

2009 HOUSE CONSTITUTIONAL REVISION

HCR 3010

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3010

House Constitutional Revision Committee

☐ Check here for Conference Committee

Hearing Date: 01/21/09

Recorder Job Number: 7473

Committee Clerk Signature Lou Engelson

Minutes:

Chairman Koppelman opened the hearing on HCR 3010. The title was read by the clerk.

Rep. Kasper: My name is Jim Kasper from District 46 in Fargo. HCR 3010 came about when I received an email from Paul Overby. He sent me an article written by George Will. (See attachment #1) I'm not here before the committee today to say that this is going to happen anytime soon in our state. I don't think it will as far as Legislature imposing a mandated health plan for the people of our state, but it could. It's my opinion if you look at the Constitution of our state, that our Constitution demands that the freedoms of the people of our state are preserved. What this does is it says the Legislative Assembly may not enact a law that restricts an individual's freedom of choice to private health care systems or private plans of any type a law that would interfere with a person's right to pay directly for lawful medical service or a law that imposes a penalty or fine for choosing to obtain or decline health care coverage or for participation in any health care system. The Legislative Assembly may not do that. If people choose to do what they wish, that's the flavor of this amendment.

Chairman Koppelman: Any questions from the committee.

Rep. Conrad: Did this pass in Arizona?

Rep. Kasper: I think it failed by 1 or 2%.

Rep. Conrad: Is this the same thing that Arnold Schwarzenegger vetoed?

Rep. Kasper: As the article said, Governor Schwarzenegger vetoed similar legislation. I'm not aware if it's the same or not.

Chairman Koppelman: Other testimony in support of HCR 3010.

Rep. Thoreson: I'm Blair Thoreson from District 44 in Fargo. I would also ask you to support HCR 3010. I believe this is a free market issue would protect the people of our state. It will let them choose who they should be able to go to for their health care choices. I think as people in government, we think we can create a solution to a problem and many times we create a problem. This would give the people the power to say I don't wish to have this solution.

Chairman Koppelman: Any questions for Rep. Thoreson:

Rep. Kretchmar: Would this amendment affect health insurance policies that we now have in effect in North Dakota.

Rep. Thoreson: I do not have an answer for that question.

Chairman Koppelman: Other questions for Rep. Thoreson.

Rep. Schneider: If there was action taken on this issue on a federal level, would you imagine this federal action granting this law?

Rep. Thoreson: That is correct. This would be specifically the Legislative Assembly so I don't think that would happen.

Chairman Koppelman: Rep. Kasper, do you have an answer for Rep. Kretchmar's question?

Rep. Kasper: No. What we have in force now, with the insurance plans that are in effect, all future insurance plans that might be marketed in North Dakota in the private sector, they're available. This simply says this body itself cannot mandate that people buy certain products or enroll in certain plans.

Rep. Kretchmar: In your presentation, the article, talked about a potential constitutional clash.

If the federal government would do something that required something like this resolution would prohibit, how do you see that playing out? Is that a court issue?

Rep. Kasper: I would hope so. It's been my contention that Congress, with their actions, have gone way too far with legislation to demand that certain laws are pushed down to the state level. Yes, I think it would require a battle in court.

Chairman Koppelman: Further testimony in support of HCR 3010.

Dustin Gawrylow, Executive Director of the North Dakota Taxpayer's Association, offered testimony in support of HCR 3010. See attachment #2.

Chairman Koppelman: Other testimony in support of HCR 3010. Seeing none, any testimony in opposition to HCR 3010.

