

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2026 ND 118

Terence B. Bjerke and Leverrett Oley Larsen,

Petitioners

v.

The North Dakota Legislative Assembly and
Michael Howe, in his official capacity as
North Dakota Secretary of State,

Respondents

No. 20260027

Petition for Declaratory Judgment and Writ of Injunction.

WRIT OF INJUNCTION GRANTED.

Opinion of the Court by Fair McEvers, Chief Justice.

Zachary M. Wallen (argued), Pittsburgh, PA, and Jesse H. Walstad (appeared),
Bismarck, ND, for petitioners.

Brian D. Schmidt (argued) and Scott K. Porsborg (appeared), Bismarck, ND, for
respondent The North Dakota Legislative Assembly.

Philip Axt, Solicitor General, Bismarck, ND, for respondent Michael Howe, in
his official capacity as North Dakota Secretary of State; submitted on brief.

Bjerke, et al. v. North Dakota Legislative Assembly, et al.
No. 20260027

Fair McEvers, Chief Justice.

[¶1] Terence B. Bjerke and Leverrett Oley Larsen (“Petitioners”) petition this Court seeking declaratory relief and a writ of injunction challenging the validity of the Legislative Assembly’s adoption of Senate Concurrent Resolution (“S.C.R.”) 4008, in which the legislature proposed a ballot measure (“Constitutional Measure 1”) to amend N.D. Const. art. XV, § 1 (providing for legislative term limits) and to repeal N.D. Const. art. XV, § 4 (limiting the legislative assembly’s authority to propose an amendment to alter or repeal the term limits established in N.D. Const. art. XV, § 1). The Petitioners claim that in adopting S.C.R. 4008, the Legislative Assembly exceeded its authority to propose constitutional amendments under N.D. Const. art. IV, § 16, as limited by N.D. Const. art. XV, § 4; that S.C.R. 4008’s adoption also violated N.D. Const. art. III, § 8; and that the appropriate remedy to address S.C.R. 4008’s alleged unconstitutional adoption is a writ to enjoin the Secretary of State from placing Constitutional Measure 1 on the November 2026 general election ballot.

[¶2] We grant the Petitioners’ request to invoke our discretionary original jurisdiction under N.D. Const. art. VI, § 2; declare the Legislative Assembly unconstitutionally adopted S.C.R. 4008 in violation of N.D. Const. art. XV, § 4; and declare S.C.R. 4008 and Constitutional Measure 1 void *ab initio*. We enjoin the Secretary of State from placing Constitutional Measure 1 on the November 2026 general election ballot. Because our conclusion S.C.R. 4008’s adoption violated N.D. Const. art. XV, § 4 is dispositive, we do not address the remaining claims. We deny the Petitioners’ request for attorney’s fees.

I

[¶3] The Petitioners are North Dakota residents and qualified electors, and both were members of the Term Limits Initiative sponsoring committee formed in 2021. After a legal challenge, this Court granted the committee’s petition and issued a writ of mandamus requiring the Secretary of State to place the Term Limits Initiative on the November 2022 general election ballot. *Hendrix v. Jaeger*,

2022 ND 168, ¶¶ 1, 24, 979 N.W.2d 918. In the November 2022 election, North Dakota electors approved the initiated measure, and the Term Limits Initiative’s language was added to the North Dakota Constitution as article XV, effective January 1, 2023. Relevant to this matter, N.D. Const. art. XV, §§ 1 and 4 provide:

Section 1. An individual shall not serve as a member of the house of representatives for a cumulative period of time amounting to more than eight years. An individual shall not serve as a member of the senate for a cumulative period of time amounting to more than eight years. An individual shall not be eligible to serve a full or remaining term as member of the house of representatives or the senate if serving the full or remaining term would cause the individual to serve for a cumulative period of time amounting to more than eight years in that respective house.

....

Section 4. *Notwithstanding* the legislative assembly’s authority to propose amendments to this constitution under article IV, section 16 thereof, *the legislative assembly shall not have authority to propose an amendment to this constitution to alter or repeal the term limitations established in section 1 of this article.* The authority to propose an amendment to this constitution to alter or repeal the term limitations established in section 1 of this article is reserved to initiative petition of the people under article III of this constitution.

(Emphasis added.) As referenced in article XV, section 4, set forth above, N.D. Const. art. IV, § 16 provides the Legislative Assembly with authority to propose constitutional amendments and submit such proposals to the electors for approval:

Any amendment to this constitution may be proposed in either house of the legislative assembly, and if agreed to upon a roll call by a majority of the members elected to each house, *must be submitted to the electors* and if a majority of the votes cast thereon are in the affirmative, the amendment is a part of this constitution.

(Emphasis added.)

[¶4] In 2025, the Legislative Assembly adopted S.C.R. 4008 by a majority vote in each house, the title of which states:

A concurrent resolution to amend and reenact section 1 of article XV of the Constitution of North Dakota, relating to term limits for members of the legislative assembly; to repeal section 4 of article XV of the Constitution of North Dakota, relating to prohibiting the legislative assembly from proposing certain amendments to article XV of the Constitution of North Dakota, and to provide for an application.

