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NORTH DAKOTA SUPREME COURT

IN THE SUPREME COURT

FOR THE STATE OF NORTH DAKOTA

Terence B. Bjerke and Leverrett Oley Larsen, Petitioners, vs. The North Dakota Legislative Assembly and Michael Howe, in his official capacity as North Dakota Secretary of State, Respondents.	)	Supreme Court No.: 2026 0027

PETITION FOR DECLARATORY JUDGMENT AND WRIT OF INJUCTION

THE NORTH DAKOTA LEGISLATIVE ASSEMBLY'S RESPONSE TO PETITION

ORAL ARGUMENT REQUESTED

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STATEMENT OF RELIEF SOUGHT AND JURISDICTIONAL STATEMENT

[¶1] The Legislative Assembly requests the Court deny the Petition and allow the people of North Dakota to vote on Senate Concurrent Resolution ("SCR") 4008. SCR 4008 is a proposal to amend the North Dakota Constitution. The people's right to vote on such proposals was established at statehood and remains an integral part of the Constitution. The Petitioners have not established any legal grounds to prevent the people from voting. This Court's precedent requires the Petition be denied.

[¶2] Petitioners request this Court exercise its discretion to assert its original jurisdiction. "To warrant the exercise of this Court's original jurisdiction, the interest of the state must be primary, not incidental, and the public – the community at large – must have an interest or right that may be affected." Kelsh v. Jaeger, 2002 ND 53, ¶ 2, 641 N.W.2d 100. "Even upon proper showing, original jurisdiction is always discretionary, and the Court determines for itself whether a matter is within its original jurisdiction." North Dakota Legislative Assembly v. Burgum, 2018 ND 189, ¶ 4, 916 N.W.2d 83. This Court has declined to exercise its original jurisdiction over similar petitions in the past and there is no reason to do so here. The Petition must be denied.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

[¶3] 1. Whether this Court is bound by its precedent that it will not enjoin the submission of constitutional amendments to the people when they are proposed in accordance with procedural requirements.

[¶4] 2. Whether this Court should issue an advisory opinion on a proposal to amend the Constitution before it is approved by the electorate.

[¶5] 3. Whether the Legislative Assembly's proposal to amend Sections 4 and 1 of Article XV should be submitted to the voters when doing so does not create a constitutional infirmity.

[¶6] 4. Whether the Petitioners have standing to proceed and whether Section 4 of Article XV is unconstitutional.

I. STATEMENT OF THE CASE

[¶7] The Petitioners request this Court enjoin the Secretary of State from placing a proposed amendment to the North Dakota Constitution on the ballot for the November 2026 election. Both Petitioners were members of the Term Limits Initiative sponsoring committee in 2022. The people approved the Term Limits Initiative by a majority vote at the November 8, 2022, general election. Consequently, the North Dakota Constitution was amended to include Article XV. Article XV is entitled "Term Limits" and Sections 1 and 4 are at issue in this case. Section 1 prohibits an individual from serving as a member of the House or Senate for a cumulative period amounting to more than eight years in each house. Section 4 provides the Legislative Assembly cannot use its authority under Section 16 of Article IV to propose amendments to Section 1 of Article XV. However, nothing prohibits the Legislative Assembly from proposing an amendment to Section 4 of Article XV.

[¶8] Since statehood, the Legislative Assembly has been authorized to propose amendments to the Constitution. This was the original process for amendment as designed by the framers at the first constitutional convention and approved by the people in 1889. In the 1910's the Legislative Assembly proposed – and the people approved – the initiative proposal process to amend the Constitution. Neither a proposal by initiative nor a proposal

by the Legislative Assembly becomes part of the Constitution until it is approved by a majority vote of the people.

[¶9] In 2025, Senator Dwyer introduced SCR 4008 to propose to the electorate a repeal of Section 4 and an amendment to Section 1 of Article XV. SCR 4008 received majority approval in both the House and Senate. The Secretary of State received SCR 4008 on April 8, 2025. The Petitioners request this Court take the unprecedented step of enjoining the Secretary of State from placing SCR 4008 on the ballot or alternatively enjoining the Secretary from counting the people's vote.

