

**LEGAL MEMO**

# House Bill 1169 Complies With the South Dakota Constitution

**To: FGA Partners**

**From: Ryan Young, *Legal Fellow***

## Introduction

The 8th Circuit Court of Appeals precedent applies rational basis scrutiny to previous geographic requirements of ballot initiatives. As a result of this, House Bill 1169 (H.B.1169) need only be rationally related to a legitimate government interest to be considered constitutional. Based upon the language of the bill and South Dakota Constitution, H.B.1169 should meet that standard and be found constitutional.

## H.B.1169

South Dakota H.B.1169 amends S.D. Codified Law §2-1-1 to create a geographic requirement for ballot initiative petition signatures.<sup>1</sup> This new standard would require a proposed ballot initiative that amends the South Dakota Constitution to be signed by qualified voters who are at least five percent of the total votes cast in the most recent gubernatorial election in each legislative district.<sup>2</sup> This would be a change from the current law, which has no geographic signature requirement.<sup>3</sup>

## South Dakota Constitution

The South Dakota Constitution establishes a ceiling for required signatures to invoke an initiative or referendum to change state statute of "[n]ot more than five percent of the qualified electors of the state shall be required to invoke either the initiative or the referendum."<sup>4</sup> The constitution also establishes a floor for required signatures that constitutional amendments proposed by initiative require a petition signed by at least 10 percent of the total votes cast for governor in the last election.<sup>5</sup> The South Dakota Constitution does not provide for a limitation or additional provisions related to geographic requirements for ballot initiative signatures.

H.B.1169 would not replace the constitution's 10 percent signature requirement but would add an additional geographic prerequisite where signatures comprising that 10 percent statewide total must include at least five percent of qualified voter signatures from each legislative district.<sup>6</sup>

## Legal precedent and analysis

South Dakota's Supreme Court has not directly addressed the boundaries of this area of South Dakota's constitution. The 8th Circuit Court of Appeals has addressed these sections of South Dakota's Constitution in two recent cases, *Dakotans for Health v. Noem (Dakotans)* and *SD Voice v. Noem (SD Voice)*.<sup>7</sup> However, both *Dakotans* and *SD Voice* focused on issues unrelated to geographic signature requirements for ballot initiatives.

The 8th Circuit has addressed geographic requirements for ballot initiatives in Nebraska. Nebraska's constitution requires that ballot petition signatures must "be so distributed as to include five percent of the registered voters of each of two-fifths of the counties of the state."<sup>8</sup> In a case challenging this language, the 8th Circuit held in *Eggers v. Evnen* that so long as a signature distribution requirement does not "draw a suspect classification or restrict a fundamental right" then it is subject to rational basis review.<sup>9</sup>

Citing the United States Supreme Court, the 8th Circuit went further to say that "[t]he State has a legitimate interest in limiting ballot initiatives to those with a reasonable chance of success so that voters' attention is not distracted by initiatives without a reasonable chance of success."<sup>10</sup> The court also agreed with the 7th Circuit, which held that "states have a legitimate interest in limiting the number of referenda."<sup>11</sup> Therefore, any challenge to H.B.1169 would be subject to rational basis review.

In order for H.B.1169 to satisfy rational basis review, it need only be rationally related to a legitimate government interest.<sup>12</sup> Given the Supreme Court and other precedent cited above, it is likely that a court would determine that H.B.1169's geographic requirements are rationally related to legitimate government interests, satisfies rational basis review, and is thereby constitutional.

## Conclusion

H.B.1169 does not address a suspect classification or restrict a fundamental right and only sets a geographic requirement for signatures on ballot initiatives petitions. H.B.1169 does not affect the South Dakota constitutional requirement of 10 percent of qualified voters statewide but instead adds a geographic requirement. Given the 8th Circuit's ruling in *Eggers*, it is likely to be found constitutional.

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<sup>1</sup> H.B.1169, 100th Leg. Sess., (S.D. 2025).

<sup>2</sup> *Id.* at §1.

<sup>3</sup> S.D. Codified Laws. §2-1-1.

<sup>4</sup> S.D. Const. art. III, § 1.

<sup>5</sup> S.D. Const. art. XXIII, § 1.

<sup>6</sup> H.B.1169, 100th Leg. Sess., (S.D. 2025).

<sup>7</sup> *SD Voice v. Noem*, 60 F.4th 1071 (8th Cir. 2023), *Dakotans for Health v. Noem*, 52 F.4th 381 (8th Cir. 2022).

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<sup>8</sup> Neb. Const. art. III, §2.

<sup>9</sup> *Eggers v. Evnen*, 48 F.4th 561, 566 (8th Cir. 2022).

<sup>10</sup> *Id.* (citing *Muro v. Socialist Workers Party*, 479 U.S. 189, 193-194 (1986)).

<sup>11</sup> *Jones v. Markiewicz-Qualkinbush*, 892 F.3d 935, 938 (7th Cir. 2018).

<sup>12</sup> *Birchansky v. Clabaugh*, 955 F.3d 751, 757 (8th Cir. 2020).