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Proposed Constitutional Amendments C & D: Limits on Legislative Powers

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**Proposed
Constitutional Amendments C & D**

Limits on Legislative Powers

South Dakota

SESSION, LEGISLATIVE ASSEMBLY

SENATE BILL NO. 343

COOPERATIVE EXTENSION SERVICE
SOUTH DAKOTA STATE UNIVERSITY
U.S. DEPARTMENT OF AGRICULTURE

Proposed Constitutional Amendments C & D

Limits on Legislative Powers

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Two separate amendments to the Legislative Article of the Constitution (proposals C and D) will be voted upon by the electors in November 1980. Both amendments propose to amend Section 1 of Article III which deals with the legislative branch of state government.

Proposed amendment C was placed on the ballot by right of initiative. Proposal D is on the ballot by the passage of a joint resolution by both houses of the 1980 legislature. These are the two means by which the constitutional amendment process may be begun.

The two amendments will be discussed together, but it should be clearly understood that they are two **separate** proposed amendments.

In other words, you may vote yes on both, no on both, or vote yes on one and no on the other. It is not a choice between one or the other. It is a choice of both, or none, or either one.

The proposed additions

Neither of the proposed amendments would remove any of the present wording of Article III. Both amendments would add a clause to Section 1. The following is the full text of Article III, Section 1 with the proposed amendments added in bold type and identified as being proposed by either the legislature or initiative petition.

The legislative power of the state shall be vested in a Legislature which shall consist of a senate and house of representatives, except that the people expressly reserve to themselves the right to propose measures, which measures the Legislature shall enact and submit to a vote of the electors of the state, and also the right to require that any laws which the Legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect, except such

laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions: provided, that not more than five per centum of the qualified electors of the state shall be required to invoke either the initiative or the referendum. **An initiated or referred law approved by the electors may not be repealed or amended by the Legislature for seven years from its effective date, except by a two-thirds vote of the members elected to each house.**

addition proposed by joint resolution of the legislature (proposal D)

This section shall not be construed so as to deprive the Legislature or any member thereof of the right to propose any measure. The veto power of the Executive shall not be exercised as to measures referred to a vote of the people. This section shall apply to municipalities. The enacting clause of all laws approved by vote of the electors of the state shall be: "Be it enacted by the people of South Dakota." The Legislature shall make suitable provisions for carrying into effect the provisions of this section.

Any law enacted by the vote of the electors through the initiative provision of this Constitution shall neither be repealed by the Legislature, nor be amended by the Legislature in such a manner as to substantially change its legal effect, without prior submission of the question of such repeal or such amendment to a vote of the electors of the state and approval by them by majority vote. Any law repealed by the vote of the electors through the referendum provision of this Constitution, or any amendment to an existing law which would have the legal effect of substantially re-enacting

addition proposed by initiated petition (proposal C)

a law repealed by the electors through the referendum provision of this Constitution, may be enacted by the Legislature but shall not go into effect until the question of such re-enactment, or substantial re-enactment, has been submitted to a vote of the electors of the state and has received their approval by majority vote. Nothing contained in this Article of the Constitution shall limit the power of the Legislature to submit any measure to a vote of the electors of the state which it deems not to be necessary for the immediate preservation of the public peace, health or safety, or for the support of state government and its existing public institutions.

Intent of the proposed changes

Both amendments are designed to limit the power of the legislature to repeal or amend any initiated or referred law.

The proposed initiated measure (proposal C) further limits the power of the legislature to reenact referred laws repealed by vote of the people.

The legislative proposal D leaves the authority to repeal or amend any initiated or referred law in the hands of the legislature but restricts that power for a period of 7 years after a referred or initiated act is passed. Referred and initiated laws may be repealed or amended by the legislature before 7 years but only by a two-thirds vote of the full membership of each house. Legislative proposal D does not restrict legislative authority to reenact a referred law repealed by the voters.

Initiated measure C denies the legislature the authority to repeal or substantially amend any initiated law passed by the people "without prior submission of the question of such repeal or such amendment to a vote of the electors of the state" and it receives approval by a majority vote.

The proposed initiated measure C allows the legislature to reenact laws repealed by the electors through the referendum process but the laws "shall not go into effect until the question of such reenactment, or substantial reenactment, has been submitted to a vote of the electors of the state and has received their approval by majority vote."

Neither proposal restricts the authority of the legislature to enact an initiated law (or

substantially similar law) previously rejected by a vote of the electors.

Implications of the proposed amendments

The most obvious question is: What if both proposed amendments pass and become part of the state constitution?

If this should happen, the South Dakota Supreme Court would have to resolve the question of which provisions should prevail.

The Supreme Court would choose one amendment over the other because there does not appear to be any possible means of reconciling one amendment with the other. As a general rule, when two conflicting amendments (or laws) pass at the same time, the most specific wording will apply.

The procedures for the possible repeal of an initiated law and the reenactment of a law repealed by popular vote differ in the proposed initiated amendment C.

Before the legislature may repeal or amend an initiated law, it must first submit the question to a vote of the electors and receive a majority vote. It requires a three-step process.

The legislature must first pass a joint resolution to repeal or amend. At the next general election, the voters would accept or reject the legislature's resolution. If the voters accept, the final step would then be the repeal or amendment by the legislature in a subsequent session.

Two separate legislatures are involved. The second legislature may not necessarily concur with the action of the previous one.

The reenactment of a repealed (or substantially similar) measure requires a two-step process. The legislature would first pass the measure and then refer it to a vote of the people for their concurrence. This is essentially the same procedure presently used to pass a referred law.

The word "substantially" which appears in the first and second sentences of the amendment is subject to wide interpretation.

At what point would a proposed bill addressing the same subject as one repealed in a popular election be "substantially" similar or just similar? The constitutionality of every law passed which might be construed to be similar would be questionable, and the question could only be resolved in the courts each time such a situation might arise.

Ideas to ponder

In making the important decision on how to vote on these two proposed amendments, there are three basic questions you may want to consider.

The first question is: Should there even be any restriction on the traditional authority of the legislature to pass and repeal laws?

Our legislative system of self government is a representative democracy rather than a direct democracy. In a representative democracy, the ideas and values of minorities can be accommodated through coalition building and compromise in the legislative process. Individual legislators may be elected for their particular expertise, or they become experts on certain committees, with their judgment respected by their peers.

A representative democracy can respond to changing circumstances more rapidly than the lengthy process of direct voting by the people on

issues requiring prompt action. For these reasons, placing fetters upon the legislative process should not be undertaken lightly.

If you believe, however, that some curbs should be placed on the legislature regarding initiated or referred laws, the next pair of questions involves the extent of such restraints.

Should the legislature retain the basic authority to pass and repeal all laws, but, if they want to reverse initiatives or referendums, either wait 7 years or assemble a two-thirds vote in both houses (proposal D)?

Or: Should only the people be allowed to reenact repealed laws or repeal initiated laws (proposal C)?

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