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AMICUS CURIAE STATEMENT OF IDENTITY AND INTEREST

[¶ 2] The interested parties are elected officials in the State of North Dakota at either the state or federal level. These officials are vested with the power to represent the citizens of North Dakota at either the state or federal level of government.

[¶ 3] The interested parties have an intimate, direct, and continuous stake in the interpretation and application of N.D. Const. Art. III relating to initiated petitions. The parties have a Constitutional duty to protect, secure, and benefit the people and as such, submit this petition for the benefit of the constituents of North Dakota.

STATEMENT OF AUTHORSHIP AND CONTRIBUTIONS

[¶ 4] Neither party's counsel authored any portion of this brief. No money was contributed by any party, nor any counsel to party, nor any person toward the preparation of submission of this brief.

LAW AND ARGUMENT

I. Every qualified elector has a Constitutional right to see the full text of the measure which right cannot be waived by elected government officials.

[¶ 5] The people's power to initiate or refer legislation is a fundamental right, and the relevant constitutional provisions must be liberally construed in favor of the people's exercise of that right. Husebye v. Jaeger, 534 N.D.2d 811, 814 (N.D. 1995). Article III, Section 1 of the North Dakota Constitution guarantees that while the legislative power of this state shall be vested in a legislative assembly, the people reserve the power to propose and adopt constitutional amendments by the initiative process. In so doing, every qualified elector has the Constitutional right to see the full text of the measure being proposed. Art. III, Sec. 2. When interpreting the state constitution, the overriding objective is to give

effect to the intent and purpose of the people adopting the constitution statement. RECALLND v. Jaeger, 2010 ND 250, ¶ 8, 792 N.W.2d 511 (quoting Kelsh v. Jaeger, 2002 ND 53, ¶ 7, 641 N.W.2d 100) (internal citations omitted). “We give words in a constitution provision their plain, ordinary, and commonly understood meaning.” Id. All decisions of the Secretary of State in the petition process are subject to review by the supreme court in the exercise of original jurisdiction. N.D. Const. Art. III, Sec. 7.

[¶ 6] The people of North Dakota, through the state constitution, have specified mandatory requirements for the exercise of the right to initiate and refer laws. Prior to a petition being circulated, it must be in proper form and contain the names and addresses of the sponsors and the full text of the measure. N.D. Const. Art. III, Sec. 2. “The framers of the amendment to the Constitution, providing for the initiative and the referendum, were careful to require that every petition contain the full text of the constitutional amendment proposed.” Dyer v. Hall, 199 N.W. 754, 756 (N.D. 1924). The justification is clear. If provisions of the Constitution, or provisions of statutes, are incorporated in the proposed amendment only by reference, the signers of petitions and voters have no opportunity to read or examine the contents and appreciate the real import of the proposed amendment. As clearly stated in Dyer, the overriding purpose of including the full text of the measure is to lessen the possibility of fraud or imposition in procuring signatures.

[¶ 7] In Dyer, plaintiff Dyer and others filed an application for review of the action of the Secretary of State in refusing to file a petition for the initiation of a constitution amendment. Dyer, 199 N.W. 754 at 754. The Secretary of State declined to file the petition upon the ground that it was insufficient. Id. The proposed amendment sought to

incorporate and to make a part of the Constitution, by reference only, several statutes and session laws, none of which were set out in the original petition. Id. at 756. The Supreme Court dismissed the petition and upheld the Secretary’s decision finding the petition was defective and failed to comply with the Constitution because it did not contain the full text of the measure. Id.

[¶ 8] At the time Dyer was decided, Article 26 of Amendments to the Constitution provided in part as follows: “Every such petition shall contain the full text of the measure and shall be filed with the Secretary of State not less than ninety days before the election at which is to be voted upon.” Much like the amendments to the Constitution in place at the time Dyer was decided, our current Constitution still provides that any measure must include the full text of the measure. See Art. III, section 2, North Dakota Constitution. Because each section undoubtedly requires the “full text of the measure” be provided, Dyer is controlling precedent in this case.

