

2009 SENATE JUDICIARY

SCR 4013

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 4013

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/4/09

Recorder Job Number: 8639

Committee Clerk Signature



Minutes: Senator Nething, Chairman

Relating to an exception of the right to trial by jury

Senator David Hogue – District 38- See written testimony- He proposes an amendment to the ND Constitution with regards to small claims court.

Senator Nething – Notes that small claims court is at \$5,000, would this become the threshold.

Senator Hogue – Said he has left the amount open. The legislature may want to decide they don't want any restrictions. It would take another act of the legislature to say if the amount in controversy does not exceed 5,000 you don't get a jury trial.

Senator Nething – Said this would be binding in district court as well.

Senator Hogue – Correct. This gives the legislature the maximum flexibility. He said there is a bill in the House to raise the small claims court jurisdiction from \$5,000 to \$10,000.

Senator Fiebiger – He struggles with amending the Constitution. He understands the concern and wonders if small claims is raised to \$10,000 which to most citizens is a significant amount would take care of the problem.

Senator Hogue – That was also his first approach. The Legislative Council said that approach wasn't constitutional because by not allowing someone to remove it to district court where they would get a jury trial, you're violating the constitution.

The legislative assembly sets policy and this is where it should start. \$10,000 is a lot of money and he thinks it helps people where it is a lot of money and small claims court is for those individuals who can't afford a lawyer. If you raise that amount and prevent them from having jury trials they are on a more level playing field. He addresses how it works for them.

Senator Fiebiger – Doesn't believe it is a fair playing field because when the case gets bounced into district court then they're in a whole new world.

Senator Hogue – He does agree, that is attempting to defendants to gain the system by removing it to district court and ask for a jury trial. He thinks Senator Fibiger's concern could be addressed by a separate statute that says once it's initiated in small claims court, you can't remove it.

Bill Neumann – State Bar Association – Said he is confused by the suggestion the problem is the ability to remove and his initial approach was to somehow pass a law that would forbid removal from small claims court. This section of the constitution would not permit such a law, the answer is not to amend the constitution to permit such a law but to amend the constitution to abolish jury trials in district court up to \$5000 or \$10000.

Senator Hogue – States that was where he was first at, you can't remove cases that are initiated in small claims court. But he was told that has been proposed before and was rejected because it violates this provision of the constitution. In order to do this you have to get the legislature to say you can't remove cases from small claims court. Legislative Council says we need to do both.

Senator Nething- Asks if he is saying, were this to become adopted by the people then you would still have a statutory major to deal with it.

Senator Hogue – States that is correct.

Close the hearing 4013

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 4013

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/11/09

Recorder Job Number: 9156

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Relating to an exception of the right to trial by jury.

Discussion is that they do not see the need for a trial by jury in small claims court. Senator Schneider mentions he spoke with the Bar Association and they didn't see a need for it and gave it a cool reception and he isn't too enthusiastic about it either. Senator Fiebiger says there is a bill that passed in the House that raises the small claims amount. He is inclined to leave things the way they are. Senator Nething said it appears we wouldn't be helping the claimant, this is advantageous to the defendant.

Senator Fiebiger motions for a do not pass

Senator Schneider seconds

Vote – 3-yes, 3-no

Senator Olafson moves a do pass

Senator Lyson seconds

Vote – 3-yes, 3-no

Senator Olafson moves without recommendation

Senator Schneider seconds

Page 2
Senate Judiciary Committee
Bill/Resolution No. 4013
Hearing Date: 2/11/09

Vote – 6-0

Senator Nething will carry

Date: 9/11/89
Roll Call Vote #: 1

4613

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen. Fiebigger Seconded By Sen. Schneider

Total (Yes) 3 (N) 3

Absent

Floor Assignment

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

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

Date: 2/11
Roll Call Vote #: 2
4013

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen. Olson Seconded By Sen. Lysan

Total (Yes) 3 (N) 3

Absent

Floor Assignment

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

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

Date: 2/11/09
Roll Call Vote #: 3
ALL VOTES without
recommendation
Committee

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.**

Senate JUDICIARY

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen Olson Seconded By Sen Spender

Total (Yes) 6 (N) 6

Absent

Floor Assignment Sen. Aeting

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

REPORT OF STANDING COMMITTEE

SCR 4013: Judiciary Committee (Sen. Nething, Chairman) recommends BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4013 was placed on the Eleventh order on the calendar.

