



Issue Brief:

Constitutional Amendment C would require a three-fifths vote for approval of ballot measures imposing taxes or fees, raising taxes or fees, or obligating an appropriation of \$10 million or more in any of the first five fiscal years.

The Greater Sioux Falls Chamber of Commerce has taken a position of opposition to Constitutional Amendment C (CA-C) and urges a “No” vote on the 2022 primary election ballot.

Background

The 2021 Legislature passed House Joint Resolution 5003¹ (HJR 5003) which sought to raise the voter threshold approval requirement of certain ballot measures from 50 percent plus-one to a higher threshold requirement of three-fifths voter approval.

HJR 5003 began with the House State Affairs Committee’s public hearing. Before the committee moved to pass the bill, it was amended to change the date of the public vote *from* the primary election (June) to the general election (November). The amended bill passed with an 11/2 vote. Then HJR 5003 was considered by the full House of Representatives, who amended the bill to distinguish that the legislature “proposes and submits” rather than “refers” ballot measures to the voters. HJR 5003 passed 56/12.

Next, HJR 5003 was considered in Senate State Affairs Committee. That committee passed the bill 6/3 with no amendments. HJR 5003’s final amendment occurred on the Senate floor. The Senate voted to suspend their rules to amend the bill. The vote to suspend required two-thirds and passed with a voice vote. The Senate then amended the bill to move the date of the election *back* to the June primary with a vote of 18/17. The House concurred with the Senate’s desire to require a June primary with a vote of 51/17. Because HJR 5003 passed both the Senate and the House, it will be on the June primary ballot this year in the form of Constitutional Amendment C.

The Attorney General’s 2022 ballot explanation² of Constitutional Amendment C (CA-C) states the following:

Currently the constitution requires that any new tax or tax increase must be approved either by voters or by two-thirds of the members of each legislative branch. To be approved by voters, such a measure must obtain a majority of the votes cast. This constitutional amendment requires that any initiated measure, proposed constitutional amendment, or referred measure imposing or increasing taxes must obtain three-fifths of the votes cast to be approved.

This constitutional amendment also adds the requirement that any initiated measure, proposed constitutional amendment, or referred measure obligating the state to appropriate \$10 million or more in any of the first five fiscal years must obtain three-fifths of the votes cast to be approved.

¹ <https://www.sdlegislature.gov/Session/Bill/22243> (April 2022).

² <https://sdsos.gov/elections-voting/assets/HJR5003AttorneyGeneralStatement.pdf> (April 2022).

This constitutional amendment additionally requires any initiated measure, proposed constitutional amendment, or referred measure which imposes or increases fees to obtain three-fifths of the votes cast to be approved.

It is important to note the Attorney General's opinion distinguishes the three different ballot measure categories that will require a voter approval of 60% or greater to pass:

- First, CA-C requires any initiated ballot measure, referred measure, or constitutional amendment referred or submitted to the voters that contains a clause imposing or increasing taxes must obtain three-fifths of the votes, or 60%, for passage; and
- Second, CA-C adds the requirement that any initiated measure, proposed constitutional amendment, or referred measure obligating the state to appropriate \$10 million or more in any of the first five fiscal years must obtain three-fifths, or 60%, for passage; and
- Third, CA-C requires any initiated measure, proposed constitutional amendment, or referred measure which imposes or increases fees to obtain three-fifths, or 60%, votes for passage. *NOTE: The dollar amount was NOT identified with fees in CA-A. Any fee, even a fee for a de minimis amount, would trigger the higher voter approval of 60%.*

Proponent Rationale³

Proponents assert CA-C will pass because voters do not want to raise taxes. There are similarities between the higher threshold of 60% passage requirement and the rule that the legislature must abide by when raising taxes or imposing a new tax. CA-C helps to fight higher taxes and protects taxpayers. Proponents assert the language in CA-C is clear and should there be a legal challenge any argument would not have legal traction with the court.

