

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court No. 20120197
Burleigh County Case No. 08-2012-CV-00309

Empower the Taxpayer, on behalf of)
itself and the 28,000 + North Dakotans)
who signed the Petition, Charlene)
Nelson, and Robert Hale,)
)
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.)

**STATE DEFENDANTS' BRIEF OPPOSING APPELLANTS'
MOTION FOR SUPERVISORY WRIT**

Appellees/Defendants Tax Commissioner Cory Fong, Senator Dwight Cook, Senator David Oehlke, Representative Charles Damschen, and Representative Lonnie Winrich (State Defendants) oppose Appellants' Motion for Supervisory Writ.

Appellants' motion requests this court direct "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." This is precisely the remedy sought in the action below which is now on appeal to this Court. See Empower the Taxpayer v. Cory Fong et al., No. 20120191 (N.D. filed April 13, 2012). In order for this Court to render an opinion granting the Appellants' Motion, the Court would have to consider the very same issues currently on appeal. "A petition for a supervisory writ is not an alternative to an appeal. The supreme court will issue a supervisory writ only to rectify errors and prevent injustice when no adequate alternative remedy exists." N.D.R.App.P. 21 explanatory note.

Tellingly, Appellants file this Motion the day after this Court denied Appellants' Motion for Abbreviated Briefing Schedule and Expedited Oral Arguments in their appeal. Appellants are abusing judicial process to invite this Court to revisit a clear decision simply because Appellants are dissatisfied with that decision. State Defendants respectfully request this Court deny Appellants' Motion.

Respectfully submitted this 20th day of April, 2012.

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Dwight Cook, Senator David Oehlke,
Representative Charles Damschen, and
Representative Lonnie Wirrich

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **STATE DEFENDANTS' BRIEF OPPOSING APPELLANTS' MOTION FOR SUPERVISORY WRIT** was on the 20th day of April, 2012, filed electronically with the clerk of court via email and served electronically or via mail on the following as indicated below:

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