In adopting S.C.R. 4008, the Legislative Assembly agreed to a “proposed amendment to section 1 of article XV and repeal of section 4 of article XV” and provided they “must be submitted to the qualified electors of North Dakota at the general election to be held in November of 2026, in accordance with section 16 of article IV of the Constitution of North Dakota.”

[¶5] On April 8, 2025, S.C.R. 4008 was filed with the Secretary of State. The Secretary of State acknowledged receipt of S.C.R. 4008 and has indicated it will be placed on the general election ballot in November 2026.

[¶6] On January 20, 2026, the Petitioners filed a petition with this Court naming the North Dakota Legislative Assembly and the Secretary of State as respondents, and requesting this Court exercise its discretionary original jurisdiction under N.D. Const. art. VI, § 2 and N.D.C.C. § 27-02-04 to grant declaratory relief under N.D.C.C. § 32-23-01 and a writ of injunction under N.D.C.C. § 32-06-01. The Petitioners seek a declaration that S.C.R. 4008 is void *ab initio* as violating N.D. Const. art. XV, § 4 and N.D. Const. art. III, § 8; a declaration the proposed Constitutional Measure 1 for the 2026 general election ballot is similarly void *ab initio*; and a writ of injunction preventing the Secretary of State from taking any steps in furtherance of placing Constitutional Measure 1 on the 2026 general election ballot or, alternatively, from counting any votes on, and certifying any election results for, the Measure. The Petitioners also request an award of reasonable attorney’s fees under N.D.C.C. § 32-23-08.

[¶7] On March 3, 2026, the Secretary of State, represented by the Attorney General, filed a response to the petition. The Attorney General, on behalf of the Secretary of State, responds that the Secretary does not have authority to refuse to put a legislatively proposed constitutional amendment on the ballot based on

the Secretary's own analysis of the proposed amendment's constitutionality. The Attorney General, on behalf of the Secretary, took "no position" on the merits of whether S.C.R. 4008 violates the North Dakota Constitution and argued the Petitioners are not entitled to attorney's fees if they prevail.

[¶8] On March 5, 2026, the Legislative Assembly filed a response opposing the petition. The Legislative Assembly argues the petition must be denied because there is no ripe issue for judicial review; S.C.R. 4008 is a valid exercise of the Legislative Assembly's authority to propose a constitutional amendment under N.D. Const. art. IV, § 16; and the Petitioners lack standing and their prayer for relief infringes on our republican form of government.

II

[¶9] At the outset, we explain the difference between this Court's mandatory original jurisdiction under N.D. Const. art. III, §§ 6 and 7, and this Court's discretionary original jurisdiction under N.D. Const. art. VI, § 2.

[¶10] Under the mandatory, self-executing provisions of N.D. Const. art. III, §§ 6 and 7, this Court generally reviews decisions by the Secretary of State regarding initiative and referendum petitions by the people. *See Haugen v. Jaeger*, 2020 ND 177, ¶ 5, 948 N.W.2d 1; *N.D. State Bd. of Higher Educ. v. Jaeger*, 2012 ND 64, ¶ 10, 815 N.W.2d 215; *Husebye v. Jaeger*, 534 N.W.2d 811, 813 (N.D. 1995); *Mun. Servs. Corp. v. Kusler*, 490 N.W.2d 700, 701-02 (N.D. 1992); *see also* N.D. Const. art. III, § 9 ("A constitutional amendment may be proposed by initiative petition."). The Secretary of State's responsibilities under those provisions are limited to the form and the sufficiency of the petition. *State Bd. of Higher Educ.*, ¶ 10 (citing N.D. Const. art. III, §§ 2 and 6; N.D.C.C. §§ 16.1-01-09 and 16.1-01-10). "We have described those limited responsibilities as ministerial in nature." *Id.* (citing *Haugland v. Meier*, 335 N.W.2d 809, 811 (N.D. 1983); *McCarney v. Meier*, 286 N.W.2d 780, 783 (N.D. 1979)). "The Secretary of State's limited responsibilities under those mandatory constitutional provisions do not include the authority to review the substance or constitutionality of the measure." *Id.*; *see also* *Mun. Servs. Corp.*, 490 N.W.2d at 705-06; *Preckel v. Byrne*, 244 N.W. 781, 784-85 (N.D. 1932); *Anderson v. Byrne*, 242 N.W. 687, 691-93 (N.D. 1932); *State ex rel. Gammons v.*

Shafer, 246 N.W. 874, 879-80 (N.D. 1933) (holding the voter-approved initiated measure provision, at issue in *Preckel*, unconstitutional in later mandamus proceeding appeal).