Rep. Potter: My name is Tracy Potter. I'm a senator from District 35. I would like to point out that the Canadian system and this constitutional amendment could co-exist peacefully and easily. There is nothing in this resolution that would prevent a Canadian system from operating exactly as it does. They have private physicians. They have private health care. They have private insurance. You are not forced to pay a premium for that insurance or penalty for not being part of it. Nothing in this measure, even if this was passed in Canada, would restrict the way that they do business. If you're afraid of the Canadian system, this isn't getting at it. What this is getting at is the Massachusetts system. Or it may be preventing North Dakota from participating in a national system if there is a national health insurance plan passed along the lines that have been discussed at the national level. This is my fear about that is North Dakotans may be asked to pay taxes for that national health insurance. Would this, because it restricts the Legislative Assembly, would it also restrict the people from initiating these kinds of measures? If you're going to have these kinds of restrictions, I would

think you would approach it not from the point of view of the purchase of insurance. I've never heard of anybody complain that their fear is that they won't be able to buy this insurance plan or that insurance plan. What I hear is the fear that they will not be able to choose their physician or the medical care they feel is most appropriate. Even if you put that provision in, the Canadian system would be peacefully with that as well because you can choose your physician. This doesn't really get at any of that. I believe this is an unnecessary piece of legislation and unnecessarily expensive. If a national health care system is passed, our legislature will have the opportunity to figure out how and when and if the North Dakota people will be participating in that.

Chairman Koppelman: My reading of this indicates that it restricts the Legislative Assembly, not the people. I have been told by doctors in Canada that they do not have the ability to receive direct payment. This would prohibit taking away the right of a person to pay directly. Do you think that would run a fowl?

Rep. Potter: That is not my understanding at all. My research in this is somewhat dated. There could have been changes in the last 23 years. It is possible it could change. But that is not my understanding at all. Again, people do buy private insurance in Canada over and above and for when they want to travel to the United States.

Chairman Koppelman: Other testimony in opposition to HCR 3010.

John Risch, North Dakota legislative director for the United Transportation Union offered testimony in opposition to HCR 3010. See attachment #3.

Chairman Koppelman: In your opening statement you said that your first opposition was because it would restrict future legislatures. The Constitution does lay a framework for what the legislature may or may not do. What you're saying is, you don't like the idea of doing it on a topic like this. Am I right?

John Risch: Certainly that's what the Constitution is all about, or mostly about. Laying some guidelines.

Chairman Koppelman: Any other testimony in opposition to HCR 3010.

David Kemnitz: (Mr. Kemnitz referred to the North Dakota Constitution. See attachment #4)

My name is David Kemnitz. I'm the president of ND AFL/CIO and am in opposition to HCR 3010. Article I, Section 21 of the North Dakota Constitution says that no special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly. If this would pass and the people haven't asked for this, there would be a certain group that could, there may well be a majority here versus a group of people that say we want this in our Constitution and it takes 46,000 to get an initiated measure on the ballot it seems somewhat (inaudible) putting something before the people which is how well thought out and how well being able in the end. But that section, Article 1, Section 21 to me says that the legislative body binds itself to the future and what the Constitution says that no special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly. Then on Article 3, Section 1 has to do with the legislative power of this state shall be vested in a legislative assembly consisting of a senate and a house of representatives, the people reserve the power to propose and enact laws by the initiative etc. The last part of the section says this article is self-executing and all of its provisions are mandatory. Laws may be enacted to facilitate and safeguard, but not to hamper, restrict, or impair these powers. Article 3, Section 8 says if votes cast by the people then this bill becomes constitutional. 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 two-thirds vote of the members elected to each house. So if the people said we want a national health care system or we want a modified all-inclusive system, and the next legislative body

looked at that, (inaudible) that you the elected officials of the state could effect, change, or alter. You have the power to do those things.

Chairman Koppelman: Other testimony in opposition to HCR 3010. Is there any neutral or informational testimony on HCR 3010.

Rod St. Aubyn: I'm Rod St. Aubyn with Blue Cross Blue Shield of North Dakota. We are taking a neutral position. Does this affect current policies. Currently in the statute it covers things like HMOs and PPOs. It regulates that particular types of policies. With HMOs and PPOs, you are restricted to participating providers. If it's PPOS, it's almost like a specific provider. You are allowed to go outside a specific network, but there's a penalty for doing so. If you do want to pass this, we would request that you make it very clear that it doesn't apply to current HMOs. I think this is something that the legal people should look at. We're concerned this is going to affect a lot of products that we currently offer. It's an employer offered plan that's based on state laws that allows for that particular plan. The state has enacted laws to provide for this. The employee doesn't have a choice. This is the plan that is offered to them. I'm not sure where this all fits in there. If you do elect to approve this, we would just ask that you make it very clear that it is not intended for that somehow.

