

**2021 HOUSE JUDICIARY**

**HCR 3003**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Judiciary

Room JW327B, State Capitol

HCR 3003

1/25/2021

<b>Relating to initiated measures for constitutional amendments.</b>
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**Chairman Klemin** called the hearing to order at 10:38 AM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter.

### **Discussion Topics:**

- Proposed amendment.

**Rep. Fegley:** Introduced the bill. Testimony #2882 10:38

**Jim Silrum, Deputy Secretary of State:** Testimony #2434 10:45

**Donnell Presky: ND Association of Counties.** Oral testimony 10:48

**Additional written testimony:** Opposition

2635, 2618, 2612

Chairman Klemin closed at 10:49 AM

DeLores D. Shimek  
Committee Clerk

HCR 3003

Representative Clayton Fegley dist. 4

Good morning, Chairman Klemin, and Members of the Committee:

I am representative Clayton Fegley from district 4 I am here to introduce HCR 3003 which addresses initiated measures for the constitutional amendments.

This measure prohibits an initiated measure for constitutional amendment from impacting more than one section of the constitution. I believe that every amendment needs to stand on its own merit and voted individually by the voters of this state. Our Constitution needs to be held in high regard and any changes should be done with the upmost diligence. When I looked at measure 3 from the last group of initiated measures, as a model of what we do not want to see happen. I believe this change will stop that wholesale change.

I need to apology to some of my colleagues, because I did not understand how we need to get co-sponsors and it lock me out because I did not do it right and that is why my name appears by itself. I have received verbal support from many of them for this bill.

The bill is simple and straight forward and I ask the committee for your support. Thankyou.

Sixty-seventh  
Legislative Assembly  
of North Dakota

**HOUSE CONCURRENT RESOLUTION NO. 3003**

Introduced by

Representative Fegley

- 1 A concurrent resolution to amend and reenact section 9 of article III of the Constitution of North  
2 Dakota, relating to initiated measures for constitutional amendments.

3 **STATEMENT OF INTENT**

- 4 This measure prohibits an initiated measure for a constitutional amendment placed on the ballot  
5 from ~~comprising more than one subject~~ impacting more than one section of the Constitution.

- 6 **BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA,**  
7 **THE SENATE CONCURRING THEREIN:**

- 8 That the following proposed amendment to section 9 of article III of the Constitution of North  
9 Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the  
10 general election to be held in 2022, in accordance with section 16 of article IV of the  
11 Constitution of North Dakota.

- 12 **SECTION 1. AMENDMENT.** Section 9 of article III of the Constitution of North Dakota is  
13 amended and reenacted as follows:

- 14 **Section 9.** A constitutional amendment may be proposed by initiative petition. The  
15 proposed amendment may not comprise more than one subject impact more than one section of  
16 this Constitution, and the secretary of state may not approve the initiative petition for circulation  
17 if the proposed amendment comprises more than one subject impacts more than one section of  
18 this Constitution. If signed by electors equal in number to four percent of the resident population  
19 of the state at the last federal decennial census, the petition may be submitted to the secretary  
20 of state. All other provisions relating to initiative measures apply ~~hereto~~ to initiative measures for  
21 constitutional amendments.

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3003

Page 1, line 5, replace "comprising more than one subject" with "impacting more than one section of the Constitution"

Page 1, line 15, replace "comprise more than one subject" with "impact more than one section of this Constitution"

Page 1, line 16, remove "comprises more"

Page 1, line 17, replace "than one subject" with "impacts more than one section of this Constitution"

Renumber accordingly

ALVIN A. JAEGER  
SECRETARY OF STATE

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**SECRETARY OF STATE**  
STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500

January 25, 2021

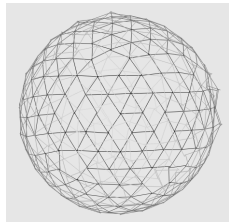
TO: Chairman Klemin and Members of the House Judiciary Committee

FR: Jim Silrum, Deputy Secretary of State on behalf of Secretary of State Al Jaeger

RE: HCR 3003 – Single subject Constitutional measure requirement

This resolution would ask the voters to amend Section 9 of Article III of the North Dakota Constitution. The amendment, if adopted, would state that initiated constitutional measures would be limited to a single subject. In the past several years, the Secretary of State has been asked to approve for circulation constitutional petitions that have grown in length and scope. It has been a concern as to whether the voters have been able to fully grasp the full extent of the impacts of these constitutional amendments because they have been so long and included so many different topics covered by the measure.

On behalf of the Secretary of State and his election team, I request the committee to vote for a do pass recommendation when you send it to the full membership of the House.



SYNTHESIS.EARTH

01-25-21

RE: TESTIMONY IN OPPOSITION TO HCR 3003

HCR 3003 seeks to amend Section 9 Article III of the Constitution of North Dakota to limit citizen-led constitutional amendments to a “single subject”.