[¶11] Under N.D. Const. art. VI, § 2, this Court also has discretionary authority to exercise original jurisdiction “to issue, hear, and determine such original and remedial writs as may be necessary to properly exercise its jurisdiction.” This includes the authority to issue “writs of habeas corpus, mandamus, quo warranto, certiorari, and injunction.” N.D.C.C. § 27-02-04. “This authority is discretionary and cannot be invoked as a matter of right.” *Bd. of Trs. of N.D. Pub. Emps. Ret. Sys. v. N.D. Legis. Assembly*, 2023 ND 185, ¶ 6, 996 N.W.2d 873 (quoting *State ex rel. Peterson v. Olson*, 307 N.W.2d 528, 531 (N.D. 1981)). “Our case law, since Statehood, has carefully set forth the rare circumstances in which we exercise our original, as contrasted with our appellate, jurisdiction.” *Wheeler v. Schuetzle*, 2006 ND 115, ¶ 3, 714 N.W.2d 829 (citing Thomas J. Burke, *The Prerogative Jurisdiction of the Supreme Court*, 32 N.D. L. Rev. 199 (1956)).

[¶12] “The Supreme Court will determine for itself, on an *ad hoc* basis, whether or not a particular case is within its original jurisdiction.” *Bd. of Trs.*, 2023 ND 185, ¶ 6; *see also State ex rel. Link v. Olson*, 286 N.W.2d 262 (N.D. 1979); *State ex rel. Vogel v. Garaas*, 261 N.W.2d 914 (N.D. 1978). It is well-settled that this Court invokes its original jurisdiction “only in cases *publici juris* and those affecting the sovereignty of the state, its franchises and prerogatives, or the liberties of its people.” *N.D. Legis. Assembly v. Burgum*, 2018 ND 189, ¶ 4, 916 N.W.2d 83. “The interests of the State must not be merely incidental but must be of primary importance, and the public must have an interest or right which may be affected.” *Peterson*, 307 N.W.2d at 531. Our discretionary original jurisdiction under N.D. Const. art. VI, § 2 is not precluded by this Court’s mandatory jurisdiction to review Secretary of State decisions under N.D. Const. art. III. *See State Bd. of Higher Educ.*, 2012 ND 64, ¶ 16.

[¶13] Here, the Petitioners’ issues involve the constitutionality of the Legislative Assembly’s exercise of its authority under N.D. Const. art. IV, § 16, in adopting S.C.R. 4008, to propose a ballot measure to amend N.D. Const. art. XV, § 1 and to repeal N.D. Const. art. XV, § 4. The Legislative Assembly exercised its

authority under N.D. Const. art. IV, § 16, despite purported limiting language of N.D. Const. art. XV, § 4, precluding the legislature's authority to propose an amendment to alter or repeal N.D. Const. art. XV, § 1, and specifically reserving that authority "to initiative petition of the people under article III of this constitution." The Petitioners request that we exercise our discretionary original jurisdiction under N.D. Const. art. VI, § 2 to review whether the Legislative Assembly properly exercised its authority in adopting S.C.R. 4008.

[¶14] The Petitioners assert that while this Court's mandatory original jurisdiction under N.D. Const. art. III, § 7, is not "triggered here," N.D. Const. art. III, § 7 "underscores the critical public importance of the prompt and final resolution of constitutional issues involving ballot measures." The Petitioners do not assert that the Secretary of State improperly performed any ministerial functions regarding the form and sufficiency of the Legislative Assembly's proposed constitutional measure. The Secretary of State further opines in its response that neither the Constitution nor the Election Code, N.D.C.C. ch. 16.1-01, vest or authorize the Secretary to conduct a form-and-sufficiency review of legislatively proposed constitutional amendments under N.D. Const. art. IV, § 16.

[¶15] On our review, whether the Legislative Assembly has properly exercised its authority to place a constitutional amendment on the general election ballot is of primary importance to the State and its people; the public has an interest or right which may be affected. We conclude the issues raised by the Petitioners are of great public importance and affect the sovereignty of the state, its franchises and prerogatives, and the liberties of its people. Under the circumstances in this case, therefore, we conclude this is an appropriate case for us to exercise our discretionary original jurisdiction under N.D. Const. art. VI, § 2.

[¶16] Before we reach the merits, however, we first address the Legislative Assembly's contentions that there is no issue ripe for judicial review and the Petitioners lack standing.

III

[¶17] We have explained that “[c]ourts adjudicate only actual controversies.” *In re Guardianship of K.H.P.*, 2024 ND 189, ¶ 12, 12 N.W.3d 835. “An issue is not justiciable if it is moot or not ripe for review, a party lacks standing, or resolving it would be advisory.” *Id.*; see also *N.D. Legis. Assembly*, 2018 ND 189, ¶ 6.

A

[¶18] The Legislative Assembly argues the Petitioners’ petition must be denied because it does not present an issue ripe for judicial review.

