

May 31, 2018

Primary Election is Tuesday, June 5th

(Absentee voting is open now)

Voting On Primary Candidates and Constitutional Amendment Y

There are two statewide elections being conducted simultaneously next week; the Republican Primary and a state-wide vote on Amendment Y which makes changes to the Constitutional provision known as “Marsy’s Law”, passed by voters in November of 2016.

The Primary

Republican Party - Voters registered as members of the Republican Party have several nominations for statewide office including:

Governor (*Winner to face Democratic Party nominee Senator Billie Sutton in November*)

- Attorney General Marty Jackley
- Congresswoman Kristi Noem

Congressional Seat – South Dakota’s only seat in the U.S. House of Representatives (*Winner to face Democratic nominee Tim Bjorkman – former circuit court judge in November*)

- Dusty Johnson – former member of Public Utilities Commission
- Shantel Krebs – Secretary of State
- Neil Tapio – State Senator

Democratic Party – Voters registered as members of the Democratic Party do not have any state-wide candidates and, therefore, will not have a statewide ballot during the primary election. A number of legislative districts do have primaries so voters in those districts will receive a ballot and will cast a vote for those seats. This is also true for local offices. The Democratic Party has candidates for statewide office with no opposition in the primary. These are:

Governor - Senator Billie Sutton, and

U.S. House of Representatives - Tim Bjorkman, former circuit court judge

What Happened to Attorney General, Secretary of State and some others that no one seems to remember? This is a question that often continues after the election when the people who win these offices are seldom heard from again!

Nominated at Party Conventions. The South Dakota Constitution lists five statewide offices that are not nominated using a primary election. They are nominated at the party conventions and any officially recognized political party is allowed to make nominations for those offices. South Dakota has four official political parties: Republican, Democratic, Libertarian and Constitutional.

The five constitutional offices that are nominated by a statewide convention are:

- Attorney General
- Secretary of State
- State Treasurer
- State Auditor
- Commissioner of School and Public Lands

Amendment Y – or in this case “why not”.

All registered voters will be eligible to cast a vote in a special election on Amendment Y which offers revisions to the amendment passed in 2016 known as Marsy’s Law. Marsy’s Law was a constitutional amendment dealing with victim’s rights and, since its passage, has resulted in a number of unintended consequences. Amendment Y is designed to address the unintended consequences.

The South Dakota Chamber of Commerce and Industry has not taken a position on Amendment Y.

As a resource to help members of the South Dakota Chamber of Commerce and Industry understand Amendment Y and Marsy’s Law, below please find two summaries.

First - the link immediately below will take readers to the Secretary of State’s Voter Information Pamphlet where there is an explanation and arguments both for and against Amendment Y. Here is that link:

<https://sdsos.gov/docs/BallotQuestionPamphlet2018Primary.pdf>

Second - the Sioux Falls Area Chamber of Commerce published an excellent issue brief that includes a history of the passage of Marsy’s Law in 2016. Here is that brief:

The 93rd legislature proposed and submitted to the voters a Constitutional amendment to revise certain provisions relating to the rights of crime victims through a joint resolution (HJR 1004).¹ The coalition urging legislative adoption was comprised of both those who supported and opposed the 2016 Marsy’s Law ballot measure. The HJR 1004 passed the House unanimously, passed the Senate amended 22/13. The House then concurred with the Senate amendments 61/6.²

The Attorney General’s 2018 ballot explanation³ states:

Marsy’s law amendment, Constitutional Amendment Y (CA-Y), revises certain provisions relating to the rights of crime victims. This amendment makes changes to the Marsy’s Law ballot measure, adopted by the voters in 2016.

The amendment narrows the definition of “victim” to mean a person against whom a crime or delinquent act is committed. If the victim is killed, incapacitated, or a minor, then “victim” may include that person’s spouse, parent, child, sibling, grandparent, grandchild, or guardian.

The amendment makes it clear that a victim must make an affirmative request to receive the benefits of several of the rights provided by Marsy’s Law. In addition, the amendment clarifies law enforcement is allowed to share information with the public to help solve crimes.

The amendment also provides a person may not file a lawsuit for money damages against the State, local governments, or their officers and employees, if the person’s rights under Marsy’s Law are violated.

Proponent Rationale⁴

Proponents of CA-Y assert the 2016 original version of Marsy’s Law had unintended consequences and the proposed amendment fixes the law. First, the amendment maintains the constitutional right of victims of criminal acts to participate in criminal proceedings in South Dakota. In addition, it clarifies that most of these rights are available at the request of the victim and in most cases the victim must be the individual victimized by a criminal act to assert these rights. The amendment also clarifies law enforcement can share information with the public to help solve crimes.

Passing this amendment will save money for county governments and it will avoid unnecessary lawsuits about these rights.