2009 HOUSE CONSTITUTIONAL REVISION

SCR 4013

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SCR 4013

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 03/18/09

Recorder Job Number: 11228

Committee Clerk Signature

Lori Engelson

Minutes:

Chairman Koppelman opened the hearing on SCR 4013.

Sen. Hogue offered testimony in support of SCR 4013. See Attachment #1.

Sen. Hogue: I introduced SCR 4030 to amend the North Dakota constitution so that our small claims court functions in the way it was designed to function. Small claims court has been around for 35 plus years. What it does is it's a process where our citizens can resolve small disputes in an inexpensive way and in a short period of time. They get their claim form from the clerk of court's office, and they are able to, in their own words, describe a dispute they had with another party. The other party has an opportunity to respond, and then the case is set for hearing usually before a judicial referee. Under current North Dakota law, if the amount in controversy does not exceed \$5000, the parties can have their case in small claims court. They don't need lawyers. They don't need to comply with the rules of civil procedure. They don't need to comply with the rules of evidence. The case typically can be heard and decided within 30 to 60 days. What happens in some cases is that a party will be sued in small claims court, and the defendant will want to remove the case to the state district court, and at the same time ask for a jury trial. Why would they remove it to district court? I submit to this committee that the answer is they are hoping that if they ask it to be removed to district court,

and if they ask for a jury trial, the plaintiff will simply go away because if you quickly do the math and figure out it's a \$3,000 dispute. I'm not going to go hire an attorney. This case really isn't worth that type of a hassle. Most lawyers don't want to help you with these small disputes because you're not going to be happy at the end of the day if your attorney's bill is as much or more than the amount of the dispute. So the citizen is told about small claims court, you go into small claims court, you get your packet, and you get a call back from some of those citizens asking what do I do now that this case has been removed to district court, and they want a jury trial. Technically they could pursue the action, but they don't know anything about the rules of civil procedure. They don't know anything about the rules of evidence. They would just rather not do it. So that is the purpose for me wanting to amend the constitution to try to balance the right that our constitution says we should have this right to a jury trial. It's a civil dispute. It's \$5,000. Why should we impanel a jury to hear this case who, after all, will have to take time from their schedule, whether it's work or daycare. Why should we engage another district judge to hear it and call bailiffs and all the people that have to be organized to facilitate a jury trial. It just seems to me that if we are going to do this, we can balance the rights of people to have their cases heard with the rights of jurors and the rights of our judicial resources to say we designed this process for these small disputes. There is nothing wrong with keeping those small disputes in small claims court. The senate did pass legislation, the appropriation was between \$800 and \$900,000 to offer us two new district judges for the state of North Dakota. The reason we did that is because our civil caseload is increasing. But we haven't really talked about how to manage that civil caseload. Here is a proposal. It's a relatively simple proposal and costs nothing, and could potentially relieve a small portion of that civil case load. That's the purpose of my amendment, to make the small claims court work

like it should in all cases and not in those cases where the defendant doesn't get creative and remove the case.

Rep. Meier: Can you reference some cases that went from a small claims to a jury trial?