Chairman Koppelman: My first look at this would lead me to believe that there's nothing in this that indicates retroactivity so I would assume this would enact the Constitution. What's on the books now would not be affected. However, the second part of your testimony regarding changes, I can see your point. Any other testimony, neutral or informative on HCR 3010.

Seeing none, we'll close the hearing on HCR 3010.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3010

House Constitutional Revision Committee

☐ Check here for Conference Committee

Hearing Date: 03/02/09

Recorder Job Number: 9987

Committee Clerk Signature

Lou Engelson

Minutes:

Chairman Koppelman opened the hearing on HCR 3010.

Chairman Koppelman: This is the one that deals with health care. Any discussion or what are the wishes of the committee?

Rep. Schneider: I move a do not pass on HCR 3010.

Chairman Koppelman: Before you do that, maybe we should look at the date again just to be safe. If this were to make it on the ballot, would this be on the primary ballot?

Rep. Conrad: I think as many people as possible would want to vote on it. I would leave it on the general ballot.

Chairman Koppelman: Any disagreement with that? Seeing none, I will accept the motion from Rep. Schneider for a do not pass. Is there a second?

Rep. Griffin: Second.

Chairman Koppelman: A second from Rep. Griffin. Discussion?

Rep. Conrad: This should be decided on the national level. We may want to have more say, but we should have done that two years ago. I would oppose this. I don't think we want to get involved at this level.

Rep. Schatz: I'm reading this, and it says the legislative assembly may not enact a law that restricts an individual's freedom of choice of private health care systems or private plans of any type; a law that interferes with a person's right to pay directly for lawful medical services. I guess I just don't see anything wrong with that. To me that's pretty straight forward and says you should be able to choose what you want. I agree.

Rep. Griffin: I agree with what Rep. Schatz just said. But I also think that we can be realistic and realize it. I can't imagine the state of North Dakota, all of the sudden people making some universal health coverage before it happens nationally. The second part says or a law that imposes a penalty or fine of any type for choosing to obtain or decline health care coverage. That could possibly interfere if maybe the state offers a plan, and the state says if you are not on our plan and you're a state employee, you've got to pay a little more. Is that a penalty for not choosing the state plan? Maybe. I just think it's something that whether we pass this or not, it probably will have zero impact on anything future legislatures do. I do think there maybe could be some unintended consequences with the last few sentences.

Rep. Uglen makes inaudible comment comparing automobile liability insurance to medical coverage. Would we be violating this law? Do we pay directly for lawful medical services.

Chairman Koppelman: It's health insurance I believe. I think the difference is that with no fault insurance, you still have the right to pay for it yourself if you wanted to. But the idea is that the insurance does it for you in which case you obviously wouldn't want to. Further discussion. Members of the committee, I really struggle on this particular resolution because philosophically I agree with what the resolution tries to do. I don't think universal health coverage or socialized medicine or whatever term you want to use to define it is a good idea. However, I'm not sure the constitution of North Dakota is the place to prohibit it. I'm probably going to support the motion.

Rep. Uglem: What is the (inaudible) this in the North Dakota Constitution. Federal law mandated it. Would our constitution automatically be void in this matter?

Chairman Koppelman: That's a good question. You could be setting up a constitutional challenge. Some would say clearly yes it would override, and others who would cite the 10th commandment and state's rights would say it should. You could easily have a court case. The clerk called the roll.

6 yes, 2 no, 1 absent and not voting. Rep. Schneider was assigned to carry the bill.

Date: 3/2/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3010

**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 Schneider Seconded By Griffin

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Rep. Conrad	✓	
Vice Chairman Kretschmar			Rep. Griffin	✓	
Rep. Hatlestad		✓	Rep. Schneider	✓	
Rep. Meier	✓				
Rep. Schatz		✓			
Rep. Uglem	✓				

Total Yes 6 No 2

Absent 1

Floor Carrier: Schneider

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

REPORT OF STANDING COMMITTEE (410)
March 3, 2009 8:54 a.m.