[¶10] The Petition is fundamentally flawed and conflates the Legislative Assembly's role as a lawmaking body with its authority to propose an amendment to the Constitution. Section 16 of Article IV authorizes the Legislative Assembly to propose "[a]ny amendment to this constitution" and upon majority approval of each house, the proposal "must be submitted to the electors." N.D. Const. Art. IV, § 16. This Court has long recognized that when the Legislative Assembly proposes an amendment "to the electors for ratification or rejection [it] does not act in its legislative capacity, but as an agent of the sovereign people appointed by and through the terms of organic law." State v. Taylor, 22 N.D. 362, 133 N.W 1046, 1048 (1911). The Legislative Assembly has no power to amend or repeal the Constitution because that power lies solely with the people of North Dakota. Despite the Legislative Assembly's strict adherence to Section 16 of Article IV, the Petitioners request this Court deprive the people of the opportunity to vote on a proposed amendment to their constitution.

[¶11] Under this Court's precedent, the Petition must be denied for numerous reasons. First, this Court's precedent makes clear it "will not enjoin the submission of

constitutional amendments." State v. Hall, 44 N.D. 459, 171 N.W. 213, 221 (1918). This is because the "courts have no power to interrupt the process of amendment before it is complete" or "to restrain a popular vote upon a constitutional proposal." State v. State Bd. of Canvassers, 44 N.D. 126, 172 N.W. 80, 82 (1919) (quoting *Revision and Amendment of State Constitutions*, Dodd, p. 232). Nonetheless, that is exactly what the Petitioners request here.

[¶12] The Petition also fails on its merits. Importantly, SCR 4008 proposes to repeal Section 4 of Article XV. Nothing prevents the Legislative Assembly from submitting such a proposal to the electorate. If the people vote to repeal Section 4 of Article XV, no provision will restrain the process of submitting a proposed amendment to Section 1. Put simply, allowing the people to vote on SCR 4008 does not create any constitutional infirmities. Rather, it avoids them. This case does not present a close call, and the Petition must be denied.

II. STATEMENT OF FACTS

A. The Right to Approve or Reject Proposed Amendments to the Constitution has Always been Afforded to the People.

[¶13] In 1889, Congress authorized North Dakota to form a constitution and state government for admission into the union. The Enabling Act (1889). The Enabling Act required the constitutional convention's elected delegates to meet in Bismarck on July 4, 1889, and form a constitution subject to approval of the qualified electors. Id. at §§ 2, 3, 4, 8. The convention resulted in a draft constitution. See 1889 – Original Draft Const. of

North Dakota[1]. The framers recognized the original constitution may need future amendments and provided a procedure for doing so. Id. at Art. XV, § 202. The draft constitution of 1889 provided "[a]ny amendment or amendments to this Constitution may be proposed in either House of the Legislative Assembly," but could not become effective unless approved by a majority vote of the people. Id. The people approved this method when they adopted the Constitution on October 1, 1889. See N.D. Const. Art. XV, § 202 (1889).

[¶14] This was the only means by which the Constitution could be amended until 1914 when the Legislative Assembly proposed - and the people approved - an indirect initiative petition process to amend the constitution. See N.D. Const. Art. 15, § 202 (1925) (Explanatory Note). That process required an initiative petition be signed by at least twenty-five percent of legal voters in not less than one-half of the counties of the State. Id. The petition was then to be filed with the Secretary of State and placed on the ballot to be voted on at the next general election. Id. If the proposed amendment received a majority vote, it was then referred to the Legislative Assembly for majority approval. Id. If the Legislative Assembly rejected the initiated petition, the issue would be again placed on the ballot. Id. If the people again voted for the petition, it became part of the Constitution. Id.

[¶15] In 1918, the Constitution was successfully amended again. Id. This amendment allowed the people to propose amendments without any involvement by the

[1] See https://ndlegis.gov/library-and-research/historical-constitution-and-century-code (Accessed March 3, 2026).

Legislative Assembly. See id. This is essentially the same process that exists today. While the Constitution has been reorganized since 1918, it still can only be amended in two ways.

[¶16] First, the Legislative Assembly may propose an amendment to the Constitution to be voted on by the people. Section 16 of Article IV requires a proposed constitutional amendment to be placed on the ballot as follows:

> 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.

