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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Paul Sorum, Marvin Nelson, Michael Coachman, Charles Tuttle and Lisa Marie Omlid, each on behalf of themselves and all similarly situated tax payers of the State of North Dakota Plaintiffs, Appellees, and Cross-Appellants vs. The State of North Dakota, The Board of University and School Lands of the State of North Dakota, The North Dakota Industrial Commission, The Hon. Douglas Burgum, in his official capacity as Governor of the State of North Dakota, and The Hon. Wayne Stenehjem, in his official capacity as Attorney General of North Dakota, Defendants, Appellants, and Cross-Appellees.	Supreme Court No. 20190203 Civil No. 09-2018-CV-00089

AMICUS CURIAE BRIEF OF THE NORTH DAKOTA PETROLEUM COUNCIL IN SUPPORT OF THE CONSTITUTIONALITY OF N.D.C.C. CH. 61-33.1

On Appeal from Amended Judgment Dated April 26, 2019,
District Court, East Central Judicial District, Cass County, North Dakota
The Honorable John C. Irby, Presiding

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I. STATEMENT OF IDENTITY AND INTEREST

[¶1] The North Dakota Petroleum Council (NDPC) respectfully submits this brief, as *Amicus Curiae*, in support of the constitutionality of N.D.C.C. ch. 61-33.1 (the "Act"). The NDPC is a trade association representing more than 500 companies involved in all aspects of the oil and gas industry. NDPC members produce 98 percent of the oil in North Dakota. The Act provides a process to finally resolve ownership issues for the oil and gas estate below Lake Sakakawea (the "Lake"). NDPC's motion for leave to file this brief further details NDPC's interest in mineral ownership under the Lake.

II. RULE 29(a)(4)(D) STATEMENT

[¶2] This brief was authored by NDPC's counsel, and not the counsel for any other party. No other party, party's counsel, or any person other than the NDPC contributed money to fund preparing or submitting this brief.

III. STATEMENT OF THE FACTS

A. The Garrison Dam Project.[1]

[¶3] The 493,000-acre Garrison Project was authorized by Congress in the Flood Control Act of 1944. The primary purpose of the project was "to adequately provide flood control in the basin of the Missouri River for the use and benefit of the public generally and for such other uses as may be authorized by Congress or Executive Order." ROA No. 143 at 202-204. The federal government acquired acreage to "flood

[1] A more detailed factual history relating to the background of the Garrison Project, land acquisitions, and the State's historical claim to only the historical riverbed is set forth in the NDPC *amicus curiae* brief filed with the District Court. ROA No. 101 at pp. 2-15.

and submerge lands permanently or intermittently for the construction, operation, and maintenance of the Dam and Reservoir." *Id.*

B. The Corps survey, the State Phase 1 and 2 surveys, and State leasing practices.

[¶4] Before construction of Garrison Dam in the 1950's, the U.S. Army Corps of Engineers conducted surveys and prepared "Segment Maps" that depicted the Missouri River boundary at the time. They did so to establish proper acreage ownership and compensation to upland owners for the federal takings necessary to create the Lake. ROA No. 102, Ex. 14 (Segment Maps "V" through "KK.") In nearly all land tracts in the area subject to this challenge, the Corps allowed landowners to reserve all oil and gas rights. *Id.*

[¶5] In 2008, the Board of University and School Lands (the "Board") authorized the "Phase 1" survey to delineate the ordinary high water mark ("OHWM") of the Yellowstone and Missouri Rivers from the Montana line to near Williston. *Id*. at Ex. 9. In 2010, the Board authorized the "Phase 2" survey to review the OHWM of the original Missouri River channel as it existed prior to Garrison Dam from Trenton to the Fort Berthold Reservation. ROA Nos. 486-91. For leasing purposes, the Board used the Phase 1 "current" conditions survey for areas west of the Highway 85 Bridge and the Phase 2 survey, based on the historical Missouri River channel, for all lands east of the bridge. ROA No. 102. The State surveys were not a final legal determination of the State's sovereign ownership and conflicted with the Corps survey. In fact, they were prepared with the following caveat: "The work completed under this contract is to delineate the ordinary high water mark (OHWM) and is not a final legal determination as to whether any specific property is 'sovereign land.'" *Id.*, Ex. 8 at ADD 008.