Module No: HR-38-3876

Carrier: Schneider

Insert LC: . Title: .

Library

REPORT OF STANDING COMMITTEE

HCR 3010: Constitutional Revision Committee (Rep. Koppelman, Chairman)
recommends **DO NOT PASS** (6 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING).
HCR 3010 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

HCR 3010

Kasper, Jim M.

From: Paul Overby [lffpc@utma.com]
Sent: Tuesday, October 28, 2008 9:16 AM
To: Selected Friends
Subject: AZ healthcare amendment

Especially in light of this statement: So, The New York Times was told in August by Barack Obama who, no stickler for consistency, said in 2003, "I happen to be a proponent of a single-payer universal health care plan."

I like this Arizona amendment below. Something we should look at in ND in the next session. I would like to see the legislature put it on the ballot while we still have time. Socialism is on the march!

Paul Overby

GEORGE WILL: Watch Arizona on health care

Grand Forks Herald

Published Sunday, October 26, 2008

WASHINGTON — On Election Day, Arizonans can give the nation the gift of a good example. They can enact a measure that could shape the health care debate that will arrest or accelerate the nation's slide into statism.

Proposition 101, "The Freedom of Choice in Health Care Act," would put the following language into Arizona's Constitution:

"Because all people should have the right to make decisions about their health care, no law shall be passed that restricts a person's freedom of choice of private health care systems or private plans of any type. No law shall interfere with a person's or entity's right to pay directly for lawful medical services, nor shall any law impose a penalty or fine, of any type, for choosing to obtain or decline health care coverage or for participation in any particular health care system or plan."

What do those people favor who oppose Proposition 101? Some support legislation sponsored by the Democratic leader in the state House of Representatives. It would establish a severe single-payer system, proscribing private health insurance in the state and requiring almost everyone not on Medicare to enroll in a state health care program. Under that program, a state commission would stipulate the menu of services and medications and could even decide which hospitals could add which technologies.

A similar bill reached the desk of California's Gov. Arnold Schwarzenegger, who vetoed it. Such legislation essentially aims to replicate Canada's system, under which, generally speaking, medically necessary physician and hospital services are available only from the government health insurance system.

Opponents of Proposition 101 are against what it would guarantee, including the right of individuals to pay directly for medical services without needing the permission of a third party.

Proposition 101 would emancipate service providers from requirements that they either charge fees set by the state or charge nothing.

Proposition 101 would prevent employer or individual mandates of the sort imposed in Massachusetts. That is, it would prevent “pay or play” systems, under which employers must either pay for employees’ health insurance or pay into a state pool that finances insurance for them.

In the name of cost control, but actually in the service of self-serving crony semi-capitalism, some opponents of Proposition 101 want to restrict access to alternative services. These opponents include some government bureaucrats who run Arizona’s Medicaid system, and some hospitals, established health insurers and physicians groups who understand that it is easier to lobby for government contracts than it is to persuade individuals to purchase this or that product.

Proposition 101 would protect Arizonans not only against abridgements of their liberties by their state government, but also perhaps against comparable actions by the federal government. Clint Bolick, director of the Goldwater Institute’s Center for Constitutional Litigation, believes that if Washington were to enact a national health insurance program of prescriptive regulations, Proposition 101 would trigger an epochal constitutional clash “between state sovereignty and national power.”

Any national health insurance scheme would be vulnerable to constitutional challenge because it would impermissibly command actions by state officials, Bolick says. Furthermore, “it is a bedrock principle of constitutional law that the federal Constitution established the floor for the protection of individual liberties; state constitutions may provide additional protections.”

Proposition 101’s premise is: “The market is the best mechanism ever invented for efficiently allocating resources to maximize production” and “there is a connection between the freedom of the marketplace and freedom more generally.”

So, The New York Times was told in August by Barack Obama who, no stickler for consistency, said in 2003, “I happen to be a proponent of a single-payer universal health care plan.”

As an earlier occupant of the Senate seat Obama occupies — Everett Dirksen — said: “I live by my principles, and one of my principles is flexibility.”