[¶19] This Court has long held that it will not issue advisory opinions. *Bies v. Obregon*, 1997 ND 18, ¶ 9, 558 N.W.2d 855 (“The premise behind the prohibition of advisory opinions is there must be an ‘actual controversy to be determined’ before a court can properly adjudicate.”). There must be an actual controversy before the court that is ripe for review for the court to adjudicate. *State ex rel. Heitkamp v. Hagerty*, 1998 ND 122, ¶ 8, 580 N.W.2d 139. “An issue is not ripe for review if it depends on future contingencies which, although they might occur, necessarily may not, thus making addressing the question premature.” *Id.* (quoting *Bies*, ¶ 9).

[¶20] The Legislative Assembly contends the petition requests this Court to restrain the people’s power to govern themselves through the voting process and precedent governs that original jurisdiction is inappropriate here. See, e.g., *Mun. Servs. Corp.*, 490 N.W.2d at 706 (“This court will not entertain a request to test the validity or constitutionality of a proposed statute on the ground that if it is enacted, it would impinge on the litigant’s rights.”); *Preckel*, 244 N.W. 781 Syll. 3 (“Where it is sought to enjoin the secretary of state from submitting an initiative proposal to the electors of this state, this court will not examine the proposed measure to test the constitutionality of the substance of the act proposed.”); *Anderson*, 242 N.W. at 692-93 (denying request to enjoin secretary of state from placing an allegedly unconstitutional initiated measure on the ballot).

[¶21] The Legislative Assembly relies in part on *Anderson*, 242 N.W. at 693, and similar cases, to argue the Court would be issuing an advisory opinion because

there is no guarantee the voters will pass the legislatively proposed constitutional measure. In *Anderson*, the Court explained:

Where all the statutory requirements have been complied with, no court or executive officer has any authority to interfere or prevent a vote thereon. In such case the people alone are authorized to determine whether the proposed measure shall be enacted into law, and if the measure, when enacted, is unconstitutional, then only have the courts power to declare it to be unconstitutional.

Id.; see also *State v. State Bd. of Canvassers*, 172 N.W. 80, 85 (N.D. 1919) (explaining “the courts cannot properly intercept a constitutional amendment” before the process is complete, as long as proper procedure is followed).

[¶22] *Anderson*, however, involved a two-part challenge to an initiated measure brought in a petition for review. 242 N.W. at 690-91. The first part of that petition, invoking this Court’s mandatory original jurisdiction under former N.D. Const. art. II, § 25 to review the action of the secretary of state, challenged the sufficiency of the form of the initiated measure presented to the secretary of state. That is, whether or not the initiated measure “contains the full text of the measure and whether or not it purports on its face to amend, suspend, or repeal various provisions of the statutes and of the Constitution without complying with the governing provisions of the Constitution as to the manner in which this may be done.” *Id.* at 690. The second part of the petition was “predicated upon the alleged unconstitutionality of the proposed measure, in the event of its adoption, from the standpoint of the subject-matter itself as distinguished from . . . the form and procedure employed in the process of enactment.” *Id.* at 691.

[¶23] As to the first question about the form of the measure and whether it constitutionally complied with the manner in which an initiated measure could be placed on the ballot, the Court in *Anderson*, exercising its mandatory original jurisdiction, reviewed the petition and held the challenged initiated measure was sufficient as to form and that the secretary of state acted properly in accepting it for placement on the ballot. 242 N.W. at 690-91.

[¶24] As to the second question about the alleged constitutionality of the proposed measure itself, the Court characterized the petition as making a

challenge “before the measure has ripened into a law.” *Anderson*, 242 N.W. at 692. Contrasting that issue with the first question presented, the Court said “[t]he question no longer involves the existence or nonexistence of a law authorizing the election or a consideration of substantial compliance with mandatory procedural requirements which can be determined as well in advance of the election as afterward.” *Id.* Because the second question challenged the constitutionality of the subject matter of the proposed measure itself, the Court said it was “not authorized to render advisory opinions,” and that the petitioner could question the subject matter of the proposed initiative “only when, and in so far as, it is applied to his disadvantage.” *Id.*

[¶25] Although the Petitioners concede this Court’s mandatory original jurisdiction under N.D. Const. art. III, § 7 is not “triggered here,” the petition in this matter falls within *Anderson’s* first question. The petition raises the issue whether S.C.R. 4008 complies with the governing provisions of the state constitution as to the manner in which the legislatively proposed constitutional measure can be placed on the ballot. The petition does not contend that the subject matter of the proposed measure would necessarily be unconstitutional if passed. In other words, assuming the proposed measure was properly placed on the ballot, the petition does not contend that it would be unconstitutional to impose term limits of four complete four-year terms for members of the legislative assembly. Rather, the petition contends it violates the state constitution to propose a constitutional measure altering or repealing the existing term limits unless the people themselves propose a measure by initiative petition under N.D. Const. art. III, § 1, rather than proposed by the legislature under N.D. Const. art. IV, § 16.

