

Opposition to HCR 3019

Madam Chair Larson & members of the Senate Judiciary Committee,

My name is Jared Hendrix. I am testifying in opposition to HCR 3019. I was the Chairperson of the ND for Term Limits sponsoring committee for the ballot measure that applied term limits to our legislature and governor. I am writing on behalf of the record 46,000 North Dakotans who signed petitions to have term limits placed on the ballot, as well as the 150,363 voters who approved the Measure with a 63.43% vote on the November 2022 general election ballot.

There are 6 members of your committee who were elected within your legislative district in the last election – reflecting the will of the voters to give *you* the authority to legislate. These same voters enacted term limits in every single one of your districts, and every county in the state. This resolution undermines the wishes of these voters.

The term limits measure included language that prohibits the legislature from altering or abolishing legislative term limits because of a clear conflict of interest. Article XV - Section 4 of the North Dakota state constitution reads: “...*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 [legislative term limits] of this article.*”

Legislators take an oath to the North Dakota constitution, yet this resolution is unconstitutional and a flagrant disregard of the will of the voters. If allowed to go forward, and if it survives a legal challenge, this proposal would put the issue again before voters, who will almost certainly reject it.

Do you have to support term limits to oppose HCR 3019?

No. Whether or not you supported the term limits measure has no bearing on the constitutional merits of this resolution. HCR 3019 is unconstitutional.

Doesn't the legislature have the ability to amend the state constitution?

Yes, but with limitations. Article IV, Section 16 reads: “*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.*”

Limitation #1 - Article III, Section 8 reads: “*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may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house.”

Limitation #2 - Article XV, Section 4 reads: “...*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 [term limits] ...is reserved to initiative petition of the people...*” The legislature is restricted from the act of **proposal** itself, regardless of the $\frac{2}{3}$ threshold it may achieve in a legislative chamber.

Doesn't HCR 3019 only alter – and not abolish – term limits?

It allows up to 48 years between both chambers, which is effectively *not* term limits. To reiterate, Article XV, Section 4 forbids the legislature from altering them.

Can the legislature term limit other statewide officials?

Yes, Section 4 only prohibits alterations to legislative term limits. For example, HCR 3019 could be amended to only propose to apply the same 2-term limits to statewide officials that was already applied by voters to the office of governor.

Is there any way for the legislature to alter legislative term limits?

The only way would be to remove all of the language of this proposal with the exception of striking Article XV, Section 4, which prohibits the legislature from altering legislative term limits. If that were enacted by the voters, then the legislature could propose changing the legislative term limits in Section 1 during the next session.

What are other examples in the constitution that restrict legislative authority?

- Article III, Section 1: “*Laws may be enacted to facilitate and safeguard, but not to hamper, restrict, or impair these powers.*”
- Article VII, Section 11: “*The power of the governing board of a city to franchise the construction and operation of any public utility or similar service within the city shall not be abridged by the legislative assembly.*”
- Article X, Section 1: “*The legislative assembly shall be prohibited from raising revenue to defray the expenses of the state through the levying of a tax on the assessed value of real or personal property.*”
- Article XI, Section 25: “*The legislative assembly shall not authorize any game of chance, lottery, or gift enterprises, under any pretense, or for any purpose whatever... [lists exceptions and parameters]*”

- Article XII, Section 10: *“No law shall be passed by the legislative assembly granting the right to construct and operate a street railroad, telegraph, telephone or electric light plant within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied for such purposes.”*

Does Article XV Term Limits violate the privileges and immunities clause?

No. Article I, Section 21 reads: *“No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens.”*

Legislators have the same rights as all citizens. The rights prescribed in Article III for the initiative petition of the people allows the ability to collect signatures and put forward a ballot measure. The sponsors of this bill could go out and do the hard work to collect signatures to undo term limits if they so choose.

How does HCR 3019 differ from other proposals like the sports betting amendment this session?

Article XI, Section 25, which prohibits gambling (with exceptions) only refers to the authority of the legislature to enact laws – i.e. statutes. HCR 3002 proposes sports betting, and such a proposal is within the legal authority of Article IV. Contrarily, the Term Limits Article XV, Section 4 prohibits the legislature from proposing an amendment to alter legislative term limits. There is no such prohibition on the legislature’s power to propose amendments to the gambling provisions of the state constitution.

Did voters understand what they were voting on?

The ballot language clearly indicated what this measure was about:

<https://vip.sos.nd.gov/PDFs/Measures%20Info/2022%20General/Official%20Ballot%20Language%20Constitutional%20Measure%20No%201.pdf>

Furthermore, if we are arguing that we are not sure that voters knew what they were voting on, the same logic applies to legislators. Voters might have a certain expectation of a legislator's voting record, or simply not have enough information to know where a candidate stands on any number of issues that are important to them. Such disconnect between voter’s expectations and voting records does not delegitimize their elections.

Weren’t there fraudulent signatures submitted for the term limits measure?

A record 46,000 signatures from North Dakotans were turned in to place term limits on

the ballot. Some signatures were thrown out due to various technical errors, which is similar to every other ballot measure. However, in addition to these, the Secretary of State unilaterally claimed, without clear evidence and solely on the basis of himself as a handwriting expert, that several petition packets had different looking signatures. He assumed this was fraud, and then arbitrarily assumed he could not trust 14,697-some signatures that were contained within packets notarized by the same notary.

No investigation or interviews were conducted, and no recourse or corrective action was considered by the Secretary's office. Despite this, his office admitted that all of these signatures had been reviewed line by line and were determined to be otherwise valid electors. Through months of investigation, neither the Secretary, nor the Attorney General or any law enforcement entity has produced a single person who claims that their signature was illegally placed on the petitions without their consent. Recently, the Ward County State's Attorney declined prosecution on signature fraud due to a lack of evidence. The Secretary of State's attempt to unconstitutionally deny the rights of over thousands of electors, without precedent or clear authority, was rebuked in a unanimous decision by the ND State Supreme Court.

For more information, please review the ND Supreme Court opinion by Justice Tufte:
<https://www.ndcourts.gov/supreme-court/opinion/2022ND168>

Thank you all for your time. Contact me any time 701-712-1487.

Respectfully,

Jared Hendrix