[¶ 9] The fact Measure 3 seeks to amend the Constitution is significant as to the form required of the circulated petition. In Anderson v. Byrne, this Court found the requirement that every initiative petition contain the full text of the measure initiated is satisfied as to an initiative proposal for the adoption of a statute where the text of the measure incorporated in the petition is a complete expression of the legislative purpose. 242 N.W. 687, 691 (N.D. 1932). In distinguishing Dyer, the Court specifically found nothing was sought to be incorporated by reference and stated, “[w]e were necessarily concerned with what would ultimately be the fundamental law of the state and with the form in which it would abide in the event of the adoption of the proposal.” Id. “We are here concerned

only with a proposed statute that contains within itself the complete expression of legislative purpose.” Id. This case is certainly more akin to Dyer than to Anderson—the Court has clearly held constitutional amendments are held to a higher standard as to the requirement the full text of the measure be included than that of statutory initiatives.

[¶ 10] In Preckel v. Byrne, this Court again distinguished Dyer as to a statutory initiative. 244 N.W. 781, 784 (N.D. 1932). In Preckel, no laws were referenced nor incorporated within the text of the petition. Id. The Court found it was not the intention of the proposers to incorporate any previous legislation into the measure and no such reference was made to previous legislation. Id. “That it may not be possible to interpret it without reference to other laws, or that the interpretation may require reference to some rulings of bureaus and commissions and that this, of necessity, would affect the constitutionality of the measure . . . is an entirely different question.” Id. This case is easily distinguishable from Preckel in that it specifically references and attempts to incorporate previous legislation into the Constitution. See Petitioner’s App. at p. 4 (“This shall apply for all elections covered in N.D.C.C. section 16.1-07-19.”).

[¶ 11] The Secretary of State’s role when it comes to an initiative measure is two-fold: First, the Secretary of State is to approve the petition for circulation if it is in proper form and contains the names and addresses of the sponsors and the full text of the measure; second, the Secretary of State shall pass upon each petition for sufficiency to be placed on the ballot. There is no indication that the changes made were going to affect the fundamental rule for the Secretary of State to approve each petition twice. In fact, one of the underlying concerns contemplated during the 1972 Constitutional Convention

regarding a two-step process was to provide the public notice that the petition process was underway—it in no way hampered or reduced the responsibility of the Secretary of State. Although eventually defeated, the fact the exact language proposed in 1972 was ultimately adopted in 1978 is of substantial importance. The underlying rationale for the two-step process remains. Splitting the prior language into two separate sections did not change the meaning, rather it placed additional emphasis on what a petition must contain. The responsibility under Art. III, section 2, requires more than a perfunctory approval. Haugland v. Meier, 339 N.W.2d 100, 104 (N.D. 1983). The secretary is expected and required to exercise prudent judgment in approving a petition as to form to preserve the purpose and objective of the referral process. Id. “Inattention to the constitutional duties or the failure to perform them properly plays favorable into the hands of those opposed to the referral process and may ultimately cause its demise.” Id. As evidenced in Haugland, the Constitutional requirements are in place for a reason—to preserve the purpose and objective of the referral process.

[¶ 12] The Secretary of State’s role is that of a procedural nature. However, the Secretary of State in his role of approving petitions for circulation and subsequently passing on petitions to be placed on the ballot, cannot waive the constitutional rights of qualified voters to see the full text of the measure as required. This Court has long held a waiver of a constitutional right is only effective if done clearly and intentionally. See State v. Ochoa, 2004 ND 43, 675 N.W.2d 161; see also State v. Kranz, 353 N.W.2d 748 (N.D. 1984). Whether there has been an intelligent waiver of constitutional rights depends upon the facts and circumstances of each particular case. State v. Manning, 134 N.W.2d 91, 97 (N.D.

1965).

[¶ 13] Each qualified elector has the constitutional right to view each and every part of the petition as noted in Dyer, including referenced and incorporated statutes. To allow a government official to waive those rights on behalf of the citizens would completely eviscerate the underlying purpose of the Constitutional language—to give each voter an opportunity to read or examine the contents and appreciate the real import of the proposed amendment.