Sen. Hogue: Typically in several situations involving a plaintiff who has damage to his vehicle and his insurance company or an adverse insurance company. They are quarreling over the estimate or the amount of damage, and the plaintiff says, no this is what my body shop is telling me and the defendant says, no, this is what we'll pay. So the plaintiff doesn't have to accept that, and they can go to small claims court, and they can ask that this is the amount of damages to my vehicle, and I want to be paid this. The defendant insurance company will take that approach. The claims adjusters do not represent the insurance companies. We have rules that say only attorneys can represent another party, so they have to engage counsel to ask that the case be removed to district court and ask for a jury trial. It happens as a bargaining tool. Remove it and now the plaintiff has to be a little more reasonable. The case is not going to be decided on the merits, it's going to be decided based on the higher costs of resolving the case in district court. This constitutional amendment doesn't just cover the small claims court. If it's in that range, it empowers the legislature to say, \$5,000, we are not going to have a jury trial for \$5,000.

Rep. Conrad: Are there other states that have this?

Sen. Hogue: I'm not aware of any.

Rep. Conrad asks an audible question.

Sen. Hogue: I think the biggest concern for me is to try to educate the public. We're certainly attacking the right to a jury trial, but I think it is in a positive way, particularly for the citizens who like to have small cases resolved in an expedited manner. People will understand.

Rep. Schatz: Is there a difference in enforcement between small claims courts and district courts? Would there be more of an emphasis on collecting the debt from the district court than the small claims court?

Sen. Hogue: There isn't supposed to be any difference. In either case, the judicial referee or a district judge is authorized to enter a judgment. The judgment is the legal document which gives the plaintiff the authority to harness the power of the sheriff to go execute on assets. So there shouldn't be any difference. A lay person who is not trained in the law, will ask how do I get an execution from the sheriff. The sheriff will explain to them what they have to do with that judgment once they get it. Typically they are honored the same want a judgment in district court is honored.

Rep. Kretschmar: If this constitutional amendment passes, the legislature still has to pass enabling statutes to make it work.

Sen. Hogue: You are absolutely correct. This will enable the legislature to set that. I think that's important for two reasons. First, we don't want to put in the constitution what that jurisdictional amount should be whether it's \$5,000 or \$10,000. We likely will adjust that in this session. So it's merely to allow the legislature to decide that something that is small claims court jurisdiction, is not appropriate for a jury trial and should be resolved either by a judicial referee or by (inaudible).

Rep. Griffin: Would you anticipate if this passed, would you envision taking away their right to remove a small claims action to district court?

Sen. Hogue: No. I wouldn't anticipate that. If a party felt strongly about wanting a district judge as opposed to a referee to hear it, I couldn't argue against that, but it would still preserve the intention of the resolution to let's get this thing resolved on its merits in short order, and let's not use the jury trial system as a mechanism to go forth with a hearing on the merits.

Rep. Griffin: Wouldn't that somewhat cover your previous argument of how these things can be extended out over a lengthier amount of time? If this were to pass, that small claims action could still get bumped to the district level and drive up the cost and expense.

Sen. Hogue: What I would envision is that if in our system now we don't like a particular judge, you have that one bump. You can bump that one judge. I would certainly support a provision where if you had a problem with a judicial referee, in many districts there is only one referee to hear this case, so if for reason you didn't hit it off with that referee, you might have an opportunity to bump it to a district judge. But still the rules of evidence, discovery, all of that, would not kick in. The district judge would be deciding it as a judicial referee would. You're going to allow a period of discovery. We're going to relax the rules of evidence, and we're going to have a decision in 30 days.

Rep. Schneider: What amount of controversy do you think would be appropriate.

Sen. Hogue: I'm comfortable with \$5,000. We are close to raising it to \$10,000. I think the legislature could set that from time to time as it would be appropriate. The things we should look at is what is the value of the time of these jurors and the court system versus the amount of the controversy. Twenty years ago \$5,000 was quite a lot. Obviously it's not nearly as much today. I think that is something that could be answered by each legislative session as they go on.

Chairman Koppelman: Is small claims court referenced anywhere else in the constitution to your knowledge?

Sen. Hogue: I don't believe it is. Small claims court is something that the legislature created by statute, and I think it's been around for 35 years. We've tinkered with it from session to session. We've raised that amount. We're raising it again this session. So it's a statute, not a constitutional matter.

