

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

**Supreme Court No.
Burleigh County Case No. 08-2012-CV-00309**

| | | |
|--|---|----------------------------------|
| Empower the Taxpayer, on behalf of |) | <u>NOTICE OF</u> |
| itself and the 28,000 + North Dakotans |) | <u>APPELLANTS' MOTION</u> |
| who signed the Petition, Charlene |) | <u>FOR SUPERVISORY</u> |
| Nelson, and Robert Hale, |) | <u>WRIT</u> |
| |) | |
| Appellant, |) | |
| |) | |
| vs. |) | |
| |) | |
| State Tax Commissioner Cory Fong, |) | |
| Senator Dwight Cook, Senator David |) | |
| Oehlke, Representative Charles |) | |
| Damschen, Representative Lonnie |) | |
| Winrich, Divide County |) | |
| Commissioner Doug Graupe, Cass |) | |
| County Commissioner Scott Wagner, |) | |
| Wahpeton Finance Director Darcie |) | |
| Huwe, Williams County Auditor Beth |) | |
| Innis, North Dakota Association of |) | |
| Counties, North Dakota Association |) | |
| of County Commissioners, North |) | |
| Dakota League of Cities, North Dakota |) | |
| Weed Control Association, North |) | |
| Dakota School Board Association, |) | |
| |) | |
| Appellees. |) | |

Lynn M. Boughey (04046)
Attorney for Plaintiffs
P.O. Box 836
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(701) 751-1485

TO THE DEFENDANTS:

YOU ARE HEREBY NOTIFIED THAT THE FOLLOWING

MOTION HAS BEEN MADE:

The Plaintiffs hereby make a motion that the Court issue a supervisory writ requiring the lower court to issue a temporary restraining order pending the Supreme Court's decision in this matter, and schedule a hearing on the motion as allowed under Rule 21 of the Rules of Appellate Procedure.

Dated this 18th day of April, 2012.



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The Plaintiffs hereby make a motion that the Court issue a supervisory writ requiring the lower court to issue a temporary restraining order pending the Supreme Court's decision in this matter, and schedule a hearing on the motion as allowed under Rule 21 of the Rules of Appellate Procedure.

Dated this 18th day of April, 2012.



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| Empower the Taxpayer, on behalf of |) | <u>BRIEF IN SUPPORT OF</u> |
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The Plaintiffs have made a motion that the Court issue a supervisory writ requiring the lower court to issue a temporary restraining order pending the Supreme Court's decision in this matter, and schedule a hearing on the motion as allowed under Rule 21 of the Rules of Appellate Procedure.

- A. **Relief Sought:** Supervisory Writ directed to the lower court requiring the Court to issue a temporary restraining order directed to the defendants to comply with the provisions of Sections 16.1-10-02(2)(a) and 16.1-10-04.
- B. **Issues Presented:** Whether a temporary restraining order is necessary in order to prevent defendants from violating Sections 16.1-10-02(2)(a) and 16.1-10-04.
- C. **Facts Necessary to Understand the Issues Presented:** This appeal concerns the application of law to Measure 2 which will be voted on June 5, 2012. This matter relates to the election franchise and the application of the North Dakota Corrupt Practices Act to the defendants in this matter. Only by granting a temporary restraining order can the violations of the law be restrained.

The issue at hand involves whether certain public officials must comply with the North Dakota Corrupt Practices Act,

whether these public officials must comply with the applicable attorney general opinions, and whether the remedies provided by the Corrupt Practices Act and other North Dakota laws (such as the laws allowing courts to issue a temporary restraining orders) can be enforced civilly, or instead whether the only remedy for a violation (and enforcement) of the corrupt practices Act is criminal.

The Plaintiffs allege that the defendants, all public officials, public entities, or private entities that receive public moneys, are all illegally taking positions on the law in violation of Section 16.1-10-02(2)(a) and are distributing false, misleading, and incomplete information about Measure 2 in violation of Sections 16.1-10-02(2)(a) and 16.1-10-04. Plaintiffs further assert that these actions are tainting the election process and are causing irreparable injury to the Plaintiffs by making a fair election impossible.

D. **Reason Why a Writ Should Issue:** It is clear from Charlene Nelson's affidavit that the Defendants are advocating a position as to Measure 2 and are issuing statements that are untrue and misleading. Since the Court has denied the Plaintiffs' request to

grant a shorter briefing schedule, the only other option to prevent the Defendant's from violating the North Dakota Corrupt Practice Act is to enjoin them from such violations.

Dated this 19th day of April, 2012.



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