Mr. Chairman, members of the committee,

My name is Dustin Gawrylow and I am the Executive Director of the North Dakota Taxpayers Association.

I am here to testify in support of HCR 3010.

I will keep this brief as this really is a very simple common sense constitutional amendment.

As we all know, healthcare costs are one of the most debated subjects in the country today.

Healthcare is expensive.

The idea of mandating that North Dakota residents buy and carry health insurance as has been imposed in other states like Massachusetts should be abhorrent to all of us.

Mandating that individuals, or even employers for that matter, buy and carry a product that everyone agrees is too expensive ~~is~~ makes no sense at all, this measure if passed by both chambers and the voters would protect North Dakotans from over-zealous future legislatures.

Even many of those that have advocated mandated healthcare admit that the major result of such efforts is a wind-fall profit for insurance companies.

In conclusion, it is perfectly valid to constitutionally protect the people of North Dakota from burdensome mandates that do not address the real problems with healthcare today.

Mr. Chairman, thank you for your time.

Attachment #2



JOHN RISCH

North Dakota Legislative Director

united transportation union

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Office: 701-223-0061
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E-mail: utu@bis.midco.net

Testimony of John Risch Before the House Constitutional Revision Committee In Opposition to HCR 3010 January 21, 2009

Mr. Chairman and members of the committee, my name is John Risch. I am the elected North Dakota legislative director of the United Transportation Union. The UTU is the largest rail labor union in North America. Our membership includes conductors, engineers, switchmen, trainmen, and yardmasters.

HCR 3010 is an attempt to restrict future legislative action regarding health care by way of the North Dakota Constitution. For this reason alone, HCR 3010 should receive a "do not pass" recommendation.

There are other reasons as well.

The premise of this resolution is that our current health care system is excellent, if not perfect, and the dynamics should never be altered.

We in North Dakota and America enjoy some excellent health care, but our overall system is not without problems.

The way in which health care is paid for is one of our current system's greatest faults and therein lies the greatest opportunity for improvement.

This resolution is some sort of attempt to stop the coming of socialized medicine. We already have socialized medicine for the aged and the poor, and the sky would not fall if the rest of society received similar benefits.

Health care has little to do with free market economics. Providers may advertise about quality of service, but never about price. And the price is the problem.

Attachment #3

Health Care Statistics in the United States

Health Insurance

- The United States is the only wealthy, industrialized nation that does not have a universal health care system. Source: Institute of Medicine of the National Academy of Sciences
- In 2006, the percentage of Americans without health insurance was 15.8%, or approximately 47 million uninsured people. Source: US Census Bureau
- Among the 84.2% with health insurance in 2006, coverage was provided through an employer 59.7%, purchased individually 9.1%, and 27.0% was government funded (Medicare, Medicaid, Military). (There is some overlap in coverage figures.) Source: US Census Bureau
- The primary reason given for lack of health insurance coverage in 2005 was cost (more than 50%), lost job or a change in employment (24%), Medicaid benefits stopped (10%), ineligibility for family insurance coverage due to age or leaving school (8%). Source: National Center for Health Statistics
- More than 40 million adults stated that they needed but did not receive one or more of these health services (medical care, prescription medicines, mental health care, dental care, or eyeglasses) in 2005 because they could not afford it. Source: National Center for Health Statistics
- Medicaid, which accounted for 12.9% of health care coverage in 2006, is a health insurance program jointly funded by the federal and state governments to provide health care for qualifying low-income individuals. Source: US Census Bureau
- Medicare, a federally funded health insurance program that covers the health care of most individuals 65 years of age and over and disabled persons, accounted for 13.6% of health care coverage in 2006. Source: US Census Bureau
- Medicare operates with 3% overhead, non-profit insurance 16% overhead, and private (for-profit) insurance 26% overhead. Source: Journal of American Medicine 2007