[¶26] Therefore, this petition involves a consideration of whether the Legislative Assembly complied with mandatory constitutional requirements about whether a legislatively proposed measure can be placed on the ballot at all. Like the first question presented in *Anderson*, that is an issue that “can be determined as well in advance of the election as afterward.” 242 N.W. at 692.

[¶27] The Petitioners are therefore not asking the Court to render an advisory opinion about whether the new term limits proposed in the measure would be

constitutional if passed, or whether the repeal of the limit the state constitution places on the legislature’s authority to propose initiated measures would be constitutional if passed. Rather, the Petitioners contend the state constitution currently forbids the legislature from using its authority to even submit a proposed constitutional amendment for placement on the ballot that seeks to alter or repeal the constitution’s current term limits.

[¶28] Courts have held that when a petitioner is mounting a pre-election ballot initiative challenge, “the question whether the issue is ripe turns on whether the challenge is *substantive or procedural*.” *Labrador v. Idahoans for Open Primaries*, 554 P.3d 85, 97 (Idaho 2024) (emphasis added). While a substantive challenge to a proposed initiative would not be ripe, pre-election review is proper when procedures for placing an initiative on the ballot were not followed. *Id.* (quoting *Davidson v. Wright*, 151 P.3d 812, 817 (Idaho 2006)); *see also State ex rel. Brooks v. Evnen*, 10 N.W.3d 887, 895 (Neb. 2024) (“[A] preelection challenge based on the procedural requirements to a voter ballot initiative’s placement on the ballot is ripe for resolution.”); *Avangrid Networks, Inc. v. Sec’y of State*, 237 A.3d 882, 889 (Me. 2020) (“[C]ourts are authorized by the [state constitution and statutes] to determine whether the proposed initiative satisfies the procedural prerequisites for a direct initiative.”); *Alaskans for Efficient Gov’t, Inc. v. State*, 153 P.3d 296, 298 (Alaska 2007) (“[W]here the initiative is challenged on the basis that it does not comply with the state constitutional and statutory provisions regulating initiatives, courts are empowered to conduct pre-election review.”).

[¶29] As part of its argument that the petition does not present an issue ripe for review, the Legislative Assembly argues there “is no dispute the Legislative Assembly followed the procedure prescribed by Section 16 of Article IV to submit a proposed amendment to the voters.” However, regardless of whether the procedure prescribed by N.D. Const. art. IV, § 16 was followed, N.D. Const. art. XV, § 4, in its present form, purports to prohibit the legislature from using its authority under N.D. Const. art. IV, § 16 to submit a proposed measure that seeks to alter or repeal the current term limits. If the submission of the proposed amendment is itself prohibited by the state constitution, then the procedure required by all the relevant parts of the state constitution clearly was not followed. That is precisely the issue raised in the petition. Therefore, this petition

involves a consideration of whether the Legislative Assembly complied with mandatory constitutional requirements about whether a legislatively proposed measure can be placed on the ballot at all. Like the first question presented in *Anderson*, this issue “can be determined as well in advance of the election as afterward.” 242 N.W. at 692.

[¶30] Here, the Petitioners’ arguments do not challenge the substance of S.C.R. 4008, but rather the process by which the Legislative Assembly adopted S.C.R. 4008 and placed Constitutional Measure 1 on the ballot, proposing to amend N.D. Const. art. XV, § 1. We therefore conclude the petition presents an issue ripe for review.

B

[¶31] The Legislative Assembly argues the Petitioners lack standing to challenge the constitutionality of S.C.R. 4008 or attempt to enjoin its proposed constitutional measure from being placed on the November 2026 general election ballot.

[¶32] “Standing is the concept used to determine if a party is sufficiently affected so as to insure that a justiciable controversy is presented to the court.” *Nw. Landowners Ass’n v. State*, 2025 ND 147, ¶ 9, 25 N.W.3d 220 (quoting *Kjolsrud v. MKB Mgmt. Corp.*, 2003 ND 144, ¶ 13, 669 N.W.2d 82 (cleaned up)). “Standing is a threshold issue to determine whether a party is entitled to have a court decide the merits of a dispute[.]” *State v. Leingang*, 2009 ND 38, ¶ 17, 763 N.W.2d 769. “A litigant may have a court decide the merits of a dispute only after demonstrating standing to litigate the issue before the court.” *Id.* The standing requirement is meant to prevent the Court from deciding purely abstract questions. *State v. Carpenter*, 301 N.W.2d 106, 107 (N.D. 1980); *see also Heitkamp*, 1998 ND 122, ¶ 10.

[¶33] “To have standing plaintiffs must show they have suffered some threatened or actual injury resulting from the putatively illegal action, and the harm must not be a generalized grievance shared by all or a large class.” *Nw. Landowners*, 2025 ND 147, ¶ 9 (quoting *First Int’l Bank & Tr. v. Peterson*, 2011 ND 87, ¶ 9, 797 N.W.2d 316 (cleaned up)). “[P]laintiffs must demonstrate standing

for each claim that they press and for each form of relief that they seek.” *Id.* (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021)). Whether standing exists presents a question of law, which is fully reviewable. *Id.*; *Flatt ex rel. Flatt v. Kantak*, 2004 ND 173, ¶ 38, 687 N.W.2d 208.

