We have 80 days and have committee hearings and our budget processes. We don't think about the big picture. What is best for the people of North Dakota over the long haul. When I look at all the constitutional amendments that have come before us in the last three elections cycles, I conclude that the largest risk to our economy is the vulnerability of our constitutional amends. You can talk about corn; you can talk about oil prices as being a risk to our economy. I think it is right in front of it. I have introduced this in the best interest of this state in the long term. When we change our core values, we need a process in place that provides for hearings, testimony, and opportunity to amend and time. I offer the amendments as well. This gives the people the last word to override the legislature. **(see att#2)** (18.10 end)

Sen. Kristin Roers: I am wondering in your research if you did a survey of what would be most commonly done is surrounding states or in whole country?

Sen Hogue: I did and it is in my written testimony. There are 17 states that permit an amendment of their constitution by the initiated process. About 2/3's does not permit it. The

ones I looked at, ours is the most vulnerable where you have no legislative involvement. Get the signatures and go on the ballot.

Sen. Erin Oban: (19.20) I appreciate the history lesson. Can you remind me when the rules you have now were put in place?

Sen Hogue: I believe it was 1916. We started in 1889, and we had a change. I don't think the second amendment has a date. 1916 or 1918.

Sen. Erin Oban: The rules have been in place for about 100 years. The examples you provide are all from the last 8 years.

Sen Hogue: Last 4 years – three elections.

Sen. Erin Oban: I can't help but wonder if there is another change that has been made that has impacted the ability to influence elections. That is not the people's ability to initiate a constitutional change. Maybe the influence of money, generally, in elections. Do you feel it has had as much influence or is that a side bar? There was a significant change that has allowed much more money coming in to influence elections. For 100 years it was fine and now it has dramatically changed. (21.26)

Sen Hogue: I would concur with you that there have been more resources from out-of-state and not just North Dakota, but other states. We have more political organizations that are much more active than they ever were. I don't deny that we have had this system for a long. My central thesis is that we are vulnerable and we ought not to be. (22.25)

Sen. Erin Oban: Have you spoken at all with the five legislators who put their name on Marcy's Law constitutional amendment that was passed by the people? In your example you talked about an agency that could be hired and submit this and plays a big role in influencing elections. Have you had conversations with them as to why they felt by going through that process instead of going through the legislature and talking to their colleagues and making that case would have been a better way to approach that criminal justice reform that was your scenario you mentioned.

Sen Hogue: I do not recall who the sponsors were of Marcy's Law. I am in charge of serving the people of North Dakota. I believe this change is in the public interest. I know that some feel I am taking away our rights, etc. If I look at our recent history, it will get worse. We need oversight. I only know what my opinion is.

Sen. Erin Oban: I often do not agree with the decision of the voters, being in the super minority. Can you understand why voters feel they think you are trying to take their rights away?

Sen Hogue: I can. One helpful thing is that we have so much communication than way back then. I respect we disagree.

Sen. Shawn Vedaa: I know we were concerned with losing the voice of the people with some thing like this, but could this be giving the people ears to hear information in initiated process?

Sen Hogue: Correct. Our founders said this is a collaborative process where the people propose it, the legislature looks at it and have hearings and amendments to improve it. Then the legislature can decide. They may disagree with the people, but the people can say they disagree with legislature as well.

Chairman Davison: Please go over the process of your amendment again. (27.09)

Sen Hogue: The amendment .03001 mirrors what our founders did when they first amended the constitution concerning amendments. May have been 1914. If it goes on the ballot and there is a majority vote. It then goes to the legislature. The legislature looks at it and does the same up or down vote. If the legislature votes to approve it, it becomes constitutional law. If the legislature disagrees with the people, it goes right back on the ballot for the people to say we are over riding your legislature and we have the last word. The people have the last say with this amendment. (28.32)

Chairman Davison: More testimony in support?

Sen Dever, Dist 32, Bismarck: I love the legislative process because it is the people's process. I serve as the chief of senate employment committee and we hired 30 temp employees for this session. I told them that your first requirement is to be courteous and respectful to anyone who comes here because it is the legislative process. (29.27) I appreciate all of you here. I am guessing there is a difference of opinion in here today. We come together to find a best solution. Sen Hogue mentioned confusion. First, this measure only applies to constitutional resolutions and has nothing to do with statutory resolutions. The legislature cannot change the constitution as was written in the Tribune that it can with a 2/3 majority vote. This is a false statement. Not one word of the constitution can be changed without a vote of the people. Another newspaper from a larger city wrote last week that we should all stand up to those sponsors of this resolution who are trying to circumvent article 3 of the constitution. They said we legislatures should read the constitution. I have two copies here with me. I have read the constitution. The one I printed yesterday is much thicker than the one I printed a decade ago. Recent measures have come on the ballot. We need to have an understand that we have three types of laws that we deal with in North Dakota. There is the constitution and Century Code and administrative rules. If you go to LC website and go to the bottom and over to left column, you can access all three of them. The administrative rules are 1 ½ times bigger than Century Code. Those rules are created by agencies in an effort to implement the Code – the bills passed here. It goes before a rules committee made up of legislators. The approve those rules. The constitution is a different thing. The US Constitution is the oldest one in the world. The body tells how we organize government. The amendments to the constitution apply to individual rights. (33.49) It begins with the Bill of Rights. Imagine if we had a national referendum and initiative process by popular vote. What would the US Constitution look like today! Look at the geography of our country. We have a different culture in central part of our country than CA or NY. Most of the people live on west and east coasts. They could impose on us their will. First casualty would be the second amendment. When we amend the North Dakota constitution like in the last election's measures; they were funded by CA and NY. There is a national organization called the Center for Public Integrity. A group of 25 people in North Dakota put together another committee called North Dakotans for Public Integrity. They will tell you that they wrote the

measure. More accurate to say that they used a model and then customized it to North Dakota. I was at a conference a few weeks back and a man from Nebraska said they had a measure that came from an organization from CA. It takes a 2% to do a statutory measure and 4% for a constitutional measure. That is a protection that is in place because the constitution is much more important. With huge infusions of cash from out-of-state, gathering 27,000 signatures in North Dakota and hiring petition people; it is not difficult to amend our constitution. And then to use those dollars to promote the measure. (He went on to give history of time and process and example of constitutional amendments) (37.42-40.31) I handed out some documents that you may find interesting. (**see att #3 and #4**) 24 states do not have initiated measure process. You need to be careful not to perceive what happens in other states translates the same here in North Dakota. I work hard to bring hard to bring honor to the legislative process.

Chairman Davison: Any more in support? Any against?

Waylon Hedegaard, President AFL-CIO: Here to oppose SCR4001. (**see att #5**) The out-of-state is not as clear as you think. Many belong to organizations that are multiply states. We are a global economy.

Brad King, Bismarck: I am here as a citizen and oppose SCR4001. (57.31) I heard some things I have not thought of so thanks to the two senators that spoke. The legislature has the right to propose constitutional amendments. And then it goes to the vote of the people. Why doesn't the legislature change if we have faulty amendments that come in? If problems with Marcy's Law, etc. Why don't they step up and clarify in the form of bills? Then put it back to the people to vote and fix things. I voted for Marcy's Law because my sheriff believed it was a good thing. I voted for measure 1 because I was pissed because of what you did in medical marijuana. I wanted a more open process. Step up and tell the people how to fix and fix it.

Dustin Gawvylow, North Dakota Watchdog: Out-of-state money is a problem. In 2017 I remember SB2336 which was a proposal that said out-of-state money must be matched with in-state money. The opposition to that, including sponsors of this amendment, said that would violate the constitution and violate Citizen United. If we don't like what other states do with their process constitutional amendments. If we don't like what they do with their money, why would we like what they do with their laws. Not make sense. I believe our constitution is based on CA constitution. Model language was brought up. I have taken model language from organization like NCSL, ALEC, HERITAGE, etc. and modified them. I had them introduced. Very few have gone anywhere but I am not the only one that use model language. Why invent the wheel when you can modify it? (1.02.35) Maybe we should limit the length of the amendments. Now I will start my testimony. (**see att.#6.**) I am here to oppose SCR4001.

Tracy Potter, Bismarck: I am an old civic teacher and former state senator in dist. 35. I am here today to oppose. It is anti-democratic with a small d. (**see att #7**) Any questions?

Dustin Peyer: There was mention of an uprising of 1914. That was from the Non-partisan League. I am a proud member today and its vice chairman. I am opposed to these changes but I am 100% against out-of-state money. BSNF Rail PAK, CVS Health PAK, Energy Transfer Partners, John Deere PAK, Marathon Oil Co, and ERA Energy. These are all out-of-state contributions to Sen Dever. (1.13.53)

Nick Archuleta, Pres. Of NDUNITED (see att #8) I am here in opposition to SCR4001. I recommend a DO NOT PASS. Any questions? (1.16-24)

Willow Hall, Dist 47, Bismarck: I am here as a citizen and oppose SCR4001. (see att. #9) (1.19.08)

Chris Nolden: I am here as a citizen: I am trying to establish a trust between the people and legislators. This bill will not help that. Can I get the pie charts? I recommend a DO NOT PASS. (1.21.18)

Eric Thompson, Bismarck: Is it wise to tell people that only those in government are intelligent enough to come up with ideas? Is it a reality that all measures proposed by out-of-state interests are against the best interests of the state's people? And that the people of this state are too ignorant to know when that is happening. Any questions? (1.22.26)

Kathrin Volochenko, representing the NPL: (see att #10) I oppose SCR4001. (1.23.5-1.30.46) Gave a history of NPL. I will stand for questions.

Tom Asbridge, Bismarck: (see att# 11) I am here in opposition to SCR4001. These sponsors need to be recalled.

Ralph Muecke, Gladstone: (see att #12) I am here against SCR4001. (1.33.59-1.37.25)

Kimmie Needham: I am against 4001 and want to respond to Sen Dever. My sister got up here earlier. (1.39.44-1.42.55) He said the legislature is for the people. Hard for me to believe that when two years ago he voted against an anti-discrimination bill. You guys amended the medical marijuana bill, too. You ignore us somethings. Sen Hogue mentioned that our process is vulnerable but Benjamin Franklin said 'those who would give liberty to purchase a little bit temporary safety, deserve neither liberty nor safety. I hated measure 1. My sister worked on measure #1.

Scott Skokos, North Dakota Resource Council: I rise against SCR4001 on behalf of my organization. This process has worked over 100 years. The legislature should support the cote of the people and have faith in this system. I stand for any questions. (1.42.21)

Pete Walla: I would feel better about their opposition to out-of-state money if they would introduce a bill that says they would not certify elections if there are tons of out-of-state money in races. (1.44.06)

Chairman Davison: Any more testimony against?

Andrew Alexis Varvel, Fargo: If we want to make sure that out-of-state interests have less say in our initiated process, then we should lower the bar to make it easier to get things on the ballot. I think the sponsors have good intention but doing it the wrong way. They should fix Marcy's Law. (1.45-42)

Chairman Davison: More testimony?

Bruce Bail: I represent myself. (see att #13)

Chairman Davison: Any more against? Seeing none, the hearing on SCR4001 is closed.
(2.00.57)

Att #14 – Pamela Sund Herschlip, Fargo. In support. Sent by e- mail to chair

Att#15 - Casey Buchmann, Stanton. Did not speak

Att#16 - Sam Wagener, Dist22- Did not speak

Att#17 - Kristin Klein – Did not speak

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Sheyenne River Room, State Capitol

SCR4001
1/17/2019
#30989

- Subcommittee
 Conference Committee

Committee Clerk: Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to the process for approving constitutional amendments.

Minutes:

Chairman Davison: Let's take up SCR4001. Sen Hogue brought forth an amendment. It was to say that the voters have the final say in a constitutional measure in North Dakota. Other people were saying they were bringing amendments. Look at page 1, line 4.

Sen. Erin Oban: (3.41) I want the committee to know I spent lots of time on line 4, the words 'approved by' are twice in that sentence. I think he would replace 'be submitted to' in the second one.

Chairman Davison: I agree. What are the committee wishes?

Sen. Erin Oban: You thought there were other amendments coming. I hesitate to move on this instead of waiting.

Chairman Davison: I do not know if they are coming. I wanted to get this in a more palatable form. I struggle with the form right now. (6.62)

Sen. Shawn Vedaa: (7.11) When I look at this bill, I think it is opposite of what I heard at the hearing. I see this at not hiding anything at all.

Sen. Kristin Roers: It comes and is voted up or down from the people.

Sen. Shawn Vedaa: At least we could go through it. Something has to be down. We can't keep dropping these constitutional measures and no one has a clue on what they are voting on.

Sen. Kristin Roers: I am torn. I do not like the current process. (8.52) Now it becomes some huge piece of legislation with measure 1, and it can't be amended in any way. How do you create a resolution that fixes the problem?

Sen. Erin Oban: Not sure if we are debating the merits of this right now, or sharing how we feel. I share much of the concerns of why the sponsors brought this forward. I might disagree on what the problems are. I struggle with any legislature questions of the voters. I don't think the constitution is where we should put this stuff. (11.30)

Chairman Davison: That is why I prefer the amendment. People get the last say. This will get voted on the floor. As a committee we need a recommendation.

Sen. Shawn Vedaa: I agree with the amendment. When we get voted in, we come up with another election in 4 years. Constitution is very difficult to change or get something back out. They vote on two lines and there are 54 pages at the Secretary of State Office. I don't like that.

Sen. Jay Elkin: I agree with both of you. When did they become so dumb? I understand out of state money flaws.

Chairman Davison: I have bill that have been changed drastically.

Sen. Erin Oban: To Sen Vedaa point, we can take it back to the people two years after they pass it. We can pass it with 2/3 majority of each chamber, governor can sign it, and it goes back to the people to vote on it again. If we think it is that bad. I feel there are two messages. If we do nothing, then we maybe don't have the courage. We would be silly to vote against what your district wants. (15.42)

Chairman Davison: The variable, I believe, that Sen Hogue is concerned about is the \$6 billion in the legacy fund. If someone decides to do something, the voters can take it and use. He is just trying, from 2% to 4% of signatures, from statute to constitution to set a higher bar. A little longer look at something that goes into our constitution. To insure we are doing the right thing for the long term. We will table this. Adjourned.

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Sheyenne River Room, State Capitol

SCR4001
2/7/2019
32394

- Subcommittee
 Conference Committee

Committee Clerk Signature : Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to the process for approving constitutional amendments.

Minutes:

Chairman Davison: This was the one held in the Pioneer Room. I will be voting no on this. We could amend this with Sen. Hogue's amendment. This SCR gives the Legislature that last call. Sen. Hogue brought an amendment to give the people the last vote. That is a band aid for it.

Sen. Jay Elkin: I move a DO NOT PASS.

Sen. Erin Oban: I second.

Vice Chair Meyer: I don't think the people should have to come back twice. I think something needs to be done, just not this.

Chairman Davison: Take the roll please: **YES -- 5 NO - 2 -0-absent**
The DO NOT PASS – PASSED. Chairman Davison will carry the bill.

Done (2.45)

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Sheyenne River Room, State Capitol

SCR4001
2/14/2019
32740

- Subcommittee
 Conference Committee

Committee Clerk: Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to the process for approving constitutional amendments.

Minutes:

Att #1 -2- Chairman Davison;

Chairman Davison: We have SCR4001 before us again. I thought about it, and there were amendments we should have looked at them. (see att #1-#2) It is a good thing to do. He explained amendment.

Vice Chair Meyer: I move to reconsider. **Sen. Shawn Vedaa:** I second. Call the roll:
YES -- 5 NO -- 1 -1-absent. PASSED.

Vice Chair Meyer: I move to adopt the amendment. **Sen. Shawn Vedaa:** I second.

Chairman Davison: He explained the Hogue amendment. This gave the people have the last say. Any discussion? Take the roll: **YES -- 5 NO -- 1 -1-absent.**
Amendment passed.

Vice Chair Meyer: I move a DO PASS as AMENDED. **Sen. Shawn Vedaa:** I second.

Chairman Davison: We have a DO PASS as AMENDED. This made the bill better. Roll:
YES -- 6 NO -- 0 -1- absent. PASSED.

Vice Chair Meyer: I didn't mean a DO PASS. Sorry. I withdraw my DO PASS as AMENDED and move a DO NOT PASS as AMENDED.

Chairman Davison: We will do a voice vote on withdrawal of DO PASS as Amended. VOICE VOTE CARRIED.

Vice Chair Meyer: I move a DO NOT PASS as amended (7.31) **Sen. Erin Oban:** I second.

Chairman Davison: Any discussion? Call roll: **YES -- 7 NO -- 0**
The **DO NOT PASS as AMENDED – passed.** **Chairman Davison will carry the bill.**
(Sen. Marcellais came after recorder was off and voted 'yes' – all heard the 'yes'.

SK
12/11

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4001

Page 1, line 4, replace "approved by" with "submitted to"

Page 1, line 5, remove "two"

Page 1, line 5, replace "assemblies before becoming" with "assembly. Under this measure, if the legislative assembly does not approve the constitutional measure, the measure will be placed on the ballot again, and, if approved by the voters, will become"

Page 1, line 18, remove "two"

Page 1, line 18, replace "assemblies" with "assembly"

Page 1, line 19, replace "both" with "the"

Page 1, line 19, replace "assemblies" with "assembly"

Page 1, line 20, after the underscored period insert "If the legislative assembly does not approve the initiative, the initiative must be placed on the ballot at the next statewide election. If the majority of votes cast on the initiative are affirmative, the initiative is deemed enacted."

Renumber accordingly

2/7/19

Date:
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SCR 4001

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen Elkin Seconded By Sen Oban

Senators	Yes	No	Senators	Yes	No
Chair Davison	///		Sen. Oban	///	
Vice Chair Meyer	///		Sen. Marcellais		///
Sen. Elkin	///				
Sen. K Roers	///				
Sen. Vedaa	///	X			

Total (Yes) 5 No 2

Absent _____

Floor Assignment Chair Davison

If the vote is on an amendment, briefly indicate intent:

2-14-19

Date:
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES *SCR 4001*
BILL/RESOLUTION NO.

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Meyer Seconded By Sen. Vedaa

Senators	Yes	No	Senators	Yes	No
Chair Davison	<i>/</i>		Sen. Oban		<i>/</i>
Vice Chair Meyer	<i>/</i>		Sen. Marcellais		<i>cb</i>
Sen. Elkin	<i>/</i>				
Sen. K. Roers	<i>/</i>				
Sen. Vedaa	<i>/</i>				

Total (Yes) 5 No 1

Absent -1-

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: *passed*
Bring back SCR to consider amendment

Date: 2-14-19
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SCR 4001

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 19.3041.0300

- Recommendation: Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Sen. Meyer Seconded By Sen. Vedaa

Senators	Yes	No	Senators	Yes	No
Chairman Davison	/		Sen. Oban	/	
Vice Chair Meyer	/		Sen. Marcellais	ob	
Sen. Elkin		/			
Sen. K. Roers	/				
Sen. Vedaa	/				

Total (Yes) 5 No 1

Absent -1-

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: Amend. passed

2-14-19
Date:
Roll Call Vote #: 3

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES** *SCR 4001*
BILL/RESOLUTION NO.

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 19.3041.03001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Meyer Seconded By Sen. Vedaa

Senators	Yes	No	Senators	Yes	No
Chairman Davison	/		Sen. Oban	/	
Vice Chair Meyer	/		Sen. Marcellais	0	
Sen. Elkin	/				
Sen. K. Roers	/				
Sen. Vedaa	/				

Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

2-14-19
 Date:
 Roll Call Vote #: 4

2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES *SCR 4001*
 BILL/RESOLUTION NO.

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sen. Meyer Seconded By Sen. Vedaa

Senators	Yes	No	Senators	Yes	No
Chair Davison			Sen. Oban		
Vice Chair Meyer			Sen. Marcellais		
Sen. Elkin					
Sen. K. Roers					
Sen. Vedaa					
<i>Voices</i>					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Passed

2-14-19

Date:

Roll Call Vote #:

5

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO.

scr 4001

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Meyer Seconded By Sen. Oban

Senators	Yes	No	Senators	Yes	No
Chairman Davison	X		Sen. Oban		
Vice Chair Meyer	X		Sen. Marcellais	X	
Sen. Elkin	X				
Sen. K. Roers	X				
Sen. Vedaa	X				

Total (Yes) 1 No 0

Absent 0

Floor Assignment Sen. Davison

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SCR 4001: Government and Veterans Affairs Committee (Sen. Davison, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4001 was placed on the Sixth order on the calendar.

Page 1, line 4, replace "approved by" with "submitted to"

Page 1, line 5, remove "two"

Page 1, line 5, replace "assemblies before becoming" with "assembly. Under this measure, if the legislative assembly does not approve the constitutional measure, the measure will be placed on the ballot again, and, if approved by the voters, will become"

Page 1, line 18, remove "two"

Page 1, line 18, replace "assemblies" with "assembly"

Page 1, line 19, replace "both" with "the"

Page 1, line 19, replace "assemblies" with "assembly"

Page 1, line 20, after the underscored period insert "If the legislative assembly does not approve the initiative, the initiative must be placed on the ballot at the next statewide election. If the majority of votes cast on the initiative are affirmative, the initiative is deemed enacted."

Renumber accordingly

2019 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SCR 4001

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union Room, State Capitol

SCR 4001
3/14/2019
33730

- Subcommittee
 Conference Committee

Committee Clerk: Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to the process for approving constitutional amendments

Minutes:

Attachments 1-4

Chairman Kasper opened the hearing on SCR 4001.

Senator David Hogue appeared. Attachment 1. (1:52-11:42)

Rep. Laning: In your proposed step process, do you see that the legislature would have any amendment authorities or would it be strictly an up or down vote?

Senator Hogue: There would be no amendment process. The legislature could say no, this is just a bad idea, and we are going to walk away from this. Another thing they could do is draft their own constitutional amendment.