[¶6] In 2009, the Board adopted rules authorizing the Commissioner to later adjust acres in riverbed leases following legal determination and, in anticipation of title disputes, to establish escrow accounts. N.D. Dept. of Trust Lands Rules §§ 85-06-06-02.1, 85-06-06-08.1. The Board issued the leases subject to an addendum, which contractually committed the Board to refund bonus payments on minerals it turned out not to own:

> If, during any time prior to expiration of the lease, it is determined by a court or by Lessor that the acreage is more than that set forth in the lease, then Lessee will pay Lessor an additional bonus for each additional acre. Such bonus will be the same per acre bonus as that paid by Lessee to obtain this lease.
>
> If, during any time prior to expiration of the lease, it is determined by a court or by Lessor that the Lessor owns less acreage than that set forth in this lease, then Lessor will refund to Lessee the proportionate per acre bonus paid for this lease.

ROA No. 495, Ex. 1.

[¶7] In 2011, the Legislature enacted the Strategic Investment and Improvements Fund (SIIF), creating accounts for lease bonuses and royalty revenues received from sovereign lands. N.D.C.C. § 15-08.1-08. In 2017, while Senate Bill 2134 was being considered, the Board established an assigned funds balance of $142 million in the event it was later determined the State must refund lease payments it collected (primarily bonus payments), with an additional $65 million in disputed riverbed royalties being escrowed with the Bank of North Dakota. ROA No. 134 at SD 79.

C. Senate Bill No. 2134

[¶8] Senate Bill 2134 was an exhaustive and dedicated effort that culminated in a comprehensive set of laws to establish the parameters and a thorough process for

determining the historical Missouri riverbed OHWM. *See* Amicus Curiae Br. of NDPC, ROA No. 101 at pp. 16-20. Ultimately, on September 27, 2018, the Industrial Commission adopted the final study required by the Act. The final study concluded the State's sovereign acreage within the OHWM of the historic Missouri River channel was 26,194 acres, or 9,507 acres more than the Corps survey (16,687 acres), but approximately 15,000 acres less than the State surveys. ROA No. 516, ¶ 12.

IV. ARGUMENT

A. The Act is consistent with the Equal Footing Doctrine and Public Trust Doctrine, as well as the North Dakota Constitution.

[¶9] The NDPC *amicus curiae* brief filed with the District Court addresses each of the Plaintiffs' constitutional claims in detail, and NDPC refers the Court to that brief for a thorough refutation of Plaintiffs' argument that the State owns the entire Lake. ROA No. 101 at pp. 21-50. In sum, the District Court correctly concluded that Plaintiffs' claims rested on "the untenable theory" that the State owns the entire Lakebed, and correctly rejected this "specious claim." ROA No. 679 at ¶ 13

1. The State has never owned the Lakebed outside of the historical Missouri riverbed.

[¶10] The flawed assumption underlying all of Plaintiffs' claims is that the State held title to the entire Lakebed before N.D.C.C. ch. 61-33.1 was enacted. The "equal-footing doctrine" determines which submerged lands are granted to a state at the time of statehood. *See PPL Montana, LLC v. Montana,* 132 S.Ct. 1215, 1227-28 (2012). The equal-footing doctrine never vested the State with title to the Lakebed, because it did not exist at statehood. ROA No. 612 at ¶ 34. The Act does not give away the State's supposed claim to the Lakebed because it never had a colorable claim in the first place.

