

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

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

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

Article III, section 3 of the ND Constitution² currently places no length-of-residency requirement on an elector who circulates a petition, and doing so violates the First and Fourteenth Amendments to the US Constitution which guarantees the right to engage in political speech.

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

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

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

¹ <https://ndlegis.gov/constit/a02.pdf>

² <https://ndlegis.gov/constit/a03.pdf>

³ <https://www.ncsl.org/elections-and-campaigns/initiative-and-referendum-processes>

⁴ <https://www.lwv.org/newsroom/press-releases/south-dakota-federal-court-strikes-down-residency-requirement-ballot>

⁵ <https://supreme.justia.com/cases/federal/us/486/414/>

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

4. The bill unjustifiably increases from 50% to 67% the percent of voters needed to approve an initiated constitutional amendment. Article III, Section 8 of the ND Constitution⁷ states that "If a majority of votes cast upon an initiated or a referred measure are affirmative, it shall be deemed enacted." The people of North Dakota have supported Section 8 by rejecting every proposal to amend the constitutional amendment process since 1978.⁸

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

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

Submitted by Carol Sawicki, LWWND Board Member. nodaklww@gmail.com

⁶ https://ballotpedia.org/Signature_requirements

⁷ <https://ndlegis.gov/constit/a03.pdf>

⁸ <https://law.und.edu/files/docs/ndlr/pdf/issues/97/2/97ndlr217.pdf>