Rep. Schauer: This will be viewed and has been viewed as bucking the will of the people. What is your response to that?

Senator Hogue: I do not think it is bucking the will of the people. The people are the ones who have to vote on this. We are here to exercise our best judgment on measures that come before us.

Rep. Rohr: Are there other states that have actually adopted what you are proposing?

Senator Hogue: I am not aware of other states that have the same ND proposal. SCR 4001 is the 1919 version of our state constitution. I have some done research on Marcy's Law. Marcy's Law could not get on the ballot in Idaho, because in Idaho the legislature has to look at it before it can go on the ballot. It was put on the ballot in Florida. Florida had version 2.0 of Marcy's Law. They saw some of the flaws in the drafts that they put in our constitution and in SD and MT constitutions, and they fixed them and submitted it to the people of Florida.

Rep. P. Anderson: If the people pass a constitutional amendment and 65% of your district voted for it, now the legislature gets a second look. Are you going to follow what your constituents said or not?

Senator Hogue: The constituents of my district are entitled to great deference, but if you come to Bismarck to simply parrot what they tell you in a poll, you are not doing your job. That is not representative government.

Rep. Johnston: Would you say 4001 represents the difference between rule by the mob or rule by law?

Senator Hogue: I am reluctant to call it rule by the mob. Voters are so much better informed today than before there was the internet and television. The constitution reflects every people's core values, and if you are going to change it, that should be a rigorous democratic process. To me that means you have public hearings where, for example, prosecutors can tell you what they think of a criminal reform measure, judges can tell you what they think of it, defense attorneys can tell you what they think of it, law enforcement can come forward and tell you what they think of it, and then you can decide.

Rep. Johnston: We don't elect our president with a vote at large. We have a process through the electoral college. When you are talking about changing the constitution, we certainly don't want it changed with the vote at large. There should be a process involved. Is that what you are saying?

Senator Hogue: Yes. If you look at how hard it is to amend our US constitution, it is too hard. It takes 38 states to ratify an amendment to the US constitution. As a result of that high bar, we now have nine people in Washington, DC that decide what our constitution means, and that is not right either.

Vice Chair Steiner: (21:10) My concern with the bill is the lack of understanding that you have about the constitution and how the average voter might see this on the ballot and the education piece that would be required for people to really understand what you are saying. If this were to pass, do you have an idea how would you educate the public to understand the differences between whether or not you are hindering their ability, or whether the out of state interest is making our ballot so vulnerable that we need to make this adjustment at this time?

Senator Hogue: That is something I considered, but I thought I needed to get across this bridge first which is to get it passed the house and senate and then to get it on the ballot. There are members of the media that oppose it and support it. I went on a local blogger's podcast last week. He is highly supportive of it. I think he would characterize it the same way, with the term Rep. Johnston used, as mob rule. Mob rule is when you don't have the ability to have public input into a rule of law. You don't have a chance to amend it, and you don't have a chance to hear from the affected people. You don't want that. That education process has to go on. I intend to reach out to the publisher of the larger newspapers in ND.

Senator Dick Dever appeared in support. Attachment 2 was handed out. (23:38) The US constitution is a benchmark. It is a benchmark by which all other federal laws and state laws

are measured. I think there are more misperceptions and, as Rep. Steiner pointed out, difficult in the education of the people to what the process is. As Senator Hogue pointed out, it is difficult to amend the US constitution. It is frustrating that we amend our ND state constitution on a simple majority vote. He mentioned a couple of other resolutions out there that will raise the bar. This resolution says the people will have the same number of signatures as now, put it on the ballot, the people will vote on it, and then the legislature will take a look at it. The vote in the legislature doesn't kill it. It can adopt it. If the legislature basically recommends not, it goes on the ballot again. We are not taking away the will of the people. We are asking the people to take another look at it. The body of the US constitution sets the structure of government. The amendments are all about individual rights. If the US constitution was as easily amended as the ND constitution is, those rights would be on the ballot. We are called a democracy and a representative democracy, but most accurately we are called a republic. The difference between a republic and a democracy is that in a republic, there is a constitution to protect the rights of the minority from the majority. Senator Hogue did not bring this in response to Measure 1 on the ballot or to Marcy's Law. A lot of people say they passed the ethics commission, because we voted to change the medical marijuana bill. I reread the medical marijuana measure and the bill we passed. My first impression was that the authors of the medical marijuana measure intended to be responsible in the way that it would be implemented. They got into such detail that it became unworkable. The bill that was passed preserved the intent of the medical marijuana measure. Neither addressed the implementation timeline. Nothing in the bill created any delays in it. If though, as we have been accused the legislature wanted to interfere with the measure, what we might have done is nothing. There were two fatal flaws in the measure. One flaw was it required that the organizations that would create factories and dispensaries would be non-profit. The other flaw was it did not legalize medical marijuana by not providing any protection or any providers that would certify that an individual qualified to use medical marijuana. As it stands now, medical providers do not prescribe marijuana. They certify the individual requesting it has a condition that is qualified. There are some flaws in Article 14. The authors of the constitution included a provision in there that says if any provision of Article 14 is in conflict with any other provision, the provisions of Article 14 supersede the other ones. What angers me most in the effort to pass Measure 1, the sponsoring committee worked to destroy the faith of the people in self-government. There is no excuse for that. Now before hearing 1521 and 2148 in the legislature, they started saying 2148 is the will of the people and 1521 is the legislature trying to get out from under this ethics measure. We can't change one word in the constitution without a vote of the people. Legislative process is the process of the people. 4001 allows the people the process and allows public hearings. I think if the public had a real understanding of what has now become Article 14 in conflict with the rest of the constitution, the outcome would be different. That's what 4001 does. (42:19)

Geoff Simon appeared in support. I chaired a coalition that opposed Measure 1 on the ballot. I believe in our state constitution we have language that is a direct violation of the first amendment, right of free speech. To me 4001 recognizes what our constitution is. Our state constitution should be sacrosanct. It should be difficult to change. Obviously, we should not be legislating through our constitution which is really what Measure 1 amounted to. Measures like that should be through the initiative process, and this measure has nothing to do with that. It strictly addresses the constitutional provisions, because you have no power to change those. If the voters are, in my opinion, fooled into voting for something that is bad,

you can't change it if it is a constitutional measure. You can if it is an initiated law. This measure says if the voters approve it, the legislature takes a look at it. There is a public hearing process. If you think it is okay, it is okay and goes into effect. If you don't think it is okay, you can maybe give some advice to voters and it goes back on the ballot, and if the voters approve it again, then it is part of the constitution. This does not in any way subvert the will of the people. It just creates a little higher hurdle to amend our constitution which I think is perfectly appropriate.

Opposition

Dustin Gawrylow, Managing Director of the ND Watchdog Network, appeared in opposition. (44:56) There are so many issues. Some people want to debate the ethics commission. They want to debate Marcy's Law. ND Watchdog Network opposed both of those. This issue of out-of-state money is a campaign finance issue which legislature could address. I would agree it is very easy for out-of-state interest to get involved, but there has been no effort to actually address that problem directly. Instead, the efforts have been to make it more difficult for North Dakotans to change their own constitution. Because it is easy for out-of-staters to change the constitution, the solution offered is make it more difficult for your own voters to change it. That seems to be targeting the wrong demographic. The very title of Article 3 is powers reserved to the people. It doesn't say unless the legislature says so or disagrees. You need to consider the ramifications of going down this route, because you are going to have your own unforeseen consequences. This has been the most bipartisan issue I have ever worked on. I would urge you to consider what the people actually do as far as the perception of the public. To me, a republic is a form of government and a democracy is how we choose that government. If you have an issue of who is funding the operations, who is writing the legislation, who is writing these measures, address that directly. Don't take it out on the people. (51:04)

Chairman Kasper: If this resolution passed, what would be the next step?

Mr. Gawrylow: Vote by the people.

Chairman Kasper: Therefore, aren't you contradicting tremendously where you are saying take the power away from the people when the first step is going to be to ask the people to make a decision by their vote?

Mr. Gawrylow: I don't think the legislature does the people any favors by giving them an opportunity to vote away their own rights.

Chairman Kasper: The people have the right to do that, do they not?

Mr. Gawrylow: They do.

Chairman Kasper: Therefore, they would be able to state their choice in their decision at the ballot box, would they not?

Mr. Gawrylow: Yes.

Chairman Kasper: How is that taking away rights of the people.

Mr. Gawrylow: By making the process more difficult in the future.

Chairman Kasper: They would learn about that, would they not, because all of this out-of-state money could come in and educate them on it?

Mr. Gawrylow: It could.

Chairman Kasper: That is right. It could.

Rep. Louser: The language in the resolution says that if the initiative doesn't pass the legislature, it automatically goes back on the ballot, so where is the difficulty?

Mr. Gawrylow: The difficulty is the time. You now have two public campaigns which means that you are going to have more money poured into certain issues. All of these resolutions making it more difficult will require more money. If the issue is truly taking money out of the process, you should be looking at ways to do that rather than ways that are going to make it more difficult.

Rep. Louser: The difficulty is the second campaign?

Mr. Gawrylow: That is part of it.

Rep. Louser: You mentioned the wave of proposed changes in a session. Would you agree that it is a response of the wave of constitutional amendments proposed on our ballot in the last decade?

Mr. Gawrylow: Yes. There was a wave in 2013 after the attempt to abolish property tax. It is a never ending process between push and pull between the people and the legislature. Why take away the rights of future generations to be able to create a framework for their own government that current generations have today?

Rep. Louser: You mentioned you advocated against the Marcy's Law proposal and your group advocated against the ethics proposal which is now Article 14. What public forums were available to you to advocate like this forum is today?

Mr. Gawrylow: The same sort of media that is open to anybody—TV, radio, newspapers. There was not a town hall style for those issues.

Rep. Louser: Of the two options for your ability to get your message out, have you found it more effective to just talk to the media or to be challenged in a forum where you can answer tough questions?

Mr. Gawrylow: I prefer the forum approach or call in radio approach.

Vice Chair Steiner: (1:01:23) Explain how your group is funded. What percentage of your money comes from in state and out of state? Can you name major contributors that would be known nationally?

Mr. Gawrylow: We started in 2006-2007 as the ND chapter of Americans for Prosperity. That folded, and then we turned into the ND Taxpayers' Association. Then we went to the 501C3 route. We are 100% in state solicited money. We do get checks unsolicited from out of state, but I have a policy of not asking for money from out of state. The people that donate to our group are folks that can cut checks for between \$50 a year to \$5,000 a year. There are people who donate to generally republican causes. I do have a few democratic type donors who like the message on issues like this that we push out there as far as protecting the will of the people. Because we are 501C3, we abide by IRS rules which are a lot more stringent than any campaign finance laws in the state of ND.

Vice Chair Steiner: You keep referring to the will of the people, but a billionaire from California who wants to spend \$6 million to put something in our constitution, is he truly the will of the people? You keep referring to the people as if the people are always North Dakota people bringing measures to change the constitution when in fact, in the last couple elections, it has been individuals who are very wealthy from out of state.

Mr. Gawrylow: The voters who vote on these measures are in state. The people who put them on the ballot, put their name behind them, are in state. The paid advertising agencies who promote these measures are in state, so when you criticize who the money is coming from, you are also criticizing the people in the state who put their name on these things. I don't disagree about the problem with out of state money. I do believe that is a campaign issue though. (1:04:32)

Rep. B. Koppelman: With the line that it doesn't matter where the idea originated, how is the state legislature taking away the will of the people by putting an idea in front of them that if the majority vote for, it will ultimately be their idea?

Mr. Gawrylow: As I learned in a college business law class, you do not have the right to sign away your rights in a contract. Putting a measure on the ballot that makes it more difficult for the public to influence their own government is asking the public to vote away their own rights. The title of Article 3 is powers reserved for the people. This measure says no, those will no longer be reserved to the people.

Rep. B. Koppelman: On the US level, if the process was followed and let's say the congress said we are going to propose an amendment that would essentially delete the right to bear arms. They get 2/3 in both chambers. They put it out to the states like the constitution prescribes. Of course, there is a protection from a 51% majority from taking that away from you because of the 2/3 there and 3/4 of the states' ratification. Let's say it comes out that we don't want the second amendment anymore. That sounds like a violation of what you learned in your contract law. How do you respond?

Mr. Gawrylow: It is a matter of should you do it. Even if all those things fell into place on your example, that probably would be civil war. The issue we had with the ethics commission was because we are governed by the IRS as far as what we disclose, we are accused of

being dark money. We do not have immediate disclosure like a candidate would. We have tax deductibility for our donors, but our tax returns are publicly searchable within three years of them being filed. The ethics bill as approved by the voters would require me to file state disclosure forms and disclose people who don't want to be disclosed in an immediate manner.

Chairman Kasper: It appears you are implying that the public does not have the ability to make an informed decision. Therefore, we as legislators should not put something before them that is so complicated that they might make the wrong decision.

Mr. Gawrylow: Using the same logic, we should question who they elect to legislature.

Rep. B. Koppelman: Those ballot initiatives and constitutional amendments that have passed tend to, you might say the one with the more money wins. By that logic and the same response to the criticism that you and others have leveled of the legislature even considering this idea of putting something like this on the ballot for the voters to decide, how much money can the legislature spend to lobby for that measure against the thousands or millions of dollars that would be derived from all other sources opposed to that matter?

Mr. Gawrylow: Zero.

Rep. Louser: If this were to go on the ballot, do you think the language in the measure would be the ballot language?

Mr. Gawrylow: It could. That is up to the secretary of state.

Rep. Louser: Do you think that is small enough that the whole measure would be on the ballot?

Mr. Gawrylow: Yes, because it is a legislatively initiated measure.

Rep. Schauer: It sounds like you are trying to save the legislature from itself. If this does pass, what would be your prediction on how people would vote on it?

Mr. Gawrylow: I would hope the people would vote it down.

Andrew Alexis Varvel, Bismarck, appeared in opposition. Attachment 3. (1:16:51-1:19:49)

Kevin Herrmann, Beulah, provided written testimony in opposition. Attachment 4.

Chairman Kasper closed the hearing.

Chairman Kasper opened the meeting on SCR 4001. (1:20:18)

Rep. Louser made a motion for a DO PASS.

Rep. Rohr seconded the motion.

Rep. Louser: This measure would create the forum that he prefers to discuss issues in as opposed to just one sided push media. That is why I made the motion for a do pass.

Rep. P. Anderson: It takes 2/3 of the legislature, both chambers, to override the governor's veto?

Chairman Kasper: Correct.

Rep. P. Anderson: Yet, this is just a majority of the members of each house. Why it isn't 2/3?

Chairman Kasper: The process is a measure is developed and gets its signatures. It comes to the legislative assembly for review and recommendation.

Rep. P. Anderson: Was there any discussion that it should be 2/3 versus just a majority?

Chairman Kasper: No.

Rep. Louser: The threshold would be if it were defeated in the assembly and it automatically goes back on the ballot, there isn't a 2/3 requirement for the voters either. If it goes back on the next ballot for a 50% plus one vote.

Rep. Schauer: I will be voting no on this. I think this is a trust issue. It sends a bad message to the people at home that the legislature doesn't trust us.

Rep. Hoverson: I like the bill for that reason. I learned something today from Senator Hogue. Do I represent the people? Do they trust me for how I think and the judgements I make? I think the people actually trust us, so I think this bill helps that. I am going to vote for it.

Rep. Johnston: I think this bill empowers the people. In my own district with some of the measures in the past, people were given soundbites. In some cases, they were given blandly false information to sign the petition and only to find out later that they were given false information. This gives us an opportunity to fix a problem. Unfortunately, a lot of people are voting on soundbites. When you are voting on a soundbite that could alter our constitution, there is just something inherently wrong with that.

Rep. Karls: She talked about a situation where she was approached by an individual to sign a petition.

Chairman Kasper: He mentioned a similar situation that happened to him.

Rep. Louser: This is the only format that is going to provide the forum for the give and take discussion. Even those opposed said they think it is up to the sponsoring committee which is actually the measure committee to create those debates, and I don't think they want to do that. There is going to be pressure on us based on how our district voted.

Rep. Schneider: I have to agree with Rep. Schauer. They believe it is an additional step. Senator Dever used the examples of the marijuana and ethics initiated measures. The voters are aware that folks tried to get progress on those two issues through the legislature in advance and resorted to initiated measure action in part because they thought that the legislature was never going to act on those two issues in any kind of a favorable way.

Rep. Johnston: When approaching our constitution, great care should be used and it should be difficult to change.

Rep. B. Koppelman: We really don't have the protection for our constitution now for the minority. I think that is what Senator Dever was trying to say. We do have that at the federal level, but we are lacking that at the state level. I think this reinstates some of that we had earlier in statehood.

Vice Chair Steiner: (1:31:50) I am going to resist this. I think the ballot is going to be overloaded. I don't think the voters are going to be educated on this. I am glad the bill is here. I am hoping through education we can maybe get to this at another session. I just don't think the timing is right for this one.

Rep. Johnston: If not now, when? What is on the horizon? If a certain amount of money could come in from another state to change our constitution, what is next? Maybe we haven't seen anything yet. I think this needs to be addressed before something really bad does happen.

Rep. Rohr: Senator Hogue responded he already has a plan in place about education. This is the first step.

Rep. Hoverson: I think a better cure to the problems that are being brought up out there is the election booth, not the measure process. I am staying yes.

Rep. Vetter: I am a little reluctant to put too much on the ballot when you have a great measure at 3010 which raises the threshold of constitutional measures.

Chairman Kasper: I will make a few comments from sitting on the ethics committee. In Measure 1, the term adjusted for inflation is in it. It pertains to the dollar amount of contribution that we need to report when we receive a campaign contribution. Current law says that any amount that you receive over \$200 must be reported by the person or entity that gave you the dollars. Anything under \$200 we now have to report in the aggregate, but we do not have to identify those people. The term adjusted for inflation is now saying that in the future based upon an index the \$200 is going to ratchet up. Right now our transparency is at \$200, but in the future we are going to have less transparency, because it is going to go from \$200 to \$200.45, \$200.90, and \$220 as time goes on. Right now on the measures committees, we require that anything over \$100 be reported. This measure increases it to \$200, so there is less transparency there. If that had gone through this process, we would have been able to have that hearing that we are having right now to try to fix those things instead of trying to deal with something that is already in the constitution which is very difficult to deal with.

House Government and Veterans Affairs Committee
SCR 4001
3/14/19
Page 10

A roll call vote was taken. 10-3, 1 absent.

Rep. Louser will carry the bill.

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union Room, State Capitol

SCR 4001
4/5/2019
34565

- Subcommittee
 Conference Committee

Committee Clerk: Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to the process for approving constitutional amendments

Minutes:

Attachment 1

Chairman Kasper opened the meeting on SCR 4001. We have a request from leadership of the house and senate to do further work on SCR 4001.

Rep. Johnston moved to reconsider SCR 4001.

Rep. B. Koppelman seconded the motion.

Voice vote. Motion carries.

Chairman Kasper: There have been four or five bills that have been circulating in both chambers on constitutional amendments, one of which is 4001. 4001 requires that if a constitutional amendment is passed, it comes back to the legislature for review. The legislature has to consider the resolution as it was on the ballot, and if the legislature votes in favor of keeping that, then it would become law at that point. This bill is the way our constitution was originally written back in 1919, and then it was amended out of that process later on. If the legislature votes to disapprove, then it goes back on the ballot in the following election. As we have seen over the last number of elections, the influence of outside campaign money coming into ND has been pretty prevalent. Rep. Steiner has 3034 in the senate which is also a constitutional amendment. That is the amendment I passed out to all of you. Attachment 1. We are asking to amend Page 1, Line 19 into 4001. Leadership has asked us to combine those two bills into one bill so that we are dealing with less number of bills.

Rep. P. Anderson: It is very serious to change our constitution. From 2000 to 2018 the public has put on 10 on the ballot to change the constitution. Our legislature has put on 25, so we are changing the constitution way more often than any of our citizens.

Rep. B. Koppelman: It is an interesting statistic, but I think if you look at the number of times the legislature has put specific statue type language in the constitution or on the ballot, it has been very few. I like the vetting end.

Rep. Rohr: Page 1, Line 19, why the word “may”?

Chairman Kasper: If you continue reading, the “only” takes care of the “may”.

Rep. Louser moved to adopt the amendment.

Rep. Rohr seconded the motion.

Rep. Louser: The timing here works very well. The timing of this language implemented into 4001 is a short window, and the legislature would convene shortly after the election and consider that ballot language. I think this is very appropriate to do.

A roll call vote was taken. 11-2, 1 absent.

Rep. Schauer: I didn’t like the bill from the start and still don’t. I think it infringes on the will of the people and makes it more difficult. I will maintain my initial position and vote no.

Rep. Hoverson: Did you say it is reverting back to the original language?

Chairman Kasper: The constitution of the state of ND back in 1919 required the same procedure as SCR 4001 is. From 1919 to today, somewhere along the line it was amended to change the overview of the legislature.

Rep. Hoverson: They key word to me in this is rigor. I don’t think the frequency of how many amendments have been done is the issue for me so much as the process. There is a lot of work that goes through with a bill, a lot of rigor. When I compare that to the rigor of the people getting signatures, I don’t think there is any comparison. I do support this idea because of that reason.

Rep. Schneider: This session has been filled with attempts to impede Article 3 which are the powers reserved to the people. The attempts I have seen this session have presented barriers to the people speaking. I think it is critically important that they have a voice in this particular way, and I am for preserving the powers reserved to the people in Article 3 which requires me to vote against this.

Rep. Louser: If I recall in discussions with Senator Hogue, I believe the original going back to 1919 required two votes of the legislature to ratify a constitutional amendment, so it would have been two years separate. This isn’t quite as rigorous as back then. This is really the only opportunity for a forum to be presented to hear pros and cons, and the amended version as you mentioned I think is even better than what came to us the first time. **I move a do pass as amended.**

Rep. Rohr seconded the motion.

