

# INITIATED MEASURE, APPROVED

## CHAPTER 652

### CONGRESSIONAL TERM LIMITS

An initiated measure to create and enact sections 16.1-01-13, 16.1-01-14, and 54-12-01.05 of the North Dakota Century Code, relating to eligibility for placement on the ballot for United States Senator and Representative in Congress, to the people's intent in enacting this measure, and to the effect of certain opinions of the attorney general; if section 16.1-01-13 is held unconstitutional, to create and enact section 16.1-01-13.1 of the North Dakota Century Code, relating to eligibility for placement on the ballot for United States Senator and Representative in Congress; and to provide for application of this measure and for a contingent effective date.

#### BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

**SECTION 1.** Section 16.1-01-13 of the North Dakota Century Code is created and enacted to read as follows:

**16.1-01-13. Term limits for United States senators and representatives in Congress.** A person is permanently ineligible to have that person's name placed on the ballot at any election for the office of United States senator or representative in Congress if, by the start of the term for which the election is being held, that person will have served as a United States senator or a representative in Congress, or in any combination of those offices, for at least twelve years.

**SECTION 2.** If section 16.1-01-13 of the North Dakota Century Code, as enacted by section 1 of this measure, is held to be unconstitutional, section 16.1-01-13.1 of the North Dakota Century Code is created and enacted to read as follows:

**16.1-01-13.1. Term limits for United States senators and representatives in Congress.** A person is ineligible to have that person's name placed on the ballot at any election for the office of United States senator or representative in Congress if, by the start of the term for which the election is being held, that person will have served as a United States senator or a representative in Congress, or in any combination of those offices, for at least twelve years. However, if that person is still otherwise eligible to hold the office, the disqualification imposed by this section ceases after two years have elapsed since the disqualification last affected that person's eligibility for placement on the ballot.

**SECTION 3.** Section 16.1-01-14 of the North Dakota Century Code is created and enacted to read as follows:

**16.1-01-14. Statement of intent.** In enacting this measure, the people of North Dakota:

1. Recognize that, along with the rest of the people of the United States, we have bestowed certain powers on the state and federal governments, and the governmental power flows ultimately from the people, not to them.
2. Do so in the partial exercise of our duty to elect representatives in Congress, under Article I, section 2 of the United States Constitution, and our duty to elect United States Senators, under the 17th Amendment to the United States Constitution.
3. Recognize that the United States Supreme Court has never held that the people of a state do not have the constitutional power to establish term limits for federal legislators from their state.
4. Recognize that certain restrictions are placed on our ability to choose federal legislators, such that we could not, for example, elect a 28-year old to the Senate or require a religious test for a federal legislator.
5. Assert that, aside from the requirements explicitly imposed by the United States Constitution, our power with respect to election of federal legislators is plenary.
6. Note that, under the United States Constitution, we have certain rights to control suffrage in elections, regulating such matters as residency, ballot access, and voting methods. As the possessors of the power to regulate suffrage, we also have the power to regulate certain qualifications of the agents we appoint by exercising our suffrage.
7. Exercise the legislative power we reserved to ourselves in Article III, Section 1 of the North Dakota Constitution.
8. Recognize that, just as the federal Hatch Act [5 U.S.C. §7324 et seq.] restricts the candidacies of otherwise eligible persons from holding elected office, we have the same salutary purpose as does the Hatch Act, namely preventing an incumbent party from using government power to entrench itself permanently into government office.
9. Are mindful of the United States Supreme Court's statement, in *Garcia v. San Antonio Metro Transit Authority*, 469 U.S. 528, 551 (1985), that state control of the election process is supposed to be a protection of the state peoples from the national government.
10. Recognize that increased concentration of power in the hands of incumbents has made this state's electoral system less free, less competitive, and most importantly, less representative.
11. Recognize that our interests are best served by having our United States senators and representatives in Congress be mindful of their origins and return to our ranks whence they came.
12. Make the following declarations and historical findings:
  - a. James Madison, in No. 57 of *The Federalist Papers*, predicted that the House of Representatives would always be responsive to the will of the people because that house would be bound by the same laws they impose on the people. His prediction was wrong and Congress has arrogated to itself powers not granted to the people, a recent notorious example

being the bank of the House of Representatives in which members were allowed to kite checks. His prediction was wrong in that Congress has oppressed the people with laws from which it exempts itself, recent examples including minimum wage, discrimination, occupational safety, and other laws.

- b. The appearance of corruption and the lack of competitiveness for entrenched incumbency seats has lessened voter participation and that is counter-productive to the purposes of a representative republic.
  - c. Our vital interests in maintaining the integrity of the political process have been harmed by these and other factors. Therefore, term limitation is the best method by which we can insure that our vital interests are guarded.
13. Believe this measure is constitutional and intend it to be so. Therefore, even if a court holds any portion of this measure unconstitutional, thereby substituting its own judgment for that we have expressed in enacting this measure, the Legislative Council shall require the publisher of the North Dakota Century Code to include the text of this measure, in the manner as if not so held but with appropriate annotation, to stand as a testament to our expressed will, and as a memorial to the defiance of that will by whatever court holds this measure unconstitutional. Furthermore, if any part of this measure is held unconstitutional, we intend that the rest of it be deemed effective, to the maximum extent permitted under section 1-02-20.

**SECTION 4.** Section 54-12-01.05 of the 1991 Supplement to the North Dakota Century Code is created and enacted to read as follows:

**54-12-01.05. Limitation of effect of certain opinions of attorney general.** Any opinion of the attorney general, or any other public official other than a court of competent jurisdiction, that this measure is unconstitutional, is not binding on any other public official, and all other public officials are free to act in accordance with the wishes of the people of North Dakota as expressed in this measure.

**SECTION 5. Application of measure; contingent effective date.** This measure does not affect the right of a person to serve out the rest of a term to which that person had been elected when the relevant part of this measure took effect. Service before and after this measure takes effect affects eligibility for placement on the ballot as follows:

1. Unless section 2 of this measure becomes effective, service as a United States Senator or representative in Congress in a term ending before this measure becomes effective does not affect a person's eligibility for placement on the ballot.
2. If section 1 of this measure is held unconstitutional, section 2 of this measure becomes effective at the first primary election more than 90 days after the case holding section 1 unconstitutional becomes final in the court of last resort or, if not appealed to a court of last resort, more than 90 days after the expiration of the time for appealing to such a court. It then governs the future eligibility for placement on the ballot

of all candidates for United States senator and representative in Congress.

Approved November 3, 1992

162,150 to 129,930

NOTE: This was measure No. 5 on the general election ballot.