

**Filed 12/22/15 by Clerk of Supreme Court  
IN THE SUPREME COURT  
STATE OF NORTH DAKOTA**

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2015 ND 294

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Damon Prescott Butterfield,

Petitioner and Appellant

v.

Grant Levi, Director of the North Dakota  
Department of Transportation,

Respondent and Appellee

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No. 20150249

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Appeal from the District Court of Stark County, Southwest Judicial District,  
the Honorable William A. Herauf, Judge.

AFFIRMED.

Per Curiam.

Thomas F. Murtha IV, P.O. Box 1111, Dickinson, N.D. 58602-1111, for  
petitioner and appellant; on brief.

Michael T. Pitcher, Office of the Attorney General, 500 North Ninth Street,  
Bismarck, N.D. 58501-4509, for respondent and appellee; on brief.

**Butterfield v. Levi**

**No. 20150249**

**Per Curiam.**

[¶1] Damon Butterfield appealed from a district court judgment affirming a Department of Transportation order revoking his North Dakota driving privileges for 180 days. Butterfield argues that the administrative hearing officer erred in the conclusions of law because North Dakota’s test refusal law violates the constitutional prohibition against unreasonable searches and seizures, is unconstitutional for denying substantive due process and is unconstitutional for penalizing the exercise of a constitutional right; that North Dakota’s test refusal law penalizes the constitutional right to withhold consent to a warrantless search, rendering the law unconstitutional; that the doctrine of unconstitutional conditions and N.D. Const. art. I, § 20, render North Dakota’s test refusal law enforceable and unconstitutional; that North Dakota’s test refusal law denies Butterfield’s substantive due process because it penalizes the exercise of a constitutional right, specifically the right to refuse a warrantless request to search; that North Dakota’s refusal and implied consent laws are unconstitutional as applied because the facts of the case demonstrate that law enforcement did not have a search warrant nor did law enforcement ever apply for a search warrant; and that the right to refuse testing is not just statutory but is of a constitutional dimension and an integral part of Fourth Amendment, N.D. Const. art. I, § 8, and substantive due process rights.

[¶2] We have previously rejected Butterfield’s arguments that North Dakota’s implied consent and test refusal laws are unconstitutional and have also rejected arguments based on the doctrine of unconstitutional conditions and N.D. Const. art. I, § 20. Beylund v. Levi, 2015 ND 18, 859 N.W.2d 403, cert. granted, 2015 WL 3867245, 83 U.S.L.W. 3935 (U.S. Dec. 11, 2015) (No. 14-1507); State v. Birchfield, 2015 ND 6, 858 N.W.2d 302, cert. granted, 2015 WL 8486653, 83 U.S.L.W. 3916 (U.S. Dec. 11, 2015) (No. 14-1468); see also Olson v. Levi, 2015 ND 250, 870 N.W.2d 222, State v. Baxter, 2015 ND 107, 863 N.W.2d 208. We summarily affirm under N.D.R.App.P. 35.1(a)(7).

[¶3] Gerald W. VandeWalle, C.J.  
Dale V. Sandstrom  
Daniel J. Crothers  
Lisa Fair McEvers

Carol Ronning Kapsner