Chairman Koppelman: It seems to me the way the resolution is written, that it would automatically tie with whatever level we set with small claims. I don't think this is your intent, but the question would be do we want to tie the legislature to the same amount for both. Or if at some time we determine that small claims amounts can be, maybe 10 years from now, small claims amounts are at \$15,000, the legislature decides if this were to become part of the constitution, it may be it's only appropriate to set this level at 10. It would allow for that. And with that in mind, maybe striking everything after the word for. At the end of line 19, the word for through the word court on line 20 which basically just removes that reference to small claims court levels in jurisdiction. That would be two things. One, it would allow the level to be set by the legislature as it decided. And secondly, it would remove the reference to small claims court since that's a relatively recent creature in state history. There may come a time when it doesn't exist anymore. We call it something else. Comments on that?

Sen. Hogue: I did think of that. I really get back to an area of concern of Rep. Conrad. That is people go to the ballot, and they are going to vote on this. I think they are not going to want anything that takes away your fundamental rights to a jury trial. I think there would have to be something within the proposed constitutional amendment, that we're going to restrict this to the small type cases. We're not going to disturb the fundamental right to a jury trial when you have cases that are significant. The small claims court language was a good way to signify that we're talking about these small cases.

Chairman Koppelman: I see your point. I'm wondering maybe that could be accomplished in other ways. Perhaps for example by saying the amount in controversy does not exceed the amount established by the legislative assembly for smaller claims. Or generic language of that sort that wouldn't reference small claims court specifically but still would get at what you're driving at and I think what the people would be concerned about as well.

Sen. Hogue: I would concur with that.

Chairman Koppelman: You've talked a little bit about your experience with small claims court as an attorney and your clients. I know in the house judiciary committee over the years, we've had a lot of discussion about small claims including this section. What I've discovered is small claims court is very different around the state of North Dakota. In some jurisdictions the only parties to hear small claims cases are judges who are acting as judicial referees in those cases. In other districts we have a few referees that hear the cases. I believe they are law trained, I know there's some discussion from time to time about the decisions that are made by some referees, and that's actually given rise to some discussion about changing the small claims system to get away from being hostage to one decision which may not be, any well trained person might look at. If you have five of them and four of the five would say this decision is not a good decision based on the law and the facts and you've got one person that might make different kinds of decisions for different reasons, and the citizen who is there with that claim, both citizens, both the plaintiff and the defendant are sort of held hostage because we don't have an appeal process from small claims. We don't have any kind of circumstance where I can see someone looking at a jury trial, and I haven't heard of people removing cases and then asking for jury trials. I can see someone saying at least this gives me an opportunity to take a look at this and be reasonable about it. I think they could get the same relief by having a judge do it frankly so maybe the removal is sufficient. Are you aware of those kinds of situations?

Sen. Hogue: I am aware of it, and I can honestly tell you it happens at all levels. You often have an unhappy party that thinks the judge got it wrong, that thinks the jury misunderstood them. You'll have that level of dissatisfaction because the nature of the system is there is going to be a winner and a loser. You get law trained referees or judges, and they look at the

evidence as presented, and they make their decision. I don't think there is any particularly bad flaw with the way they go about deciding those cases.

Chairman Koppelman: Further support of SCR 4013. Testimony in opposition to SCR 4013.

Glen E. Baltrusch provided testimony in opposition to SCR 4013. See Attachment #2.

David Peterson: My name is David Peterson. I am a lawyer in Bismarck, North Dakota. The right to a jury trial I think is important. Frankly I trust jurors more than I do judges. I am very concerned about an erosion of the right to a jury trial. I see the jurisdictional amount in small claims court is now raised to \$10,000. That's reasonable, but I do not think that you should pass this to the vote of the people because I think that it is going to have the possibility of eroding the right to a jury trial. I think if a defendant gets sued and believes that they want to have a jury trial, they ought to have that right. It should not be taken away from them. Judges don't always make the right decision. Judges are human like everyone else, and they can make a mistake. Generally speaking, when you get six or twelve people off the street, they are going to come up with a reasonable decision. I don't think we should lessen that right for any corporation that gets sued or any individual that gets sued. Sen. Hogue did not provide any statistics as to how many times this has happened. I think there are problems in some districts with respect to some of the referees. There are concerns about that. So I respectfully request that you leave the constitution the way it is with the jury trial as it currently exists as it has been since the beginning of our state.