Rep. B. Koppelman: As time goes on, I am getting a little more offended by some of the testimony we have heard in the past about how we are somehow assaulting the people or changing the constitution, neither of which I do believe is the case. We have to assume that there are members of “the people” who want it to be harder to change the constitution, because they don’t want other portions of “the people” to be readily changing it just because a millionaire or billionaire has a fancy. Maybe we should have it made it more like the US constitution. I find it both interesting and unnerving that we are having people tell us that we are assaulting the people. You can’t believe in the power of the people and then say we believe in the freedom of information and public forum, and then say we think it is an assault and then give them a choice.

Vice Chair Steiner: I appreciate that my bill was added on. I appreciate that possibly it makes the bill stronger, but I didn’t vote for the original bill, and I still don’t think that this is the bill that we should present to the people, so I am not going to vote for this.

Rep. P. Anderson: No matter what we say or do, I think this is a backlash on Measure 1, and I think that is what the people are going to think.

Chairman Kasper: The founding fathers were concerned that as time goes on, the will of the people would be overtaken by big government, and they were concerned that there had to be a way for the people to initiate an amendment to the US constitution so they came up with Article V. The congress can propose an amendment, and it has to be ratified by $\frac{3}{4}$ of the states, or a convention of the states could be called by the state legislatures if $\frac{2}{3}$ of the state legislatures ask for this convention to consider proposing amendments to the US constitution. That convention has no power to change the constitution at all. It has the power to propose the amendments, and they have to be ratified by $\frac{3}{4}$ of the state legislatures as well. How do we have an opportunity to vet a change in our constitution if we don’t have this possibility? I understand if this goes on the ballot, there are going to be huge amounts of people against it for the reason Rep. Anderson and others indicated. If we had a magic way for the people of our state to become better educated on constitutional or referred issues, I think that would solve a lot of problems, but we don’t have that opportunity. I support the review process in the bill. I don’t believe the intention of this is because of Measure 1. You will recall from Senator Hogue’s testimony, he indicated back to four or five measures that have been passed mostly by outside money. That is the part I object to. I don’t like that outside money is coming into our state to change our constitution, but it is free speech. I think this bill is a step in the right direction.

A roll call vote was taken. 8-5, 1 absent.

Rep. Louser will carry the bill.

DO 4/5/19

PROPOSED AMENDMENTS TO ENGROSSED SENATE
CONCURRENT RESOLUTION NO. 4001

Page 1, line 7, after the period insert "The measure also requires constitutional amendments to be submitted to voters only at general elections."

Page 1, line 19, after the period insert "An initiative to amend the constitution may be placed on the ballot only at a general election."

Page 1, line 19, remove "in a statewide"

Page 1, line 20, remove "election"

Page 1, line 23, replace "statewide" with "general"

Re-number accordingly

Date: 3-14-19
Roll Call Vote #: 7

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 4001

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Louser Seconded By Rep. Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Pamela Anderson	A	
Vice Chair Vicky Steiner		X	Rep. Mary Schneider		X
Rep. Jeff Hoverson	X				
Rep. Craig Johnson	X				
Rep. Daniel Johnston	X				
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Karen Rohr	X				
Rep. Austen Schauer		X			
Rep. Steve Vetter	X				

Total (Yes) 10 No 3

Absent 1

Floor Assignment Rep. Louser

If the vote is on an amendment, briefly indicate intent:

Date: 4-5-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 4001**

House Government and Veterans Affairs Committee
 Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Johnston Seconded By Rep. B. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper			Rep. Pamela Anderson		
Vice Chair Vicky Steiner			Rep. Mary Schneider		
Rep. Jeff Hoverson			<i>Vote Motion Carries</i>		
Rep. Craig Johnson					
Rep. Daniel Johnston					
Rep. Karen Karls					
Rep. Ben Koppelman					
Rep. Vernon Laning					
Rep. Scott Louser					
Rep. Karen Rohr					
Rep. Austen Schauer					
Rep. Steve Vetter					

Total (Yes) _____ No _____
 Absent _____
 Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 4-5-19
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 4001**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 19.3041.04002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Louser Seconded By Rep. Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Pamela Anderson		X
Vice Chair Vicky Steiner	X		Rep. Mary Schneider		X
Rep. Jeff Hoverson	X				
Rep. Craig Johnson	A				
Rep. Daniel Johnston	X				
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Karen Rohr	X				
Rep. Austen Schauer	X				
Rep. Steve Vetter	X				

Total (Yes) 11 No 2

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 4-5-19
 Roll Call Vote #: 3

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 4001**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Louser Seconded By Rep. Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Pamela Anderson		X
Vice Chair Vicky Steiner		X	Rep. Mary Schneider		X
Rep. Jeff Hoverson	X				
Rep. Craig Johnson	H				
Rep. Daniel Johnston	X				
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Karen Rohr	X				
Rep. Austen Schauer		X			
Rep. Steve Vetter		X			

Total (Yes) 8 No 5

Absent 1

Floor Assignment Rep. Louser

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SCR 4001, as engrossed: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SCR 4001 was placed on the Sixth order on the calendar.

Page 1, line 7, after the period insert "The measure also requires constitutional amendments to be submitted to voters only at general elections."

Page 1, line 19, after the period insert "An initiative to amend the constitution may be placed on the ballot only at a general election."

Page 1, line 19, remove "in a statewide"

Page 1, line 20, remove "election"

Page 1, line 23, replace "statewide" with "general"

Renumber accordingly

2019 TESTIMONY

SCR 4001

SCR 4001
1/10/19
A# #1
pg 1

1 TESTIMONY OF DAVID HOGUE IN SUPPORT OF SCR 4001

2 SENATE GOVERNMENT AND VETERANS' AFFAIRS COMMITTEE

3 JANUARY 10, 2019

4
5 Good Morning Chairman Davison and members of the Senate Government and
6 Veterans' Affairs Committee. My name is David Hogue. I am a North Dakota state
7 senator representing District 38, which includes northwest Minot and the city of
8 Burlington. I appear before your committee to seek support for SCR 4001.

9 SCR 4001 is a proposed resolution that would amend our state constitution for
10 changing how we amend our state constitution. It's a proposed amendment to change
11 the amendment process. Article III of our state constitution permits enactment of laws
12 through the initiated measure process. It permits enactment of new laws to the ND
13 Century Code and amendment of our state constitution.

14 There has been a significant amount of media interest in SCR 4001, and I have
15 read all of that coverage. I testify that I have read all of it because our modern search
16 engines permit me to know when someone is publishing information about this
17 resolution or the initiated measure process since introduction of SCR 4001.

18 I conclude the majority of the coverage has misunderstood what SCR 4001
19 addresses, so my first point of discussion with you is to describe what SCR 4001 is not
20 about. First, SCR 4001 does not address the statutory initiated measure process. So,
21 for example, a measure to legalize medical marijuana, recreational marijuana, Sunday
22 opening, or when an academic school year starts are not proposals that SCR 4001 is

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1 related to. The error that most commentators have made relates to a failure to
2 recognize the fundamental distinction between statutory law on the one hand, and the
3 core values that define our North Dakota government and philosophy that is contained
4 within our state constitution, on the other hand.

5 Nor does SCR 4001 relate to referred measures as one public commentator has
6 mistakenly suggested. Referred measures are the people's attempt to set aside a law
7 that the legislature and the governor enacted. The most recent example related to the
8 legislature's attempt to permit corporate investment in dairy farms. The people gathered
9 signatures to "refer" this measure. After sufficient signatures were gathered, there was
10 a vote, and the people of North Dakota invalidated the legislative measure regarding
11 corporate dairy farms. SCR 4001 has nothing to do with referred measures.

12 SCR 4001 relates to how we as North Dakotans will govern ourselves. There are
13 17 states that permit constitutional initiated measures, but few are as reckless and ill-
14 advised as ours. SCR 4001 proposes to change that vulnerability.

15 For this proposed change, some history is in order. Our Founders concluded
16 that the people should not be permitted to propose constitutional amendments. So, our
17 original constitution provided that only the legislature could propose a constitutional
18 amendment. To propose an amendment, the legislature had to pass the proposal in
19 two consecutive legislative sessions. After that, the proposal had to be voted on and
20 passed by a majority of the people.

21 The original constitutional provision is attached to my testimony as attachment 1.
That requirement--that it be voted on by two consecutive legislative assemblies--is the

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pg 3

1 inspiration for the provision of SCR 4001 that requires consecutive votes by the
2 legislative assembly. Contrary to some assertions that this is an onerous impossible
3 hurdle, I think it respects the level of scrutiny that constitutional amendments warrant.
4 In the words of Barbara Streisand, it takes us back to "The Way We Were."

5 But SCR 4001 permits either the people or the legislative assembly to propose
6 constitutional amendments. This is a right the people did not enjoy at the inception of
7 statehood.

8 When the people and the legislature next amended the process for amending our
9 state constitution, they continued the format of requiring both the people and the
10 legislature to approve constitutional amendments. I have attached a copy of that
11 change as well in attachment 2.

12 Having studied that proposal, I now support it over SCR 4001. Under this
13 version of our constitutional law, either the people or the legislature could propose
14 constitutional amendments, but the other would always have to concur. Do you see the
15 checks and balances?

16 Under this version in Attachment 2, if the people initiated a constitutional
17 amendment and subsequently approved it, it would then go to the legislative assembly
18 for its approval. If the legislative assembly approved it, it became part of the
19 constitution. If the legislative assembly did not concur, the measure went back on the
20 ballot for the people to approve **over the objection** of the legislative assembly. **In this**
21 **way, the people had the last word.** This a reasonable way to govern in my view.

5 CR 4001
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1 I want you to try to imagine a proposal that will fundamentally change our
2 criminal justice system. How should that proposal be reviewed, considered, and
3 adopted by the people of North Dakota?

4 What if I told you the proposal was drafted by a law firm in California for a
5 California resident. That proposal was sent to a public relations firm in North Dakota for
6 review and comment and after deliberation between the law firm in California and the
7 public relations firm in North Dakota, the measure was sent to the ND Sec of State for
8 approval as to the form of measure. Then, the content of the measure was available on
9 the ND Sec. of State web site, then subsequently voted up or down by the people of
10 North Dakota.

11 But what if I told you there's another process for reforming our criminal justice
12 system. The proposal is published. The legislature schedules hearings on the
13 proposal. Stakeholders who will be affected by the proposal can come to the hearing
14 and voice support or opposition to the proposal. The stakeholders can offer testimony;
15 they can even offer amendments to the proposal.

16 Imagine after the hearings that there would be debate and maybe even
17 refinements to the proposal. Imagine that the permanent measure that will
18 fundamentally change our criminal justice system is subjected to debate, public
19 hearings, amendments, and rigorous scrutiny.

20 What do you choose?

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pg 5

1 I point directly to the history of the state of California, and North Dakota's recent
2 history with constitutional initiated measures for my reasons for advocating this
3 measure. There are several learned people who have concluded that California's once
4 booming economy was crippled by the initiated measure process that California is now
5 burdened with.

6 John Diaz, a learned observer of California's system writes: "Today, the initiative
7 process is no longer the antidote to special interests and the moneyed class; it is their
8 vehicle of choice to attempt to get their way without having to endure the scrutiny and
9 compromise of the legislative process."

10 I say that Mr. Diaz was prophetic, though he was not referring to North Dakota's
11 recent history. I append to my testimony as attachments 3, 4, 5, and 6, the spending for
12 the last four proposed constitutional measures in North Dakota. For the media and
13 opponents of SCR 4001, attachment 3-6 are raw: a firm, square punch in the nose to
14 the assertion that SCR 4001 is a power struggle between the people of North Dakota
15 and an "elitist" legislature. Where are the people in these last four constitutional
16 measures?

17 Those publications that have been critical of SCR 4001 don't have the inclination
18 nor perhaps the space to print that raw data. It does not comport with their narrative of
19 power struggle between the "people" and a supposed elitist legislature. It's a false
20 narrative that should be arrested. This measure is about good government, and the
21 right to self-governance, not about a ginned up power struggle between the people's
22 elected representatives and the people.

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A H H I
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1 Chairman Davison and committee members, I'm happy to stand for your
2 questions.

3

4

5

ser 4001
1-10-19
AH #1
Pg 7

§ 196. The governor and other state and judicial officers except county judges, justices of the peace and police magistrates, shall be liable to impeachment for habitual drunkenness, crimes, corrupt conduct, or malfeasance, or misdemeanor in office, but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of trust or profit under the state. The person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

§ 197. All officers not liable to impeachment, shall be subject to removal for misconduct, malfeasance, crime or misdemeanor in office, or for habitual drunkenness or gross incompetency in such manner as may be provided by law.

§ 198. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

§ 199. On trial of impeachment against the governor, the lieutenant governor shall not act as a member of the court.

§ 200. No person shall be tried on impeachment before he shall have been served with a copy thereof, at least twenty days previous to the day set for trial.

§ 201. No person shall be liable to impeachment twice for the same offense.

ARTICLE XV.—FUTURE AMENDMENTS.

§ 202. Any amendment or amendments to this constitution may be proposed in either house of the legislative assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered on the journal of the house with the yeas and nays taken thereon, and referred to the legislative assembly to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice, and if in the legislative assembly so next chosen as aforesaid such proposed amendment or amendments, shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislative assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the legislative assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislative

assembly voting thereon, such amendment or amendments shall become a part of the constitution of this state. If two or more amendments shall be submitted at the same time they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

ARTICLE XVI.—COMPACT WITH THE UNITED STATES.

§ 203. The following article shall be irrevocable without the consent of the United States and the people of this state:

First. Perfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

Second. The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and that said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States residing without this state shall never be taxed at a higher rate than the lands belonging to residents of this state; that no taxes shall be imposed by this state on lands or property therein, belonging to, or which may hereafter be purchased by the United States or reserved for its use. But nothing in this article shall preclude this state from taxing as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person, a title thereto, by patent or other grant save and except such lands as have been or may be granted to any Indian or Indians under any acts of congress containing a provision exempting the lands thus granted from taxation, which last mentioned lands shall be exempt from taxation so long, and to such extent, as is, or may be provided in the act of congress granting the same.

Third. In order that payment of the debts and liabilities contracted or incurred by and on behalf of the territory of Dakota may be justly and equitably provided for and made, and in pursuance of the requirements of an act of congress approved February 22, 1889, entitled, "An act to provide for

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pg 8

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 pg 9

by law for a special election or elections. Any measure referred to the people shall take effect when it is approved by a majority of the votes cast thereon and not otherwise, and shall be in force from the date of the official declaration of the vote.

The enacting clause of all the initiative bills shall be, "Be it enacted by the people of the State of North Dakota." This Section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. The whole number of votes cast for Secretary of State at the regular election last preceding the filing of any petition for the initiative and referendum shall be the basis upon which the number of legal voters necessary to sign such petition shall be counted.

Petitions and orders for the initiative and for the referendum shall be filed with the Secretary of State, and in submitting the same to the people he and all other officers shall be guided by the general laws and the acts submitting this amendment until legislation shall be especially provided therefor.

This amendment shall be self executing, but legislation may be enacted to facilitate its operation.

Yes 48,783
 No 19,964

A majority of the voters voting on said proposed amendment having voted in favor of the adoption of the said proposed amendment, the said proposed amendment is hereby duly declared carried and adopted.

ARTICLE XVI.

§ 202. This Constitution may be amended as follows:

FIRST: Any amendment or amendments to this Constitution may be proposed in either house of the legislative assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendments shall be entered on the journal of the house with the yeas and nays taken thereon, and referred to the legislative assembly to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice, and if the legislative assembly so next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all members elected to each house, then it shall be the duty of the legislative assembly to submit such proposed amendment or amendments to the people in such manner and at such times as the legislative assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislative assembly voting thereon, such amendment or amendments shall become a part of the Constitution of this state. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

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SECOND: Any amendment or amendments to this Constitution may also be proposed by the people by the filing with the Secretary of State, at least six months previous to a general election, of an initiative petition containing the signatures of at least twenty-five per cent. of the legal voters in each of not less than one-half of the counties of the state. When such petition has been properly filed the proposed amendment or amendments shall be published as the legislature may provide, for three months previous to the general election, and shall be placed upon the ballot to be voted upon by the people at the next general election. Should any such amendment or amendments proposed by initiative petition and submitted to the people receive a majority of all the legal votes cast at such general election, such amendment or amendments shall be referred to the next legislative assembly, and should such proposed amendment or amendments be agreed upon by a majority of all the members elected to each house, such amendment or amendments shall become a part of the Constitution of this state. Should any amendment or amendments proposed by initiative petition and receiving a majority of all the votes cast at the general election as herein provided, but failing to receive approval by the following legislative assembly to which it has been referred, such amendment or amendments shall again be submitted to the people at the next general election for their approval or rejection as at the previous general election. Should such amendment or amendments receive a majority of all the legal votes cast at such succeeding general election such amendment or amendments at once become a part of the Constitution of this state. Any amendment or amendments proposed by initiative petition and failing of adoption as herein provided, shall not be again considered until the expiration of six years.

Yes 43,111
No 21,815

A majority of the voters voting on said proposed amendment having voted in favor of the adoption of the said proposed amendment, the said proposed amendment is hereby duly declared carried and adopted.

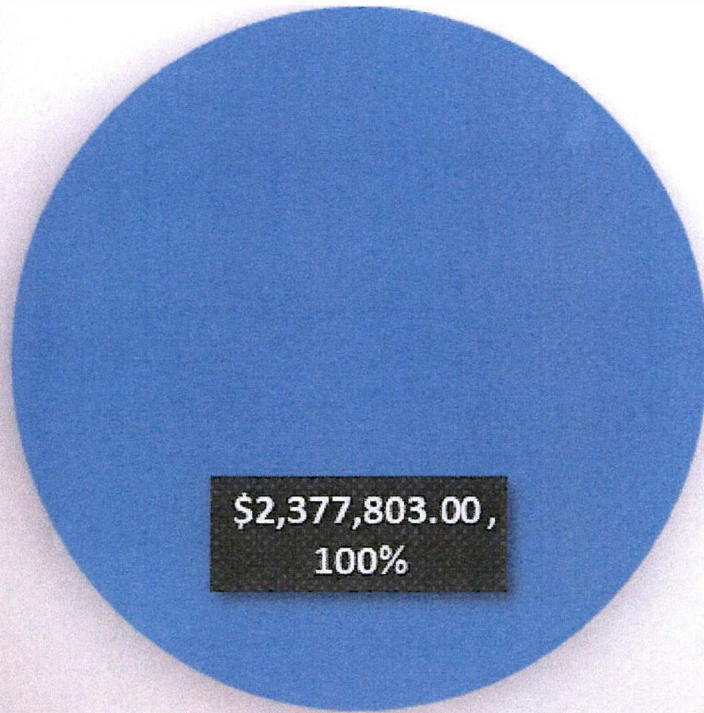
ARTICLE XVII.

§ 216. The following named public institutions are hereby permanently located as hereinafter provided, each to have so much of the remaining grant of one hundred and seventy thousand acres of land made by the United States for "other educational and charitable institutions," as is allotted by law, viz:

FIRST: A Soldiers' Home, when located, or such other charitable institution as the legislative assembly may determine at Lisbon. in the County of Ransom, with a grant of forty thousand acres of land.

