

Issue Brief

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J.A.I.L. Amendment Threatens Judicial Independence in South Dakota

Introduction

At first glance, it would be easy to dismiss Ronald Branson's Judicial Accountability Initiative Law (J.A.I.L.) as merely the rantings of an unsuccessful litigant. After all, he seems determined to turn the judicial system on its head by advocating state constitutional amendments that would let ordinary citizens bring lawsuits against judges whose decisions they don't like.¹

But apparently 46,800 South Dakotans appear to hold a different view. In the past year, Branson and his followers persuaded that many residents to sign petitions which, in turn, caused Secretary of State Chris Nelson to certify the J.A.I.L. amendment on the state's Nov. 7 ballot as Amendment E.²

Branson's movement is now being taken much more seriously by other South Dakota residents. Ninety-two of the state's 105 lawmakers, for example, have co-sponsored House Concurrent Resolution 1004, which urges voters to reject the J.A.I.L. amendment on Election Day.³ And, a bipartisan coalition of the state's top political, business, labor, law enforcement, medical, and agricultural leaders has been organized to fight Amendment E.⁴ They have formed a coalition, No on Amendment E, and will work for its defeat in November.

This *Issue Brief* takes a closer look at the J.A.I.L. amendment, the man behind the initiative and how it ended up on the ballot in South Dakota. The *Brief* also reviews the arguments being put forward by Branson's opponents, including the State Bar of South Dakota, and concludes with some observations on this controversial amendment initiative.

What is the J.A.I.L. Amendment

The preamble to the J.A.I.L. amendment⁵ finds that "the doctrine of judicial immunity has the potential of being greatly abused; that when judges do abuse their power, the People are obliged – it is their duty – to correct that injury, for the benefit of themselves and their posterity."

The amendment proposes creation of a 13-member Special Grand Jury with statewide jurisdiction to judge both law and fact. Jurors would have to be at least 30 years old, a U.S. citizen and a state resident for at least two years. Jurors would be selected at random by a voter's list maintained by the Secretary of State. They would serve only once for one year and would receive a salary commensurate to that of a Circuit Court judge, prorated to the number of days actually served.

The Legislature would be required to provide a suitable facility for the Special Grand Jury and allow the jurors to retain non-governmental advisors, special prosecutors, and investigators as needed. These individuals also would serve no longer than one year.

Lawmakers also would be required to deduct 1.9 percent from the gross judicial salaries of all judges, which would be deposited into a trust account to finance the Special Grand Jury. Attorneys representing a party filing a civil complaint or answer before the Special Grand Jury would be required, at the time of filing, to pay a fee equal to the filing fee due in a civil appeal to the State Supreme Court. If additional funds are needed, the Legislature would be required to impose appropriate surcharges upon the civil court filing fees of corporate litigants.

The Special Grand Jury could not entertain a complaint until the complainant exhausted all judicial remedies available in the state within the immediate preceding six-month period. A judge would have 20 days to answer the complaint and the complainant 15 days to respond to the judge's answer. The Special Grand Jury would have 120 days to render its opinion.

If the Special Grand Jury found probable cause of criminal conduct, they would be allowed to bring an indictment against a judge. A 12-member special trial jury would be impaneled and a non-governmental special prosecutor would be appointed. A judge with no more than four years on the bench from a county other than that of the defendant judge would hear the case. If a judge is subsequently convicted, the special trial jury would impose the penalty, not the special judge.

Whenever a judge received "three strikes," that judge would be permanently removed from office, and could not serve in any state judicial office. Retirement benefits could not exceed one-half of the benefits entitled to the removed judge.

Who is Ronald Branson?

According to Ronald Branson's website⁶ he joined the U.S. military in 1963 at the age of 17 and was assigned to Fort Belvoir, Virginia, where he became a "prison chaser," an individual who oversaw prison work detail. Following an honorable discharge, he entered

Washington Bible College and later graduated from Bible institutes in California and Wisconsin and was ordained into the ministry in 1977.

In 1980, he joined forces with Arthur Julius Porth, a Wichita, Kansas building contractor, who became known as the so-called patriarch of tax protest movement in the 1960s and 1970s.⁷ In 1992, Branson co-founded the Granada Forum, "a research center for all types of subject matters that cannot be talked about in the mainstream media." The Forum still holds monthly lectures at a church in Tarzana, California.⁸

Branson's legal pursuits date back to 1982, when he first engaged the County of Los Angeles over its refusal to give a mandatory civil service hearing to a 16-year county employee holding civil service protection. Branson took the county to court and he describes that experience in great detail on his website.

In 1994, Branson brought a \$13.5 million lawsuit against the City of Los Angeles and seven police officers for false arrest, false imprisonment and for an unwarranted strip-search. Branson lost, but the following year, he spent two days creating his original initiative, "The Judicial Reform Act of 1996." The following year, Branson renamed it "The Judicial Accountability Initiative Law."⁹

Since 2002, Branson has worked full time on J.A.I.L. and refers to himself as its "Five-Star National J.A.I.L. Commander-in-Chief, with a national following that currently includes 50 states and three foreign nations." He now resides in North Hollywood, California with his wife, Barbie, who assists him in JAIL efforts.