Opponent Rationale³

Opponents assert CA-C is too important to be on a June primary ballot where voter turn-out is typically less than half of the voters who vote in the general election. In addition, the politically advantageous move will result in more Republican Party voters weighing in on CA-C rather than Democratic Party⁴ voters. Opponents also assert CA-C has significant fundamental changes being proposed to the South Dakota Constitution. These changes are important enough to have CA-C on the general ballot. Moreover, legal questions remain about the ambiguous language in CA-C about who decides or defines when the 60% threshold is determined. Are decisions about the language in CA-A determined by the Legislature, Attorney General, or the Courts? Lastly, opponents assert that through CA-C, the legislature is

³ Detailing "Proponents" and "Opponents" rationale is designed to provide the reader with an understanding of the opinions and talking points from each perspective. They are not intended to reflect the position of the Greater Sioux Falls Chamber of Commerce

⁴ See Appendix.

seeking to diminish the voters' influence over ballot measures. Historically ballot measures rarely receive over 60%⁵ voter support.

Chamber Position

The Greater Sioux Falls Chamber of Commerce has taken a position of opposition to Constitutional Amendment C (CA-C) and urges a "No" vote on the 2022 primary election ballot.

Rationale

The Board of Directors' concerns about CA-C were three-fold. First, the legislature is seeking to make it more difficult for the South Dakota voters to pass ballot measures. There was concern about voting on a Constitutional Amendment at a primary election where voter turnout is less than half of the voter turnout in a general election. Moreover, making significant changes to the State Constitution deserves a broader discussion and vote.

Second, concerns were expressed about the political maneuvering of the legislature when placing CA-C on the ballot in June. The legislature sought to effectively quash the vote on Medicaid expansion that is scheduled for the 2022 general election by requiring a 60% threshold if CA-C passes in June. Current law requires ballot measures to be approved by a vote of 50 percent plus one. When the legislature changed the election date for CA-C from November to the June primary, all ballot measures on the November ballot, including Medicaid expansion, will require a 60 percent voter approval if they fall under the purview of CA-C.

Note: Historically voter approval for ballot measures over the last 10 general elections indicates⁶ five out of 23 ballot measures have passed with a 60 percent or greater.

The third concern is focused on the unforeseen impact if CA-C passes. For example, the Board expressed concerns about the appropriation provision and how that would work. The language is overly broad in some sections and yet very limiting in others. Moreover, which branch of government would determine if the appropriation clause required a 60% voter threshold prior to the election?

⁵ See Appendix.

⁶ See Appendix.

APPENDIX

Historical Data on Voter Turnout and Ballot Approval Percentages for the last 10 years

South Dakota voter turnout comparison between primary and general elections.

The South Dakota Legislature has placed ballot measures on the general election ballot (November) with few exceptions. Constitutional Amendment C (CA-C) is one of those exceptions as it has been placed on the June primary ballot. The concern when placing an amendment to the South Dakota Constitution on a primary ballot is the voter turnout is less than half of voter turn-out in a general election. Below is a historical look back on voter turnout from the last ten statewide elections.⁷ South Dakota primary elections engage significantly less voters compared to general elections.

- 2020 Voter Turnout: Primary Election 28.22%; General Election 73.88%
- 2018 Voter Turnout: Primary Election 26.57%; General Election 64.98%
- 2016 Voter Turnout: Primary Election 21.94%; General Election 69.62%
- 2014 Voter Turnout: Primary Election 19.22%; General Election 54.18%
- 2012 Voter Turnout: Primary Election 20.78%; General Election 69.72%

South Dakota Republican Party stipulates only voters registered as Republicans may vote in that party's primary. The Democratic Party has open primaries. Voter turnout, related to party affiliation, is generally relative to whether either party has the most contested races to be voted on in the primary election. For example, the 2022 primary election⁸ has 13 contested Republican Senate primary races and the Democratic Party has zero contested Senate primary races. The Republican House has 22 races that are contested and will be voted on in the June primary, while the Democratic candidates only have three contested races on the primary ballot.