SECOND: The School for the Blind of North Dakota, at Bath-

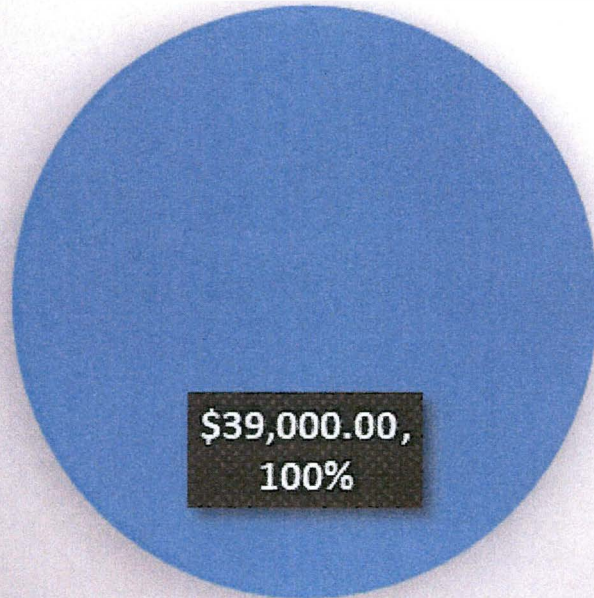
Marsy's Law For North Dakota Funding Sources



- NOT ND Based Funding
- ND Based Funding

1181
AH-195
Schr-4001

North Dakotans for Citizen Voting Funding Sources

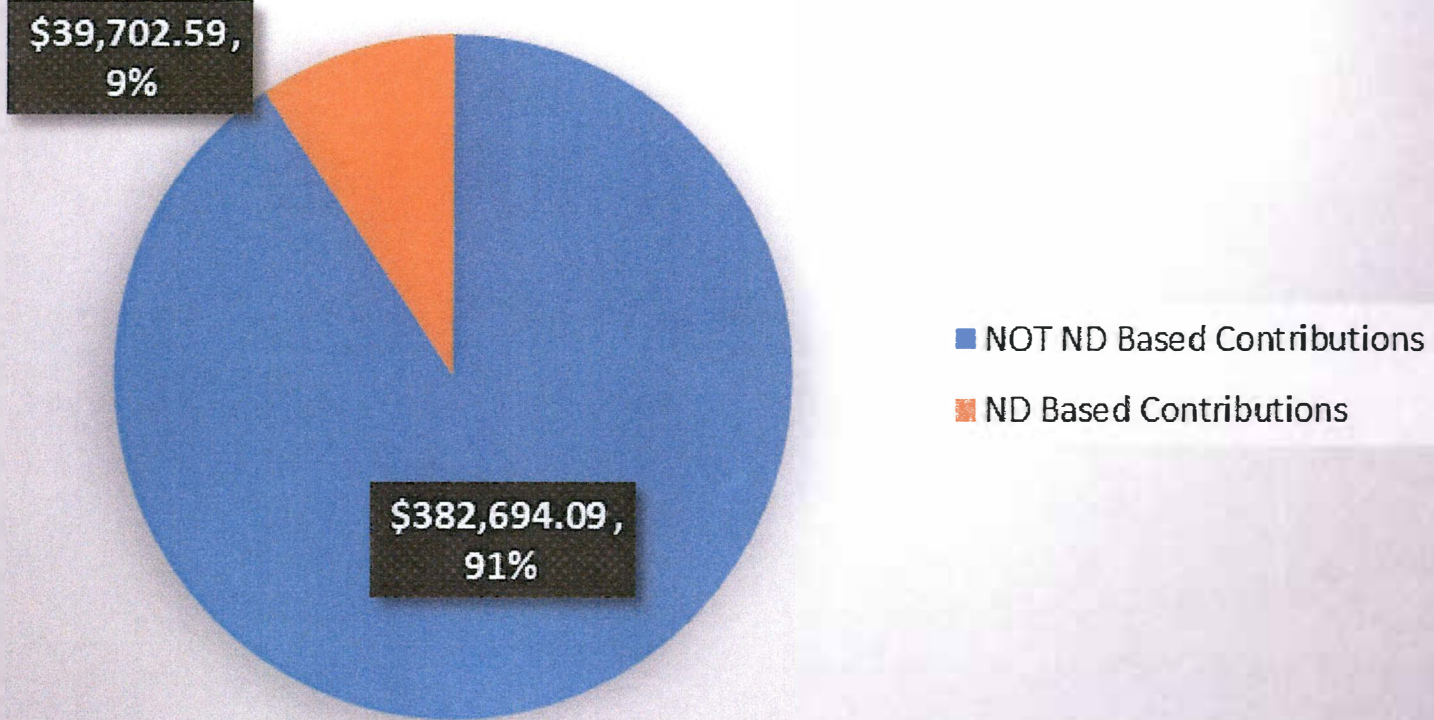


- NOT ND Based Contributions
- ND Based Contributions

\$39,000.00,
100%

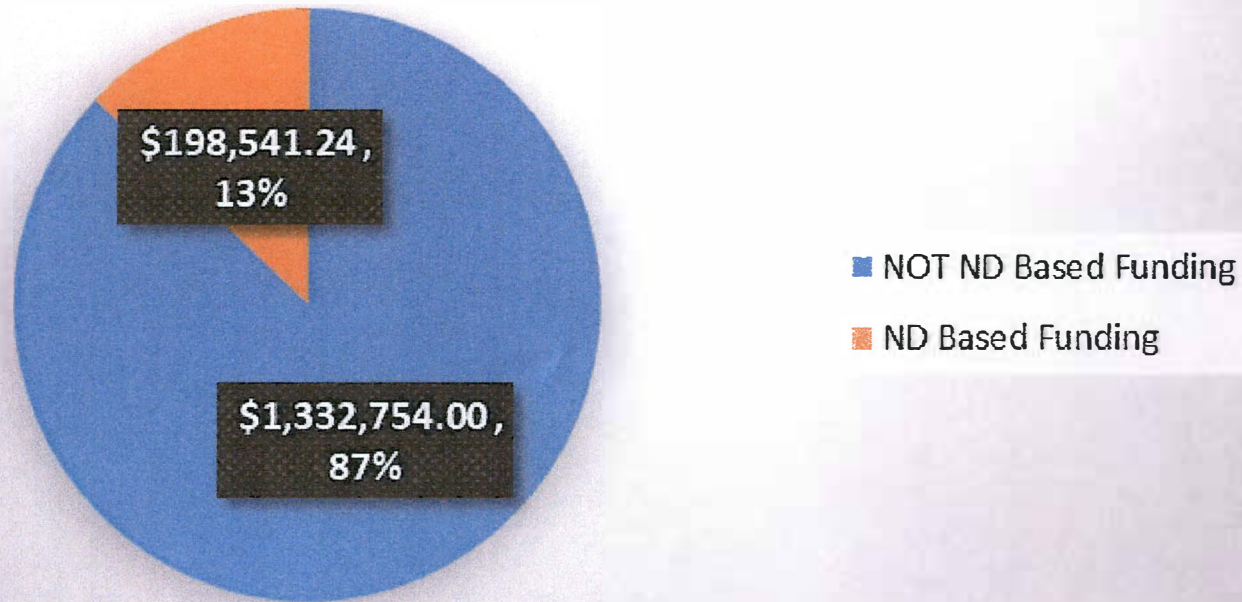
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Measure 1 Funding Sources



See 4001
1-10-11
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North Dakotans for Clean Water, Wildlife, and Parks Funding Sources



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#1
#1
pg 14

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Pg 1

19.3041.03001
Title.

Prepared by the Legislative Council staff for
Senator Hogue
January 9, 2019

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4001

Page 1, line 4, replace "approved by" with "submitted to" ^{2nd} "approved by"

Page 1, line 5, remove "two"

Page 1, line 5, replace "assemblies before becoming" with "assembly. Under this measure, if the legislative assembly does not approve the constitutional measure, the measure will be placed on the ballot again, and, if approved by the voters, will become"

Page 1, line 18, remove "two"

Page 1, line 18, replace "assemblies" with "assembly"

Page 1, line 19, replace "both" with "the"

Page 1, line 19, replace "assemblies" with "assembly"

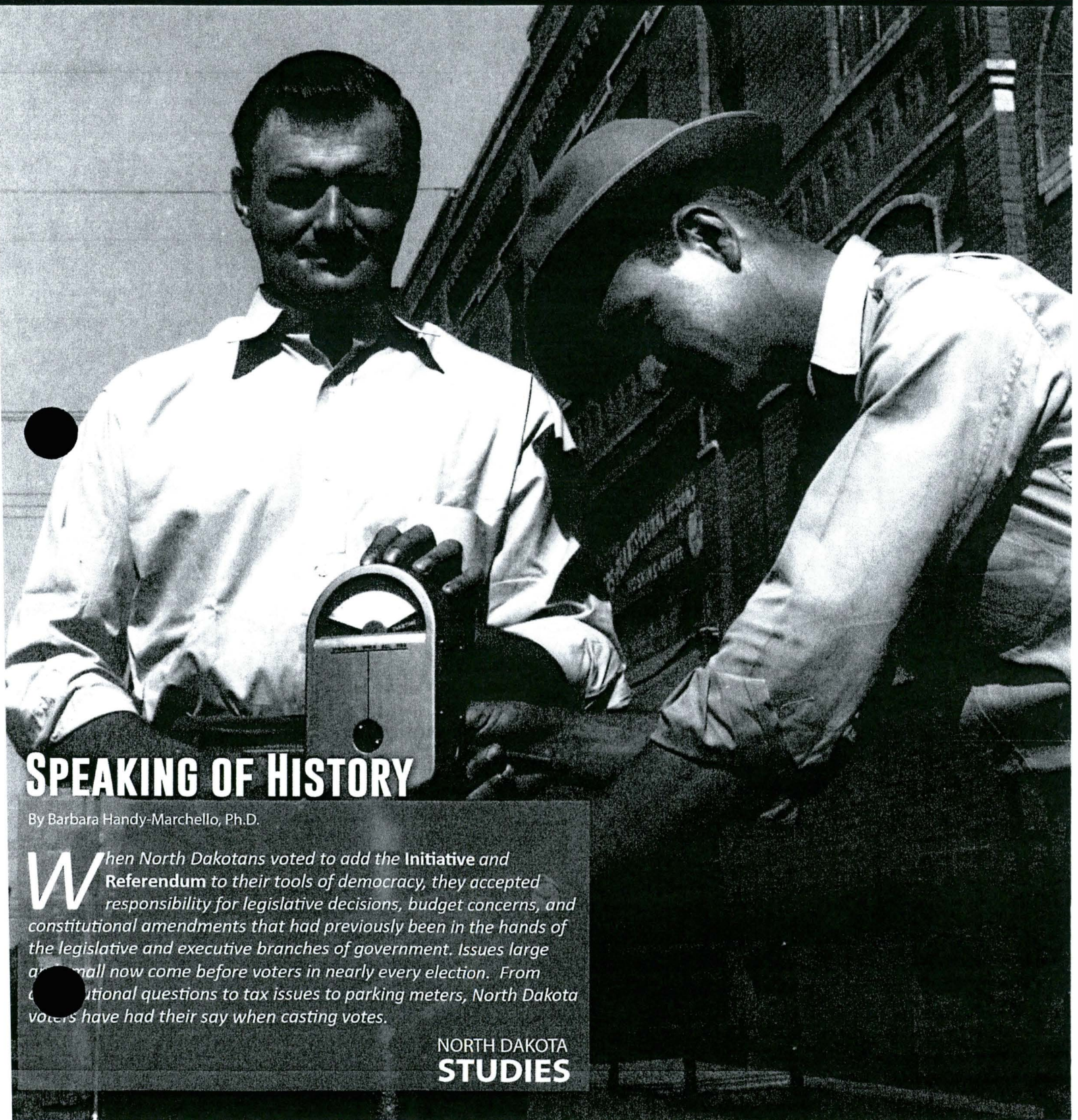
Page 1, line 20, after the underscored period insert "If the legislative assembly does not approve the initiative, the initiative must be placed on the ballot at the next statewide election. If the majority of votes cast on the initiative are affirmative, the initiative is deemed enacted."

Renumber accordingly

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NORTH DAKOTA STUDIES

A PROGRAM OF THE STATE HISTORICAL SOCIETY OF NORTH DAKOTA • FALL 2018 *Sam Dever*



SPEAKING OF HISTORY

By Barbara Handy-Marchello, Ph.D.

When North Dakotans voted to add the **Initiative and Referendum** to their tools of democracy, they accepted responsibility for legislative decisions, budget concerns, and constitutional amendments that had previously been in the hands of the legislative and executive branches of government. Issues large and small now come before voters in nearly every election. From constitutional questions to tax issues to parking meters, North Dakota voters have had their say when casting votes.

NORTH DAKOTA
STUDIES

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RH H3
Pg 2

Initiative and Referendum: *Tools of Democracy*

In 1787, Benjamin Franklin was asked what kind of government the new Constitution created. He is reported to have answered, "A Republic, if you can keep it." Historians usually interpret his statement to mean that a republic, or a representative democracy as our government is often described, requires active participation of all citizens. However, in the early Republic, citizenship rights were limited. Rights expanded over the course of the 19th century and, by 1890, the quest for expanded rights in governance was supported by politically active citizens known as Progressives. The period of 1890 to 1920 is known as the Progressive Era in American history.

Progressives supported the initiative and referendum in state government to expand the "toolbox of democracy." Initiative and referendum (I and R) are two different actions. An **initiative** allows citizens to propose a law or a constitutional amendment by petitioning to have the measure placed on the ballot. If the measure is approved by a vote of the people, it becomes law. **Referendum** (also called referral) is a process by which people can petition to have a bill that has already passed the legislature referred to the people for a vote. If a referral fails, the bill becomes law as previously approved by the legislature. If the voters approve a referred measure, the bill is nullified, as though it had been vetoed by a governor. The legislature must wait seven years before attempting to again pass a referred bill over the people's vote. However, the legislature can overturn a referral with two-thirds vote in both houses before the seven-year period expires.

In 1902, **Katherine V. King** of McKenzie, North Dakota, known as the "Mother of Initiative and Referendum," organized a state

chapter of the **Direct Legislation League**. She was active in reform and prohibition causes through the Woman's Christian Temperance Union and the Socialist Party. King and the state chapter of the Direct Legislation League urged the legislature to consider initiative and referendum in 1903, but the measure failed to gain support. In 1907, after the "revolution of 1906" had blunted the power of "Boss" **Alexander McKenzie** and placed Progressive Democrat "Honest" **John Burke** in the North Dakota governor's chair, the legislature gave due consideration to a bill proposing initiative and referendum as constitutional amendments.

The 1907 bill was introduced by **Lars A. Ueland** of Edgeley. The bill he introduced in the North Dakota legislature allowed citizens to petition to place a measure on the ballot

that would either become law or an amendment to the state constitution. The petition had to have the signatures of 8 percent of the voters. Because Ueland's bill was offered as a constitutional amendment, it first had to pass both houses of the legislature, and be approved by the next (1909) legislative session. The bill then went to the voters for final approval. The bill passed both houses in 1907.

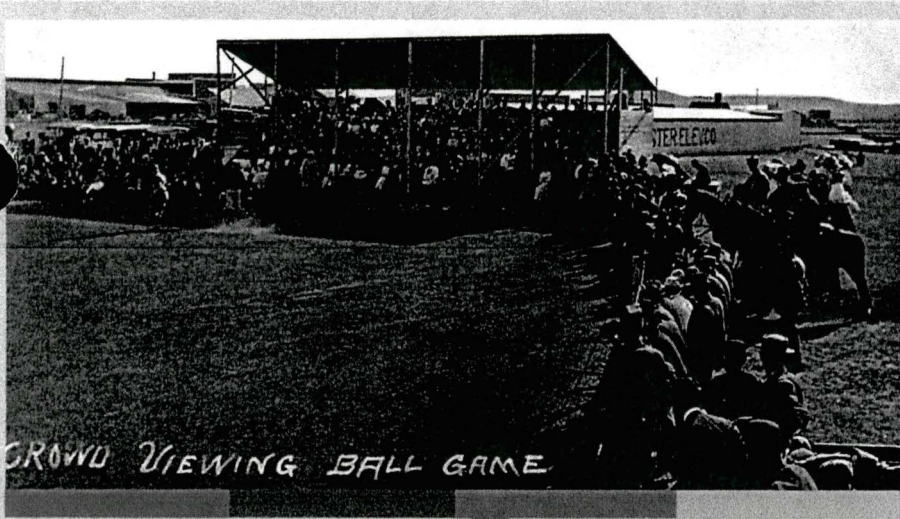
The Ueland bill (called the Thoreson bill after Ueland was no longer in the legislature) was presented to the 1909 session. Two other initiative and referendum bills were introduced that year. The three bills exposed both the possible complications of an I and R bill and the contention over expanding the **tools of democracy**. The competing bills required signatures on the petitions from at least half the counties in the state.

LARS UELAND: THE FATHER OF INITIATIVE AND REFERENDUM IN NORTH DAKOTA

The law allowing for initiative and referendum in North Dakota was written and presented to the legislature by people who believed in the right and obligation of citizens to actively engage in governmental processes. **Lars Ueland**, who introduced the first bill when he was a member of the 1907 legislature, was an activist on many fronts.

Ueland was born in Wisconsin and had attended Luther College before moving to Dakota Territory and establishing a farm near Edgeley. He was always interested in improving his farm and his community. He established the Lyceum at Pomona View Number One (school) where he and his neighbors met monthly to share ideas and foster a sense of community. He promoted a community telephone system that eventually reached from Edgeley to Jud. He was interested in new crops and agricultural techniques and was one of the first farmers to raise durum wheat. Along with other progressive farmers, he was a founder of the Grain Growers Association. He served in the first state legislature as a Republican, was re-elected as a Populist in 1893, and ran successfully as a Democrat in 1907. In 1892, he served on the executive committee of the national Direct Legislation League. He introduced the Initiative and Referendum bill in 1907, but was not re-elected in 1908 to continue his support of the bill. In 1909, he moved with his wife, Hanna, and their 11 children to Oregon where he established an organization for former North Dakotans living in Oregon.

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pg 3



Residents of New England, North Dakota, turned out for this baseball game in the 1910s. Baseball games were not legal on Sundays until voters approved an initiated measure in 1920. SHSND SA 00175.00024

In 1938, an initiated measure passed that granted state-funded pensions (\$40 per month) to the elderly. In 1940, a measure earmarked sales tax revenue for the support of schools and the poor. Many years later, voters approved an initiated measure that abolished the requirement to declare a party affiliation when voting (the open primary).

In 1948, voters approved an initiated measure that made North Dakota the only state that banned parking meters. The petition was started by "Hard Wheat Henry" Howard, who farmed near Minot. When Howard felt he had been unjustly fined for not "feeding" coins into the parking meter, he turned to the initiative process to ban parking meters. He was successful, but the legislature revised the law in 1951 making parking meters legal once again. This time Howard used the referral process to have the law placed on the ballot. Voters voted "no" to oppose the new law in 1952 and public street parking has been free ever since.

The bill introduced by Senator C. W. Plain (R-Cavalier) disallowed petitions for measures that required a budget appropriation. All three bills failed in 1909.

The legislature considered another R bill in 1911. The concept now had broad backing from Progressive Republicans. The bill passed and, as required by the state constitution, was passed again in 1913. This law required the signatures of 10 percent of voters on a petition for initiated measures, and signatures of 15 percent of voters for a constitutional amendment. Petitions for either initiated measures or amendments had to include signatures from at least half of the state's counties. Voters approved the amendment in 1914. Progressive ideals concerning the role of citizens in governance were now written into North Dakota law.

Most states that had approved an I and R bill (including South Dakota) had seen little use of the law. In North Dakota, there were no initiated measures on the ballot until the **Nonpartisan League** established its influence after the 1916 election. In 1918, there were seven League-sponsored initiated measures on the

ballot. Three of the measures made significant changes in the way laws and constitutional amendments were created and passed. One of these measures reduced the number of signatures required (10,000 to initiate; 7,000 to refer); another forbade the legislature to exempt any bill from referendum. Another measure allowed constitutional amendments to be approved by one legislative assembly (not two as previously required) and the people's vote. All seven measures passed with substantial majorities.

Over the next century, the people were actively engaged in determining laws and amendments to the state constitution. In 1932, 16 initiated measures and one referred measure were placed on the ballot. Many of the 1932 initiated measures were related to the financial condition of the state during the grim years of the Great Depression. Among other changes, voters reduced the salaries of state and local elected officials and reduced property taxes. Voters also **banned corporations** from engaging in farming. (See sidebar on page 4.)

As the Depression waned, voters used the initiative to manage state funds in the interest of the people.

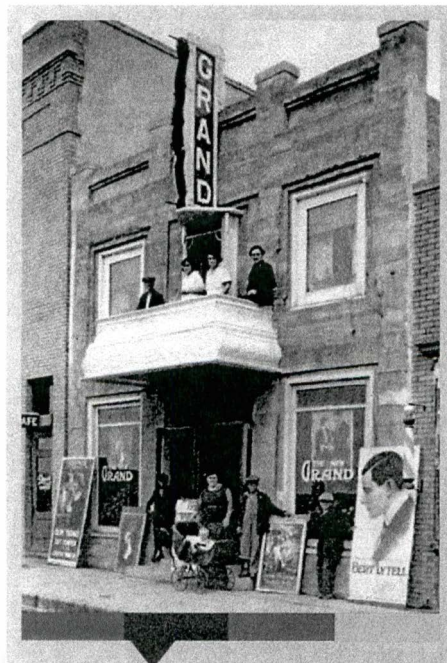
Votes on initiated measures offer insight into the culture and temperament of North Dakotans at a particular time. In 1920, voters overturned by a margin of fewer than 2,000 votes a law that prohibited



Two men wait to vote in McIntosh County in the 1930s. Voters became increasingly involved in legislative action when the initiative and referendum strengthened the tools of democracy in North Dakota. SHSND SA 00075-00231

baseball games on Sunday. In that same presidential primary election of March 1920, voters rejected an initiated measure (by nearly twice as many votes) that would have allowed movie theaters to open on Sundays. Two more initiated measures tested the public's interest in going to the movies on Sunday. In 1933, the measure failed again by a slim margin. In 1934, the measure was finally approved by just over 1,000 votes.

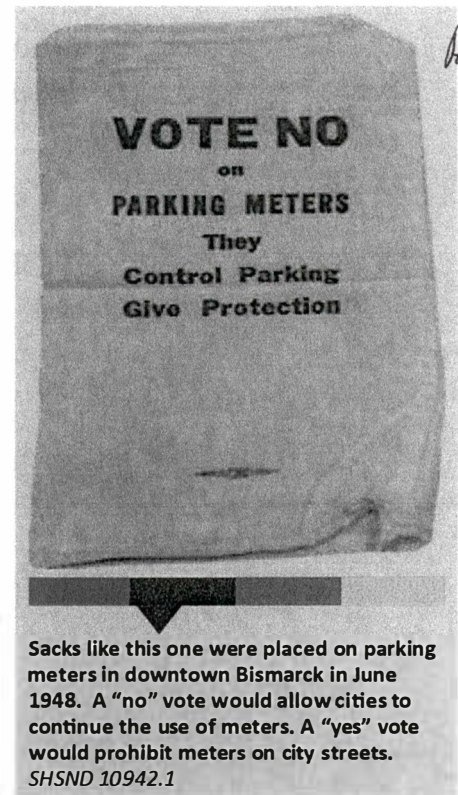
Some individuals have used the referral process with great vigor. **Robert McCarney**, who had once sold pencils on the streets of Bismarck, became one of the largest Ford dealers in the region. When the 1963 legislature passed several school tax bills, McCarney petitioned to have the bills referred to a vote of the people. Though he failed in his first attempt, over the next two decades he sponsored 10 successful petitions and referrals.



The Grand movie theater in Mohall advertised films starring Olive Thomas and Bert Lytell in 1920. Thomas' films, *Out Yonder* and *Youthful Folly*, were about young girls who became involved in slightly risqué adventures. Voters approved an initiative to allow theaters to open on Sundays in 1934. SHSND SA 00232-00001

Between 1914 and 2014, North Dakotans voted on 74 referred measures. Voters approved a little more than one-third of these measures. In the same time period (1914 to 2014), citizens voted on 189 initiated measures and constitutional amendments (not including amendments proposed by the legislature). The voters approved a majority of the constitutional amendments that were placed on the ballot by petition, but less than half of the initiated measures. These statistics show that voters are actively engaged in governance through the initiative and referendum processes and are thoughtful when deciding these issues on their ballots.