On the Ballot

Gary Zerman is a Valencia, California attorney, who also serves as the "Lieutenant Commander-in-Chief" of the national J.A.I.L. movement. In a recent telephone interview,¹⁰ he explained how his organization came to get its amendment on the ballot in South Dakota.

"Obviously we're going to focus in states that allow initiatives," Zerman said. "We tried California (in 2000), but because the state is so large, the number of signatures required would have cost us over a million dollars for signature gatherers."

Zerman said that South Dakota has some good laws in its constitution: “Section 27 (of the state constitution) says it is the duty of the people to take initiative, and that’s what we’re doing.”

Using 30 paid petition gatherers and volunteers, J.A.I.L. acquired 46,800 signatures for the proposed amendment, well above the required 33,456 signatures needed to be on the ballot.

“There are three big cities in South Dakota, and so we concentrated there,” Zerman said. “Our government’s not working; there’s way too much law. We’re in charge, we’re the masters, and they’re (the judiciary) supposed to be serving us so we’re drawing a line in the sand and South Dakota is our battle ground.”

William Stegmeier of Tea, South Dakota, who owns a company that manufactures livestock-feed grinders, serves as J.A.I.L.’s state coordinator and he turned in the signed petitions to the Secretary of State.¹¹

Opponents of J.A.I.L.

On Feb. 2, the South Dakota House of Representatives, by a vote of 67 to 0, adopted House Concurrent Resolution 1004, which urges “...all South Dakota voters to protect our citizen boards, to protect our system of justice, to protect economic development, to protect all our citizens from frivolous lawsuits that would be authorized by the Judicial Accountability Initiated Law, and to vote against Amendment E.”¹²

The House vote followed a public hearing in which 17 organizations as diverse as the South Dakota Chamber of Commerce, the state AFL-CIO and the National Association of Mutual Insurance Companies (NAMIC) testified in support of the resolution.¹³

The resolution was forwarded to the Senate State Affairs Committee the next day, and Branson was invited to attend the committee hearing on Feb. 15. He declined, but sent Stegmeier, who read a prepared statement, but declined to answer any of the Committee’s questions. The Committee adopted the resolution by a 9-0 vote and forwarded it to the full Senate, where it was ratified by a 34 to 0 vote on Feb. 16.

The key arguments against Amendment E state that:

- Amendment E would actually allow lawsuits against all South Dakota citizen boards, including county commissioners, school board members, city council members, planning and zoning board members, township board members, public utilities commissioners, professional licensing board members, jurors, judges, prosecutors, and all other citizen boards;
- If approved, Amendment E would establish a new entity to investigate complaints with an initial budget of \$2.65 million, plus the cost of a facility, with authority to hire as many employees as it deemed appropriate without legislative appropriation, consultation, review, or approval;
- If approved, Amendment E would raise court filing fees for small businesses from \$50 to \$675 per case in order to help pay for the J.A.I.L. special grand jury;
- Amendment E would permit convicted felons, whose convictions have been affirmed by the state Supreme Court to sue the prosecutors who prosecuted them, the jurors who voted to convict them, and the judges who sentenced the felons, thus burdening the courts and citizens with countless expenses and needless lawsuits;
- If approved, Amendment E would increase the number of lawsuits filed and burden the state’s court system;
- Amendment E would authorize and encourage jury nullification, which was rejected by voters in 2002; and
- Amendment E would prohibit summary judgment, a legal remedy currently available and used to quickly and inexpensively rid our courts of frivolous lawsuits.¹⁴

Among the most vocal critics at the Feb. 2 hearing were two state representatives. Rep. Tom Hennies,

a Republican from Rapid City and a well respected leader in the law enforcement community, warned that the J.A.I.L. proposal would extend far beyond judges, and concluded, “Anarchy can be expected if it is passed by the people of South Dakota.”¹⁵

Fellow Republican, Joel Dykstra of Canton, said: “We are not talking about a constitutional amendment. We are talking about a constitutional replacement. Not only will every level of government, volunteers and elected officials be in jeopardy, they would be absent. Nobody would serve our state.”¹⁶

The legal community also has weighed into the debate over Amendment E. Tom Barnett, executive director of the State Bar of South Dakota, argued in an October 8, 2005 op-ed piece in the *Rapid City Journal* that the J.A.I.L. amendment wasn’t necessary.

“South Dakota judges are subject to being voted out of office by our citizens. In addition, our citizens have an absolute right to reject a particular circuit judge from sitting on a case where a party has concerns that he or she will be treated unfairly. Unlike other states where appeals to the Supreme Court are limited, in South Dakota all parties have an absolute right to appeal a judge’s decision to our Supreme Court. Ethical violations by a judge are investigated by the Judicial Qualifications Commission – a constitutionally created body charged with judicial oversight. In other words, in case a problem arises in the future, South Dakotans already enjoy many protections against alleged abusive judges.”¹⁷

Conclusion

In our view, the controversy over Amendment E raises some fundamental arguments that should be emphasized more forcefully as the debate over the J.A.I.L. amendment unfolds.