Health Care Expenditures

- In 2005, personal health care expenditures were paid by private health insurance 36%, federal government 35%, state and local governments 11%, and out-of-pocket payments 15%. Source: National Center for Health Statistics
- The United States spends twice as much on health care per capita (\$7,129) than any other country . . . and spending continues to increase. In 2005, the national health care expenditures totaled \$2 trillion. Source: National Center for Health Statistics
- 75% of all health care dollars are spent on patients with one or more chronic conditions, many of which can be prevented, including diabetes, obesity, heart disease, lung disease, high blood pressure, and cancer. Source: Health Affairs
- From 2000 to 2006, overall inflation has increased 3.5%, wages have increased 3.8%, and health care premiums have increased 87%. Source: Kaiser Family Foundation
- The average family health insurance premium, provided through an employer health benefit program, was \$11,480 in 2006. Employees paid an average of \$2,973 towards the premium amount. Source: Kaiser Family Foundation

Infant Mortality

- The United States ranks 43rd in lowest infant mortality rate, down from 12th in 1960 and 21st in 1990. Singapore has the lowest rate with 2.3 deaths per 1000 live births, while the United States has a rate of 6.3 deaths per 1000 live births. Some of the other 42 nations that have a lower infant mortality rate than the US include Hong Kong, Slovenia, and Cuba. Source: CIA Factbook (2008)
- Approximately 30,000 infants die in the United States each year. The infant mortality rate, which is the risk of death during the first year of life, is related to the underlying health of the mother, public health practices, socioeconomic conditions, and availability and use of appropriate health care for infants and pregnant women. Sources: CDC and National Center for Health Statistics

Life Expectancy

- Life expectancy at birth in the US is an average of 78.14 years, which ranks 47th in highest total life expectancy compared to other countries. Source: CIA Factbook (2008)

Bankruptcy

About half of the bankruptcy filings in the United States are due to medical expenses. Source: Health Affairs Journal 2005

<http://www.healthpaonline.net/health-care-statistics-in-the-united-states.htm>

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a violation of due process of law under Article I, § 9 of the state Constitution, or Amendment Fourteen, § 1 of the United States Constitution, by permitting service of notice by registered mail for the expiration of periods of redemption for real property. *Mund v. Rambough*, 432 N.W.2d 50 (N.D. 1988).

Unemployment Benefits.

A full-time college student disqualification for unemployment benefits effected by section 52-06-02(6), bears a rational relationship to

legitimate governmental interests and does not violate the equal protection guarantee of the federal constitution. Nor does it violate this section. *Lee v. Job Serv.*, 440 N.W.2d 518 (N.D. 1989).

Law Reviews.

Schools — Nature of the Right to Instruction — The Substantive Requirements of "Free Appropriate Public Education" Under the Education of All Handicapped Children Act of 1975, 59 N.D. L. Rev. 629 (1983).

Section 21. 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.

Source: Const. 1889, Art. I, § 20.

In General.

A statute which grants no privileges or immunities, except such as would apply to all citizens under the circumstances and conditions expressed in the statute, does not violate the provision against granting such privileges and immunities. *Vermont Loan & Trust Co. v. Whithed*, 2 N.D. 82, 49 N.W. 318 (1891).

Classification must be based upon such differences in situation or purpose between the persons included in the class and those excluded therefrom as fairly and naturally suggest the propriety of and necessity for different or exclusive legislation in the line of the statute in which the classification appears. *State ex rel. Workmen's Comp. Fund v. E.W. Wylie Co.*, 79 N.D. 471, 58 N.W.2d 76.

This constitutional provision does not prohibit appropriate legislative classification where proper facts justify such action as long as the act applies uniformly to all those within the class under similar circumstances. *Ferch v. Housing Auth.*, 79 N.D. 764, 59 N.W.2d 849 (1953).

City was not guilty of invidious discrimination in choosing to file one suit to compel removal of one unauthorized fence on a flood protection dike rather than several suits to remove several fences, where the outcome of the case might obviate the necessity of filing additional suits to remove other fences. *City of Minot v. Johnston*, 379 N.W.2d 275 (N.D. 1985).

Anti-Snuff Act.

The Anti-snuff Act was not unconstitutional on the theory that it deprived of life, liberty, or property without due process, or denied equal protection of the laws. *State v. Olson*, 26 N.D. 304, 144 N.W. 661, 1918B L.R.A. 975 (1913), error dismissed, 245 U.S. 676, 38 S. Ct. 13, 62 L. Ed. 542 (1917).