[¶ 14] This Court has previously declined to authorize insufficient petitions to be placed on the ballot for issues far less egregious than the omission here. In Thompson v. Jaeger, a sponsoring committee submitted a petition to the Secretary of State for an initiated measure to amend the Century Code. 2010 ND 174, ¶ 3, 788 N.W. 2d 586. The petition was approved for circulation and the sponsoring committee submitted 526 petitions containing nearly 14,000 signatures to the Secretary of State. Id. at ¶ 4. The Secretary of State decided the 526 petitions circulated for signatures and submitted to him were insufficient to be placed on the ballot because those circulated petitions did not contain the first page of the approved petition listing the names and addresses of the required twenty-five sponsors. Id. Thompson petitioned the Supreme Court for review. Id. at ¶ 5. In upholding the secretary’s decision, the Supreme Court held the sponsors’ page was part of the petition and therefore had to be circulated with the rest of the petition. Id. at ¶ 13. “The plain language of N.D. Const. art. III, § 3, refers to “[t]he petition” and does not differentiate between a petition approved by the Secretary of State and a petition circulated for signatures by electors.” Id. at ¶ 12.

[¶ 15] In this case, it was not a sponsor page missing, but the full text of the measure. Both are intended to be included in circulated petitions as has been repeatedly held by this Court. “The Secretary of State shall approve the petition for circulation if it is in proper form and contains the names and addresses of the sponsors and the full text of the measure.” Id. “The phrases in that provision are separated by the term “and,” which is conjunctive in nature and ordinarily means in addition to.” Id. (internal citations omitted). The full text of the measure, like sponsor pages, are important to the initiative process and the omission of either renders a petition insufficient. As such, the Secretary should have rejected the petition for circulation and should have rejected to place the petition on the ballot.

[¶ 16] The Secretary of State is not employed to give legal advice to those individuals on how to draft, circulate, or endorse petitions. In fact, the secretary’s own pamphlet on initiating and referring law in North Dakota advises individuals to review the laws associated with petitions. See “Initiating and Referring Law in North Dakota” available at <https://vip.sos.nd.gov/PortalListDetails.aspx?ptlhPKID=7&ptlPKID=1#content-start>. (Accessed August 17, 2020). An individual may choose to forego familiarizing himself with the petition laws of the state but must still abide by those applicable laws. Failure to adhere to the mandates, especially Constitutional mandates, as they relate to initiated petitions must result in the petition being rejected. Furthermore, the Secretary specifically informs an individual that he/she need not necessarily hire an attorney to draft a petition, but that complicated measures such as this one, may require a higher degree of legal drafting skills to ensure the desired outcome is achieved. See Id.

[¶ 17] The respondent may argue that the correct time to challenge the petition was prior

to it being approved as to form and sufficiency for circulation. Because Section 7 of Article III of the Constitution states “all decisions of the Secretary of State in the **petition process** are subject to review. . .”, this argument must fail. (Emphasis added). Approval as to form and sufficiency and approval to be placed on the ballot are both within the petition process. Therefore, the challenge as to the form and sufficiency is appropriate at this time.

CONCLUSION

[¶ 18] The Secretary of State does not have the authority to waive any rights guaranteed to the people by the Constitution on behalf of the people. By passing on the petition for form and sufficiency and again passing on the petition to place on the ballot, the Secretary denied the people the opportunity to view the full text of the measure as required by the Constitution. A writ of injunction prohibiting the Secretary from placing the measure on the ballot for a vote is the only available remedy and a writ must be issued so as to protect and preserve the purpose and objective of the referral process.

Dated this 18th day of August, 2020.

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**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

Michael J. Haugen, Jacob Stutzman,)	
Trent Barkus, and Brighter Future Alliance;)	
)	
Petitioners,)	Supreme Court No. 20200213
vs.)	
)	
)	
Alvin Jaeger, in his official capacity as)	
North Dakota Secretary of State.)	
)	
Respondent.)	

CERTIFICATE OF COMPLIANCE

[¶ 1] The undersigned hereby certifies that this brief complies with Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure, in that it contains 11 pages excluding this certificate of compliance.

[¶ 2] This brief has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 word processing software in Times New Roman 12-point font.

Dated this 18th day of August, 2020.

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Michael J. Haugen, Jacob Stutzman,)	
Trent Barkus, and Brighter Future Alliance;)	
)	
Petitioners,)	Supreme Court No. 20200213
vs.)	
)	Exhibit 1: Interested Parties to
)	Brief of Amicus
Alvin Jaeger, in his official capacity as)	
North Dakota Secretary of State.)	
)	
Respondent.)	