First, implicit in the writings of Ronald Branson and his J.A.I.L. amendment is the notion that judicial immunity is absolute, and that ordinary citizens have no recourse in addressing perceived judicial wrongdoing. This is simply not true.

The state’s five Supreme Court justices and 38 Circuit Court judges are subject to standards of conduct that require them to uphold the integrity and independence

of the judiciary; avoid impropriety or the appearance of impropriety in all of their activities; perform their judicial duties impartially and diligently; conduct their extra-judicial activities so as to minimize any conflict with their judicial obligations, and refrain from inappropriate political activity.¹⁸

As in every other state in the country, litigants in South Dakota may file an appeal of their case in the appropriate court. In addition, a seven-member Judicial Qualifications Commission exists to review complaints brought by the public. Under the Commission’s rules, disciplinary proceedings against a judge are confidential until the Commission’s recommendation is filed with the Supreme Court or the accused judge requests the matter be made public. The matter also becomes public if the disciplinary investigation is based upon the conviction of a judge for a felony under state or federal law, or a crime involving moral turpitude.¹⁹

Second, the practical idea behind the concept of judicial immunity is that it allows judges to perform their work without fear of harassment or liability for unpopular or unfavorable decisions. If the J.A.I.L. amendment were to become law, it would seriously undermine this concept, and would threaten the integrity of the entire judicial system. Who wants to be a judge if that individual has to look over his/her shoulder in fear that a complaint about a judicial act or opinion will result in a special grand jury investigation and possible indictment? Nobody.

Finally, and perhaps most importantly, both Supreme Court and Circuit Court judges are accountable to South Dakota voters. In the case of the five Supreme Court justices, voters have the opportunity every eight years to decide on whether to retain them in office.

The 38 Circuit Court judges are subject to nonpartisan elections. In 2004, South Dakota residents were asked to consider a constitutional amendment to let Circuit Court judges be retained like their Supreme Court counterparts, but the question was defeated by a 2 to 1 margin.²⁰ On Nov. 7, all five Supreme Court justices and 38 Circuit Court Judges will face the voters.

Finally, whether Ronald Branson and his followers ultimately succeed in South Dakota remains an open

question at this point, but the fact that 24 other states²¹ have similar initiative provisions in their laws should serve as a wake-up call to anyone who supports maintaining the independence of the current state judicial system.

NAMIC is working with and contributing to the coalition to defeat Amendment E. We strongly encourage member companies to make a financial contribution. Those contributions should be sent to Richard Tieszen, c/o No on Amendment E, 306 W. Capitol Street, Suite 300, Pierre, South Dakota 57501.

This Issue Brief is the work of several NAMIC staff members. Senior State Affairs Manager David Reddick wrote the brief with input from NAMIC North Central State Affairs Manager Joe Thesing. They would like to thank John Stallings, a senior majoring in journalism at Indiana University, Purdue University – Indianapolis. He is working as an intern this semester at NAMIC and collected much of the background information used in this Issue Brief. NAMIC Regulatory Affairs Counsel Marsha Harrison offered some valuable legal insights on the J.A.I.L. amendment.

Endnotes

¹Information about Ronald Branson and his J.A.I.L. amendment can be found at his website: www.jail4judges.org

²See website of South Dakota Secretary of State Chris Nelson. www.sdsos.gov/electionsvoteregistration/upcomingelection_ballotquestionstatus.shtm

³A copy of House Concurrent Resolution 1004 can be found on the South Dakota Legislature website at <http://legis.state.sd.us/sessions/2006/HCR1004.htm>

⁴"JAIL initiative panned," *Rapid City Journal*, Feb. 6, 2006.

⁵See Branson's website for copy of the J.A.I.L. amendment or at Secretary of State Chris Nelson's website

⁶See Branson website for biographical information about him.

⁷See "Untaxing America," an article about A.J. Porth produced by the Southern Poverty Law Center at www.splcenter.org.

⁸Information about the Granada Forum can be found at its website: www.granadaforum.com.

⁹See Branson biography.

¹⁰John Stallings telephone interview with Gary Zerman, February 2, 2006.

¹¹See Chris Nelson's website.

¹²See House Concurrent Resolution 1004. Link at Note 3.

¹³See article mentioned in Note 4.

¹⁴See House Concurrent Resolution 1004.

¹⁵See article mentioned in Note 4.

¹⁶Ibid.

¹⁷See Tom Barnett's Op-Ed column, "J.A.I.L. is Unnecessary," *Rapid City Journal*, October 8, 2005.

¹⁸Information about the duties and obligations of South Dakota judicial officials can be found at the website: www.sdjudicial.com.

¹⁹Ibid.

²⁰Background on the 2004 constitutional amendment can be found at the Secretary of State's website.

²¹Information about other state ballot initiatives can be found at www.ballot.org. This website is maintained by The Ballot Initiative Strategy Center.