N.D. Const. Art. IV, § 16.

This process is how SCR 4008 came to be.

[¶17] Second, the people may also propose an amendment to the Constitution by initiative petition. N.D. Const. Art. III, § 9. Section 9 of Article III provides as follows:

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

Id.

[¶18] If the petition is sufficient, the measure is placed on the ballot and must be approved by majority vote to become part of the Constitution. N.D. Const. Art. III, §§ 6, 7, 8. This process is how Article XV, the term limits amendment, was enacted in 2022.

[¶19] Regardless of whether an amendment is proposed by the Legislative Assembly under Article IV or by initiative petition under Article III, it does not become effective unless it is approved by a majority vote of the people. See N.D. Const. Art. IV, § 9; N.D. Const. Art. III, §§ 8, 9.

B. The Term Limits Amendment was Approved in 2022.

[¶20] In July 2021, the North Dakota for Term Limits Sponsoring Committee and North Dakota for Term Limits (collectively "Committee") submitted the Term Limits Initiative petition to the Secretary of State. Hendrix v. Jaeger, 2022 ND 168, ¶ 2, 979 N.W.2d 918. This proposal was to create a new article to the North Dakota Constitution imposing term limits on the Governor and members of the Legislative Assembly. Id. The Secretary of State approved the petition for circulation and "the Committee was required to gather 31,164 qualified elector signatures" to place the initiative on the November 2022 ballot. Id. at ¶ 2. The Committee submitted petition packets containing 46,366 elector signatures to the Secretary of State. Id. at ¶ 3. The Secretary of State "invalidated every signature appearing on petitions gathered by circulators whose affidavits were notarized by Zeph Toe" due to suspected forgery. Id. The Committee petitioned this Court for mandamus requiring the Secretary of State to place the Term Limits Initiative on the November 2022, general election ballot. Id. at ¶ 5. This Court held the Secretary of State's decision to invalidate all signatures on petitions having circulator oaths notarized by Toe was a misapplication of law and there were enough otherwise valid signatures to meet the minimum threshold. Id. at ¶ 22. This Court issued a writ of mandamus directing the Secretary of State to place the Term Limits Initiative on the November 2022 ballot. Id. at ¶ 24.

[¶21] The people approved of the Term Limits Initiative by a majority vote at the November 8, 2022, general election. See Petition for Declaratory Judgment and Writ of Injunction ("Pet.") Exhibit #4. Consequently, Article XV became part of the Constitution and provides the following relevant provisions:

> **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.

N.D. Const. Art. XV, §§ 1, 4.

[¶22] Article XV became effective on January 1, 2023. N.D. Const. Art. XV, § 5.

C. The Legislative Assembly Proposed an Amendment to Article XV.

[¶23] On January 27, 2025, Senator Dwyer introduced SCR 4008. Exhibit A. SCR 4008 proposed submitting to the electors a measure "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; and 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." Id. On March 17, 2025, the Senate adopted SCR 4008 by majority vote. Pet. Exhibit # 6. On April 2, 2025, the House also adopted SCR 4008 by majority vote. Pet. Exhibit # 7. The Speaker of the House and President of the Senate signed SCR 4008 and the Secretary of State filed it in his office on April 8, 2025. Exhibit B.

[¶24] On January 20, 2026, the Petitioners filed their Petition for Declaratory Judgment and Writ of Injunction. The Petitioners request this Court exercise its original jurisdiction and issue a declaration that the Legislative Assembly's proposed amendment (SCR 4008) is void and any resulting ballot measure is void, and to enjoin the Secretary of State from placing the Legislative Assembly's proposed amendments to Article XV on the ballot. Under this Court's precedent – which is consistent with numerous courts across the country – the Petition must be denied.