The legislature has attempted to limit the scope of initiative and referendum on a few occasions. In the early years,



BANNING CORPORATE FARMING

In 1932, an initiative placed an anti-corporate farming measure on the ballot. Voters approved the law, which prohibited corporations (a group of people authorized to act as a single entity) from owning land or engaging in farming. Any corporation that was already engaged in farming had 10 years to dispose of the land.

The first law of this kind was enacted in Kansas in 1931. The combination of drought and depression in the 1930s forced banks to recall loans (mortgages) on farms, but the same conditions made it difficult for farmers to repay the loan. Farmers lost their land to the banks, but banks could only make money by selling the land. The buyers were often large corporations.

Many farmers believed that corporations had an unfair advantage in farming and threatened family farms. A large corporation can afford to sell products at less than market price, buy goods directly from manufacturers (bypassing local merchants), and may not be liable for environmental damage because of their status as a corporation. North Dakota voters faced measures on corporate farming laws again in 1968 and 2016. Both times, voters upheld the ban on corporate farming.

Those who oppose anti-corporate farming laws believe that they violate a legal doctrine inferred from Article I of the U.S. Constitution (called the dormant commerce clause), which prohibits states from impairing interstate commerce. Anti-corporate farming laws have been challenged in courts that upheld the laws throughout the 20th century. In 2003, a federal court of appeals held South Dakota's corporate farming law violates the U.S. Constitution. In the next few years, several states, including North Dakota, may see legal challenges to corporate farming laws.

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the number of signatures on a petition had to be determined by an estimate of the number of voters. Many people who can legally vote often do not, and North Dakota does not have a voter registration law. So the number of signatures required for a petition was set by an estimate of the possible total number of legal voters. An early 20th century estimate was 20,000, but the 1931 legislature wanted to increase the number from 20,000 to 40,000. The bill went to the voters, who rejected it almost two to one.

Voters rejected efforts to change the number of signatures on petitions again in 1942 and 1958. In 1978, voters approved a change that now requires signatures of 4 percent of the total population (determined by the most recent decennial census) to initiate a petition and 2 percent to refer.

In 2014, the legislature proposed a constitutional amendment that would have allowed the state to take a petition out of circulation if it required funds appropriated by the legislature. In addition, the proposed law stated that any measure that would have

a significant fiscal (financial) impact would have to be on the general election ballot in November when voters go to the polls in larger numbers than in primary or special elections. Voters rejected this amendment with 57 percent of the vote.

In 2018, a commission of legislators, representatives of various interest groups, and appointed members considered ways to revise the processes of initiative and referendum as outlined in the constitution. The commission has not proposed legislation, but has forwarded ideas for modest revisions to the 2019 legislature for consideration. Some of the ideas generated by the commission include: a statement of fiscal impact of initiated measure to be included in the ballot language; legislative council aid for the petitioners in drafting a measure in the proper language; fiscal impact statements on referral petitions; and a financial report by the petitioners that includes in-state and out-of-state support.

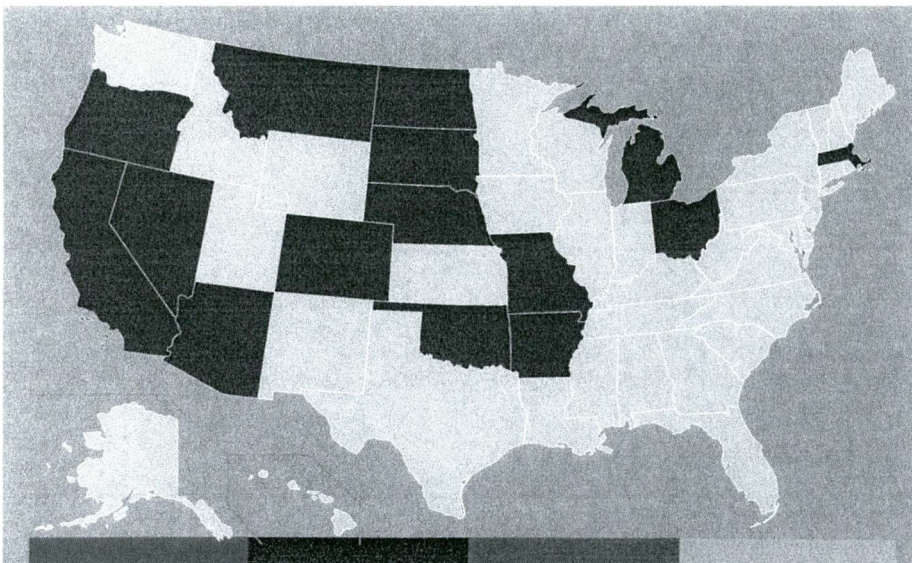
Since 1918, voters have faced as many as 10 initiated or referred measures



The North Dakota Secretary of State must review and approve I and R petitions to assure that they have enough signatures of legitimate North Dakota voters. Secretary of State Robert Byrne (1925-1934) approved 27 ballot measures in his nine years in office. SHSND SA 10118-00003

in a single election. Whether one or ten, initiated and referred measures demand that voters be informed before they reach the polls. North Dakotans have asserted their right to deal directly with important state issues and made use of these tools of democracy with regularity. Voters will likely continue to see referred measures, initiated measures, and/or constitutional amendments on the ballot whenever the people believe they need to participate directly in legislative affairs.

Cover photo: Officials check a newly installed parking meter in downtown Bismarck in 1947. Parking meters were removed after voters rejected a measure that would have legalized them in 1952. SHSND SA 2016-P-011-01150



North Dakota is one of 15 states where voters might see initiated measures, referred measures, and/or constitutional amendments on the primary or general election ballots. Twenty-four states do not allow voters to use the initiative process to make new laws. Map by Jessica Rockeman

About the Author



Barbara Handy-Marchello, Ph.D., is a historian and researcher/writer for *North Dakota: People Living on the Land*—a new grade 8 curriculum. Handy-Marchello also contributes to the SHSND blog at history.nd.gov. Speaking of History will appear in future newsletter issues and focus on a variety of topics related to North Dakota history, geography, and culture.



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Sen. Plever

INITIATIVE AND REFERENDUM STATES

Initiative – a law or constitutional amendment introduced by citizens through a petition process either to the legislature directly to the voters.

Popular Referendum – a process by which voters may petition to demand a popular vote on a new law passed by the legislature.

INITIATIVE AND REFERENDUM STATES

State	Statutes		Constitution
	Initiative	Popular Referendum	Initiative
Alaska	I <i>Indirect</i>	Yes	None
Arizona	D	Yes	D
Arkansas	D	Yes	D
California	D	Yes	D
Colorado	D <i>on ballot</i>	Yes	D
Florida	None	No	D
Idaho	D	Yes	None
Illinois	None	No	D
Maine	I	Yes	None
Maryland	None	Yes	None
Massachusetts	I	Yes	I
Michigan	I	Yes	D
Mississippi	None	No	I
Missouri	D	Yes	D
Montana	D	Yes	D
Nebraska	D	Yes	D

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	Statutes		Constitution
Nevada	I	Yes	D
New Mexico	None	Yes	None
North Dakota	D	Yes	D
Ohio	I	Yes	D
Oklahoma	D	Yes	D
Oregon	D	Yes	D
South Dakota	D	Yes	D
Utah	D & I	Yes	None
Washington	D & I	Yes	None
Wyoming	I*	Yes	None
U.S. Virgin Islands	I	Yes	I

D – *Direct Initiative*; proposals that qualify go directly on the ballot

I – *Indirect Initiative*; proposals are submitted to the legislature, which has an opportunity to act on the proposed legislation. The initiative question will subsequently go on the ballot if the legislature rejects it, submits a different proposal or takes no action.

I* -- Alaska and Wyoming's initiative processes are usually considered indirect. However, instead of requiring that an initiative be submitted to the legislature for action, they only require that an initiative cannot be placed on the ballot after a legislative session has convened and adjourned.

For more information, contact: Wendy Underhill, NCSL Staff Liaison.

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 Tel: 202-624-5400 | Fax: 202-737-1000

Waylon Hedegaard

**Testimony for 2019 Senate Resolution 4001
Senate Government and Veteran Affairs Committee
Presented by Waylon Hedegaard
President of the North Dakota AFL-CIO
January 10th.**

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AH 5

Mr. Chairman, Members of the Committee: grant 7013189927
ndfop@hotmail.com

My name is Waylon Hedegaard, President of the North Dakota AFL-CIO. I am here to stand against Senate Concurrent Resolution No 4001.

I'm quite certain that no one will mind if I keep this short... contrary to my nature. Democracy is a messy, ugly affair. And we often don't like the results that come from this bedlam. And seeing such results, many have a strong urge to clean the mess up, to create more order out of the chaos... to perfect Democracy.

A long dead friend of mine used to call this tendency, "White man's disease". That is the need to take something we love and keep to "perfecting" it until we no longer do.

This is how I feel about SCR 4001. We don't like some of the results of our citizens votes, so there is an urge to limit the scope of future result. I don't feel we can allow that to happen.

Democracy works because it is messy, because it is chaotic, and because it is an agent of change because it causes the unexpected to happen. That apparent weakness has always been its strength.

I would end paraphrasing Winston Churchill. Democracy is the worst form of government... except for all the others... It's just not the most efficient, and that inefficiency is the price we pay for our nation's 240 plus years of progress

Please recommend a do not pass on SCR 4001.

I would stand for questions.

Dustin
Gawrylow

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SCR 4001 - Testimony by Dustin Gawrylow (Lobbyist #266) ND Watchdog Network

Almost every session that I have been involved with the legislature there have been multiple attempts to make the initiative process harder to use by the people of North Dakota.

Every two years, those people of North Dakota vote for Republicans in exceeding numbers, and at the same time they also have a tendency to vote for ballot measures that Republicans do not like.

In 2018, it was the Ethics Commission. In 2016 it was Marsy's Law. In 2012 it was the statewide smoking ban. In 2008 it was the Tobacco Control measure.

But it is not just when these measures pass that legislators and primarily Republicans get upset, even when ballot measures fail, many representatives of the people take that as a reason to clamp down on the process with increases in signature requirements and changes of timelines.

In 2013 a slew of bills were introduced to make the process harder in response to the failed attempt to abolish the property tax in 2012, and the failed attempt that I was part of to cut the income tax in half in 2008.

I could go on, but there is only so much time in the day to document all the reactionary attempts to dismantle Article III of the state constitution; an article that is titled "Powers Reserved to the People," by the way.

If many legislators had their way, that title would be changed to "Powers The Legislature Lets The People Have".

But you have heard it all before. Every session these sorts of bills and resolutions pop up. And every session we tell you to stop trying to take away the rights of your own voters.

Senate Concurrent Resolution seeks to ask the voters of North Dakota to give away their rights and give the legislature not one but two veto's for every constitutional measure.

A DOUBLE VETO - Nowhere in American government does any branch of government have that; and while there may be foreign countries that operate that way, they probably are not the types of places any of us would want to live.

This resolution establishes once and for all that the legislators who are fine with being elected are not ok with the very people who elect them setting the terms and conditions under which government and the legislature operates.

I URGE THIS COMMITTEE TO GIVE THIS AND ALL OTHER ATTEMPTS TO TAKE AWAY THE RIGHTS OF VOTERS A STRONG DO NOT PASS, and to think about why it is that the voters who put you in office should not be trusted to tell you how to do your jobs. Thank you.

Tracy
Potter

Testimony of Tracy Potter on SCR 4001, Senate Government & Veteran's Affairs Committee

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My name is Tracy Potter, retired citizen of Bismarck. I am an old Civics teacher and former state Senator from this district, so ably represented now by Sen. Oban.

This resolution is completely wrong-headed. It is anti-democratic. It posits a distrust of the political choices of the very people who sent you here. The losers in elections often feel that way, but winners seldom do.

To begin, this amendment to Article III has a drafting error that I'm surprised slipped by Legislative Council. Section I of Article III, reads "The People reserve the power ... to propose and adopt constitutional amendments." If this amendment is adopted that statement becomes a lie. The People will be able to propose, but only the legislature will be able to adopt, and only in the most lengthy, difficult and convoluted way the sponsors could dream up.

It is the height of arrogance for the elected representatives of our state to substitute their judgment for the judgment of the people who elected them. It's like with the Supreme Court, even when they are wrong, they are right, by definition. That doesn't leave you powerless. You are still able to amend initiated legislation and you can try to re-amend changes to the constitution you don't like at the next election. And, as you heard this morning, SB 2033, which will improve the legal clarity of the next generation of initiatives.

I'd like to provide two hypothetical examples of how this resolution represents a complete roadblock to reasonable change.

I think all of us in this room can agree that Senators are better than Representatives. OK, maybe not better, but our state's founders, like our nation's founders, believed in a bicameral system where the House could be entirely replaced in one election cycle, but the Senate was to be less responsive to immediate public passions. It requires two or three elections to replace all the Senators. Why state Senators and North Dakota voters fell for the crazy idea of giving House members four-year terms twenty years ago, I have no idea. But they did. They have likely realized their mistake.

So, hypothetically, let's say the People wanted to return to the founders' sensible traditions. Their only recourse would be the constitutional initiative. If SCR 4001 were in force, the House would hold veto power over their own terms. One chamber alone would be more powerful than the People of North Dakota.

It is appropriate that changing the constitution should be more difficult than passing a law. For the People this is true. They need twice as many signatures for a constitutional initiative. For the legislature it is the opposite. It is actually easier to change the constitution than to pass a bill. You only need a simple majority and you do not need the governor's signature. It does go to the voters for approval, but so can any bill, since the People also reserve the power of referral.

For a second hypothetical, say the People wanted to balance the scales and passed a sensible constitutional initiative requiring a 2/3rds vote in each house to place an amendment on the ballot. That would be in line with American constitutional traditions. Yet, under SCR 4001, either house could veto the People's will, and they probably would.

This is a terrible idea. It is a blatant and arrogant attempt to shift power away from the People and into the hands of the legislature. We elect you to do the People's work, but not to over-rule the People's will. Please recommend a do-not-pass on SCR 4001.

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Great Public Schools

Great Public Service

Nick Archuleta

**Testimony Before the Senate Government and Veterans Affairs Committee
SCR 4001**

Thursday, January 10, 2019

Good afternoon Chairman Davison and members of the Committee. For the record, my name is Nick Archuleta and I am the president of North Dakota United. On behalf of our 11,500 members, I rise today to urge a DO NOT PASS recommendation for Senate Concurrent Resolution 4001.

The right of North Dakota citizens to initiate constitutional amendments did not happen overnight. It was a fight that was begun in 1896 and finished eighteen years later, in 1914. The initiative procedure called for the gathering of signatures and a vote of the people. If the Constitutional amendment was approved by the people, the proposed amendment was then sent to the legislature. If the legislature concurred with the will of the people, the Constitution was amended. If not, the measure was sent to the ballot for the people to vote on it again.

This process proved to be overly cumbersome and in 1918, the good people of North Dakota approved a new initiative procedure which completely removed the Legislative Assembly from the process. Though there have been changes to this process over the years, not until now has there been a proposal that would loop the legislature back into the initiative process for approval of Constitutional amendments.

North Dakotans have rightfully embraced their right to amend directly the state's Constitution; the document that governs all of us who live here.

While I have a great deal of respect for every legislator who has signed on to SCR 4001, I feel that the proposed changes would impede the citizens of North Dakota in the exercise of their right to amend the Constitution.

If the proposed changes to Section 9 of Article III of the North Dakota Constitution are enacted, it will mean that Constitutional changes approved by the people in 2019 would not go into effect until 2024, if at all. This unnecessary delay would occur as a result of language that

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would require two successive legislative assemblies to approve what the citizenry has already approved at the voting booth. As everyone here knows, legislative assemblies in North Dakota convene only every other year. That being the case, the will of the people of North Dakota will have to be put on hold until two separate legislative assemblies deem that the intentions of North Dakotans are worthy of approval. The proposed changes to the ND Constitution, as expressed in SCR 4001, will forever alter the relationship between the government and the governed. They will take us back to a time when citizen participation in their governance was undervalued.

For this reason, I urge this Committee to award a DO NOT PASS recommendation for SCR 4001.

Thank you, Chairman Davison and members of the Committee. I am happy to stand for questions.

Willow
Hall

SCR 4001
1/10/19
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P81

Good Afternoon Chairman Davidson and committee members,

My name is Willow Hall, and I live in District 47 in Bismarck ND for the record.

I am here today to ask you to please recommend a "do not pass" on SCR4001.

As you are aware, there are few things more sacred in our system of government than the voting booth. It's our sacred right and responsibility as citizens to engage in this process. North Dakota is a state with very down to earth, common sense people, who take what happens here very seriously.

Each of you was elected and sit here today because those voters educated themselves about you, your qualifications and expertise and chose to trust you with the work you are doing. Those same voters bring the same effort and energy to initiated measures, including constitutional amendments.

It's difficult for me to read the text of SCR 4001, the bill in front of us today, and imagine how it does justice to the population of North Dakota, and our core values of self determination through hard work, personal achievement, civic responsibility as well as government. The premise of the bill boldly suggests that these people who elected you to do this job, are not capable of self determination through the process of initiated constitutional amendments. The threshold for changing our constitution is a high mark to hit, and yet it's also achievable if the people come together and exercise their voice towards an agreed direction for our state. This process works very well in North Dakota, and I respectfully ask you to trust the constituents who have elected you, to bring the same level of conviction, thoughtfulness, and duty to the voting booth, that caused them to fill in the bubbles next to your names.

Thank you for listening to me today, and I'll stand for any questions you may have.

Willow Hall
1809 N Bell St
Bismarck ND
58501
701-391-4650

Kathrin
Volochenko

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1/10/19
A# 10
pg 1

Greetings,

I'm Kathrin Volochenko of the Nonpartisan League (NPL) and I'm here before you to ask as to the reason for SCR 4001 of which we strongly oppose. One of the primary goals of the original NPL, formed in 1915, was to reform the ballot initiative process to allow the citizens of North Dakota to enact changes to or to completely write new law as needed for the common good. The Nonpartisan League was at the height of its power from 1915 through the 1930s and in that time made some sweeping and lasting changes to state government and the state as a whole

The father of the North Dakota ballot initiative process was L. A. Ueland of Edgeley, a state legislator who served on the executive committee of the National Direct Legislation League from its founding in 1896. If Ueland was the father of the process, however, Katherine King of McKenzie was the mother. Mrs. King, married to Royal V. King, in 1902 organized a state chapter of the League. Mrs. King's League won passage of Ueland's I&R bill through both houses of the legislature in 1907, despite opposition from Prohibitionists who feared the possibility of an initiative to repeal the state's anti-liquor amendment.

The 1907 I&R amendment needed to be approved by the legislature twice, in two successive sessions with an election in between. In 1909 the legislature reversed itself and totally killed the I&R amendment. Mrs. King and Ueland pressed on nonetheless, and won the necessary legislative approvals in 1911 and 1913. The I&R amendment finally went to the voters for ratification in 1914 and passed.

The watershed event in North Dakota's century of statehood was the agrarian revolt of 1915-1916, which spawned the Non-Partisan League, one of the most successful state-level reform organizations in the nation's history. In that revolt, which was dramatized in the 1979 movie Northern Lights, farmers united against an unresponsive state government controlled by banks, railroads, and big grain dealers.

The League put seven constitutional amendment initiatives on the 1918 ballot. All seven passed by similar majorities of about 58 percent. Taken together, they brought about a revolutionary change in state government by:

- Reducing the number of signatures required for initiative petitions
- Forbidding the legislature to exempt any bills from referendum petitions
- Abolishing the requirement that proposed constitutional amendments be approved in two successive legislatures (in favor of a single approval)
- Authorizing the legislature to classify personal property for purposes of tax exemptions
- Authorizing the legislature to impose an acreage tax on land to insure crops against hail damage
- Authorizing the state to issue up to \$10 million in bonds rather than the existing \$200,000 limit, allowing mortgages on state industries
- Authorizing the state, counties, and cities to engage in business activities, thus clearing the way for bills that set up the state-owned bank, mill, and grain elevator, which continue to operate to the present day. Considered "socialistic" enterprises by critics, they provided a model for President Franklin D. Roosevelt's Tennessee Valley Authority.

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The material principle of the Nonpartisan League is government of, by, and for the people. Not a new concept, but a constant battle. It is the people's right to have a government that represents their wishes. It is their right to have a government where favoritism or discrimination is not practiced. Where laws are equally enforced. It is the people's right to change the government, especially when it fails to live up to these standards

Article 1 Section 2 of the North Dakota Constitution summarizes it well:

Section 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require.

All too often people cannot bring their concerns and desires to the state legislature and get a fair hearing. And when the people have voted, the legislature feels that it's entitled to change basic aspects or essentially "gut" a measure that the people have voted upon and passed.

We the Nonpartisan League support the right of the people of North Dakota to ask the legislature to rule on the form of government that they choose. There is often now no choice but to turn to the ballot, and we the Nonpartisan League support that right.

Do we as a state wish to revert back to 1907 when a given Initiative and Referral Amendment needed to be approved the legislature twice in two successive sessions with an election in between in top of that??

In conclusion, we the Nonpartisan League of today are working to revive the original core principles and values of the original NPL and in response to SCR 4001 we ask for a recommended "Do not Pass"

Further History of the Nonpartisan League

Bankers and grain dealers sponsored an initiative backlash against the state-owned industries in 1920, gaining voter approval of measures requiring public audits of such industries, banning real estate loans by the state bank, and limiting state bank deposits to the assets of the state, rather than including local governments' assets. But North Dakotans in 1921 defeated four initiatives to further restrict the operations of state-owned industries, including one that would have abolished the state bank outright. In 1922 voters again confirmed their support for the state bank by approving an initiative doubling the state's bonded indebtedness limit so that the bank could make more farm loans.

