

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

Michael J. Haugen, Jacob Stutzman,
Trent Barkus, and Brighter Future
Alliance,

Petitioners,

v.

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

and

Sponsoring Committee of Measure 3,
Respondents.

**SUPREME COURT NO.
20200213**

SPONSORING COMMITTEE'S OPPOSITION TO PETITION

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I. INTRODUCTION

[1] Petitioners ask this Court to take an enormous step—depriving North Dakota citizens of their right to vote on an initiated constitutional amendment. And Petitioners ask this Court to make that leap on the flimsiest of grounds: a contrived legal argument that no initiated measure may contain citations. The Petition filed in this matter is long on partisan rhetoric and unsubstantiated allegations but is woefully short on substance. This Court should leave the fate of Measure 3 where it belongs: in the hands of North Dakota voters.

[2] The North Dakota Constitution reserves to the people of North Dakota the right to legislate by initiative and referendum. Measure 3 seeks to add a new section to the North Dakota Constitution and to amend existing section 2 of Article IV. The full text of the measure was undisputably set forth word for word in the petition exactly as it would appear in the Constitution. Accordingly, Secretary of State Jaeger—who is himself opposed to the substance of Measure 3—had no choice but to approve the form of the petition initiating Measure 3.

[3] Because Measure 3 facially complies with the law, Petitioners and the Amici have tried to create a new requirement out of whole cloth—that the full language of every statute referred to in a proposed initiated measure

must be set forth verbatim in the petition. In so doing, the Petition relies almost exclusively on a case decided nearly a century ago, *Dyer v. Hall*, 199 N.W. 754 (N.D. 1924). But the holding in *Dyer* does not go nearly as far as Petitioners and the Amici suggest. Rather, *Dyer* only held that the Secretary acted properly when he rejected a petition that attempted to expressly add numerous statutes to the Constitution itself because “[n]one of these statutes are set out in the petition, or the proposed amendment, or in any manner, except by reference, incorporated therein.” *Id.* at 756. *Dyer* simply does not create a rule that an initiated or referred measure may not contain a citation or reference. Indeed, many initiated measures since *Dyer* have contained references similar to the single citation to existing law contained in Measure 3.

[4] As required by law, the Secretary prepared a petition title that fairly and concisely summarizes Measure 3. While Petitioners may prefer a petition title that describes Measure 3 in a manner more in line with Petitioners’ partisan beliefs, Petitioners simply have no basis to challenge the Secretary’s petition title. Moreover, the changes Petitioners suggest, such as a detailed description of instant-runoff voting and listing each of the ten criteria for drawing fair legislative districts, would themselves run afoul of the statutory requirement that the petition title be concise—not to mention the requirement that the petition title be fair.

[5] Measure 3 complies with North Dakota law, and the Secretary of State properly placed it on the ballot for the November 3, 2020 general election. There it should remain, so the people of North Dakota can exercise their constitutional right to vote on it.

II. ISSUES FOR REVIEW

[6] This Petition presents two issues.

[7] **Issue One:** The North Dakota Constitution requires the Secretary of State to approve a petition for circulation if it is in proper form, including containing the “full text of the measure.” N.D. Const. art. III, § 2. The circulated petition for Measure 3 included the full text of a new section to be added to the Constitution, and the full text of revisions to the existing Article VI, section 2 of the Constitution. Did the petition initiating Measure 3 comply with Article III, section 2?

[8] **Issue Two:** North Dakota law requires the Secretary of State to prepare a petition title for each initiated or referred measure. The petition title must be “short and concise” and must fairly represent the measure. N.D.C.C. § 16.1-01-09. The petition title the Secretary of State prepared for Measure 3 reasonably summarized each change proposed in Measure 3. May the Petitioners compel the Secretary of State to remove Measure 3 from the

November 3, 2020, general election ballot because they disagree with the Secretary of State's petition title language?