[¶34] The Legislative Assembly contends the Petitioners have not shown an “actual or threatened injury” because S.C.R. 4008 “has no legal effect unless it is approved by the people at an election,” and argues “[t]he mere act of voting on a proposed amendment to the Constitution cannot cause ‘some threatened or actual injury’ to the Petitioners.” The Legislative Assembly again relies on *Anderson*, 242 N.W. at 692-93, to support its argument. In contending the Petitioners here lack standing, the Legislative Assembly also relies upon *Anderson’s* analysis of the second question, rather than the first question.¹

[¶35] Because the Petitioners’ petition claims a constitutional violation regarding the propriety of placing a legislatively proposed measure on the general election ballot, *Anderson* supports a determination that the Petitioners have standing to challenge S.C.R. 4008. The petition’s challenge to S.C.R. 4008

¹ We also note, historically, this Court has said that “[p]rocedurally, the title ‘State ex rel.’ reflects that the application requesting the Supreme Court to exercise its original jurisdiction is reserved to the State itself and is used only to vindicate or protect its rights and prerogatives or the liberties of its people[,]” and “[t]he application for a writ addressed to the original jurisdiction of the Supreme Court must always be brought in the name of the State.” *Wheeler v. Schuetzle*, 2006 ND 115, ¶ 8, 714 N.W.2d 829. This Court has further noted “a private relator must set forth in his petition that he has called the alleged infringement upon the sovereignty of the State to the attention of the Attorney General and requested the Attorney General to institute an original proceeding but that the Attorney General has refused to do so or has unreasonably delayed doing so.” *Id.*; see, e.g., *State ex rel. Lesmeister v. Olson*, 354 N.W.2d 690, 693 (N.D. 1984); *SunBehm Gas, Inc. v. Lesmeister*, 308 N.W.2d 555, 557 (N.D. 1981); *State ex rel. Vogel v. Garaas*, 261 N.W.2d 914, 916 (N.D. 1978); *State ex rel. DeKrey v. Peterson*, 174 N.W.2d 95, 98 (N.D. 1970); see also *State ex rel. Link v. Olson*, 286 N.W.2d 262, 266 (N.D. 1979) (“[O]rdinarily, the attorney general institutes these proceedings as the legal representative of the interests of the state, his consent or refusal is not necessary in an action in which he is one of the parties defendant, and which concerns his alleged wrongful act and seeks to restrain it.” (citing *State v. Langer*, 177 N.W. 408, 413 (N.D. 1919))). Nevertheless, none of the parties have raised these grounds as an issue. Therefore, to the extent these grounds are procedural, see *Wheeler*, ¶ 8, this Court may waive compliance with procedural rules, so long as it is not a jurisdictional requirement. See *State v. Freed*, 340 N.W.2d 172, 174 (N.D. 1983).

presents a live controversy rather than a purely abstract question. The Petitioners' alleged "actual injury" stems from the mere placement of the proposed measure on the ballot. In addition, the Petitioners were members of the Term Limits Initiative sponsoring committee that initiated the measure responsible for creating N.D. Const. art. XV, and the Petitioners are also North Dakota taxpayers and qualified electors. This Court has previously recognized similarly-situated petitioners to be "proper part[ies]" to raise questions where "the sovereignty and prerogatives of the State are involved." *State ex rel. Walker v. Link*, 232 N.W.2d 823, 825 (N.D. 1975); *see also Haugen*, 2020 ND 177, ¶ 11 (considering and granting a petition brought by similarly-situated petitioners who claimed an initiated measure did not comply with constitutional requirements for its placement on the general election ballot); *Billey v. N.D. Stockmen's Ass'n*, 1998 ND 120, ¶ 7, 579 N.W.2d 171 ("[A]ny state taxpayer has standing to challenge a statute on the basis state funds are being unlawfully dissipated.").

[¶36] Under these circumstances, we conclude the Petitioners have standing. We therefore will address the merits of the petition.

IV

[¶37] The Legislative Assembly argues that, even if the issues are ripe and the Petitioners have standing, N.D. Const. art. XV, § 4 raises constitutional concerns. Specifically, the Legislative Assembly argues that, because article XV, section 4 limits the people's ability to vote on amendments proposed by their elected officials, it infringes upon our republican form of government.

[¶38] Article IV, section 4, of the United States Constitution guarantees each state shall have a republican form of government. *Duncan v. McCall*, 139 U.S. 449, 461 (1891).

Under this article of the Constitution it rests with Congress to decide what government is the established one in a State. For as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not. And when the senators and representatives of a State are admitted into the

councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal.

Luther v. Borden, 48 U.S. 1, 42 (1849).