Appointed Counsel.

—Indigent Parents.

Allowing an indigent parent an opportunity to receive assistance of appointed counsel to protect parental rights is a "privilege" within the meaning of this section. *D.S. v. T.D.K.*, 499 N.W.2d 558 (N.D. 1993).

Business Corporation Prohibited from Farming.

The Corporate farming law does not violate this section. *Coal Harbor Stock Farm, Inc. v. Meier*, 191 N.W.2d 583 (N.D. 1971).

City Ordinance Exceeding Statute.

For a case noting possible equal protection violations where a city enacts an ordinance with penalties which differ from the penalties imposed by a parallel state statute, see *City of Fargo v. Little Brown Jug*, 468 N.W.2d 392 (N.D. 1991).

Civil Remedies and Procedure.

Statutes which authorized the giving of surety bonds on appeal and the taxing of the cost thereof are not unconstitutional as class legislation in violation of this section. *Investors Syndicate v. Pugh*, 25 N.D. 490, 142 N.W. 919 (1913).

A statute which abolishes the fellow servant rule so far as it applies to common carriers does not contravene the privileges and immunities section. *Peterson v. Fargo-Moorhead St. Ry.*, 37 N.D. 440, 164 N.W. 42 (1917).

Classification Based on Sex.

Shortage of funds does not constitute a sufficient compelling state interest to justify the discriminatory practice of transferring women prisoners to out-of-state prisons while keeping men prisoners in this state's prisons. *State ex rel. Olson v. Maxwell*, 259 N.W.2d 621 (N.D. 1977).

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PRIOR PROVISIONS

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side thereby. Power v.
05 N.W. 9 (1925).

under federal govern-
not considered per-
ip" within former pro-
g such individuals.
). 437, 178 N.W. 437

Collateral References.

Elections ⇨ 86-94.
25 Am. Jur. 2d, Elections, §§ 88, 94.
29 C.J.S. Elections, §§ 16, 33.
What constituted "conviction" within con-
stitutional or statutory provision disenfran-
chising one convicted of crime, 36 A.L.R.2d
1238.

Effect of conviction under federal law, or
law of another state or country, on right to
vote or hold public office, 39 A.L.R.3d 303.

Voting rights of persons mentally incapac-
tated, 80 A.L.R.3d 1116.

Law Reviews.

A Study of Guardianship in North Dakota,
60 N.D. L. Rev. 45 (1984).

ARTICLE III

POWERS RESERVED TO THE PEOPLE

Note.

For provisions of section 25 of original Article II, and amendments thereto, repealed by art.
amd. 105, approved November 7, 1978 (S.L. 1977, ch. 613, § 1; 1979, ch. 696), see Appendix of
Historical Notes.

Section 1. While the legislative power of this state shall be vested in
a legislative assembly consisting of a senate and a house of representatives,
the people reserve the power to propose and enact laws by the initiative,
including the call for a constitutional convention; to approve or reject
legislative Acts, or parts thereof, by the referendum; to propose and adopt
constitutional amendments by the initiative; and to recall certain elected
officials. This article is self-executing and all of its provisions are mandatory.
Laws may be enacted to facilitate and safeguard, but not to hamper, restrict,
or impair these powers.

Source: Art. amd. 105, sec. 1, subsec. 1,
approved Nov. 7, 1978 (S.L. 1977, ch. 613, § 1;
1979, ch. 696).

Inapplicability to Ordinances and Local Law.

The power of the people to initiate and refer
legislation under this section, does not in-
clude a reserved power to initiate or refer
local laws or ordinances; accordingly, former
section 40-05.1-09 did not contravene this
section. Pelkey v. City of Fargo, 453 N.W.2d
801 (N.D. 1990).

These Powers.

The term "these powers" refers only to the
powers reserved in the people under this
section so as to prohibit any law which would
hamper, restrict, or impair the powers re-
served in the people; such term does not
encompass the "legislative power". Sunbehm
Gas, Inc. v. Conrad, 310 N.W.2d 766 (N.D.
1981).