III. STATEMENT OF THE CASE

[9] The Sponsoring Committee agrees that this case arises under this Court's original jurisdiction. Accordingly, there are no lower-court proceedings or disposition for this Court to review. Instead, this case presents for review two decisions by the Secretary of State. First, the Petitioners challenge the Secretary's decision that the petition initiating Measure 3 was in proper form. Second, the Petitioners challenge the wording of the petition title drafted by the Secretary and approved by the Attorney General. Both of those decisions are subject to review in an original proceeding in this Court.

IV. STATEMENT OF THE FACTS

[10] Rather than set forth relevant facts or identify disputed facts, as required by N.D.R.App.P. 28(b)(6), the Petition's Statement of Facts is replete with accusations and other disputed and questionable assertions. The allegations that the petitions initiating Measure 3 were incomplete as circulated, and that signatures were procured by fraud are completely baseless. The Court should disregard the Petitioners' self-serving and unproven allegations of misconduct. Regardless, those inflammatory allegations are not before the Court on this Petition. Rather, the narrow legal

issues presented here are (1) the legal sufficiency of the petition initiating Measure 3, as approved by the Secretary, and (2) whether the petition title drafted by the Secretary and approved by the Attorney General fairly and reasonably describes Measure 3. By arguing that the decisions of the Secretary only present questions of law (Pet. at ¶ 24), Petitioners concede that the “facts” they advance have no bearing on this Court’s decision.

[11] The Sponsoring Committee sets forth the relevant facts below. These undisputed facts are public records, provided in the Sponsoring Committee’s Appendix (“Cmte. App’x”).

[12] On April 30, 2020, the Secretary approved circulation of the petition to place Measure 3 on the November 3, 2020 general election ballot. (Cmte. App’x at 3.) As the Secretary’s letter made clear, “[a] submitted petition will not be counted, if it was not circulated in its entirety as approved by this office. Before circulating, all pages of the petition must be securely fastened in the top left-hand corner.” (*Id.* (emphasis in original).) To place Measure 3 on the ballot, the Sponsoring Committee needed to collect 26,904 signatures. (*Id.*) On July 6, 2020, the Sponsoring Committee timely submitted the signatures of 36,824 voters. (Cmte. App’x at 16.) After review, the Secretary determined that the Sponsoring Committee submitted a sufficient

number of signatures to place Measure 3, and so notified the Sponsoring Committee on August 11, 2020. (Cmte. App'x at 15.)

[13] The text of Measure 3 is the only fact relevant to Issue One. The petition initiating Measure 3, as approved by the Secretary, is reprinted in full in the Sponsoring Committee's Appendix at pages 7-14.¹ The full text of Measure 3 appears in the petition packet at pages 8-10.

[14] The Sponsoring Committee's Appendix also contains the petition title drafted by the Secretary and approved by the Attorney General. (Cmte. App'x at 8.) The text of the Secretary's petition title and the full text of Measure 3 are the only facts relevant to Issue Two. *See Municipal Servs. Corp. v. Kusler*, 490 N.W.2d 700, 703 (N.D. 1992) ("Having compared the ballot title with the full text of the initiated measure, we conclude that it is a concise statement that fairly represents the measure.").

V. ARGUMENT

A. Standard of Review.

[15] The Sponsoring Committee agrees with Petitioners that, as to Issue One, this Court "independently examines the actions of the Secretary to determine whether he has complied with the law." *Kusler*, 490 N.W.2d at 702.

¹ The text of Measure 3 is also available in Petitioners' Appendix at pages 3-10.

When reviewing the form of an initiated or referred petition, the Secretary's role is limited and ministerial, thus, the Secretary's decision is reviewed de novo. *N.D. State Bd. of Higher Educ. v. Jaeger*, 2012 ND 64, ¶ 10, 815 N.W.2d 215, 218 (N.D. 2012); *McCarney v. Meier*, 286 N.W.2d 780, 783 (N.D. 1979) ("That a question of law may arise, as here, upon the sufficiency of the petition vests no discretion in said official in acting under it."). This is true whether the judicial challenge is to the Secretary's approval of the form of the petition for Measure 3 for circulation or for placement on the ballot.

