

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.)

**COUNTY DEFENDANTS' JOINDER IN STATE DEFENDANTS'
OPPOSITION TO APPELLANTS' MOTION FOR SUPERVISORY WRIT**

Defendants 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 League of Cities, and North Dakota School Board Association (hereinafter “County Defendants”) hereby join in the State Defendants’ opposition to Appellants’ Motion for Supervisory Writ. County Defendants submit the following additional argument in opposition to the motion for supervisory writ.

As stated by this Court in *Roe v. Rothe-Seeger*, 2000 ND 63, 608 N.W.2d 289, 291:

Our authority to issue supervisory writs derives from N.D. Const. art. VI, § 2, and N.D.C.C. § 27-02-04. The authority to issue supervisory writs is discretionary; it cannot be invoked as a matter of right. This Court determines whether it should exercise its original jurisdiction to issue remedial writs on a case-by-case basis. Courts generally will not exercise supervisory jurisdiction “where the proper remedy is an appeal merely because the appeal may involve an increase of expenses or an inconvenient delay.” We exercise our authority to issue supervisory writs rarely and cautiously, and only to rectify errors and prevent injustice in extraordinary cases in which there is no adequate alternative remedy.

Id. at ¶ 5. This Court “generally will not exercise supervisory jurisdiction where the proper remedy is an appeal.” *State v. Holte*, 2001 ND 133, ¶ 5, 631 N.W.2d 595, 597 (citing *Roe v. Rothe-Seeger*, 2000 ND 63, ¶ 5). In *Rothe-Seeger*, the Court denied the request for a supervisory writ on the basis the Court was not convinced an appropriate remedy could not be obtained through an appeal of any adverse judgment against the applicant. 2000 ND 63 at ¶ 6. As an alternate remedy was available to the applicant in the form of an appeal, it was not an extraordinary case in the issuance of a supervisory writ was required to prevent injustice. *Id.*

In the present case, this Court should refuse to exercise supervisory jurisdiction as the Appellant's are already seeking a proper remedy through an appeal of the very issue upon which the supervisory writ is sought.

Respectfully submitted this 20th day of April, 2012.

SMITH BAKKE PORSBORG
SCHWEIGERT & ARMSTRONG

By: /s/ Randall J. Bakke

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Counties, North Dakota League of Cities, and
North Dakota School Board Association

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **COUNTY DEFENDANTS' JOINDER IN STATE DEFENDANTS' OPPOSITION TO 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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