A state record of 18 initiatives qualified for the ballot in 1932. Among the measures passed by voters were initiatives reducing property taxes, prohibiting crop mortgages, banning corporations from farming, reducing salaries of judges and state and local elected and appointed officials, reducing officials' travel expenses, and abolishing the requirement of published, public notice regarding auction of land to pay delinquent taxes.

In 1938, North Dakotans passed an initiative providing for pensions for senior citizens, and in 1940, they approved measures earmarking sales tax revenues for schools and welfare and increasing funding for financially distressed schools. In 1944, the voters

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initiated over \$12 million worth of bonds to match federal funds for highway construction, and in 1948, they voted to ban parking meters. Notable initiatives passed in the 1950s include a conflict-of-interest measure prohibiting legislators from doing over \$10,000 worth of business annually with the state or local governments (1954), and an initiative that set up a \$1 million college student loan fund from state bank profits (1955). In 1962 voters struck a blow for ballot-box freedom by passing an initiative abolishing the requirement that they publicly state their party affiliation when they vote.

In 1963 Robert P. McCarney, a Bismarck auto dealer, sponsored three referendum petitions to block tax increase bills which just been approved by the legislature. Although the state's voters upheld each of the bills, McCarney was not about to give up. Years earlier, as chauffeur to Non-Partisan League Governor (and later U.S. Senator) William ("Wild Bill") Langer, McCarney had learned the value of tenacity in politics. Over the next 17 years, he sponsored 10 successful petition drives for initiatives or referendums on tax issues. In 1978 his initiative to lower the North Dakota income tax on individuals, but raise it for corporations, won - the capstone of his activist career. It is still said in state government circles that North Dakota's tax structure is more a product of McCarney than of the legislature.

In 1980, before he was elected to Congress, Byron Dorgan sponsored an initiative to more than double the tax on oil production (from 5 percent to 11.5 percent). Despite strong opposition from oil companies, it passed with 56 percent of the vote.

The other most hotly contested initiative of the state's history was a 1978 measure to establish a state agency to regulate health care costs. Sponsored by state Insurance Commissioner Byron Knudsen, it provoked intense opposition from hospitals' and doctors' organizations, which raised \$175,000 for their effort to oppose it - a huge amount by North Dakota standards. Voters rejected the initiative by a three to one margin. Since 1978, numerous other issues have been voted on through the initiative process i.e. term limits and environmental regulations to name a few.

TESTIMONY

Tom Asbridge

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January 10, 2019

Senate Committee on Government and Veterans Affairs.

I rise in opposition to SCR 4001.

In recent years, a significant amount of truly bad ideas have come through this body but none are more onerous or present a slap in the face of the very principles that have sustained our State since statehood in 1889 than does this proposal.

In North Dakota, we have a proud history of our government being close to the "People". We have taken pride in the openness and basic practice of democracy. The very idea of this proposal flies in the face of those ideals.

To suggest that this is misguided is insufficient in description. It is obvious that the sponsors do have an agenda. Certainly not the democratic process but an arrogance that has no place in my State. Clearly, they believe that they and they alone, know what is best for our State. There exists no question whatsoever in that regard.

In recent years, the people have initiated and successfully exercised their rights to do what the Legislature has failed to do. Clearly, some in the body have not got the message. Or perhaps they lack basic understanding of the very ideals that formed this State and Nation. Perhaps, the sponsors should consider taking a basic course in Civics as they seem to fail to understand those sacred ideals. Or worse, they just chose to ignore them.

I have confidence that this body will uphold our values and kill this ill founded proposal. In any event, I can assure you that the mere attempt here will not go unnoticed. And those who have chosen this path will face the wrath of the electorate. I can assure this committee that I will do whatever is in my power as a citizen to cause the authors to reap the whirlwind that they have sown. Recall is not beyond the pale here and using this as proof that they are not fit to serve either their respective constituents or the citizens of our great State.

I urge a NO vote on this proposal.

Tom Asbridge Citizen

Bismarck, N.D.

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TESTIMONY IN OPPOSITION TO SCR 4001

Good afternoon ladies and gentlemen of the committee. My name is Ralph Muecke from Gladstone ND and I'm here to testify in opposition to Senate Concurrent Resolution 4001.

Mark Twain once said: "No mans life, liberty, or property are safe while the legislature is in session." Never did he speak truer words. SCR 4001 is a very good example.

There are only 23 states in the union that have the Initiative and Referral (I&R) process. ND is privileged to be one of them. But sadly to say the I&R process is under attack in all 23 states that have it, by those they elect to represent them in state government. ND is no exception.

The I&R process is an issue that is near and dear to me. I have worked both ends of the process, from the top as being a chairman of a petition drive to pounding the pavement obtaining signatures to put an issue on the ballot.

There are those that say the process is too easy. Obviously, they have never done it. I can tell you from experience that there is a lot of work involved, all the way from gathering signatures to managing a campaign. It takes signatures of 2% of the states population for a referral or a statute and 4% of the states population to initiate a constitutional amendment. With all of the work, time and money involved, people simply aren't going initiate or refer something that they feel isn't important or necessary. They simply can't afford the money and the time that it takes to do a measure.

Do you ever read the constitution? Article III Section 1 of the state explicitly states:

While the legislative power of this state shall be invested in a legislative assembly consisting of a senate and a house of represenatives, the people reserve the power to propose and enact laws by the initiative, including the call for a constitutional convention; 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.

But over the years some legislators keep coming up with some bill or resolution designed to cripple or throw a monkey wrench into the I&R process. They say it's to improve and protect the process. It doesn't take a rocket scientist to see what the real intention is. SCR 4001 is a witch hunt. A solution in search of a problem that doesn't exist.

I have testified against many of these bills over the years. SCR 4001 is the worst I have ever seen. If passed in its present form, this will virtually wipe out the peoples ability to initiate a constitutional amendment of any kind. It's all about eliminating accountability and those that we elect distancing themselves from those that elect them.

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I realize that if passed by the legislature this resolution requires voter approval. But this resolution is so bad that it needs to be stopped dead in its tracks right here and now.

Remember, we the people are the government. The people we elect are to represent us in state government. Instead they are rapidly becoming a ruling monarchy. Anybody that takes away my rights had better have their running shoes on.

Please vote "NO" on SCR 4001.

Bruce Bail - last speaker

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P81

Testimony for ND Hearing over Bill to Limit Right to Petition
1-10-19

Good afternoon chairman Davidson and committee members.

Not every North Dakota voter may be fully aware of all the wonderful, powerful rights our federal Constitution bestows upon each of us. When they rebelled against the king and established our country and government, our Founding Fathers fully intended to put rights of free speech and petition in the First Amendment, to acknowledge its overarching importance to fairly governing ourselves and ensuring the most important rights to us, enabling and protecting all other rights.

As every lawmaker here knows, in our country the First Amendment to the U.S. Constitution guarantees citizens' right to petition under the Petition Clause, which specifically prohibits Congress from abridging "the right of the people ... to petition the Government for a redress of grievances." It's the very same First Amendment that also guarantees us the rights to freedom of speech, a free press, and religion.

Our U.S Supreme Court recognizes that, "It wasn't by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances." *Thomas v. Collins*, 323 U. S. 516, 530 (1945); *see also* *Wayte v. United States*, 470 U. S. 598, 610, n. 11 (1985). [wikip](#).

Although often overlooked in favor of other more famous freedoms, and sometimes taken for granted, many other civil liberties are enforceable against the government only by exercising this basic right. The right to petition is regarded as fundamental in *some* republics, such as ours, as a means of protecting public participation in government. This basic human right *isn't* available in many countries though, like Russia, China, South Korea, Iran, 1930's Germany, Venezuela, Nicaragua and Saudi Arabia, among others. en.wikipedia.org/wiki/Right_to_petition_in_the_U.S.

A petition conveys the special concerns of its author[s] *to* the government, & usually requests action *by* the government to address those concerns. *See* *Sure-Tan Inc. v. NLRB*, 467 U. S. 883, 896-897 (1984). [wikip](#)

In *Blackstone's Commentaries on the Laws of England*, Americans in the Thirteen Colonies read that "the right of petitioning the king, or either house of parliament, for the redress of grievances" was a "right appertaining to every individual." Thus, depriving the monarch of a free hand to do whatever he and his favored nobles pleased.

In 1776, our very Declaration of Independence cited King George's perceived failure to redress the grievances listed in colonial petitions, such as the Olive Branch Petition of 1775, as a justification to declare independence, famously stating:

In every stage of these Oppressions we have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Historically, the right can be traced back to English documents such as the Magna Carta, which, by the monarchy's acceptance, implicitly affirmed the right, and the later Bill of Rights of 1689, which explicitly declared the "right of the subjects to petition the king."

original

The first significant exercise and defense of the right to petition within the U.S. was to advocate the end of slavery by petitioning Congress in the mid-1830s, including 130,000 such requests in 1837 and 1838. *In 1838*, The House of Representatives adopted a gag rule that would table all such anti-slavery petitions. John Quincy Adams and other Representatives eventually achieved the repeal of this rule in 1844 on the basis that it was contrary to the right to petition the government.

While the prohibition of abridgment of the right to petition originally referred only to the Congress and federal courts, the incorporation doctrine later expanded the protection of the right to its current scope, over all state and federal legislatures and courts and the executive branches of the state and federal governments. The right to petition includes under its umbrella the legal right to sue the government, and the right of individuals and groups ~~to~~ to lobby the government.

North Dakotans can still directly initiate state constitutional amendments and statutes through the thorough ballot initiative process, a fundamental right we've kept for a century ~~They can also replicate laws passed by the state legislature through the veto-refundation process.~~ The movement to gain the right of initiative here began in 1896. After an eighteen-year battle, the state's citizens gained a new amendment to the North Dakota Constitution in 1914, ratifying their rights to propose direct legislation. Initiatives first appeared on the North Dakota ballot four years later in 1918 – 100 years ago – when seven measures were petitioned onto the state's ballot. Voters approved all seven measures.

Through the November elections of 2014, 198 initiatives have appeared on the state's ballot. Changes promulgated by the North Dakota State Legislature in recent years, some eroding laws governing the initiative process here, have led to a steep decline in initiatives that succeed in making the ballot. Only five initiatives made the ballot between 2000 and 2006, and that was before *further* restrictions by the legislature in 2013. Five initiatives have made the ballot since 2000. By comparison, in the decade between 1930-38, 45 initiatives qualified for the ballot.¹ Currently, 26,904 eligible ND voters must sign an initiative for a constitutional amendment – *not* a small number.

It's hard to understand why North Dakota citizens' courageously, hard-won rights to present Initiatives for vote by our fellows, to participate in governing ourselves, is now, in these modern times of nearly instantaneous and transparent communication, less desirable, maybe even more suspect or harmful.

Alexander Hamilton, of somewhat humble origins himself, was among the champions of a distrust of the "common" voters, preferring the upper class elites to know better what's best for everyone else. Happily, those views didn't prevail. This isn't the first time that those in office have considered diminishing the public's ability to determine its needs and wants. It was a courageous triumph for North Dakotans to get the full right to the Initiative in the first place, and those who worked to do so properly believed and expected this right they'd won would stand forever.

From the May 22, 2018 meeting minutes of the North Dakota Legislative Management's Initiated & Referred Measures Study Commission, considering a Resolution Draft about Measures for Constitutional Initiative Amendments, Requiring a Threshold Amount of Spending, Commission members' comments included:

"[T]he resolution draft would be contrary to the constitution."
The Committee Chairman replied that "the resolution draft, if approved by voters, would become part of the constitution."

Ms. Chaffee

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“[T]he people of North Dakota are capable of deciding what’s good for them and should be able to place any provision they choose in the constitution[,]” *adding that* “the resolution ~~is~~ [being considered] should include an amendment to Section I of Article III of the North Dakota Constitution to make [its] ~~the resolution’s~~ impact clear.”

Mr. Hale

Another member “oppose[d] the resolution ~~draft~~ because North Dakotans can vote down measures they think are bad.”

Ms. Pulvermacher

One Senator on the committee “oppose[d] the resolution draft[, *adding*] there’s a legitimate concern about putting spending measures in the constitution, but the Legislative Assembly should not have veto authority over measures approved by the public.”

Ms. Oban

Another Senator observed that the “resolution ~~draft~~ would protect against some vulnerabilities for initiated measures[, *saying*] our [state?] government isn’t a direct democracy but rather a representative republic [?], that gives the Legislative Assembly authority to make budgeting decisions.”

The resolution failed on a roll call vote.

Why propose this bill, now? Are we being overwhelmingly flooded by constitutional initiatives? Is our right to democratically participate through effectively petition really that costly or onerous? *Some legislators (all from the party in power) now propose a* If budget funding or out-of-state influence are concerns, can’t they be better handled in other ways? The bill, Senate Concurrent Resolution 4001, would amend our state Constitution to seriously weaken our Initiated Measure process, and restrict our existing right to directly enact changes to it. In relevant part changing it to read:

If voters approve an initiative for a constitutional amendment in a statewide election, the amendment must [STILL] be submitted to the two subsequent legislative assemblies [ANYWAY]. *IF* that initiative is approved by a majority of members of each house in both legislative assemblies, the initiative is deemed enacted.

This barrier subverts the very purpose of an Initiative – a direct voice by the governed to participate in their government. Merely submitting such a bill to voters in 2020 has its own costs. But more importantly, this abandons the public’s right to properly petition and enact an Initiative into the Constitution, when the legislature otherwise overlooks, ignores or acts contrary to, their needs and wishes, by giving the very legislature that citizens may find ignoring their wishes an override or veto power. Further, if the Initiative process that’s served us well to date *is* settled federal law we’ve been abiding by for a century, why would this legislature want to buy more costly, unpopular litigation in attempting to remove more of our basic rights, clearly contrary to our Founding Fathers explicit enactment? Especially during a time when they’ve already slashed state revenue through tax cuts, then used that as a justification to cut the services and institutions that protect, support and improve our lives, while oil prices plummet, and clumsily self-inflicted tariffs, and perhaps necessary trade disputes, are crippling our farmers’ agricultural commodity prices and value *AND* increasing the costs of goods we buy?

But why continue to put up with this meddlesome initiative process anyway? Few North Dakotans can regularly afford and manage to come to Bismarck and get to better know and lobby their legislators, button-holing to persuade, gaining greater “access” by throwing small “reception” parties and so on, as corporations and their industry mouthpiece organizations, regularly employing well-paid, full-time

lobbyists and sophisticated, experienced career directors of communications, government affairs managers, and focused research experts. Not only are many voters reliably, non-confrontationally “North Dakota-nice,” they may be overwhelmed trying to keep up with the nuances and buried details of the plethora of legislative proposals that may affect them, to alter or completely remove their existing legal rights or add new laws. Meanwhile, they’re also busy trying to earn a living and care for their families, and may be unaware of various interests’ fervent efforts to get another one by them.

Ours is a briefly meeting citizen legislature after all, albeit a somewhat politically lopsided one, but that seems to be the voters’ choice. When these hard-working, busy legislators miss (or ignore) pressing issues on our citizens’ minds, what’s wrong with these voters calling attention to them? One *could* think citizen legislators would welcome the added efforts of a well-intentioned public, in bringing to voters’ attention matters and issues that have either evaded lawmakers, among all the other work before them, such as the basic business of funding and running state government and so on, or that seem less important to legislators, while not so to many of their constituents. A few strong legislative leaders, a caucus or the entire legislature might be caught up, passionately debating strongly held views over “inside baseball” details, while missing citizens’ greater concerns, longer on their minds.

Much of government is about who gets what and who doesn’t, who gets away with what, and who is helped or hurt by reasonable, necessary funding and regulation or the lack of it. What if you no longer had the upper hand, as a lawmaker, but were merely another face in the crowd, depending on YOUR representatives to keep your broad interests uppermost at heart? This bill would seriously impair our rights to directly repudiate the bill itself. Or to exercise voters’ ability to register their desire for a change of representatives, by returning to electing House members to two- rather than four-year terms.

As powerful, well-funded & highly incentivized outside industrial and new development pressures are changing the very face of the land and economic forces here, voters recently approved a long overdue initiative to establish a government ethics commission, rules and procedures. That can’t be *too* “wrong” since about forty of our fellow states *have* enacted such ethics commissions, and their governments haven’t crumbled or become bogged down in penny ante nitpicking, despite the outlandish exaggerations and claims we were subjected to during the election season. Physicians, attorneys, accountants and auditors, among others – ethically regulated by their own professions – welcome the clarity and daylight of the necessary rules, authorities and procedures to help them stay within the lines, protect the public they serve *and* their own reputations, and to regulate and correct those who stray. After our legislature took a pass on establishing an ethics commission, an experienced bipartisan group, assisted by respected, capable legal experts, crafted the well-drafted proposal. And the majority of well-advised ND voters approved it. Apparently, it will *still* take four years to implement. Who spoke against this? Those whose legislative lobbying might be regulated or experience oversight from it – chambers of commerce, oil companies and utilities stood out prominently, flooding us with mailers and ads, bearing obnoxious parades of horrors and laughable slippery slopes (that don’t occur in states *with* such ethics laws), about how misguided and onerous such measures would be, and that we already had enough bits and pieces here and there to do the job. To their credit, most of the public considered that, then said let’s give ‘er a go.

Finally, we’ll have a government ethics commission and rules – eventually, since it won’t become operational reality any faster than the slow walking medicinal marijuana law has. So far, the Legislative Assembly may not repeal or amend an initiative for seven years without a 2/3 majority vote. ND Constitution, Article III, Section 8 But for both these new laws, it’s taking four years to implement their operation anyway, and with the ethics law, plenty of delay for intervening ethical missteps.

} Sen. Dever

Can unclear initiatives result in **unintended consequences**? Sure. Like Marsy's law, funded largely by an understandably grieving, justice-seeking out-of-state millionaire, where more than just the intended victims seem to be shielded from appropriate public disclosure. Well, sometimes our earnest legislators may need to even better detect the pulse of what's on their constituents' minds. Besides, even some of the best legislatively reviewed and enacted laws can also result in unintended consequences.

Not all recent initiatives earn voters' rubber stamp. Fully legalizing marijuana use – as an interesting patchwork of ten fellow states, plus the District of Columbia, the Northern Mariana Islands and Canada *have* – is still seen by some as the work of the very devil himself. Another 13 states plus the U.S. Virgin Islands have decriminalized it. Legalization proponents not only carefully crafted their measure, but then went on to advocate and discuss publicly. However, a majority of that public said no thanks, maybe the proposal seemed *too* broad, too soon.

But what may come *from* this unsuccessful initiative effort? An acknowledgement that, long after the hilariously inaccurate distortions of Reefer Madness propaganda films – partly aimed at suppressing minorities – then a paranoid and resentful President discussed with his aid how to thwart what they perceived as their supposed “hippie & minority” adversaries by heavily criminalizing its use – on a par with deadly heroin and other dangerous narcotics – they carelessly condemned many young lives to needlessly harsh prison sentences and lifelong felony records for only light use, under the hopefully appealing guise of a “get tough, law and order, war on drugs” posture. *(Which then as now here, ignored the effects of alcohol – one of the most heavily abused and destructive drugs.)* Likely spurred by changing attitudes and demonstrated reality, ND legislators are now considering decriminalizing marijuana use, in the spirit of the federal bipartisan revisitation of generally overly harsh incarceration laws and mandatory minimums. Plus, the profitable growing of another crop, useful industrial hemp, has also been federally approved, perhaps just in time for our farmers.

~~What if~~ the public fully and clearly understood that they could directly affect the full implications of matters like the following, which legislators may be ignoring or even endorsing? Would they again turn to the Initiative process?

- The party in power, influenced by “striking it rich!” through oil, doled out generous, voter-pleasing state income tax cuts, not only to individuals, but to corporations. For instance, not to pick on them, but longtime *and* newcomer, small in-state to larger out-of-state banks who often trumpet their good efforts in building communities, benefited handsomely by these tax cuts. At least one smaller domestic banking corporation got a windfall for its shareholders of $\frac{3}{4}$ of a million dollars a year. Since then, governors & legislators – citing a woeful lack of state funds – have repeatedly slashed funding, personnel, compensation and programs of our educational institutions and other needed services, while keeping much of the tax revenue *from* oil production bottled up in the Legacy Fund.
- A refinery's industrial site will soon hug the entrance to our state's beloved, wild and beautiful *lone* National Park (itself created only after the prolonged, successful work of ND citizens and lawmakers), named after the father of our national parks who briefly lived there. When mining interests again recently proposed developing a gold mine in Paradise Valley, next to Yellowstone National Park, Montana and Wyoming governors, legislators and Congressional delegations quickly put the damper on it. That didn't happen here, thanks to gaming of an inadequate public services review process. Now state leaders look to pour more taxpayer money into popping up a library named after that very same father of our national park system as another tourist attraction.