[16] The Petition neglects to provide a standard of review for Issue Two. Unlike counting signatures or approving the form of a petition, drafting a petition title is not a ministerial act. This Court has previously articulated the standard of review for petition title language:

In reviewing a ballot title,² the court must not concern itself with the merit or lack of merit of the proposed measure, because that determination rests with the electorate. Furthermore, the ballot title need not encompass every possible effect of the measure nor must it convey possible problems that may arise upon implementing the measure. If the ballot title is neither misleading nor unfair, it is not our responsibility to draft a better one.

Kusler, 490 N.W.2d at 703 (internal citations omitted). Ultimately, so long as the Secretary crafts a petition title that is fair and impartial, this Court

² Prior to 2009, the "petition title" required by N.D.C.C. § 16.1-01-09(1)(b) was called the "ballot title." *See* 2009 N.D. Sess. Laws ch. 180 § 3, S.B. 2324.

defers to the Secretary’s chosen language. *Id.* (“If a summary is not clearly misleading, the courts will not interfere with a choice of language that reflects the purpose of the proposed measure, even though the language used is not the most precise or exact wording possible.”).

B. Requirements for Ballot Measures.

[17] For any initiated or referred measure—whether statutory or constitutional—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.” N.D. Const. art. III § 2. Prior to circulation, the Secretary of State “shall draft a short and concise statement that fairly represents the measure,” which is then submitted to the Attorney General for approval. N.D.C.C. § 16.1-01-09.

C. Measure 3 includes the full text of the measure.

[18] Plainly, the petition initiating Measure 3 contained the full text of the measure. Every word of Measure 3 appears in the petition, with new material underscored, deleted material overstruck, and existing material in ordinary typeface. (Cmte. App’x at 8-10.)

[19] Faced with that reality, the Petition tries to create a new rule that is at odds with the plain language of the Constitution, decades of past practice,

and common sense. To justify this outcome-driven “rule,” the Petition relies primarily on a case that is clearly distinguishable.

[20] In *Dyer v. Hall*, this Court approved a decision by the Secretary of State to refuse to file an initiated constitutional amendment that did not contain the full text of the proposed amendment. The proposed amendment in *Dyer* attempted to incorporate into the Constitution and expressly make irrevocable “a large number of statutes, enacted during a period of many years and scattered throughout several volumes of compiled statutes and sessions laws . . . some of which may have been modified or repealed by subsequent inconsistent legislation[.]” 199 N.W. at 757. It did so without setting out the statutes “in the petition, or the proposed amendment, or in any manner, except by reference[.]” *Id.* at 756. Unsurprisingly, the *Dyer* Court held that the petition did not set forth the full measure of the proposed amendment—the petition in that case plainly did not do so. But here, the petition initiating Measure 3 contains literally every word that Measure 3 proposes to add to the Constitution.

[21] Contrary to Petitioners’ characterization, *Dyer* does not create a rule that petitions may never cite or reference outside material. In fact, such references happen routinely. By way of recent example only:

- In 2016, the initiated constitutional amendment known as Marsy's Law referenced, but did not include the text of, the Sixth Amendment to the United States Constitution. (Cmte. App'x at 18-19.) This amendment passed.
- Also in 2016, an initiated statutory measure³ revised certain North Dakota statutes relating to tobacco regulation. This initiated measure referenced, among other statutes, N.D.C.C. § 51-25-01 and the Federal Food, Drug Cosmetic Act, 21 U.S.C. § 301 *et seq.*, without providing the text of either of those external statutes. (Cmte. App'x at 25-33.) This initiated measure was ultimately rejected by voters.
- In 2012, an initiated statutory measure related to an indoor smoking ban referenced alcoholic beverage licensing requirements, N.D.C.C. ch. 5-02, medical professional licensing under N.D.C.C. title 43, and gambling and gaming facilities as defined in N.D.C.C. § 12.1-28-01. (Cmte. App'x at 39-43.) None of those statutory compilations was included in the petition. This initiated measure also passed.
- Also in 2012, an initiated statutory measure made it a felony to harm domestic animals. That initiated measure cited, but did not include the

³ Article III section 2 of the North Dakota Constitution, which requires that a petition set forth the full text of a measure, applies to all initiated measures, not just initiated constitutional measures.

text of, N.D.C.C. ch. 20.1-03 (relating to hunting, trapping, and fishing licenses or permits) N.D.C.C. § 36-21.1-01, and N.D.C.C. ch. 12.1-32. (Cmte. App'x at 49.) This initiated measure was rejected.