2. The Act does not violate the anti-gift clause or Public Trust Doctrine.

[¶11] The anti-gift clause in Article X, § 18 of the North Dakota Constitution provides that the State shall not "make donations to or in aid of any individual, association or corporation except for reasonable support of the poor . . . ." The Act does not donate lands or minerals to anyone. The Act codifies existing law and policy regarding the State's ownership under the Lake and establishes a process for the State and private parties to determine their land and mineral ownership. Furthermore, the State receives significant consideration by the Act's process for determining property rights. Not only does the State resolve multiple possible property disputes, it resolves numerous potential takings claims. As this Court has explained, the position that the State owns the minerals under the Lake implies constitutional takings claims by landowners who, to date, have only been compensated for their surface property. *See Wilkinson v. Bd. of Univ. & Sch. Lands*, 2017 ND 231, ¶ 24, 903 N.W.2d 51. Passing legislation to absolve the State from potentially billions of dollars' worth of takings liability is no "gift."

[¶12] The Act does not affect the public's interest in navigability or other features of the public trust doctrine, such as bathing, swimming, recreation and fishing. *See J.P. Furlong Enter., Inc. v. Sun Expl. & Prod. Co.*, 423 N.W.2d 130, 140 (N.D. 1988). Such interests are not implicated because the Lake sits on federal surface and is managed by the federal government. Importantly, the Act benefits the public trust by permanently confirming sovereign ownership to 26,194 mineral acres underlying the historic Missouri riverbed. ROA No. 516 at ¶ 12. The Act provides certainty of title enabling the State to reap substantial oil and gas royalty proceeds and taxes from sovereign mineral lands for decades to come.

3. Federal supremacy bars any claim that the lands underlying the Lake are "sovereign lands."

[¶13] Under the Supremacy Clause, U.S. Const. Art. VI, "When and to the extent that state law public trust rights conflict with federal takings law, the Supremacy Clause dictates that federal takings law prevails." *United States v. 32.42 Acres of Land, More or Less, Located in San Diego Cnty., Cal.*, 683 F.3d 1030, 1034 (9th Cir. 2012). In 1953, Congress enacted the Submerged Lands Act ("SLA"), in part, to confirm and establish state "title to ownership of the lands beneath navigable waters within [their] boundaries" and to release and relinquish "all right, title and interest of the United States" in the same. 43 U.S.C. § 1311(a)(1), (b)(1). However, the SLA does not confirm equal footing title to lands acquired and flooded by the United States under its takings authority. In fact, Section 1313 of the SLA expressly excludes lands acquired by the United States through eminent domain or purchase. It provides, in relevant part:

> There is excepted from the operation of section 1311 of this title—
>
> (a) all tracts or parcels of land together with all accretions thereto, resources therein, or improvements thereon . . . acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary capacity . . . .

43 U.S.C. § 1313(a). Congress's directive under Section 1313 is clear. States do not acquire lands under the equal-footing doctrine, public trust law, the SLA, or otherwise when the United States condemns or purchases the lands in a proprietary capacity.

B. The District Court erred in finding N.D.C.C. § 61-33.1-04(1)(b) violates, on its face, the North Dakota Constitution's anti-gift clause at Article X, § 18.

[¶14] Section 61-33.1-04, N.D.C.C., contains two distinct subsections relating to the State's obligation to refund lease bonus to operators and royalties to mineral owners if the OHWM study concluded the State collected lease payments for acreage it never

owned. Section 61-33.1-04(1)(b) directs the Board, within six months after the adoption of the final review findings, to refund royalty proceeds "attributable to oil and gas mineral tracts lying entirely above the ordinary high water mark of the historical Missouri riverbed channel on both the corps survey and the state phase two survey. . . ." (Emphasis added.) The District Court found this provision unconstitutional. ROA No. 682 at ¶ 8.