Chairman Koppelman: Further testimony in opposition to SCR 4013. Any neutral testimony on SCR 4013. Seeing none we'll close the hearing on SCR 4013.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SCR 4013

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 04/01/09

Recorder Job Number: 11614

Committee Clerk Signature

Lori Engison

Minutes:

Chairman Koppelman opened the hearing on SCR 4013.

Chairman Koppelman: This is the one that deals with trial by jury.

Rep. Kretschmar: I would move a do not pass on 4013.

Rep. Griffin: Second.

Rep. Kretschmar: My recollection from law school is that the Supreme Court in the 30's and 40's and more recent cases than that have ruled that the Bill of Rights in the United States Constitution has been passed on and effective in the states through the adoption of the 14th amendment. Article VII of the Bill of Rights allows jury trials for any amount over \$20. Now \$20 in 1789 was probably a nominal award. Now you can't get into federal court now unless the case is over \$75,000. I don't think we should monkey with the right to trial.

Chairman Koppelman: Those of you that practice law, have you seen this to be a problem in terms of people using the request for a jury trial as sort of a ploy to

Rep. Griffin: It does happen.

Rep. Schneider: It's a strategy.

Rep. Kretschmar: I believe if we want to change anything on those lines, it has to be done by statute.

Chairman Koppelman: Any further discussion. Seeing none I'll ask the clerk to call the roll on a do not pass recommendation on SCR 4013.

The roll was called by the clerk.

7 yes, 2 no, 0 absent and not voting. Rep. Kretschmar was assigned to carry the resolution.

Date: 04/01/09
Roll Call Vote #: 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 4013**

HOUSE CONSTITUTIONAL REVISIONS COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken DP DNP DP AS AMEND DNP AS AMEND

Motion Made By Kretschmar **Seconded By** Griffith

Total Yes 7 No 2

Absent

Floor Carrier: Kutschmar

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

REPORT OF STANDING COMMITTEE (410)
April 2, 2009 8:04 a.m.

library

Module No: HR-56-5941
Carrier: Kretschmar
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SCR 4013: Constitutional Revision Committee (Rep. Koppelman, Chairman)
recommends **DO NOT PASS** (7 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).
SCR 4013 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SCR 4013

1 **TESTIMONY OF DAVID HOGUE IN SUPPORT OF SENATE CONCURRENT**
2 **RESOLUTION NO. 4013**

3 **Senate Judiciary Committee**

4 **February 4, 2009**

5 **10:30 am**

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8 Good Morning Chairman Nething and members of the committee. My
9 name is David Hogue. I am a North Dakota Senator representing District 38. I am
10 the prime sponsor of Senate Concurrent Resolution No. 4013 and offer testimony
11 in support of its adoption.

12 This concurrent resolution seeks to amend the North Dakota Constitution
13 to fulfill the intent of the Legislative Assembly with regard to the creation of the
14 small claims court. Mr. Chairman as you and committee members are no doubt
15 aware, The Legislature created a small court claims process to expedite and
16 streamline the handling of relatively small cases. That process, described in
17 Chapter 27-08.1 of the North Dakota Century Code, has generally worked well by
18 eliminating most of the costs and attorney's fees related to resolving a dispute
19 through the court system.

1 Under the existing small court claims process, litigants appear without
2 attorneys and explain the dispute to a judicial referee or judge who decides the
3 matter based on the evidence presented during the hearing. There is usually no
4 formal discovery, no formal pleadings. The rules of evidence and other forms
5 rules do not apply.