10-year statewide ballot measures passage rates

During the discussion of CA-C, the requirement of the 60 percent voter approval was discussed. The information below from the South Dakota Secretary of State's website provides the data for discussion purposes and context to CA-C. Voter approval for ballot measures over the last 10 general elections indicate five out of 23 ballot measures have passed with 60% or more.

⁷ South Dakota Secretary of State's Website <https://sdsos.gov/elections-voting/election-resources/election-history/default.aspx> (April 2022).

⁸ <https://vip.sdsos.gov/candidatelist.aspx?eid=470> (April 2022).

General Election approval percentages for:

- **2020 General Election Ballot Measures:**
 - Initiated Measure 26 to Legalize Medical Marijuana
 - **Yes = 70%**
 - No = 30%
 - Constitutional Amendment A to Legalize Recreational Marijuana
 - **Yes = 54%**
 - No = 46%
 - Constitutional Amendment B to Legalize Sports Wagering in Deadwood
 - **Yes = 58%**
 - No = 42%
- **2018 General Election Ballot Measures:**
 - Initiated Measure 24 to prohibit contributions to ballot committees
 - **Yes = 56%**
 - No = 44%
 - Initiated Measure 25 to increase the tobacco tax to fund the lowering of tech colleges
 - Yes = 45%
 - No = 55%
 - Constitutional Amendment W
 - Yes = 45%
 - No = 55%
 - Constitutional Amendment X
 - Yes = 46%
 - No = 54%
 - Constitutional Amendment Z
 - **Yes = 62%**
 - No = 44%
- **2016 General Election Ballot Measures**
 - Referred Law 19: Revising State Election Laws and Election Petitions
 - Yes = 29%
 - No = 71%
 - Referred Law 20: Lowering State Minimum Wage for Non-Tipped Employees
 - Yes = 29%
 - No = 71%
 - Initiated Measure 21 to set a maximum finance charge for certain money lenders
 - **Yes = 76%**
 - No = 24%
 - Initiated Measure 22 to revise campaign finance and lobbying laws, to create a publicly funded campaign finance program and to create an ethics commission
 - **Yes = 52%**
 - No = 48%
 - Initiated Measure 23 to give certain organizations the right to charge fees
 - Yes = 20%
 - No = 80%
 - Constitutional Amendment R creating governing body for postsecondary technical education institutes
 - **Yes = 51%**
 - No = 49%
 - Constitutional Amendment S to expand rights for crime victims (Marsy's Law)
 - **Yes = 60%**
 - No = 40%

- Constitutional Amendment T to provide for a statewide redistricting commission
 - Yes = 43%
 - No = 40%
 - Constitutional Amendment U to limit the ability to set statutory interest rates for loans
 - Yes = 37%
 - No = 63%
 - Constitutional Amendment V to establish non-partisan elections
 - Yes = 45%
 - No = 55%
- **2014 General Election Ballot Measures**
 - Initiated Measure 18 to require health insurers to include all willing and qualified health care providers on their provider lists
 - Yes = **62%**
 - No = 38%
 - Initiated Measure 18 to increase the minimum wage
 - **Yes = 55%**
 - No = 45%
 - Constitutional Amendment Q: Constitutional Amendment to authorize the legislature to allow Roulette, Keno and Craps in Deadwood
 - Yes = 57%
 - No = 43%
 - **2012 General Election Ballot Measures**
 - Constitutional Amendment M south to change certain provisions relating to corporations
 - Yes = 30%
 - No = 70%
 - Constitutional Amendment N to repeal certain reimbursement restrictions for travel by legislators when traveling to and from a legislative session
 - Yes = 37%
 - No = 63%
 - Constitutional Amendment O to change the method of distributions for the Cement Plant trust funds
 - **Yes = 57%**
 - No = 43%