

IN THE SUPREME COURT

AUG 22 2017,

STATE OF NORTH DAKOTA

Sundance Oil and Gas, LLC,)	STATE OF NORTH DAKOTA
)	
Plaintiff and Appellee,)	
)	Supreme Ct. No. 20170148
v.)	
)	District Ct. No. 31-2014-CV-00064
)	
Hess Corporation,)	
)	
Defendant and Appellant,)	
)	
and)	
)	
Barbara B. Corwin and Patricia B. Goldberg,)	
)	
Defendants.)	

APPEAL FROM JUDGMENT DATED FEBRUARY 28, 2017,
ORDER FOR PARTIAL SUMMARY JUDGMENT DATED MAY 11, 2016 AND
ORDER FOR ENTRY OF JUDGMENT DATED FEBRUARY 28, 2017
NORTH CENTRAL JUDICIAL DISTRICT
HONORABLE STACY J. LOUSER

BRIEF OF AMICUS CURIAE STATE OF NORTH DAKOTA

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STATEMENT OF ISSUE

¶1 North Dakota Century Code § 38-13.1-01, is constitutional.

STATEMENT OF IDENTITY AND INTEREST

¶2 The North Dakota Attorney General has an interest in this appeal as an amicus curiae. On July 24, 2017, Amicus Curiae (the State) received notice of Appellant's constitutional challenge. The State, through undersigned counsel, submits this brief under N.D.C.C § 32-23-11 and N.D.R.Civ.P. 24(c), which provide that the Attorney General is entitled to participate if a party questions the constitutionality of a statute.

LAW AND ARGUMENT

¶3 The Appellant's argue that if the Supreme Court sustains the district court's decision in favor of Appellee, the Court will render N.D.C.C. § 38-13.1-01 unconstitutional. Appellant's Brief, at 11. Appellant specifically argues that section 38-13.1-01 should be deemed unconstitutional if the Court determines that notice by publication to a lessee of an interest in the lands in dispute satisfies the notice requirements of the statute. Id. at 11 - 15. Appellant is not arguing that the law is facially unconstitutional, rather that the Court should determine its application is unconstitutional.

¶4 "All regularly enacted statutes carry a strong presumption of constitutionality, which is conclusive unless the party challenging the statute clearly demonstrates that it contravenes the state or federal constitution." Simons v. State, 2011 ND 190, ¶ 23, 803 N.W.2d 587 (citations omitted). Any doubt about a statute's constitutionality must, when possible, be resolved in favor

of its validity. Id. “The power to declare a legislative act unconstitutional is one of the highest functions of the courts, and that power must be exercised with great restraint.” Id. “The presumption of constitutionality is so strong that a statute will not be declared unconstitutional unless its invalidity is, in the court’s judgment, beyond a reasonable doubt.” Id.

[¶5] Furthermore, before the Court analyzes the Appellant’s constitutional argument, the Court must first inquire as to whether alternative grounds exist for a decision. If the Court can resolve the matter on other appropriate grounds, then the constitutionality need not, and should not, be addressed. Minot Daily News v. Holum, 380 N.W.2d 347, 350 (N.D. 1986); Bismarck Public Schools v. Walker, 370 N.W.2d 565, 566 (N.D. 1985); Little v. Graff, 507 N.W.2d 55, 59 (N.D. 1993). A party who attacks the constitutionality of a statute must show, among other things, that a decision on the constitutional question is necessary in order to protect him in the enjoyment of the rights guaranteed to him by the Constitution. Olson v. Ross, 39 N.D. 372, 167 N.W. 385, 386 (N.D. 1918). Until a property owner meets reasonable conditions placed upon his ownership, the owner has no complaint against the constitutionality of the statute. N. Laramie Land Co. v. Hoffman, 268 U.S. 276, 283 (1925).

[¶6] There are alternative grounds upon which the case at bar could be decided and, accordingly, the Court should not consider the constitutional arguments. For instance, several factual issues exist that would allow the Court to render a decision without concluding the law is unconstitutional. Specifically, the Court could conclude that Appellant was not an interested party even under

the Appellant's interpretation of the statute and, thus, was not entitled to actual notice of the trust action that was initiated pursuant to the statute. An alternative decision is appropriate in this case.

[¶7] Finally, as stated above, Appellant does not appear to be making a facial challenge to a statute but rather that the District Court's interpretation of the statute is unconstitutional. Appellant's argument seems to rest on an expansive interpretation of the statute requiring the petitioner to not only attempt to reasonably ascertain the place of residence or whereabouts of the mineral owner and/or his or her heirs, but also provide actual notice beyond notice by publication to any mineral, royalty or leasehold owner of an interest in the lands subject to any trust action initiated pursuant to the statute. As stated above, Appellant describes any such mineral, royalty or leasehold owners as "interested" parties and, as such, due process necessitates that they receive actual notice of the trust action. The District Court, however, did not address whether Appellant was an "interested" party and, thus, a factual determination would need to be made on this issue before the constitutionality of the statute should be addressed. In other words, if Appellant is determined to not qualify as "interested" parties, the constitutional issue becomes moot. The Court has stated that it does not render advisory opinions. State v. Hansen, 2006 ND 139, ¶7, 717 N.W.2d 541; Sorenson v. Felton, 2011 ND 33, ¶14, 793 N.W.2d 799. If the Court, however, addresses the constitutionality of the law in question, the state argues that section 38-13.1-01 is constitutional.

CONCLUSION

[¶] If the Court chooses to address the constitutional issue, the State of North Dakota respectfully requests that this Court find that N.D.C.C. § 38-13.1-01 is constitutional.

Dated this 22nd day of August, 2017.

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Defendants.)

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

[¶1] Donna J. Connor states under oath as follows:

[¶2] I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct.

[¶3] I am of legal age and on the 22nd day of August, 2017, I served the attached Brief of Amicus Curiae State of North Dakota, upon Michael James Mazzone, Dante Egisto Tomassoni, Zachary Evan Pelham, Benjamin Ward Keup, Kirsten Tuntland, Christina M. Wenko, and Charles J. Peterson, by placing a true and correct copy thereof in an envelope addressed as follows:

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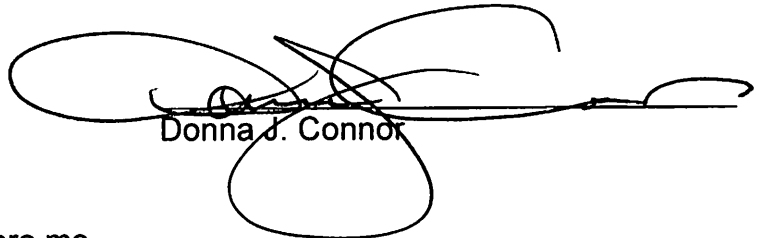
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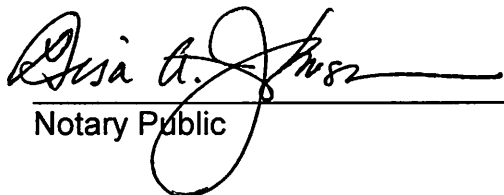
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and depositing the same, with postage prepaid, in the United States mail at
Bismarck, North Dakota.



Donna J. Connor

Subscribed and sworn to before me
this 22nd day of August, 2017.



Notary Public