- In 2008, an initiated statutory measure revised a number of statutes relating to tobacco. This initiated measure referenced, but did not include, N.D.C.C. ch. 23-28 and a “master settlement agreement and consent agreement adopted by the east central judicial district court in its judgment entered December 28, 1998 [Civil No. 98-3778] in *State of North Dakota, ex rel. Heidi Heitkamp v. Philip Morris, Inc.*” (Cmte. App'x at 54-56.) That statute, the master settlement agreement, and the consent agreement were all missing from the initiated measure's petition. This measure passed.
- In 2002, an initiated measure relating to student loans referenced income tax liability as computed under N.D.C.C. § 57-38-29 or 57-38-30.3. Those statutes were not included in the text of the measure. (Cmte. App'x at 58.) This measure was rejected.

[22] Of course, the Secretary approved for circulation each one of the above petitions. Yet Petitioners would have this Court believe that all of the above initiated measures were constitutionally infirm. They are not—because *Dyer* did not create a rule that an initiated measure must contain the full text

of any statute cited or referenced in the measure. Instead, the “rule” that Petitioners urge this Court to suddenly recognize has never existed.

[23] Two North Dakota cases cited by Amici, *Anderson v. Byrne* and *Preckel v. Byrne*, do not create such a rule either. In both cases, the North Dakota Supreme Court held that the petition at issue did include the full text of the measure, distinguishing those cases from *Dyer*. See *Anderson v. Byrne*, 242 N.W. 687, 691 (N.D. 1932) (“We are concerned here only with a proposed statute that contains within itself the complete expression of legislative purpose.”); *Preckel v. Byrne*, 244 N.W. 781, 784 (N.D. 1932) (“The measure is complete in itself, and . . . contains the full text of the proposed measure to be submitted to the people . . .”).

[24] In fact, *Anderson* and *Preckel* reinforce the conclusion that Measure 3 includes the full text of the measure it seeks to enact. Clearly, the “legislative purpose” of Measure 3 is not to enact N.D.C.C. § 16.1-07-19—that statute already exists as law. Instead, the legislative purpose of the challenged portion of Measure 3 is to provide extra time for military-overseas voters to request and return ballots. (See Cmte. App’x at 8.)

[25] *Preckel* even more clearly illustrates that a petition need not include every referenced statute. That case involved an initiated measure that would have reduced salaries of public officials “which are now fixed by law”

to a percentage of the prior amount. 244 N.W. at 782. Thus, the measure on its face did not include the text of—or even citations to—unspecified statutes that it was directly affecting, nor did it give voters the calculations of what the new salaries would be. Nonetheless, the Court found that the measure did not need to include the text of those referenced statutes: “There is no intention indicated that any law, regulation or quotation is to be a part of this measure. That it may not be possible to interpret it without reference to other laws . . . is an entirely different question.” *Id.* at 784.

[26] One rule that does exist is that petitions cannot set forth extraneous matters. *See Haugland v. Meier*, 335 N.W.2d 809, 811 (N.D. 1983) (*Haugland I*); *Haugland v. Meier*, 339 N.W.2d 100, 106 (N.D. 1983) (*Haugland II*). Section 16.1-01-09 sets forth the precise items each petition must contain. Nowhere does that form allow a sponsoring committee to place other statutes before the voters. Had the petition initiating Measure 3 separately included the text of N.D.C.C. § 16.1-07-19 in addition to the full text of Measure 3, Petitioners and Amici would certainly be arguing to this Court that Measure 3 should be kept off the ballot because it improperly included extraneous material emphasizing the overseas-military ballot component of Measure 3 and confusing voters into thinking that Measure 3 would actually enact N.D.C.C. § 16.1-07-19.