6 Under current law, when the lawsuit is commenced in small claims court,
7 the defendant has the option of removing the case to state district court and
8 asking for a jury trial. Permitting defendants to seek a jury trial is incompatible
9 with the intent of Chapter 27-08.1.

10 Our law should balance the sanctity of the jury trial system against the
11 gravity of the dispute before the court. With respect to criminal trials, our North
12 Dakota Constitution strikes that balance by making clear that criminal cases in
13 which the defendant cannot be confined for more than one year is not entitled to
14 a jury trial. So, under the current constitutional framework, a citizen may be
15 jailed for a year without a jury trial. On the other hand, a person is entitled to jury
16 trial if that person has a \$1,000 dispute with another person.

17 Our Constitution should recognize that some civil cases do not warrant a
18 jury trial. We have had small claims court jurisdiction around for over 35 years. I

1 submit that the jurisdictional amount of small claims court is the place to limit
2 jury trials in civil cases, just as we limit jury trials in criminal cases to
3 misdemeanors.

4

5 This legislation will properly balance the right to a jury trial with the
6 burdens a jury trial imposes on citizens of North Dakota. I ask this committee to
7 give SCR 4013 favorable consideration.

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1 **TESTIMONY OF DAVID HOGUE IN SUPPORT OF SENATE CONCURRENT**
2 **RESOLUTION NO. 4013**

3 **Constitutional Revision Committee**

4 **March 18, 2009**

5 **3:30 pm**

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7

8 Good Morning Chairman Koppelman, Vice Chairman Kretschmar and
9 members of the committee. My name is David Hogue. I am a North Dakota
10 Senator representing District 38. I am the prime sponsor of Senate Concurrent
11 Resolution No. 4013 and offer testimony in support of its adoption.

12 This concurrent resolution seeks to amend the North Dakota Constitution
13 to fulfill the intent of the Legislative Assembly with regard to the creation of the
14 small claims court. Mr. Chairman, as you and committee members are no doubt
15 aware, The Legislature created a small court claims process to expedite and
16 streamline the handling of relatively small cases. That process, described in
17 Chapter 27-08.1 of the North Dakota Century Code, has generally worked well by
18 eliminating most of the costs and attorney's fees related to resolving a dispute
19 through the court system.

1 Under the existing small court claims process, litigants appear without
2 attorneys and explain the dispute to a judicial referee or judge who decides the
3 matter based on the evidence presented during the hearing. There is usually no
4 formal discovery, no formal pleadings. The rules of evidence and other forms
5 rules do not apply.

6 Under current law, when the lawsuit is commenced in small claims court,
7 the defendant has the option of removing the case to state district court and
8 asking for a jury trial. Permitting defendants to seek a jury trial is incompatible
9 with the intent of Chapter 27-08.1.

10 Our law should balance the sanctity of the jury trial system against the
11 gravity of the dispute before the court as well as the collective value of the time
12 of jurors. Our Constitution should recognize that some civil cases do not warrant
13 a jury trial. We have had small claims court jurisdiction around for over 35 years.
14 I submit that the jurisdictional amount of small claims court is the place to limit
15 jury trials in civil cases.

16 Adoption of this resolution will permit smalls claims court to function the
17 way it was intended to function in all cases. Cases that start out in small claims
18 court are by definition relatively small cases. The constitutional amendment will

1 permit a future legislative assembly to decide whether some or all of the cases
2 should stay in small claims court.

3 Mr. Chairman, the Senate has passed legislation increasing the funding for
4 two additional district court judges at a cost of nearly \$800,000. We need to add
5 judges because of the increased civil case load. I support the addition of two
6 judges but I also recognize the need to evaluate how we manage the civil case
7 load. This is a measure Mr. Chairman that does not cost anything and may lead to
8 a modest reduction of civil caseload.

9 This legislation will properly balance the right to a jury trial with the
10 burdens a jury trial imposes on citizens of North Dakota. I ask this committee to
11 give SCR 4013 favorable consideration. Chairman Koppelman, I would be happy
12 to try and respond to the questions of the Committee.