III. LAW AND ARGUMENT

A. The Petition Must Be Denied

[¶25] The Petitioners request the Court exercise its original jurisdiction to rule on the validity of SCR 4008 and enjoin the Secretary from placing the Legislative Assembly's proposal on the ballot. It is well-settled this Court's "original jurisdiction is always discretionary" and the "Court determines for itself whether a matter is within its original jurisdiction." North Dakota Legislative Assembly v. Burgum, 2018 ND 189, ¶ 4, 916 N.W.2d 83. The Petition requests this Court restrain the people's power to govern themselves through the voting process. This Court's precedent dictates original jurisdiction is inappropriate here. See Municipal Services Corp. v. Kusler, 490 N.W.2d 700, 706 (N.D. 1992) ("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 v. Byrne, 62 N.D. 634, 244 N.W.781, Syll. 3 (1932) ("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 v. Byrne, 62 N.D. 218, 242 N.W.687 (1932)

(denying request to enjoin Secretary of State from placing an allegedly unconstitutional initiated measure on the ballot). In accordance with this precedent, the Court should decline to exercise its original jurisdiction.

1. There is no Issue Ripe for Judicial Review.

[¶26] The Petition does not present an issue ripe for review under this Court's long-standing precedent. As explained above, the Legislative Assembly has never had authority to amend the Constitution. Rather, the Legislative Assembly can only propose an amendment to the voters. See N.D. Const. Art. IV, § 16. This Court recognized the Legislative Assembly's power to submit amendments to the Constitution "must be the same" as the power of the initiated petition because both are "held to be an effective part of the Constitution, and operative and self-executing." Hall, 44 N.D. 459, 171 N.W. at 214. In fact, the Legislative Assembly does not act in a legislative capacity at all when it proposes a constitutional amendment. Taylor, 22 N.D. 362, 133 N.W. at 1048. Rather, when the Legislative Assembly submits a proposed amendment to the "electors for ratification or rejection," it "does not act in its legislative capacity, but as an agent of the sovereign people appointed by and through the terms of organic law." Id.

[¶27] SCR 4008 is neither a law nor an amendment to the Constitution. SCR 4008 is merely a proposal and is no different than an initiated proposal under Article III. The Legislative Assembly's proposal has no effect unless a majority of voters approve it. It is undisputed that SCR 4008 was proposed in accordance with Section 16 of Article IV. See Pet. Exhibits #6-7; N.D. Const. Art. IV, § 16. Nonetheless, the Petitioners seek to prevent the people from voting on it. The Petitioners' arguments lack any support under North Dakota law. In fact, this Court's precedent makes clear the petition must be denied.

[¶28] In State Bd. of Canvassers this Court explained it "cannot properly intercept a constitutional amendment" before the process is complete provided proper procedure is followed. State Bd. of Canvassers, 44 N.D. 126, 172 N.W. at 85. This Court supported its rationale as follows:

> **The courts have no power to interrupt the process of amendment before it is complete, to restrain a popular vote upon a constitutional proposal, even though they may be clearly of the opinion that the popular vote will be ineffective because of defects already apparent in the method of proposal. They must wait until the amending process is fully completed, and then pass upon the validity of the amendment, if this question is properly presented in litigation before them.**

Id. at 82-83 (quoting *Revision and Amendment of State Constitutions*, Dodd, p. 232) (emphasis added).

[¶29] More recently, this Court explained "no court…has any authority to interfere or prevent a vote" of the people because "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 the power to declare it unconstitutional." Anderson, 62 N.D. 218, 242 N.W. at 693 (1932) (quoting State ex rel. Carson v. Kozer, 126 Or. 641, 270 P. 513, 515 (1928)).

[¶30] This logical and measured approach makes sense because a proposal has no legal effect until it is approved by a majority vote. It is also consistent with this Court's fundamental principle that under "our constitutional framework for the separation of powers, it is well established that courts perform judicial functions and do not render advisory opinions on abstract disagreements." Kjolsrud v. MKB Mgmt. Corp., 2003 ND 144, ¶ 12, 669 N.W.2d 82; see also Langer v. State, 69 N.D. 129, 284 N.W. 238, 252 (1939) (explaining "[t]he debates of the Constitutional Convention leave no doubt that it was the

deliberate judgment of the framers of the State Constitution that Judges of the Supreme Court, as part of their official duties, should not be required, or authorized, to give advisory opinions"). If the Court were to rule on the validity of a constitutional proposal, it would do nothing more than comment on a proposal that may or may not become law. This Court does not exercise its jurisdiction to do so. See Kusler, 490 N.W.2d at 706 (N.D. 1992) (declining to rule on the validity of a proposal that – if enacted – would impinge on litigant's rights); Preckel, 62 N.D. 634, 244 N.W.at Syll. 3 (explaining the Court will not enjoin the Secretary of State from submitting a proposal to the electors or test the constitutionality of its substance); Anderson, 62 N.D. 218, 242 N.W.687 (denying request to enjoin Secretary of State from placing an allegedly unconstitutional initiated measure on the ballot).