Power to Initiate.

State fair association's regulation limiting

the right to circulate initiative petitions at the
state fair did not unconstitutionally hamper,
restrict, or impair the power of the people to
initiate; rather, it structured and accommo-
dated the petition circulation process at the
state fair together with all of the other activ-
ities simultaneously occurring there.
Bolinske v. North Dakota State Fair Ass'n,
522 N.W.2d 426 (N.D. 1994), cert. denied, 514
U.S. 1004, 115 S. Ct. 1315, 131 L. Ed. 2d 197
(1995).

Setting of Fee by State Auditor.

Section 54-10-14 is not an unconstitutional
delegation of legislative authority under this
section or N.D. Const., art. XI, § 26, since the
delegated power to ascertain facts for opera-
tion of a law is not unconstitutional if a
reasonable guideline is given and since the
legislated guideline of "related costs" protects
against an arbitrary exercise of the power by
the State Auditor in setting the fee for review-
ing a public accountant's audit report.
Syverson v. Peterson, 495 N.W.2d 79 (N.D.
1993).

secretary of state in passing upon the sufficiency of an initiative petition was mandatory and self-executing; on review, the supreme court could determine only the questions the secretary was authorized to decide. *Preckel v. Byrne*, 62 N.D. 634, 244 N.W. 781 (1932).

Ministerial Capacity.

In performance of the duties imposed on him by the initiative and referendum provisions of the Constitution, the secretary of state acted in a ministerial capacity and his acts in that regard were subject to judicial

review in an appropriate proceeding. *Schmidt v. Gronna*, 68 N.D. 488, 281 N.W. 57 (1938).

Original Proceeding.

Electors and taxpayers of the state could bring an original proceeding in the supreme court to review the action of the secretary of state on an initiative petition. *Preckel v. Byrne*, 62 N.D. 356, 243 N.W. 823 (1932).

Collateral References.

Constitutionality, construction, and application of statutes requiring bond or other security in taxpayers' action, 41 A.L.R.5th 47.

Section 8. 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.

Source: Art. amd. 105, sec. 1, subsec. 8, approved Nov. 7, 1978 (S.L. 1977, ch. 613, § 1; 1979, ch. 696).

Effect of Vote.

Voters cast their ballots to approve or reject the referred measure, not to repeal or reject the actions of their legislature. *State ex rel. Wefald v. Meier*, 347 N.W.2d 562 (N.D. 1984).

DECISIONS UNDER PRIOR PROVISIONS

Departure from Legislative Purpose.

If the result of striking a part of a statute through the referendum was to remove the inducement therefrom, so that the remainder was a substantial departure from the legislative purpose, the entire statute fell. *Baird v. Burke County*, 53 N.D. 140, 205 N.W. 17 (1925).

Emergency Measure.

If an emergency measure was rejected at a referendum election and "thereby repealed", the measure, including every part and provision thereof, was annulled and destroyed and ceased to have any effect. *Dawson v. Tobin*, 74 N.D. 713, 24 N.W.2d 737 (1946).

Where an emergency measure amending and reenacting a former law and repealing all

measures in conflict therewith, was rejected at a referendum election, the rejection nullified the emergency measure and revived the law repealed by the measure. *Dawson v. Tobin*, 74 N.D. 713, 24 N.W.2d 737 (1946).

Initiated Measure.

Legislative amendment and reenactment of an initiated measure did not destroy its initiative character, and a subsequent amendment thereof was subject to the constitutional limitation placed on the assembly. *State ex rel. Strutz v. Baker*, 71 N.D. 153, 299 N.W. 574 (1941).

Two-Thirds Vote.

Initiated measure could be amended or repealed only by a two-thirds vote of all members elected to each house. *State ex rel. Truax v. Smart*, 48 N.D. 326, 184 N.W. 623 (1921).

Unconstitutional Veto.

It was not constitutional for the governor to veto a bill providing for the salary of the director of a state agency when such state agency was created by an initiated legislative measure and the veto of the general appropriation bill had the effect of destroying that measure. *State ex rel. Dahl v. Dewing*, 131 N.W.2d 434 (N.D. 1964).