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SENATE CONCURRENT RESOLUTION 4013 TESTIMONY

Before the House Constitutional Revision Committee

March 18, 2009 at 3:30 P.M.

Submitted by Glen E. Baltrusch

Good afternoon Chairman Koppelman and Representatives of the committee.

My name is Glen Baltrusch. I was born and raised in the great state of North Dakota, and I reside in Harvey, North Dakota, which is in District 14. I stand before you today in opposition to Senate Concurrent Resolution 4013 and respectfully request that this committee **"RECOMMENDS DO NOT PASS"** to the floor of the House of Representatives after this hearing is completed.

Mr. Chairman, committee members, SCR 4013 is a gross violation of our basic fundamental 'right to jury' as prescribed in the "**Declaration of Rights**" as written in *Article 1; Section 13; of The Constitution of North Dakota*"; and would violate "**Article 7 of "The BILL OF RIGHTS"** of "**The CONSTITUTION OF THE UNITED STATES**". "**Article 3; Section 2; Paragraph 3; of The CONSTITUTION OF THE UNITED STATES**" pertains to right to jury in criminal trial, which is questionable in regards to *The Constitution of North Dakota* as referred to by Senator Hogue in his testimony. Also in testimony submitted by Senator Hogue, he has stated that the small claims process created by the Legislative Assembly as described in Chapter 27-08.1 of the North Dakota Century Code has generally worked well. So the question is; why would the 61st Legislative Assembly decide to deceive the good citizens of North Dakota by placing Senate Concurrent Resolution 4013 on the ballot? So that they vote away their Constitutional Right to Jury?

Mr. Chairman, committee members, **Senate Concurrent Resolution 4013 must have a "DO NOT PASS" recommendation to the House of Representatives**, then must have a 'unanimous' vote of "NAY" on the floor. I pray that we do not have a Legislative Assembly that is going to begin practicing the 'The Theory of Karl Marx'.

If you would place "The **BILL OF RIGHTS** of The **UNITED STATES CONSTITUTION**" and the "*Declaration of Rights of The North Dakota Constitution*" beside each other, you would find that they essentially mirror each other, and rightfully should do such. Especially since North Dakota is one of the several states of the Union, and "**The UNITED STATES CONSTITUTION**" is the supreme law of the land. Legislative bodies may expand the rights and liberties of its citizens, but not take them away. I believe passage of Senate Concurrent Resolution 4013 is unconstitutional; and could be very costly to the State of North Dakota if passed by the 61st Legislative Assembly, adopted at the ballot box, and challenged within the courts.

In reference to SCR 4013, I believe it should be noted that House Bill 1296, which relates to small claims court, has passed both the House of Representatives and the Senate, and by doing such, has increased the dollar amount from a five thousand (\$5,000) dollar limit to a ten thousand (\$10,000) dollar limit in small claims court. It also should be noted that the Legislative Assembly will in future sessions be creating, amending, and/or enacting law(s) to further increase claims to be heard within the small claims court(s) of this state. It is in the record. Mr. Chairman, committee members, **SCR 4013 needs a 'DO NOT PASS' recommendation and must be defeated on the floor.**

Chairman Koppelman, and committee members, Senate Concurrent Resolution 4013 is very dangerous, devious, sinister, and spits in the face of our brave men and women who have paid the ultimate price so that you, I, and every citizen has this fundamental right of jury. The founding fathers of our great country along with the framers of the United States Constitution and the Bill of Rights had the grace of God to provide them with great guidance; and the Declaration of Rights of the North Dakota Constitution shall not be so shamelessly violated as Senate Concurrent Resolution 4013 does. I respectfully request your support with a "**Do Not Pass**" recommendation to the House of Representatives.

Chairman Koppelman, committee members, thank-you for your time and consideration in this pertinent matter. If you have any questions, I will try to answer them for you.