[¶31] Similarly, in Hall this Court denied a writ of injunction that sought to restrain the Secretary of State from submitting a proposed amendment to a vote of the electors at the next general election. Hall, 44 N.D. 459, 171 N.W. at 214. This Court explained "the courts have no authority or power to interfere in the steps leading to the enactment of a law." Id. at 220. This Court compared the legislative process to the amendment process and explained that "[i]f a member of the legislative assembly should introduce a law which is clearly unconstitutional, and such law is before each branch of the Legislature, no court could interfere to restrain the passage of such law on the ground that it was unconstitutional." Id. Consequently, this Court reasoned it "will not enjoin submission of constitutional amendments." Id. at 221.

[¶32] This precedent is neither antiquated nor unique to North Dakota. For example, in 1980 the Supreme Court of Colorado adopted – and quoted – the same

authority this Court relied upon in State Bd. of Canvassers as support to order an election on an initiative proposal. See McKee v. City of Louisville, 616 P.2d 969, 527-31 (Colo. 1980) (en banc) and compare with State Bd. of Canvassers, 44 N.D. 126, 172 N.W. at 82-83.

[¶33] Moreover, in 1990 the Supreme Court of Missouri explained it will not "give advisory opinions as to whether a particular proposal would, *if adopted*, violate some superseding fundamental law, such as the United States Constitution." Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824, 827 (Mo. 1990) (en banc); see also Buchanan v. Kirkpatrick, 615 S.W.2d 6, 12 (Mo. 1981) (en banc) (explaining no court is "granted the power to enjoin an amendment from being placed on the ballot upon the ground that it would be unconstitutional if passed and adopted by the voters"); City of Kansas City v. Kansas City Bd. of Election Commr's, 505 S.W.3d 795, 798 (Mo. 2017) (en banc) (explaining "preelection challenges are limited to claims that the procedures for submitting a proposal to the voters were not followed.") The Supreme Court of Florida adopted this rationale in 2015 and explained it does not "consider or address the merits or wisdom of the proposed amendment" and it must "act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people," because the Court has "no authority to inject itself in the process, unless the laws governing the process have been 'clearly and conclusively' violated". In re Advisory Opinion to Atty Gen. re Limits or Prevents Barriers to Local Solar Electricity, 177 So.3d 235, 242 (Fla. 2015).

[¶34] 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. See

Pet. Exhibits #6-7; Exhibits A-B; N.D. Const. Art. IV, § 16. This Court cannot enjoin the submission of an amendment to the voters or issue a declaration on a proposed amendment before it has the effect of law. State Bd. of Canvassers, 44 N.D. 126, 172 N.W. at 82-83; Hall, 44 N.D. 459, 171 N.W. at 220-21; Kjolsrud, 2003 ND 144 at ¶ 12; Langer, 69 N.D. 129, 284 N.W. at 252; Kusler, 490 N.W.2d at 706 (N.D. 1992); Preckel, 62 N.D. 634, 244 N.W.781 at Syll. 3; Anderson, 62 N.D. 218, 242 N.W.687; Blunt, 799 S.W.2d at 827; Buchanan, 615 S.W.2d at 12; City of Kansas City, 505 S.W.3d at 798; In re Advisory Opinion to Atty Gen. re Limits or Prevents Barriers to Local Solar Electricity, 177 So.3d at 242. Nonetheless, this is exactly what the Petitioners request here.