[¶39] Therefore, Respondents’ argument that N.D. Const. art. XV, § 4 “infringes,” “cuts against,” or “is an impediment to” the Secretary of State’s compliance with the guarantee clause—U.S. Const. art. IV, § 4—is non-justiciable and thus without merit. *See Rucho v. Common Cause*, 588 U.S. 684, 687 (2019) (stating “the Guarantee Clause does not provide the basis for a justiciable claim”); *Pac. States Tel. & Tel. Co. v. State of Oregon*, 223 U.S. 118, 150-51 (1912) (rejecting guarantee clause challenge to initiative provision in state constitution as not “within the reach of judicial power”).

V

[¶40] The Petitioners argue that S.C.R. 4008 exceeded the Legislative Assembly’s authority as limited by N.D. Const. art. XV, § 4, and that S.C.R. 4008 also violates N.D. Const. art. III, § 8. The dispositive issue, however, is whether the Legislative Assembly exceeded its authority under N.D. Const. art. IV, § 16, as limited by N.D. Const. art. XV, § 4, to propose an amendment to N.D. Const. art. XV, § 1.

A

[¶41] We interpret constitutional provisions according to the same principles of statutory construction. *Sorum v. State*, 2020 ND 175, ¶ 19, 947 N.W.2d 382 (citing *Heitkamp*, 1998 ND 122, ¶ 13). We have provided the following framework for construing constitutional provisions:

We aim to give effect to the intent and purpose of the people who adopted the constitutional provision. [*Heitkamp*, at ¶ 13]. We determine the intent and purpose of a constitutional provision, “if possible, from the language itself.” *Kelsh v. Jaeger*, 2002 ND 53, ¶ 7, 641 N.W.2d 100. “In interpreting clauses in a constitution we must presume that words have been employed in their natural and

ordinary meaning.” *Cardiff v. Bismarck Pub. Sch. Dist.*, 263 N.W.2d 105, 107 (N.D. 1978).

A constitution “must be construed in the light of contemporaneous history—of conditions existing at and prior to its adoption. By no other mode of construction can the intent of its framers be determined and their purpose given force and effect.” [*Heitkamp*, at ¶ 17] (quoting *Ex parte Corliss*, 16 N.D. 470, 481, 114 N.W. 962, 967 (1907)). Ultimately, our duty is to “reconcile statutes with the constitution when that can be done without doing violence to the language of either.” *State ex rel. Rausch v. Amerada Petroleum Corp.*, 78 N.D. 247, 256, 49 N.W.2d 14, 20 (1951). Under N.D. Const. art. VI, § 4, we “shall not declare a legislative enactment unconstitutional unless at least four of the members of the court so decide.”

Bd. of Trs., 2023 ND 185, ¶ 11 (quoting *Sorum*, ¶¶ 19-20). We have said that whether legislation is unconstitutional presents a question of law, fully reviewable by this Court. *Id.*; *Teigen v. State*, 2008 ND 88, ¶ 7, 749 N.W.2d 505.

B

[¶42] In determining the scope of the Legislative Assembly’s authority to propose a constitutional amendment to N.D. Const. art. XV, § 1, we must construe the competing language of N.D. Const. art. IV, § 16, and N.D. Const. art. XV, § 4.

[¶43] Article IV, § 16 of the North Dakota Constitution, which grants authority to the legislature to propose constitutional amendments, provides in part: “Any amendment to this constitution may be proposed in either house of the legislative assembly, and if agreed to upon a roll call by a majority of the members elected to each house, must be submitted to the electors”

[¶44] Article XV, § 4 of the North Dakota Constitution, however, limits this authority, stating: “*Notwithstanding the legislative assembly’s authority to propose amendments to this constitution under article IV, section 16 thereof*, the legislative assembly shall not have authority to propose an amendment to this constitution to alter or repeal the term limitations established in section 1 of this article.” (Emphasis added.) This section further provides the authority to propose a

constitutional amendment to “alter or repeal” the term limits in section 1 “is reserved to initiative petition of the people under article III of this constitution.” N.D. Const. art. XV, § 4.

[¶45] We have discussed the meaning and usage of the term “notwithstanding”:

Generally, the ordinary meaning of “notwithstanding” is “despite,” “in spite of,” or “without prevention or obstruction from or by.” See *N.L.R.B. v. SW Gen., Inc.*, 580 U.S. 288, 301, 137 S.Ct. 929, 197 L.Ed.2d 263 (2017) (citing *Webster’s Third New International Dictionary* 1545 (1986); *Black’s Law Dictionary* 1091 (7th ed. 1999) (“Despite; in spite of”)); see also *Black’s Law Dictionary* 1277 (12th ed. 2024). “In statutes, the word [notwithstanding] ‘shows which provision prevails in the event of a clash.’” *N.L.R.B.* at 301, 137 S.Ct. 929 (quoting A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 126-27 (2012)). “A ‘notwithstanding’ clause does not naturally give rise to such an inference; it just shows which of two or more provisions prevails in the event of a conflict. Such a clause confirms rather than constrains breadth.” *Id.* at 302, 137 S.Ct. 929. “When the Legislature intends for a statute to prevail over all contrary law, it typically signals this intent by using phrases like ‘notwithstanding any other law’ or ‘notwithstanding other provisions of law.’” *Hohenshelt v. Superior Ct. of Los Angeles Cnty.*, 18 Cal.5th 310, 335 Cal.Rptr.3d 532, 573 P.3d 944, 955 (2025).