[27] In an attempt to buttress their misreading of *Dyer*, Petitioners provide the Court additional citations they claim demonstrate that other states require “the proponents of a ballot measure [to] include the precise and complete language of the ballot referendum in order for the referendum to be valid.” (Pet. at ¶ 30 n.2.) Far from supporting the Petitioners’ argument, two of these cases actually establish the opposite proposition: measures may cross-reference other statutes without running afoul of the concept that a measure should contain the full text of the proposed enactment.

[28] In *Wilson v. County of Napa*, 9 Cal. App. 5th 178 (2017), an initiative petition failed to include a specific document that would have been enacted into law as a new legal requirement if the initiative were to pass. *Id.* at 182-83. The Court held that the failure to include this document violated the law because “[t]he measure does not simply cross-reference another provision of law but would enact as binding conditions . . . what are now only recommended measures for voluntary compliance.” *Id.* at 186. The court limited its holding to those situations in which an extrinsic document is enacted as a new law and explicitly stated that cross-references in initiative petitions are common-place:

We do not imply that cross-references may never be included in an initiative petition. Cross-references are commonly and permissibly used in both initiatives and referendums. Their inclusion presents no

problem so long as the reference does not create or impose new legal obligations that are not otherwise specified in the measure.

Id. This case is plainly distinguishable from the measure invalidated in *Wilson* because Measure 3 does not impose N.D.C.C. § 16.1-07-19 as a new legal requirement. Instead, this facts of this case are identical to the cross-references that the *Wilson* Court noted are “commonly and permissibly” used.

[29] Similarly, in *Kerr v. Bradley*, 89 P.3d 1227 (Or. Ct. App. 2004), a proposed initiative sought to amend two Oregon statutes. The Court held that an initiative petition containing only the amendatory material, but not the full language of the statutes as they would read in their amended form, failed to present the full text of the measure. Petitioners’ broad reading of *Kerr* is belied by another Oregon case. In *Schnell v. Appling*, 238 Or. 202, 395 P.2d 113, 114 (1964), the Oregon Supreme Court determined that “no useful purpose would be served by quoting at length either the related statutes referred to in the proposed measure but left unchanged thereby or the statutes to be repealed thereby.” Here, Measure 3 does not amend or alter the text of N.D.C.C. § 16.1-07-19 in any way. Moreover, Measure 3 contains the full text of both sections of the North Dakota Constitution exactly as they would read if Measure 3 is approved by the voters. That is all *Kerr* required, and just as

the Oregon Supreme Court observed in *Schell*, requiring Measure 3 to set forth the full text of N.D.C.C. § 16.1-07-19 would serve no useful purpose.

[30] The petition initiating Measure 3 did, in fact, set forth the full text of the proposed measure. There is no support for Petitioners' proffered "rule" requiring an existing statute to be set forth in the petition. This Court should not accept the invitation from Petitioners and Amici to deprive North Dakotans of the opportunity to vote on it.

D. Petitioners' claims of fraud and confusion are not before the Court and are implausible.

[31] Realizing the legal insufficiency of their position, Petitioners attempt to muddy the waters with untested and unsubstantiated accusations of fraud and misconduct. Those accusations simply are not before this Court. And even if they were, Petitioners' complaints are not plausible.

[32] This Court recognized in *Kusler* the narrow scope of judicial inquiry when a challenge is raised to the form of a petition or to a petition title prepared by the Secretary. The only issues are whether the petition itself is in proper form, and whether the Secretary's title reasonably describes the measure, even if other words may have been used. 490 N.W.2d at 702-03 (addressing narrow scope of review for petition title); 490 N.W.2d at 704-05 (addressing the narrow scope of review for the form of a petition). Alleged actions by unidentified canvassers are wholly unrelated to the two issues in

this case: the form of the petition initiating Measure 3, and the Secretary's petition title language.