HCR is a poorly written amendment. It seeks to limit citizen-led ballot initiatives to a “single subject” but does not define what “single subject” means. It leaves it up to the Secretary of State to determine what is or isn’t a “single subject” but does so without any guidance or definition.

While there is some general common sense idea of what a “single” subject might entail, the problem of the “One and the Many” is a well-known philosophical riddle that dates back millennium. Determining where one thing ends and another thing begins is not so simple after all.

Perhaps an example would illuminate the discussion. Suppose a person wanted to limit North Dakota state Constitutional amendments to a “single subject”. If that person read the Constitution of North Dakota, they would discover that the right to amend the Constitution is addressed in Section 9, Article III – the Powers Reserved to the People – and in Section 16, Article IV – Legislative Branch. To limit all amendments to the Constitution of North Dakota to a “single subject” this person would have to amend the Constitution in *two* sections, one that deals with the Powers Reserved to the People and one that deals with the Powers of the Legislature.

So does this hypothetical “single subject” amendment actually encompass a “single subject”? It would need to limit the power of the People *and* the power of the Legislature; it would require an amendment of the language in Section 9, Article III *and* an amendment of Section 16, Article IV of the Constitution. So while it would accomplish *one* thing, it would require *two* separate amendments to do so.

As you can see, “single subject” is a real can of worms. Almost any idea to amend the constitution can be presented as one unifying idea or as many separate threads, all dependent on the way the author of the amendment organizes the idea.

Furthermore, as written, this resolution gives all power to the Secretary of State in determining what is or isn't a "single subject". As shown, there are no criteria to determine what is or isn't a "single subject". As such, this resolution puts the Secretary of State in an impossible situation. No matter what decision the Secretary of State makes, they will be subject to criticism and accusations of political favoritism.

Lastly, the sponsor of HCR 3003 has provided no examples of abuse of the Constitutional amendment process that would justify adding an additional layer of bureaucracy into the Constitution. In fact, after careful empirical study of past citizen-led constitutional amendments, it appears that the more complicated and ambitious amendments are more likely to fail. In short, HCR is a solution to a problem that does not exist. As such, we urge this committee to move forward with a DO NOT PASS designation.

Sincerely,  
Ryan Warner  
Synthesis.Earth



## Written testimony on House Concurrent Resolution 3003

Chairman Klemin and House Judiciary Committee members

My name is Kevin Herrmann, 300 Fair St. SW, Beulah, ND.

I am in opposition of House Concurrent Resolution 3003. House Concurrent Resolution 3003 will make a change to Article III "Powers Reserved to the People", section 9. The current wording in section 9 in Article III "Powers Reserved to the People" is working fine.

It seems the elected legislators are not listening to the citizens of North Dakota. Do the elected legislators need to be reminded that amended Senate Concurrent Resolution 4001 was defeated in 2020 general election? The citizens of North Dakota have voted saying to leave Article III "Powers Reserved to the People" left alone. Why are you as legislators not listening?

I attend every meeting of the Initiated and Referred Measure Study Commission during the 2017-2018 65<sup>th</sup> Legislative Interim which I saw certain legislators did not like the outcome after the Commission concluded. So certain legislators introduced bills in the 66<sup>th</sup> Legislative sessions pertaining to Article III "Powers Reserved to the People" which some citizens of North Dakota and myself did testified in opposition.

It is amazing how the legislators complain about outside influence with initiative measures for constitution amendments but legislators have no problem taking out of state PAC money which I see influences your vote on there issues. Where is the Ethics?

I am asking the House Judiciary committee to House Concurrent Resolution 3003 a DO NOT PASS recommendation.

Thank you for reading my testimony. I could not be in person due to work.

Kevin Herrrmann  
701-873-4163

## House Concurrent Resolution - 3003

Thank you for the chance to address the members of the House Judiciary Committee. I am writing in opposition to HCR 3003. The resolution would limit citizen-initiated ballot measures to a single subject if the initiative amended the constitution.

This procedural change would create barriers to direct democracy and give the secretary of state the ability to deny proposed amendments. The word "subject" is broad and ill-defined, and the secretary of state would have to make arbitrary decisions on what petitions would be approved for circulation.

The proposed resolution appears to seek to create hurdles for citizen-initiated ballot measures and restrict the power of North Dakota voters to shape law and policy.

I urge the committee to give the resolution a Do Not Pass recommendation to signify that lawmakers trust the voters of North Dakota to make decisions when voting on citizen-initiated ballot measures.

Thank you for your time.

Whitney Oxendahl

# Bill Actions for HCR 3003

Introduced by Rep. Fegley

A concurrent resolution to amend and reenact section 9 of article III of the Constitution of North Dakota, relating to initiated measures for constitutional amendments.

Date	Chamber	Meeting Description	Journal
01/05	House	Introduced, first reading, referred Judiciary Committee	<u>HJ 163</u>
01/25	House	Committee Hearing 10:30	
02/12	House	Request return from committee	<u>HJ 607</u>
		Withdrawn from further consideration	<u>HJ 607</u>