The amendment this amendment is widely supported by victim's rights and their advocates, state's attorneys, sheriffs, police chiefs and county officials. It was supported by the Governor and by legislators from both political parties. In addition, the national group who wrote and promoted Marsy's Law in the 2016 election, also supports CA-Y.

Opponent Rationale⁵

Opponents of CA-Y believe it is better to repeal Marsy's Law rather than amend it. Marsy's law, even with amendments, will still place demands on county budgets. They assert the law is unnecessary, costly and unconstitutional and prefer the initial repeal proposed in HJR 1004 before it was amended. Moreover, opponents assert that Marsy's Law was imposed on South Dakotans by a California billionaire who has no ties to South Dakota.

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

Historical Background from the 2016 Election.

In 2016, an amendment to the Constitution, known as Marsy's Law or Constitutional Amendment S (CA-S), was placed on the ballot through the initiative process. In summary, CA-S expanded the following victim's protections, places them within the State Constitution and gives crime victims written notification of these rights:

- Harassment or abuse;
- Right to privacy;
- Timely notice of all trial, sentence and post-judgement proceedings including pardon or parole;
- Right to confer with the attorney for the government; and
- Opportunity to provide input during all phases of the criminal justice process.

The Sioux Falls Area Chamber of Commerce encouraged a No vote on CA-S⁶. (*The amendment passed by a vote of 215,565 to 146,084.*)

Key Rationale Points for Opposing CA-S in 2016⁸:

- A change or expansion of these rights is better handled in statute rather than South Dakota's constitution. Once inserted into the constitution, the impacts of this measure become arduous to change or adjust. Statues, on the other hand, can be changed in a legislative session. State law addresses victims' rights and have been enacted since the early 1990's⁹.
- The term "victim" is overly broad to include individuals not victimized by a criminal act and may be in conflict with a criminal defendant's rights.
- The change in law is intended to address a problem that is addressed in South Dakota through statute.
 - This ballot measure was authored by Dr. Nicolas after his sister, Marsy, was murdered by her boyfriend. Only a week after the murder, Dr. Nicolas and his mother walked into a grocery store after visiting her daughter's grave and were confronted by the accused murderer. The family had no idea that he had been released on bail. Dr. Nicolas first proposed the change to California's state constitution, the state wherein he resides. Since then, he has taken this effort to South Dakota, North Dakota and Ohio. In South Dakota, Dr. Nicolas was the sole funder of the 2016 campaign and invested \$2.1 million dollars¹⁰ to get CA-S

passed. He intends to bring Marsy's law to all 15 states that do not extend enumerated rights to victims of crimes in their state constitutions.¹¹

- Concern for the impact this measure would place upon South Dakota's state's attorneys and their offices, responsibilities, staffing and budget. Prosecutors, the defense bar and the state bar were strongly opposed to the measure.

¹The prime sponsors of HJR 1004 were Representative Mickelson (D-13) and Senator Bolin (D-16). *Note additional legislation was enacted by the legislature relating to Marsy's Law. HB 1162 provided for the placement of a proposed constitutional amendment on the June primary ballot and provided funding for the change to local election officials. HB 1174 revised certain provisions regarding rights for crime victims.*

²Legislative Research council webpage:

http://www.sdlegislature.gov/Legislative_Session/Bills/Bill.aspx?Bill=HJR1004&Session+2018 (2018). *Note: Joint resolutions do not require the Governor's signature.*

³Attorney General 2018 Ballot Explanation of Constitutional Amendment Y. Secretary of State website:

https://sdsos.gov/elections-voting/assets/2018_CA_HJR1004_AGStatement.pdf (2018)

⁴South Dakota Secretary of State website, Ballot Question Pamphlet Compiled by the Office of Secretary of State Shantel Krebs. <https://sdsos.gov/elections-voting/assets/BallotQuestionPamphlet2018Primary.pdf> (2018).

⁵South Dakota Secretary of State website, Ballot Question Pamphlet Compiled by the Office of the Secretary of State Shantel Krebs. <https://sdsos.gov/elections-voting/assets/BallotQuestionPamphlet2018Primary.pdf> (2018).

⁶Issues Management Council adopted: August 17, 2016.

⁷South Dakota Secretary of State website: <https://sdsos.gov/elections-voting/default.aspx> (2018).

⁸Issues Management Council Issue Brief, July 2016.

http://www.siouxfallschamber.com/publications/BOD%20MarsysLaw_positions_rationale_final.pdf (2018)

⁹S.D.C.L. 23A-28C- (2012).

http://www.sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=23A-28C-1

¹⁰South Dakota Secretary of State website, campaign finance reporting system, statewide ballot question committee, Marsy's Law for South Dakota: <https://sdcfr.sdsos.gov/Search/Search.aspx> (2018).

¹¹Marsy's Law, Justice with Compassion website: <https://marsyslaw.us/about-marsys-law/> (2018).