2. SCR 4008 is a Valid Exercise of the Legislative Assembly's Authority Under Section 16 of Article IV.

[¶35] Even if the Petition was ripe for judicial review – and it is not – it still must be denied because it fails on its merits. First, the Petitioners' argument that SCR 4008 violates Section 8 of Article III is wrong. Section 8 of Article III is inapplicable to a proposed amendment to the Constitution. Second, contrary to Petitioners' argument, SCR 4008 – if passed – would not conflict with any other provision of the Constitution.

a. *Section 8 of Article III does not Apply to Constitutional Amendments Proposed by the Legislative Assembly.*

[¶36] The Petitioners assert SCR 4008 violates Section 8 of Article III of the Constitution. Pet. at ¶¶ 33-40. Section 8 of Article III provides the following:

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

N.D. Const. Art. III, § 8 (emphasis added).

[¶37] The Petitioners argue SCR 4008 is a legal nullity because neither chamber of the Legislative Assembly adopted it by a two-thirds majority as the Petitioners assert is required by Section 8. Pet. at ¶ 39. Their argument conflates the Legislative Assembly's authority to propose an amendment to the Constitution with its general lawmaking authority. These are two separate powers and the Legislative Assembly does not act in a legislative capacity when it proposes an amendment to the Constitution. Taylor, 22 N.D. 362, 133 N.W. at 1048. Rather it acts "as an agent of the sovereign people" and has absolutely no authority to amend or repeal any part of the Constitution. See id; see also N.D. Const. Art. IV, § 16. The power to do so lies exclusively with the people. See N.D. Const. Art. IV, § 16. (explaining a majority of the electors must approve of a proposed amendment for it to be "part of this constitution").

[¶38] Section 8 uses the terms "repealed or amended" for a reason. The Legislative Assembly certainly has the power to amend or repeal a statute through legislative action. See N.D. Const. Art. III, § 1; N.D. Const. Art. IV, § 13; N.D.C.C. § 1-02-17. But it has no power to "repeal" or "amend" the Constitution, and it did not do so here. The plain language of Article III, Section 8 makes it inapplicable to SCR 4008.

b. *SCR 4008 is not in Conflict with the Constitution.*

[¶39] The Petitioners argue it "is impossible to reconcile SCR 4008 with the constitutional restrictions contained in Article XV, Section 4 'without doing violence to the language of either.'" Pet. at ¶ 32. According to the Petitioners, SCR 4008 is invalid because Section 4 of Article XV prohibits Section 1 of Article XV from being amended by a legislative proposal. Pet. at ¶¶ 25-31. The Petitioners ignore that SCR 4008 proposes to

repeal Section 4 of Article XV. Notably, Section 4 of Article XV is the only provision that restricts an amendment to Section 1. There is absolutely nothing that prohibits the Legislative Assembly from proposing an amendment to repeal Section 4 of Article XV.

[¶40] Section 16 of Article IV authorizes the Legislative Assembly to propose "any amendment" to the Constitution. See N.D. Const. Art. IV, § 16. This includes an amendment to repeal Section 4 of Article XV. If the people vote to approve SCR 4008, Section 4 of Article XV will no longer exist. Consequently, nothing will prohibit the legislative proposal as a vehicle to amend Section 1 of Article XV. On the other hand, if the people reject this proposal, then Article XV will remain unchanged. Despite the Petitioners' arguments, SCR 4008 does not create a conflict with any other provision of the Constitution.

3. The Petitioners Lack Standing and Their Prayer for Relief Infringes Upon our Republican Form of Government.

a. *The Petitioners Lack Standing.*

[¶41] The Petitioners seek to use Section 4 of Article XV as a barrier to prevent the people from voting to amend their Constitution. To establish standing to make such a claim they must show "some actual or threatened injury from the putatively illegal action" and the "asserted harm must not be a generalized grievance shared by all or a large class of citizens." Kjolsrud, 2003 ND 144 at ¶ 14. SCR 4008 has no legal effect unless it is approved by the people at an election. The mere act of voting on a proposed amendment to the Constitution cannot cause "some threatened or actual injury" to the Petitioners. See Anderson, 62 N.D. 218, 242 N.W. at 692-63 (denying petition to declare proposed measure unconstitutional and to enjoin the Secretary of State from placing it on the ballot because "only actual, rather than anticipated, invasion of constitutional rights invokes judicial

concern" and "the petitioner…has made no showing which entitles him to any relief sought"); McKee, 616 P.2d at 974 (explaining if a proposed measure is not adopted by the voters the complaining party "will not have been affected in any manner"). As explained above, no issues presented in this case are ripe for review and the Petitioners lack standing to press their claims under Section 4 of Article XV.

b. ***The Petitioners' Prayer for Relief Infringes Upon our Republican Form of Government.***

[¶42] Even if these issues were ripe for review and the Petitioners had standing, their application of Section 4 of Article XV raises numerous constitutional concerns. Most notably, Section 4 infringes upon our republican form of government and violates this Court's long-standing recognition that initiative and Legislative Assembly proposals stand on equal footing.