[33] Petitioners' accusations are manufactured political talking points. Only one Petitioner, Jacob Stutzman, claims to have been confused by the reference in the petition to N.D.C.C. § 16.1-07-19. In support, Mr. Stutzman points to an email he sent to the Secretary of State on Sunday, August 9, 2020, at 10:44 p.m. The Petition was filed only days later, on August 12, 2020. This conveniently-timed email is the only instance Petitioners have presented that anyone claimed to be confused by Measure 3's citation to N.D.C.C. § 16.1-07-19. Even if Mr. Stutzman were confused, he only needed to look at the rest of the section, which clearly explained that it applied to military-overseas ballots. And of course, the Secretary's petition title on the same page summarized the initiated constitutional amendment as well. Petitioner Stutzman's confusion simply is not plausible.

[34] Beyond Mr. Stutzman, Petitioners submitted emails from sixteen individuals who apparently contacted the Secretary to express confusion or frustration over what is in Measure 3. It is unclear if these individuals were confused when they signed the petition, or became confused later by partisan media coverage. One individual mentioned coverage of Measure 3 by conservative blogger Rob Port (Pet. App'x at 30), and fully seven of the

individuals emailed the Secretary of State on July 7, 2020, the day after Petitioner Brighter Futures Alliance placed a quote critical of Measure 3 in the Bismarck Tribune.⁴ Another mentioned an apparent conspiracy theory that Measure 3 is an effort “to make Vote harvesting legal by Dems.” (Pet. App’x at 32.) On top of the partisan news coverage, the Secretary himself encouraged people to “flood the media with letters, etc. now that you know how they mislead you in signing the petitions.” (Pet. App’x at 43.)

[35] Regardless of the purported confusion manufactured by Measure 3’s political opponents, North Dakota law requires that the entire language of the measure be included in the petition, that the Secretary draft a fair and concise summary of the measure, and that the entire petition be circulated together, to foreclose precisely these after-the-fact claims of misinformation. As Lee Ann Oliver, the Election Specialist in the Secretary of State’s Office, stated:

What I can tell you is the law requires that the entire petition be present for the voters to read and know exactly what they are signing. I realize that people are busy, however as a voter they have a responsibility to know what they are signing and the law

⁴ “Petitions submitted for sweeping North Dakota election changes,” *Bismarck Tribune*, July 6, 2020, available at https://bismarcktribune.com/news/local/govt-and-politics/petitions-submitted-for-sweeping-north-dakota-election-changes/article_8a22c877-8aff-57ad-9453-d04723f837c9.html#tracking-source=home-top-story-1 (last accessed August 15, 2020).

allows that to happen by requiring the entire petition to be present.

(Pet. App'x at 31.) The full text of Measure 3 was undisputably available to each voter who signed the petition initiating Measure 3, stapled to the page they each physically signed. Petitioners' implication that over 36,000 North Dakota voters were presented with the full text of Measure 3 but were somehow "tricked" into signing it is unsupported, and is disrespectful to North Dakota voters. In short, Petitioners' attempt to cast Measure 3 as an underhanded campaign is a manufactured red herring that simply has no bearing on whether the petition initiating Measure 3 was in proper form.

E. The Secretary of State's petition title was fair and concise.

[36] The second issue presented by Petitioners⁵ is whether the Secretary's petition title is a fair and concise summary of Measure 3, as required by N.D.C.C. § 16.1-01-09(1)(b).

[37] This Court has already held that, as long as the language of a petition title is fair, opponents may not object to that language:

If a summary is not clearly misleading, the courts will not interfere with a choice of language that reflects the purpose of the proposed measure, even though the language used is not the most precise or exact wording possible. A ballot title is not rendered unfair simply because it does not contain every detail of a measure or does not explain how the measure will work in every situation.

⁵ Amici do not join in this argument.

Kusler, 490 N.W.2d at 703. Indeed, in *Kusler*, the Court rejected a challenge to the Secretary’s petition title because “[t]he applicants’ objections are primarily an attack on the substance of the proposed measure. Their objections reveal a fear that the electorate will not understand the ultimate consequences of the measure and will approve it, with dire consequences. The Secretary need not, and, indeed, must not, incorporate the expression of those concerns in the ballot title.” *Id.*⁶

[38] The ways in which the Petitioners contend the Secretary’s petition title is misleading are wholly unpersuasive. The first reason given, that the petition title does not mention that Measure 3 does not contain the full text of N.D.C.C. § 16.1-07-19, is baseless for the reasons discussed above.