Federal Elected Officials:

U.S. Senator John Hoeven
U.S. Senator Kevin Cramer
U.S. Congressman Kelly Armstrong

State Elected Officials:

Governor Doug Burgum
Lt. Governor Brent Sanford
Insurance Commissioner Jon Godfread
Tax Commissioner Ryan Rauschenberger
Agriculture Commissioner Doug Goehring
Treasurer Kelly Schmidt
Superintendent of Public Instruction Kirsten Baesler
Public Service Commissioner Julie Fedorchak
Public Service Commissioner Randy Christmann
Auditor Josh Gallion

North Dakota Senate Members:

Senate Majority Leader Rich Wardner
State Senator and Assistant Majority Leader Jerry Klein
State Senator Brad Bekkedahl
State Senator Randy Burckhard
State Senator David A. Clemens
State Senator Kyle Davison
State Senator Dick Dever
State Senator Jay Elkin
State Senator Robert Erbele
State Senator Ray Holmberg
State Senator Jordan Kannianen
State Senator Curt Kreun

State Senator Oley Larsen
State Senator Diane Larson
State Senator Randy D. Lemm
State Senator Scott Meyer
State Senator Janne Myrdal
State Senator Dale Patten
State Senator Jim P. Roers
State Senator Kristin Roers
State Senator David S. Rust
State Senator Donald Schaible
State Senator Jessica Unruh-Bell
State Senator Shawn Vedaa
State Senator Terry Wanzek

North Dakota House of Representatives Members:

House Majority Leader Chet Pollert
State Representative and Assistant Majority Leader Scott Louser
State Representative Bert Anderson
State Representative Dick Anderson
State Representative Thomas Beadle
State Representative Rick Becker
State Representative Glenn Bosch
State Representative Mike Brandenburg
State Representative Chuck Damschen
State Representative William R. Devlin
State Representative Jason Dockter
State Representative Sebastian Ertelt
State Representative Jay Fisher
State Representative Patrick Hatlestad
State Representative Craig Headland
State Representative Pat D. Heinert
State Representative Michael Howe
State Representative Dennis Johnson
State Representative Terry Jones
State Representative Tom Kading
State Representative Karen Karls
State Representative Jim Kasper
State Representative Keith Kempenich
State Representative Dwight Kiefert
State Representative Ben Koppleman
State Representative Kim Koppleman
State Representative Mike Lefor
State Representative Donald W. Longmuir
State Representative Andrew Marschall
State Representative Bob Martinson
State Representative David Monson

State Representative Mike Nathe
State Representative Jon O. Nelson
State Representative Emily O'Brien
State Representative Mark S. Owens
State Representative Bob Paulson
State Representative Todd Porter
State Representative Brandy Pyle
State Representative David Richter
State Representative Shannon Roers Jones
State Representative Karen M. Rohr
State Representative Dan Ruby
State Representative Matthew Ruby
State Representative Mark Sanford
State Representative Bernie Satrom
State Representative Mike Schatz
State Representative Austen Schauer
State Representative Jim Schmidt
State Representative Randy A. Schobinger
State Representative Cynthia Schreiber-Beck
State Representative Vicky Steiner
State Representative Michelle Strinden
State Representative Nathan Toman
State Representative Bill Tveit
State Representative Steve Vetter
State Representative Don Vigesaa
State Representative Robin Weisz
State Representative Greg Westlind
State Representative Denton Zubke

Dated this 18th day of August, 2020.

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Alvin Jaeger, in his official capacity as)	
North Dakota Secretary of State.)	
)	
Respondent.)	

CERTIFICATE OF SERVICE

[¶ 19] The undersigned hereby certified that on August 18, 2020, the following documents:

Motion for Leave to File Brief of An Amicus Curiae and Extension of Time to File, Exhibit 1: Interested Parties to Motion for Leave to File Brief of An Amicus Curiae and Extension of Time to File, Brief of Amicus Curiae of Various Elected Officials In Support of Petitioners' Writ of Injunction, Certificate of Compliance and Exhibit 1: Interested Parties to Brief of Amicus were electronically filed with the Clerk of the North Dakota Supreme Court and were also electronically transmitted to counsel of record as follows:

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