[¶43] This Court recently explained "[t]he North Dakota Constitution must be read in light of history." Wrigley v. Romanick, 2023 ND 50, ¶ 17, 988 N.W.2d 231. Section 4 restricts the way Section 1 of Article XV can be amended and is a direct attack on the amendment process embedded in the Constitution since statehood. See N.D. Const. Art. XV, § 202 (1889); N.D. Const. Art. IV, § 16. Notably, the legislative proposal process was created in response to the Enabling Act's mandate that North Dakota operate in a republican form of government. See Enabling Act, § 4 (mandating the "Constitution shall be republican in form…"). The "republican form of government is guaranteed to every state" and its distinguishing feature is that the people "pass their own laws." Duncan v. McCall, 139 U.S. 449, 461 (1891). This lies at the foundation of our form of government. Kelsh, 2002 ND at ¶ 3 ("Few matters encompass more public interest than issues involving the power of the people to govern themselves through the voting process.") Section 4 of

Article XV cuts against the republican form of government because it limits the people's ability to vote on amendments proposed by their elected officials. Per the plain language of Section 4, the people cannot be allowed to vote on a proposed amendment to Section 1 unless they obtain signatures from at least 4 percent of the resident population. See N.D. Const. Art. III, § 9; N.D. Const. Art. XV, § 4. Substantial resources are required to achieve such a threshold. This is an impediment to our republican government that the framers of our Constitution certainly did not envision or intend. When read in its proper historical context, Section 9 of Article III was enacted to supplement – not replace - Section 16 of Article IV.

[¶44] Section 4 also conflicts with the fundamental premise that initiated and legislative proposals stand on equal footing. See Hall, 44 N.D. 459, 171 N.W. at 220; see also State v. Rivinius, 328 N.W.2d 220, 228 (N.D. 1982) (explaining the provisions within our Constitution "have at least equal standing" with one another). These issues – while real – do not need to be addressed in this case. SCR 4008 merely proposes to repeal Section 4 and amend Section 1 of Article XV. If the Court denies the Petition, the people will have an opportunity to express their will at the polls. However, if this Court reverses well-settled precedent and grants the Petition, the people of North Dakota will be deprived of such opportunity. This case does not present a close call and the Petition must be denied.

IV. CONCLUSION

[¶45] The Petition presents issues that are not ripe for judicial review, and nothing in the Constitution prevents the people of North Dakota from casting their vote on the Legislative Assembly's proposal. The Petitioners' attempt to silence this State's electorate

is contrary to this Court's precedent and our republican form of government. The Legislative Assembly respectfully requests the Petition be denied.

Dated this 3rd day of March, 2026.

By */s/ Scott K. Porsborg*

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CERTIFICATE OF COMPLIANCE

[¶46] The undersigned certifies the above brief is in compliance with N.D.R.App.P. 32(a)(8)(A) and the total number of pages of the brief is 23 pages.

Dated this 3rd day of March, 2026.

By */s/ Scott K. Porsborg*

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Sens. Luick, Castaneda, Klein, Paulson introduced:
SB 2393: A BILL for an Act to amend and reenact section 53-06.1-11.2 of the North Dakota Century Code, relating to transfers from the charitable gaming operating fund to the gambling disorder prevention and treatment fund; and to authorize a full-time equivalent position for the department of health and human services.
Was read the first time and referred to the **Judiciary Committee**.

Sens. Wanzek, Sickler, Dwyer introduced:
SB 2394: A BILL for an Act to create and enact a new chapter to title 47 of the North Dakota Century Code, relating to association community bylaws and board of directors.
Was read the first time and referred to the **Industry and Business Committee**.

Sen. Hogue introduced:
SB 2395: A BILL for an Act to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to uniform licensure and board operations.
Was read the first time and referred to the **Workforce Development Committee**.