[39] Petitioners’ related argument, that the petition title should have alerted voters that the Legislature could amend N.D.C.C. § 16.1-07-19 and thereby alter North Dakotans’ constitutional rights, is similarly meritless.

[40] First, Measure 3, if enacted, will expressly preclude the Legislature from enacting any law “to hamper, restrict, or impair, this article.” (Cmte. App’x at 9 (Section 4. General Provisions).) Thus, Petitioners’ fear

⁶ Although *Kusler* is controlling precedent that directly contradicts the Petitioners’ argument on Issue Two, the Petition fails to point the Court to this case anywhere in paragraphs 36-40.

that the legislature could subsequently abrogate the constitutional rights conferred in Measure 3 is unfounded.

[41] Second, the Constitution is replete with instances where the Legislature has the power to amend legislation that impacts the availability of rights. By way of example of the instances where legislative action may enable, expand, or alter rights set forth in the Constitution:

- Article III, section 2—the very section on which Petitioners rely in this case—allows the legislative assembly to establish a procedure for determining the fiscal impact of an initiated measure.
- Article VIII grants the legislature great flexibility in providing uniform education, which is “necessary in order to insure the continuance of that government and the prosperity and happiness of the people[.]”
- Article X, section 5 allows the legislative assembly to exempt classes of personal property from taxation. Section 7 authorizes the legislature to impose an acreage tax in addition to the specific taxes set forth in that Article X, section 1. Section 8 instructs the legislative assembly to pass laws to carry out the provisions of Article X. Section 9 authorizes the legislative

assembly in impose a property tax and classify property within the state for taxation purposes.

- Article XIV, section 1 instructs the legislative assembly to implement and enforce that section, which declares the right of the people of North Dakota to information regarding candidates for office and ballot measures, and requires public disclosure of lobbying expenditures. Notably, the legislature is free to revise “as necessary to promote the purposes of this section.”

[42] In each of the above instances, and many others, the legislature may act to enable, provide, expand, restrict, or amend the scope or application of these constitutional provisions. The Secretary of State did not need to address this contorted argument in his petition title. In fact, doing so would have itself been unfair.

[43] Finally, Petitioners criticize the Secretary’s petition title because they believe it should have explained the details of instant runoff elections and identified each of the criteria for redistricting. Setting aside the fact that the language of Measure 3 itself spells out the answer to both of those questions, that level of detail is inappropriate for a petition title. Nor should the Secretary have provided the full list of elections for which overseas-military ballots will be available, set forth the full statutory text of N.D.C.C. § 16.1-07-19, or

provide a comparison of different types of elections addressed in other sections. As this Court already held in *Kusler*, “[a]n attempt by the Secretary to include a fair and impartial discussion of all of those matters in the ballot title, would create the antithesis of the ‘short and concise’ statement required by Section 16.1–01–09, N.D.C.C.” 490 N.W.2d at 703.

VI. CONCLUSION

[44] In an effort to keep the voters from considering Measure 3, Petitioners have concocted legal requirements that do not exist. The “rule” urged by Petitioners and Amici is not supported by the law, past practice, or common sense. Instead, Petitioners are attempting to create a new rule that has never been employed solely for the purpose of keeping Measure 3 off the ballot.

[45] In addition, the Secretary’s petition title is fair and concise, and Petitioners cannot establish a basis for this Court to allow them to rewrite the language drafted by the Secretary and approved by the Attorney General.

[46] The petition for a writ should be denied.

Dated this 19th day of August, 2020.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Sponsoring Committee of Measure 3 certifies that this brief complies with the requirements of N.D.R.App.P. 32(a)(5)-(6) and 32(a)(8)(A) in that it is printed in 14 point, utilizing proportionately spaced typeface and contains 23 pages.

Dated this 19th day of August,
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PROOF OF SERVICE

I hereby certify that, on the 19th day of August, 2020, I filed the foregoing document with the North Dakota Supreme Court electronically through the Supreme Court's E-filing Portal, and added the following e-mail addresses which generates service on all parties:

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