- Again attempting to increase highway speed limits, “since distances are so far, & most drive at 80 mph anyway,” (and when the limit is 80, they’ll be doing 85?). This may please some – residents or otherwise – who’ve chosen to locate and conduct their business interests in far flung locations around the state. But what happens when we recognize that the minor inconvenience of a few extra minutes spent driving is outweighed by increasing large truck and other traffic careening at us across our highways in icy or heavy snow conditions? When carnage, injuries and vehicle damage become unacceptable, and we admit that our winter highway conditions are much more comparable to our northern neighbor Canada’s than Texas, how will we pull back from that?
- Expanding yet *more* gambling – once illegal and widely deplored as a deeply decadent vice – into the state “because we *can* legally, & many are doing it online anyway,” while knowing that as of 2008, nearly three in every hundred who gamble in the U.S. are pathological or problem gamblers, and another 2.7 to 4.3% could be called *probable* pathological gamblers. About 6 million American adults are addicted to gambling, risking their jobs, families and careers for a vice they can’t control.² Ready proximity to gambling opportunities increases the incidence of problem gamblers, as in Nevada, or by the nearness in feet. Gambling proceeds can be funneled through charities, relieving government of providing services they’d otherwise be asked for. ² https://en.wikipedia.org/wiki/Problem_gambling
- An Industrial Commission that holds supposedly “public” hearings to consider merely aspirational, unenforced flaring limits, while anyone attending who’s NOT a chosen oil industry representative is barred from even asking a question, while the state’s combined oil industry regulator and cheerleader official seems to continue the cheerleading role far more successfully. What might voters do when they realize that states can say no to polluting industries questionably getting their every wish, as NY has when it said no to fracking, after watching neighboring Pennsylvania’s residents ignite their faucets’ water, and surface waters become unusable? And when we fully acknowledge the dangerous health risks and effects, plus our reckless contributions to rapid, destructive, oncoming climate change? Or we all learn that those in our nation’s financial centers who push to drill more oil wells aren’t compensated (rewarded) by the Income new wells produce (however low the prices and high the costs) – even when oil prices freefall, but only by the Drilling of more wells. No better than mountaintop coal removal destruction & resulting pollution, coal miners’ black lung, or asbestosis & cancer. What’s our remedy if the legislature *glaciously* joins in the moment’s excitement to *endorse and* heedlessly encourage this, but it’s destroying our way of life? *Naomi Oreska, Merchants of Doubt*
- What if the legislature *had* okayed the request of the President of the Petroleum Industry mouthpiece here, to enact a “quick take” eminent domain, despite complaints that companies were already pressuring landowners to yield easements, then not delivering on promises? As this would even more rapidly gobble up land for industrial purposes, some here might realize it didn’t differ much from the huge, still open acid waste pit that swallowed up part of Butte, MT.
- A new governor, likely with the best intentions to improve government, spends thousands on consultants from the company he sold his software business to, and who he then became an executive of, to replace the state’s Oracle’s SAP over-arching software with Microsoft ‘s Peoplesoft. Two similar products. Might we want to discourage someone running state government as the CEO of his own private corporation?
- ... gloating over the misfortunes of the rest of our country during a deep recession induced by careless lending and securities practices while waging two wars and implementing a tax cut, when international oil prices were reaching \$100 a barrel, and literally “giving away the farm,” to where that revenue has plummeted to \$20 a barrel locally, as commodities often do.

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Some may be wondering, just who's put the legislature up to this? Who's behind sponsoring the curtailing of our hard-won, longstanding rights to petition through Initiative? This otherwise well-intentioned proposal could cause some to wonder, what else is the legislature up to?

Not depriving North Dakotans of their rights to introduce voter Initiatives may sound scary to moneyed interests who benefit from achieving their own targets, or to hard-working legislators, who feel that's the work they're here, and quite capable, to do. But if our citizens' interests occasionally aren't being otherwise heard and followed, or are being outright ignored, what other recourse do we have? That's the purpose of the Initiative.

Please don't chafe at what may be perceived as legislative inconvenience, or citizens getting in the way of governing. North Dakotans deserve their ability to continue to speak with a direct voice, when their interests, needs and reasonable wishes aren't being heard or acted upon. Don't throw away what has taken so much to gain: a valuable tool for citizen participation in our lawmaking toolbox.

Thank you for your time and attention, and your continued work, time, expertise, attention to detail & sacrifices, and North Dakotans' interests and well-being.

¹ https://ballotpedia.org/History_of_Initiative_%26_Referendum_in_North_Dakota; ballotpedia.org/Laws_governing_the_initiative_process_in_North_Dakota

Present yourself as an elder brave among the council of fellow chiefs, (basically fellow family & tribe members) whom you respect & wish to be respected by; or a citizen-farmer, speaking up for fairness and an even deal.

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Among other things listed:

Senators: David Hogue (R) Minot; Majority Caucus Leader; President Pro Tempore; Attorney; BA, Cornell College; U.S. Army War College; JD, UND; Veteran. 10 yrs in Senate. A senator, usu. a sr member of the majority party, chosen to preside over the Senate in the absence of the vice president.

Dick Dever (R) Bis, Mfgr's Repr, Bis-Man Chamber; Elder, Shepherd of the Valley Lutheran Church; big on Veterans stuff [No college.] 18 yrs in Senate

Gary Lee (R) Cassellon; retired; BA, NDSU; Viet Nam vet; President Pro Tempore, 2017; Cassellon City Council; Central Cass School Board; Past Director, Cass Rural Water Users; EFC Church. 17 yrs in Senate

Representatives: Kim Koppelman (R) W Fgo; President/CEO, Koppelman & Assoc's, LLC ; NDSCS; BILLD Fellow; Toll Fellow; Past National Chairman, Council of State Governments (CSG); Chairman, CSG Suggested State Legislation Committee; Past City Councilman; Exec. Committee, NCSL & CSG; Committee Chair, MLC, CSG Public Safety & Justice Task Force; Co-Chairman, Interstate Compact on Transmission Line Siting; Founder/Chairman, National Interbranch Summit of the States; Founder/Chairman, Interbranch Working Group; R Street Board; ALEC; Chairman, VCLA Board; Church Elder/Chairman; Legislative Awards, NDSAA, SBAND; Stueben Eagle Leadership Award; CSG Champion Award; NDFFA Champion Award; 25 yrs in House

Scott Louser (R) Minot; Realtor/Owner, NextHome Legendary Properties; BS & MS, MSU; VP, Natnl Assoc of Realtors, 2012. 8 yrs in House

Mike Nathe (R) Bis; Owner, Bismarck Funeral Home; BS, Mortuary Science, U of M; Kiwanis; NRA; NFIB; CANA; BILLD; DMORT; 10 yrs in House

Jim Kasper (R) Fgo; Pres., Asset Management Group, Inc.; Business Economics, NDSU; US Army Reserve; Business Champion Legislator, GNDC, 2011; Friend of Farm Bureau, 2011 & 2009; Distinguished Friend of ND Pharmacy Award, 2010; Keynote Speaker, ACLI, Boston, 2008; Keynote Speaker, Mealey's Conference, NY City Harvard Club, 2007; Keynote Speaker, Life Settlements Conference, Orlando, 2007; Outstanding Legislator, NDAIFA, 2007; Testified, US Senate Banking Committee, Privacy matters, 2002; F-M Life Underwriter of the Year; 44 Year Member MDRT; Bethel Evangelical Free Church. 18 yrs in House

Vicky Steiner (R) Dickinson; Owner, Big Sky Condos; BS, MSU; Vision West ND; Badlands Advisory Group; DSU Community Committee; Rotary; ND Right to Life; St Patrick's Church building committee

Erin Oban (D) Bis; District Mgr, Junior Achievement; BS, Mathematics Education, U of Mary; Co-Chair, ND Sportsmen's Caucus; 2015 BILLD Fellow; Governing Institute Women in Gov't Class of 2015; "40 under 40", Bismarck Tribune, 2014; Board, Designer Genes & YouthWorks; Good Shepherd Lutheran Church. 5 yrs in House

Wayde 388-3942. Sheyenne River Room

Koppelman: *Advertising:* "a full-service, award-winning communications firm which has provided effective, award-winning public relations, marketing & advertising services for clients on a local, regional & national scale for over 30 years." *Undefined* currently works as a Realtor at Patterson Schwartz Real Estate. Per www.mylife.com/kim-koppelman/e454954086306 His "Reputation Score" is "Poor" (above Bad, 2 below Good): "Approx. Reputation Score" is 1.73 out of 5.

Initiated and Referred Measures Study Commission – North Dakota Statutory Committee

The Initiated & Referred Measures Study Commission is to undertake a comprehensive study of the initiated & referred measure laws of North Dakota & report its findings & recommendations to the Legislative Management by Sep 1, 2018. Created by 2017 Senate Bill No. 2135, the membership consists of one person appointed by the Chief Justice, who shall serve as Chairman, 3 House members & 3 Senate members, one nonvoting member appointed by the Secretary of State, seven citizen members appointed by the Governor, & one member appointed by each of the following organizations – Greater North Dakota Chamber, North Dakota Newspaper Association, North Dakota Farm Bureau, and the North Dakota Farmers Union.

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att #14
jsh

Written Testimony in Support of SCR 4001

*e-mailed
to chair*

Submitted Respectfully by Pamela Sund Herschlip, Fargo, North Dakota

January 8, 2018

To: Kyle Davison, Chair, North Dakota Government and Veterans Affairs
Committee and Members of the Committee

Today, I write in support of SCR 4001.

In my vision of a more perfect union in North Dakota, the North Dakota State Legislature would initiate all bills that become law in the state, as is the case in 24 states in the Union. That is called representative government. But as you know, since 1914, citizens of North Dakota can initiate measures that become law. The 2018 North Dakota statewide elections were fraught with the consequences of a small portion of the population, using citizen signatures, to get their citizen-initiated measures on the ballot, constitutional and statutory. Both create problems.

But the biggest problems, it seems to me, are created with constitutional amendments. Cause to amend the North Dakota Constitution is a serious affair, too serious to bring it to a vote of the people without hearings, research, debate, and possible amendments, among other considerations. Citizens do not have the resources, the subject matter expertise, the legal experience, and the monetary support to thoroughly vet their initiated constitutional measures, yet they end up on the ballot. Let's face it: we have a lot of smart and thoughtful people in North Dakota, but even bright citizens do not have the time to do what they hire their legislators to do: vet bills before they become law.

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Please consider the following: Why do some states that allow for initiated statutory measures forgo citizen sponsored constitutional amendments? Because, as with the United States constitution, constitutions should only be amended for significant cause. And, again, as is the case with the United States Constitution, the representatives of the people are involved in the process, not side-lined as is the case in the state of North Dakota. To amend the U.S. Constitution, a constitutional amendment has to be proposed either by a 2/3 vote of both houses of Congress or else by a constitutional convention convened when the legislature of 2/3 of the states so request. The key thing to note here is the involvement of the legislature. While opponents of 4001 might prefer the populist approach, the representative approach is paradigmatically, using the U.S. Constitution's example, and the example of other states, sound. Some states even require a 2/3 majority to pass initiated constitutional measures. Maybe this, too, should be the case in ND.

Consider also: The constitution provides for our fundamental values and laws. Logically, it should require a higher standard to amend. Our standard of a simple majority up-down vote of the people with no legislative review or analysis for constitutional amendment is among the lowest bars in the states that do permit constitutional amendment by vote of the people. Also, if it takes a 2/3 vote of the people to pass a constitutional amendment that is generated by you, the legislature, why a lower standard for a citizen-generated that has had no review? This makes no sense and should be remedied.

Citizen generated measures introduce excess chaos into what should be an orderly legislative process: North Dakota's 2018 ballot Measure 1, a constitutional measure, and Measure 3, an initiated measure, are examples of the current initiated measure process creating public confusion and distrust. To this day, I'm sure many citizens still don't know exactly what they voted for or against

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on these measures because proponents and opponents presented conflicting views of how each measure would change state law. Order needs to be brought to the process.

Another point to consider: With all citizen generated measures, the public quickly lines up into two camps that are forced to duke it out at the ballot box. In the run up to the state-wide election, each side must organize to get its view and arguments heard. The proponents, the opponents and the media become the public's educators and mediators on the measures. This is not representative government. It is government by opinion, often half-baked, sometimes curried by out-of-state forces with mega-funds that pour into the state, as we saw with at least three recent citizen-initiated measures. (For your review: I have placed a portion of a newspaper article at the end of this statement that aptly tells the story of what can happen when outside forces interfere in the initiated measure process.) Clearly, the public loses when it is torn between believing proponents or the opponent's version of what the measure is, does, and what the resulting law would entail. Truth and an orderly process lose. Faulty and possibly illegal laws can result. Many of these pitfalls are what the legislative process protects against. This process, ironically, includes the necessary hearings that you, the Government and Veteran's Affairs Committee members are appropriately participating in today.

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In conclusion: It is my belief, that the North Dakota ballot measure process is in desperate need of reform, especially constitutional measures. SCR 4001 is a step in the right direction. It thrusts our legislators into the weighty matter of amending the North Dakota constitution. In other words, it puts them right where they should be, representing all of the people of North Dakota. I am thankful to Senator David Hogue and his co-sponsors who are seeking a remedy. Predictably, in the last couple of few weeks, a few citizens and newspaper editors are already pounding the podium over such proposals. I hope the sponsoring senators and this committee will not be detoured by these voices. These passionate voices are fleeting; the state constitution is enduring.

I believe that the North Dakota legislature should use all appropriate means necessary to safeguard against further problems with initiated measures. My hope is that SCR 4001 is seriously considered and this version or an amended version is adopted.

Thank you for your consideration.

Sincerely,

Pamela Sund Herschlip

(Please see the aforementioned newspaper article on the following page.)

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The following segment of a newspaper article was written by John Diaz for the *San Francisco Chronicle* in 2008. The initiative measure process in California is instructive as North Dakota looks to improve our own process with safeguards:

“There is no big secret to the formula for manipulating California's initiative process. Find a billionaire benefactor with the ideological motivation or crass self-interest to spend the \$1-million plus to get something on the ballot with mercenary signature gatherers. Stretch as far as required to link it to the issue of the ages (this is *for the children*, Prop. 3) or the cause of the day (this is about *energy independence and renewable resources*, Props. 7 and 10). If it's a tough sell on the facts, give it a sympathetic face and name such as "Marsy's Law" (Prop. 9, victims' rights and parole) or "Sarah's Law" (Prop. 4, parental notification on abortion). Prepare to spend a bundle on soft-focus television advertising and hope voters don't notice the fine print or the independent analyses of good-government groups or newspaper editorial boards ... **Today, the initiative process is no longer the antidote to special interests and the moneyed class; it is their vehicle of choice to attempt to get their way without having to endure the scrutiny and compromise of the legislative process.**

Casey
Buchmann
opposed

SB 4001
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Republicans Love their Walls

In an era where there is an undisputed desire by one party to erect as many obstacles as possible for any kind of direct democracy. The cream rises to the top in the Republican Party. From Border Walls to Voter Rights the republican's version of democracy is defined by how they react.

In North Dakota, citizens don't have to look too hard in our past and even present to see that our current republicans' leaders feel that they know what is best for the people of North Dakota. Seems every legislative session there is always some knee jerk reaction bill that comes out. And this year is no different.

Last November 6, North Dakotans voted on and approved 2 Initiated Constitutional Measures. And once more we see that republican legislators think they know what is best for the people of North Dakota in SCR 4001.

Claiming that this resolution is aimed to keep out-of-state money from initiated constitutional measures. And that it needs legislative approval in 2 concurrent sessions leaves me shaking my head in disbelief.

Have our elected legislators who are sponsoring become the voice for all North Dakotans? Did they forget that they work for the people of North Dakota not the other way around? And when it comes to out-of-state money should the Republican Party really be using that line in a bill?

Yes, the Republican Party truly does believe in building walls. And here in North Dakota SCR 4001 is a bill that would create a wall that would not only keep people out but more importantly Direct Democracy dormant and useless.

Casey Buchmann
Washburn, ND
Nonpartisan Leaguer
(701) 301-9579

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pg 1

I am opposed to SCR 4001

Gary lee's own districts voted in favor of measure 1 and 2 why should you strike down our will?

Sam Wagener D22
Dem-NPL Chair

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pg 1

Testimony in opposition of
SB 4001
Relating to Constitutional Amendments

Submitted by:
Kristin Klein
1119 University Drive Lot 509
Bismarck, ND 58504

Dear, Senators Hogue, Dever, G. Lee Representatives K.
Koppelman, Louser, Nathe and other members of the
committee,

My name is Kristin Klein and I am opposing SB 4001 in
relation to constitutional amendments. I do not think it is
necessary nor do I believe this will be beneficial. I am
highly concerned that SB 4001 will be limiting the voice of
the people in this state. It is in my opinion that the
provisions in place protecting the constitution of North
Dakota are sufficient.

Thank you for your time and consideration

Sincerely,
Kristin Klein

not speak

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pg 1

19.3041.03001
Title.

*Chair
brot to
Comm.*

Prepared by the Legislative Council staff for
Senator Hogue

January 9, 2019

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4001

Page 1, line 4, replace "approved by" with "submitted to" *2nd* "approved by"

Page 1, line 5, remove "two"

Page 1, line 5, replace "assemblies before becoming" with "assembly. Under this measure, if the legislative assembly does not approve the constitutional measure, the measure will be placed on the ballot again, and, if approved by the voters, will become"

Page 1, line 18, remove "two"

Page 1, line 18, replace "assemblies" with "assembly"

Page 1, line 19, replace "both" with "the"

Page 1, line 19, replace "assemblies" with "assembly"

Page 1, line 20, after the underscored period insert "If the legislative assembly does not approve the initiative, the initiative must be placed on the ballot at the next statewide election. If the majority of votes cast on the initiative are affirmative, the initiative is deemed enacted."

Renumber accordingly

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19.3041.03001

Sixty-sixth
Legislative Assembly
of North Dakota

SENATE CONCURRENT RESOLUTION NO. 4001

Introduced by

Senators Hogue, Dever, G. Lee

Representatives K. Koppelman, Louser, Nathe

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

3 **STATEMENT OF INTENT**

4 This measure requires an initiated constitutional measure approved by voters to be ~~approved~~
5 ~~by~~submitted to the ~~two~~ subsequent legislative ~~assemblies before becoming~~assembly. Under this
6 measure, if the legislative assembly does not approve the constitutional measure, the measure
7 will be placed on the ballot again, and, if approved by the voters, will become effective.

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

10 That the following proposed amendment to section 9 of article III of the Constitution of North
11 Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the
12 general election to be held in 2020, in accordance with section 16 of article IV of the
13 Constitution of North Dakota.

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

16 **Section 9.** A constitutional amendment may be proposed by initiative petition. If signed by
17 electors equal in number to four percent of the resident population of the state at the last federal
18 decennial census, the petition for a constitutional amendment may be submitted to the
19 secretary of state. If electors approve an initiative for a constitutional amendment in a statewide
20 election, the amendment must be submitted to the ~~two~~ subsequent legislative
21 assembliesassembly. If the initiative is approved by a majority of members of each house in
22 boththe legislative ~~assemblies~~assembly, the initiative is deemed enacted. If the legislative
23 assembly does not approve the initiative, the initiative must be placed on the ballot at the next
24 statewide election. If the majority of votes cast on the initiative are affirmative, the initiative is

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- 1 | deemed enacted. All other provisions relating to initiative measures apply heretoto initiative.
- 2 | measures for constitutional amendments.

#1
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1 **TESTIMONY OF DAVID HOGUE IN SUPPORT OF SCR 4001**
2 **HOUSE GOVERNMENT AND VETERANS' AFFAIRS COMMITTEE**
3 **MARCH 14, 2019**

4
5 Good Morning Chairman Kasper and members of the House Government and
6 Veterans' Affairs Committee. My name is David Hogue. I am a North Dakota state
7 senator representing District 38, which includes northwest Minot and the city of
8 Burlington. I appear before your committee to seek support for SCR 4001.

9 SCR 4001 is a proposed resolution that would amend our state constitution for
10 changing how we amend our state constitution. It's a proposed amendment to change
11 the amendment process. Article III of our state constitution permits enactment of laws
12 through the initiated measure process. It permits enactment of new laws to the ND
13 Century Code and amendment of our state constitution.

14 There has been a significant amount of media interest in SCR 4001, and I have
15 read all of that coverage. I testify that I have read all of it because our modern search
16 engines permit me to know when someone is publishing information about this
17 resolution or the initiated measure process since introduction of SCR 4001.

18 I conclude the majority of the coverage has misunderstood what SCR 4001
19 addresses, so my first point of discussion with you is to describe what SCR 4001 is not
20 about. First, SCR 4001 does not address the statutory initiated measure process. So,
21 for example, a measure to legalize medical marijuana, recreational marijuana, Sunday
22 opening, or when an academic school year starts are not proposals that SCR 4001 is

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1 related to. The error that most commentators have made relates to a failure to
2 recognize the fundamental distinction between statutory law on the one hand, and the
3 core values that define our North Dakota government and philosophy that is contained
4 within our state constitution, on the other hand.

5 Nor does SCR 4001 relate to referred measures as one public commentator has
6 mistakenly suggested. Referred measures are the people's attempt to set aside a law
7 that the legislature and the governor enacted. The most recent example related to the
8 legislature's attempt to permit corporate investment in dairy farms. The people gathered
9 signatures to "refer" this measure. After sufficient signatures were gathered, there was
10 a vote, and the people of North Dakota invalidated the legislative measure regarding
11 corporate dairy farms. SCR 4001 has nothing to do with referred measures.

12 SCR 4001 relates to how we as North Dakotans will govern ourselves. There are
13 17 states that permit constitutional initiated measures, but few are as reckless and ill-
14 advised as ours. SCR 4001 proposes to change that vulnerability.

15 For this proposed change, some history is in order. Our Founders concluded
16 that the people should not be permitted to propose constitutional amendments. So, our
17 original constitution provided that only the legislature could propose a constitutional
18 amendment. To propose an amendment, the legislature had to pass the proposal in
19 two consecutive legislative sessions. After that, the proposal had to be voted on and
20 passed by a majority of the people.

21 The original constitutional provision is attached to my testimony as attachment 1.
22 That requirement--that it be voted on by two consecutive legislative assemblies--is the

1 inspiration for the original version of SCR 4001 that requires consecutive votes by the
2 legislative assembly. Contrary to some assertions that this is an onerous impossible
3 hurdle, I think it respects the level of scrutiny that constitutional amendments warrant.
4 In the words of Barbara Streisand, it takes us back to "The Way We Were."