Sens. Weston, Boehm, Hogue, Paulson and Reps. Steiner, Tveit introduced:
SB 2396: A BILL for an Act to provide for a performance audit of the department of commerce.
Was read the first time and referred to the **State and Local Government Committee**.

Sens. Enget, Sorvaag, Sickler and Rep. Kempenich introduced:
SB 2397: A BILL for an Act to amend and reenact subdivision f of subsection 4 of section 24-02-37.3, subsection 4 of section 54-27-19.4, subdivision c of subsection 4 of section 57-51.1-07.7, and subdivision b of subsection 6 of section 57-51.1-07.8 of the North Dakota Century Code, relating to the definition of non-oil-producing county for purposes of the flexible transportation fund, legacy earnings township aid fund, municipal infrastructure fund, and county and township infrastructure fund; to provide an effective date; and to declare an emergency.
Was read the first time and referred to the **Finance and Taxation Committee**.

Sens. Barta, Castaneda, Sickler and Reps. Bolinske, Christianson introduced:
SB 2398: A BILL for an Act to create and enact a new chapter to title 37 of the North Dakota Century Code, relating to the establishment of the military compatibility commission.
Was read the first time and referred to the **Agriculture and Veterans Affairs Committee**.

FIRST READING OF SENATE CONCURRENT RESOLUTIONS

Sens. Boschee, Patten, Rummel and Reps. Lefor, J. Olson, Steiner introduced:
SCR 4006: A concurrent resolution urging Congress to establish federal protections for the wild horse herd at Theodore Roosevelt National Park.
Was read the first time and referred to the **Energy and Natural Resources Committee**.

Sens. Hogue, Klein, Dever and Reps. Klemin, Lefor, Weisz introduced:
SCR 4007: A concurrent resolution to amend and reenact section 9 of article III and section 16 of article IV of the Constitution of North Dakota, relating to requiring each resolution adopted by the legislative assembly proposing a constitutional amendment and each initiative petition and measure proposing a constitutional amendment to be comprised of a single subject.
Was read the first time and referred to the **State and Local Government Committee**.

Sen. Dwyer introduced:
SCR 4008: 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; and 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.
Was read the first time and referred to the **State and Local Government Committee**.

Sens. Mathern, Braunberger introduced:
SCR 4009: A concurrent resolution urging Congress to support admitting Washington, D.C. into the Union as a state of the United States.
Was read the first time and referred to the **Workforce Development Committee**.

The Senate stood adjourned pursuant to Senator Klein's motion.

Shanda Morgan, Secretary

Sixty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2025

SENATE CONCURRENT RESOLUTION NO. 4008
(Senator Dwyer)

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.

STATEMENT OF INTENT

This measure provides an individual may not serve more than four complete terms in the legislative assembly. The measure also repeals the provision prohibiting the legislative assembly from proposing constitutional amendments relating to term limits.

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

That the following proposed amendment to section 1 of article XV and repeal of section 4 of article XV of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in November of 2026, in accordance with section 16 of article IV of the Constitution of North Dakota.

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

Section 1. An individual ~~shall~~may not serve more than four complete four-year terms 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~~legislative assembly. An ~~individual shall not be eligible to serve a full or remaining term~~individual's service as a member of the ~~house of representatives or the senate if serving the full or remaining~~legislative assembly during a term ~~would cause the individual to serve for a cumulative period of time amounting to more than eight years in that respective house~~that is less than four years does not count toward the term limit for a member of the house of representatives or the senate under this section.

SECTION 2. REPEAL. Section 4 of article XV of the Constitution of North Dakota is repealed.

SECTION 3. APPLICATION. If approved by the electors, this measure will apply to individuals elected to the legislative assembly after January 1, 2023.

Exhibit B
2026 0027

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

Filed in this office this 8th day of April, 2025,

at 4:12 o'clock P M.

Secretary of State

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of March, 2026, a true and correct copy of the foregoing **THE NORTH DAKOTA LEGISLATIVE ASSEMBLY'S RESPONSE TO PETITION, EXHIIBIT A**, and **EXHIBIT B** were filed via Electronic Filing and served upon the following:

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