State v. Bell, 2025 ND 201, ¶ 22, 29 N.W.3d 270 (emphasis added).

[¶46] In construing the plain language of these two constitutional provisions, the use of the term “notwithstanding” in N.D. Const. art. XV, § 4 defines a plain limit to the Legislative Assembly’s authority and shows an intent for this provision to prevail over the authority N.D. Const. art. IV, § 16. Moreover, N.D. Const. art. XV, § 4 constitutes a more specific delineation of the Legislative Assembly’s authority to “alter or repeal” N.D. Const. art. XV, § 1, than the general authority provided under N.D. Const. art. IV, § 16. See *Int. of M.R.M.-B.*, 2026 ND 82, ¶ 20, 34 N.W.3d 128 (“If the conflict between two provisions is irreconcilable, the specific statute controls over the general statute. N.D.C.C. § 1-02-07; *State v. Sapa*, 2022 ND 197, ¶ 15, 981 N.W.2d 843.”).

[¶47] On our review, therefore, we conclude S.C.R. 4008 impermissibly seeks to amend the term limits defined in N.D. Const. art. XV, § 1, in direct contravention of N.D. Const. art. XV, § 4—the procedure for placing such a constitutional amendment on the ballot. The constitution itself reserves this power to the people and does not give the Legislative Assembly authority to propose this amendment. We hold the process used to place S.C.R. 4008 on the ballot violates the constitution.

VI

[¶48] We do not address whether it would be appropriate to sever any portion of S.C.R. 4008; the parties have not requested or briefed whether severing any provision of a concurrent resolution deemed unconstitutional would be appropriate.

[¶49] Because we determine S.C.R. 4008 is unconstitutional based on the process the Legislative Assembly used to place it on the ballot, this Court has authority to enjoin the Secretary of State from placing Constitutional Measure 1 on the November 2026 general election ballot. *See, e.g., Haugen*, 2020 ND 177, ¶ 11 (granting a writ of injunction that enjoined the secretary of state from placing an initiated measure on the ballot after determining the initiated measure was unconstitutional). We therefore enjoin the Secretary of State from placing Constitutional Measure 1 on the November 2026 general election ballot.

VII

[¶50] The Petitioners request this Court to award attorney’s fees under N.D.C.C. § 32-23-08.

[¶51] This Court has held it may award attorney’s fees under its authority to issue a declaratory judgment. *See State Farm Fire & Cas. Co. v. Sigman*, 508 N.W.2d 323, 326 (N.D. 1993) (interpreting the phrase “[f]urther relief based on a declaratory judgment or decree may be granted whenever necessary or proper” in N.D.C.C. § 32-23-08 to justify an award of attorney’s fees in the “unique situation” of an insurance coverage dispute); *see also W. Nat’l Mut. Ins. Co. v. Univ. of North Dakota*, 2002 ND 63, ¶¶ 50-51, 643 N.W.2d 4 (same). We have not

applied N.D.C.C. § 32-23-08 to award attorney’s fees outside the context of an insurance coverage dispute. *W. Nat’l Mut.*, ¶ 51.

[¶52] Generally, North Dakota courts apply the “American Rule” for attorney’s fees and assume each party to a lawsuit will bear its own attorney’s fees. *See, e.g., Sorum*, 2020 ND 175, ¶ 58 (stating, in the context of a declaratory judgment action against the State alleging a legislative enactment was unconstitutional, that the “American Rule” generally applies whereby “each party to a lawsuit will bear its own attorney’s fees”). We accordingly deny the Petitioners’ request for attorney’s fees.

VIII

[¶53] Our conclusion that S.C.R. 4008’s adoption violated N.D. Const. art. XV, § 4 is dispositive. We have considered the remaining arguments and conclude they are either unnecessary to our decision or are without merit. We grant the requested review, conclude the Legislative Assembly’s adoption of S.C.R. 4008 violated N.D. Const. art. XV, § 4, and declare S.C.R. 4008 and Constitutional Measure 1 void *ab initio*. We enjoin the Secretary of State from placing Constitutional Measure 1 on the November 2026 general election ballot. We deny the Petitioners’ request for attorney’s fees.

[¶54] Lisa Fair McEvers, C.J.

Jerod E. Tufte

Jon J. Jensen

Douglas A. Bahr

Cherie L. Clark, D.J.

[¶55] The Honorable Cherie L. Clark, D.J., sitting in place of Friese, J., disqualified.