5 But SCR 4001 permits either the people or the legislative assembly to propose
6 constitutional amendments. This is a right the people did not enjoy at the inception of
7 statehood.

8 When the people and the legislature next amended the process for amending our
9 state constitution, they continued the format of requiring both the people and the
10 legislature to approve constitutional amendments. I have attached a copy of that
11 change as well in attachment 2.

12 Having studied that proposal, I now support SCR 4001 as amended by the North
13 Dakota Senate. Under this version of our constitutional law, either the people or the
14 legislature could propose constitutional amendments, but the other would always have
15 to concur. Do you see the checks and balances?

16 Under this version in Attachment 2, if the people initiated a constitutional
17 amendment and subsequently approved it, it would then go to the legislative assembly
18 for its approval. If the legislative assembly approved it, it became part of the
19 constitution. If the legislative assembly did not concur, the measure went back on the
20 ballot for the people to approve **over the objection** of the legislative assembly. **In this**
21 **way, the people had the last word.** This a reasonable way to govern in my view.

1 I want you to try to imagine a proposal that will fundamentally change our
2 criminal justice system. How should that proposal be reviewed, considered, and
3 adopted by the people of North Dakota?

4 What if I told you the proposal was drafted by a law firm in California for a
5 California resident. That proposal was sent to a public relations firm in North Dakota for
6 review and comment and after deliberation between the law firm in California and the
7 public relations firm in North Dakota, the measure was sent to the ND Sec of State for
8 approval as to the form of measure. Then, the content of the measure was available on
9 the ND Sec. of State web site, then subsequently voted up or down by the people of
10 North Dakota.

11 But what if I told you there's another process for reforming our criminal justice
12 system. The proposal is published. The legislature schedules hearings on the
13 proposal. Stakeholders who will be affected by the proposal can come to the hearing
14 and voice support or opposition to the proposal. The stakeholders can offer testimony;
15 they can even offer amendments to the proposal.

16 Imagine after the hearings that there would be debate and maybe even
17 refinements to the proposal. Imagine that the permanent measure that will
18 fundamentally change our criminal justice system is subjected to debate, public
19 hearings, amendments, and rigorous scrutiny.

20 What do you choose?

1 I point directly to the history of the state of California, and North Dakota's recent
2 history with constitutional initiated measures for my reasons for advocating this
3 measure. There are several learned people who have concluded that California's once
4 booming economy was crippled by the initiated measure process that California is now
5 burdened with.

6 John Diaz, a learned observer of California's system writes: "Today, the initiative
7 process is no longer the antidote to special interests and the moneyed class; it is their
8 vehicle of choice to attempt to get their way without having to endure the scrutiny and
9 compromise of the legislative process."

10 I say that Mr. Diaz was prophetic, though he was not referring to North Dakota's
11 recent history. I append to my testimony as attachments 3, 4, 5, and 6, the spending for
12 the last four proposed constitutional measures in North Dakota. For the media and
13 opponents of SCR 4001, attachment 3-6 are raw: a firm, square punch in the nose to
14 the assertion that SCR 4001 is a power struggle between the people of North Dakota
15 and an "elitist" legislature. Where are the people in these last four constitutional
16 measures?

17 Those publications that have been critical of SCR 4001 don't have the inclination
18 nor perhaps the space to print that raw data. It does not comport with their narrative of
19 power struggle between the "people" and a supposed elitist legislature. It's a false
20 narrative that should be arrested. This measure is about good government, and the
21 right to self-governance, not about a ginned up power struggle between the people's
22 elected representatives and the people.

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1 Chairman Kasper and committee members, I'm happy to stand for your
2 questions.

3

4

5

6

#1
SCR 4001
3-17-19

§ 196. The governor and other state and judicial officers except county judges, justices of the peace and police magistrates, shall be liable to impeachment for habitual drunkenness, crimes, corrupt conduct, or malfeasance, or misdemeanor in office, but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of trust or profit under the state. The person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

§ 197. All officers not liable to impeachment, shall be subject to removal for misconduct, malfeasance, crime or misdemeanor in office, or for habitual drunkenness or gross incompetency in such manner as may be provided by law.

§ 198. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

§ 199. On trial of impeachment against the governor, the lieutenant governor shall not act as a member of the court.

§ 200. No person shall be tried on impeachment before he shall have been served with a copy thereof, at least twenty days previous to the day set for trial.

§ 201. No person shall be liable to impeachment twice for the same offense.

ARTICLE XV.—FUTURE AMENDMENTS.

§ 202. Any amendment or amendments to this constitution may be proposed in either house of the legislative assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered on the journal of the house with the yeas and nays taken thereon, and referred to the legislative assembly to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice, and if in the legislative assembly so next chosen as aforesaid such proposed amendment or amendments, shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislative assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the legislative assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislative

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3-12-19

assembly voting thereon, such amendment or amendments shall become a part of the constitution of this state. If two or more amendments shall be submitted at the same time they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

ARTICLE XVI.—COMPACT WITH THE UNITED STATES.

§ 203. The following article shall be irrevocable without the consent of the United States and the people of this state:

First. Perfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

Second. The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and that said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States residing without this state shall never be taxed at a higher rate than the lands belonging to residents of this state; that no taxes shall be imposed by this state on lands or property therein, belonging to, or which may hereafter be purchased by the United States or reserved for its use. But nothing in this article shall preclude this state from taxing as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person, a title thereto, by patent or other grant save and except such lands as have been or may be granted to any Indian or Indians under any acts of congress containing a provision exempting the lands thus granted from taxation, which last mentioned lands shall be exempt from taxation so long, and to such extent, as is, or may be provided in the act of congress granting the same.

Third. In order that payment of the debts and liabilities contracted or incurred by and on behalf of the territory of Dakota may be justly and equitably provided for and made, and in pursuance of the requirements of an act of congress approved February 22, 1889, entitled, "An act to provide for

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by law for a special election or elections. Any measure referred to the people shall take effect when it is approved by a majority of the votes cast thereon and not otherwise, and shall be in force from the date of the official declaration of the vote.

The enacting clause of all the initiative bills shall be, "Be it enacted by the people of the State of North Dakota." This Section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. The whole number of votes cast for Secretary of State at the regular election last preceding the filing of any petition for the initiative and referendum shall be the basis upon which the number of legal voters necessary to sign such petition shall be counted.

Petitions and orders for the initiative and for the referendum shall be filed with the Secretary of State, and in submitting the same to the people he and all other officers shall be guided by the general laws and the acts submitting this amendment until legislation shall be especially provided therefor.

This amendment shall be self executing, but legislation may be enacted to facilitate its operation.

Yes..... 48,783
No 19,964

A majority of the voters voting on said proposed amendment having voted in favor of the adoption of the said proposed amendment, the said proposed amendment is hereby duly declared carried and adopted.

ARTICLE XVI.

§ 202. This Constitution may be amended as follows:

FIRST: Any amendment or amendments to this Constitution may be proposed in either house of the legislative assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendments shall be entered on the journal of the house with the yeas and nays taken thereon, and referred to the legislative assembly to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice, and if the legislative assembly so next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all members elected to each house, then it shall be the duty of the legislative assembly to submit such proposed amendment or amendments to the people in such manner and at such times as the legislative assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislative assembly voting thereon, such amendment or amendments shall become a part of the Constitution of this state. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

#1
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3-14-19

SECOND: Any amendment or amendments to this Constitution may also be proposed by the people by the filing with the Secretary of State, at least six months previous to a general election, of an initiative petition containing the signatures of at least twenty-five per cent. of the legal voters in each of not less than one-half of the counties of the state. When such petition has been properly filed the proposed amendment or amendments shall be published as the legislature may provide, for three months previous to the general election, and shall be placed upon the ballot to be voted upon by the people at the next general election. Should any such amendment or amendments proposed by initiative petition and submitted to the people receive a majority of all the legal votes cast at such general election, such amendment or amendments shall be referred to the next legislative assembly, and should such proposed amendment or amendments be agreed upon by a majority of all the members elected to each house, such amendment or amendments shall become a part of the Constitution of this state. Should any amendment or amendments proposed by initiative petition and receiving a majority of all the votes cast at the general election as herein provided, but failing to receive approval by the following legislative assembly to which it has been referred, such amendment or amendments shall again be submitted to the people at the next general election for their approval or rejection as at the previous general election. Should such amendment or amendments receive a majority of all the legal votes cast at such succeeding general election such amendment or amendments at once become a part of the Constitution of this state. Any amendment or amendments proposed by initiative petition and failing of adoption as herein provided, shall not be again considered until the expiration of six years.

Yes..... 43,111
No 21,815

A majority of the voters voting on said proposed amendment having voted in favor of the adoption of the said proposed amendment, the said proposed amendment is hereby duly declared carried and adopted.

ARTICLE XVII.

§ 216. The following named public institutions are hereby permanently located as hereinafter provided, each to have so much of the remaining grant of one hundred and seventy thousand acres of land made by the United States for "other educational and charitable institutions," as is allotted by law, viz:

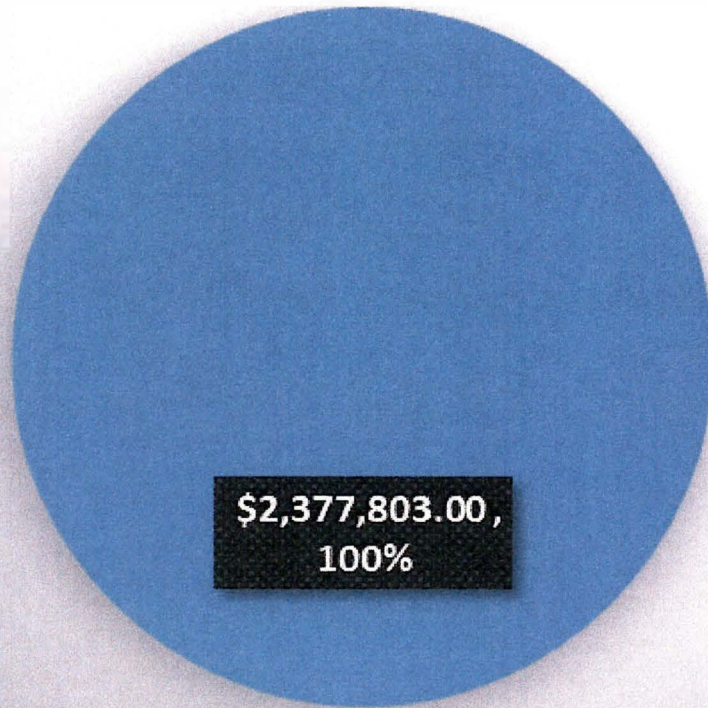
FIRST: A Soldiers' Home, when located, or such other charitable institution as the legislative assembly may determine at Lisbon, in the County of Ransom, with a grant of forty thousand acres of land.

SECOND: The School for the Blind of North Dakota, at Bath-

#1
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3.14.19

11

Marsy's Law For North Dakota Funding Sources



- NOT ND Based Funding
- ND Based Funding

#1
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3-14-19

12

North Dakotans for Citizen Voting Funding Sources

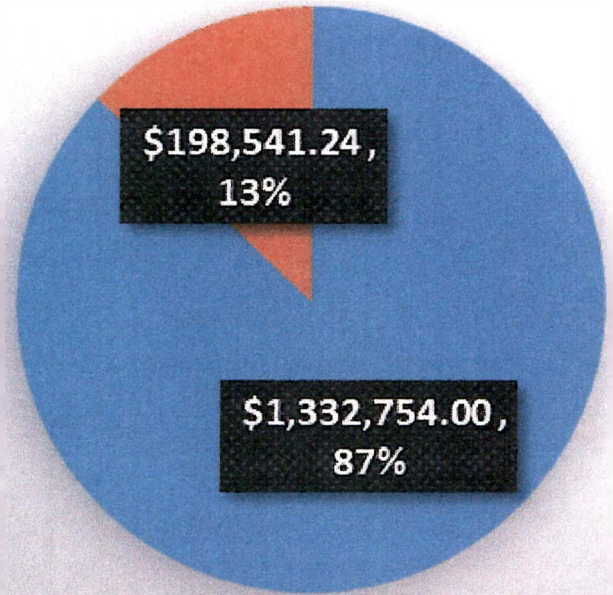


- NOT ND Based Funding
- ND Based Funding

#1
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13

North Dakotans for Clean Water, Wildlife, and Parks Funding Sources

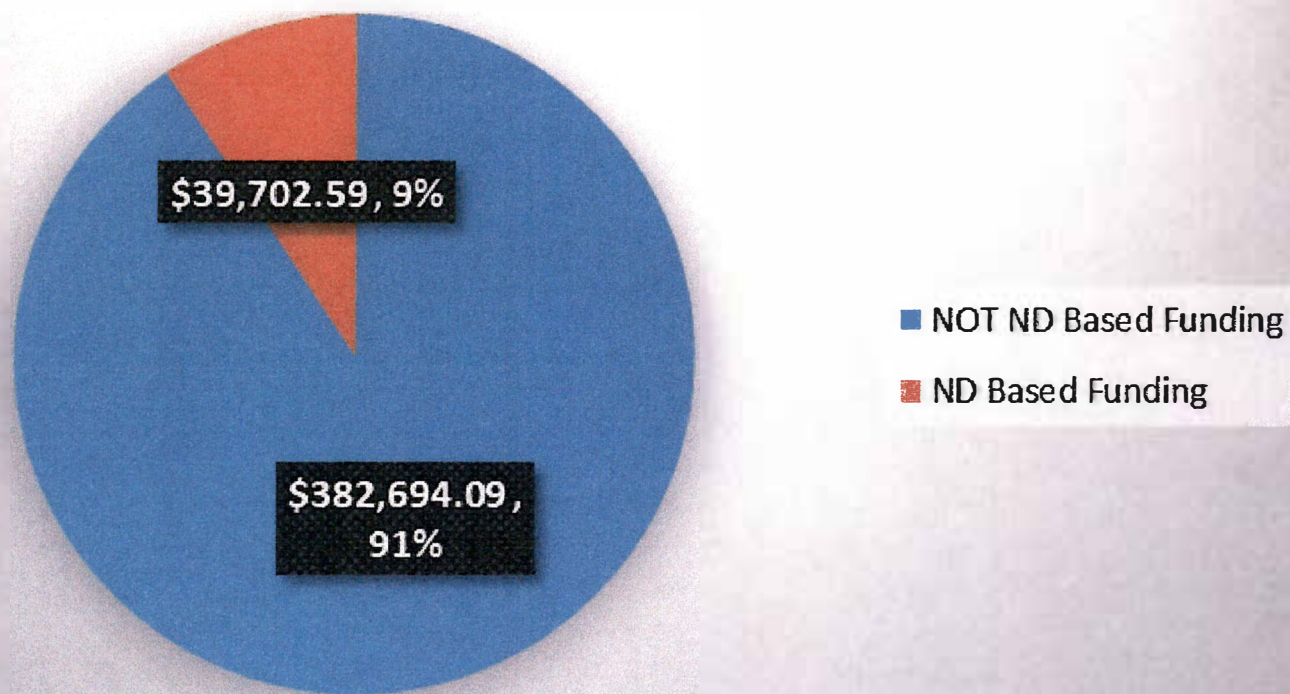


- NOT ND Based Funding
- ND Based Funding

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14

Measure One Funding Sources





#2
SCR 4301
2-1-19

INITIATIVE AND REFERENDUM STATES

Initiative – a law or constitutional amendment introduced by citizens through a petition process either to the legislature directly to the voters.

Popular Referendum – a process by which voters may petition to demand a popular vote on a new law passed by the legislature.

INITIATIVE AND REFERENDUM STATES

State	Statutes		Constitution
	Initiative	Popular Referendum	Initiative
Alaska	I	Yes	None
Arizona	D	Yes	D
Arkansas	D	Yes	D
California	D	Yes	D
Colorado	D	Yes	D
Florida	None	No	D
Idaho	D	Yes	None
Illinois	None	No	D
Maine	I	Yes	None
Maryland	None	Yes	None
Massachusetts	I	Yes	I
Michigan	I	Yes	D
Mississippi	None	No	I
Missouri	D	Yes	D
Montana	D	Yes	D
Nebraska	D	Yes	D

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	Statutes		Constitution
Nevada	I	Yes	D
New Mexico	None	Yes	None
North Dakota	D	Yes	D
Ohio	I	Yes	D
Oklahoma	D	Yes	D
Oregon	D	Yes	D
South Dakota	D	Yes	D
Utah	D & I	Yes	None
Washington	D & I	Yes	None
Wyoming	I*	Yes	None
U.S. Virgin Islands	I	Yes	I

D – *Direct Initiative*; proposals that qualify go directly on the ballot

I – *Indirect Initiative*; proposals are submitted to the legislature, which has an opportunity to act on the proposed legislation. The initiative question will subsequently go on the ballot if the legislature rejects it, submits a different proposal or takes no action.

I* -- Alaska and Wyoming's initiative processes are usually considered indirect. However, instead of requiring that an initiative be submitted to the legislature for action, they only require that an initiative cannot be placed on the ballot until after a legislative session has convened and adjourned.

For more information, contact: Wendy Underhill, NCSL Staff Liaison.

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3-14-19

Testimony for the House Government & Veterans Affairs Committee

Senate Concurrent Resolution 4001

Andrew Alexis Varvel

March 14, 2019

Chairman Kasper and Members of the Committee:

My name is Andrew Alexis Varvel. I live in Bismarck. My message is simple:

NO!

This turkey is so bad that it you should not only give it a **“DO NOT PASS”** recommendation, but you should amend it before giving it a **“DO NOT PASS”** recommendation. That way, if the House floor ignores you, it would be voting on something different. The way to keep special interests from abusing the initiated measure is simple – make the process of starting a referendum even easier so that ordinary citizens will have more sway. Restricting the initiated measure only plays into the hands of billionaires because they have the means to take advantage of rules that make this process prohibitively expensive for most other people. This proposed hoghouse amendment is designed to make the process even easier. The House may be unlikely to vote for this hoghouse version, but that's the point. If the House passes this hoghouse amendment, that's okay too.

Thank you. I welcome questions from the committee.

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PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4001

Page 1, line 1, after "A concurrent resolution" replace the remainder of the bill with "to amend and reenact sections 2, 4, and 9 of article III of the Constitution of North Dakota, relating to powers reserved to the people on initiated measures.

STATEMENT OF INTENT

This measure would make it easier for electors to initiate or refer a measure or to initiate a constitutional amendment.

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

That the following proposed amendments to articles 2, 4, and 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 general election to be held in 2020, 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. 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~~ ten 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.

SECTION 2. 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 electors equal in number to ~~two~~ one percent of the resident population of the state at the last federal decennial census.

SECTION 3. 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. If signed by electors equal in number to ~~four~~ two 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.

Renumber accordingly

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Written testimony of Engrossed Senate Concurrent Resolution 4001

Chairman Kasper and Government and Veterans Affairs committee members

My name is Kevin Herrmann, 300 Fair St. SW, Beulah, ND. I am working my scheduled dayshift which is why I am not testifying in person.

I oppose engrossed Senate Concurrent Resolution 4001. This resolution would have the legislative assembly involved with section 9 of Article III "Powers Reserved to the People". Isn't Article III "Powers Reserved to the People" supposed to be for the citizens of North Dakota? In 1914 the citizens of North Dakota amended to North Dakota state constitution in letting the electors petition to vote on a constitution amendment. Then in 1918 the citizens of North Dakota amended the North Dakota state constitution to allow constitution amendment to place on a ballot if a petition with 20,000 or more signatures was filled at least 120 days before an election. Doesn't this prove the citizens of North Dakota did not want to be restricted of having the legislative assembly the power to decide if or when to send a constitution amendment to the vote of the people? In this resolution, the legislative assembly would need to pass the initiative measure each house to be enacted even though the voters of North Dakota approved the measure. Does this mean the legislators can amend the measure in committee? There is nothing in this resolution saying if legislators can amend or not amend the measure in committee before getting voted on house or senate floor sessions. When Senate Concurrent Resolution 4001 had committee hearing in Senate Government and Veterans Affairs, the public citizen's voice strong opposition but 31 legislators did not listen to the citizens of North Dakota. There is no vulnerability or loophole in Article III "Powers Reserved to the People" of our North Dakota constitution as certain legislators are claiming as I will call Fake News.

I have heard certain legislators complain about out of state money financing the initiative measures but will not condone in public the legislators who have accepted out of state money for their campaign. Isn't that out of state influence to those legislators? Isn't that double talk?

I attended every meeting to the Initiated Measures and Referred Study Commission. Three of the sponsors on engrossed Senate Concurrent Resolution were on the Initiated Measures and Referred Study Commission. The appointed citizens on the commission did not agree with

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the legislators on the discussion of legislative assembly involved in section 9 of Article III "Powers Reserved to the People".

The majority of legislators are upset over past measures being passed on election ballot forcing legislators to legislate such as medical marijuana and ethics measures. The bottom line is the legislative assembly is trying to get some power back from the citizens of North Dakota.

Maybe it is time for citizens of North Dakota to show more power over the legislative assembly by amending the Article XI "General Provisions" section 26 that the North Dakota voters will vote on compensation for legislative assembly.

I am asking the Government and Veterans Affairs committee to give engrossed Senate Concurrent Resolution 4001 a DO NOT PASS.

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Title.

Prepared by the Legislative Council staff for
Representative Kasper
April 4, 2019

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4-5-19

PROPOSED AMENDMENTS TO ENGROSSED SENATE
CONCURRENT RESOLUTION NO. 4001

Page 1, line 7, after the period insert "The measure also requires constitutional amendments to be submitted to voters only at general elections."

Page 1, line 19, after the period insert "An initiative to amend the constitution may be placed on the ballot only at a general election."

Page 1, line 19, remove "in a statewide"

Page 1, line 20, remove "election"

Page 1, line 23, replace "statewide" with "general"

Renumber accordingly