[¶15] Meanwhile, Section 61-33.1-04(2)(a) provides that the Board must complete within two years of the adoption of the final review findings, "any acreage adjustments, lease bonus and royalty refunds, and payment demands as may be necessary relating to state-issued oil and gas leases." This section applies to refunds of lease bonus and royalties to owners of land not entirely above both the Corps survey and Phase 2 survey but that are above the OHWM established by the Wenck study. The Amended Judgment finds this subsection constitutional, but it is unclear whether the Court's preliminary injunction and Order on Cross-Motions for Summary Judgment prevent the implementation of the refund and adjustment provisions for collections the State received for tracts attributable to Section 61-33.1-04(2)(a). ROA No. 446 at ¶ 4; ROA No. 612 at ¶¶ 49-50, 54-56, and 57. NDPC asserts that all royalties and bonus collected by the State for mineral acreage that it does not own and never owned must be refunded. Such refunds do not violate the anti-gift clause or any other state law.

1. The District Court erroneously analyzed the refund provision as a gift rather than a restoration or release of funds to their rightful owners.

[¶16] The District Court incorrectly assumed the Wenck study vested title in mineral owners who did not previously own or have a basis to make a claim, stating:

> Giving money to newly adjudicated mineral owners, who had no legal basis to make a claim for that money, is a direct violation of Article X, §

> 18 of the North Dakota Constitution which prohibits the State from giving away state assets without receiving like value in return.

ROA No. 612 at ¶ 50 (emphasis added). In fact, the exact opposite is true. Landowners reserved oil and gas rights in deeds of conveyance (or condemnation judgments) to the Corps for lands adjacent to the historical Missouri River channel and had unbroken chains of title to the oil and gas rights above the OHWM for over 60 years. *See* ROA No. 144 at 211-12 and ROA 169 at 282-84 (example deeds). Relying on the Phase 2 survey, the State in many instances leased acreage far above the Corps survey. This leasing by the State overlapped the mineral owners' tracts and forced operators to obtain "protective" leases from both mineral owners and the State for the same acreage. In the area of overlap, royalties have been typically suspended or escrowed (as required by the Board) until a final determination of the OHWM. As previously noted, the Phase 2 survey was "not a final legal determination as to whether any specific property is 'sovereign land.'" ROA No. 102, Ex. 8 at ADD 008. It was not until the Industrial Commission adopted the Wenck study on September 27, 2018 that the State's sovereign mineral ownership claim was legally determined, subject to a two-year right of appeal.[2]

[¶17] It is anticipated Sorum will assert this Court's holding in *Solberg v. State Treasurer*, 53 N.W.2d 49 (N.D. 1952) prohibits any royalty or bonus refunds under the

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[2] In 2019, the Legislature adopted Senate Bill 2211, authorizing the Board to retain a professional surveying firm to conduct acreage calculations necessary for the Board and operators to make payment adjustments "on a quarter-quarter basis or governmental lot basis above and below the ordinary high water mark as delineated by the final review findings of the industrial commission." N.D.C.C. § 61-33.1-03(8). The Bill also changed the payment trigger date from the adoption of the Industrial Commission's final review findings to the adoption of the acreage determination by the Board. N.D.C.C. § 61-33.1-04.

anti-gift clause. However, *Solberg* is inapplicable. In *Solberg*, the plaintiff defaulted on a mortgage to the State, as mortgagee. *Id.* at 50. In 1937, the plaintiff quit claimed title to the State, with the State receiving unconditional fee ownership. *Id*. In 1946, the State sold the land back to the plaintiff. *Id.* The deed reserved to the State 50% of the minerals, as authorized (and required) by the law in effect at the time of the deed. *Id.* In 1951, the Legislature enacted Chapter 231 of 1951 Session Laws, which provided that any State conveyance of property to a former owner shall be sold free of any mineral reservation. *Id.* at 50-51. The legislation also required the State to "release" to such former owners any reservation of minerals made subsequent to March 12, 1939. *Id.* In analyzing whether the release provision violated the anti-gift clause, this Court stated:

> The lands in question became the property of the state when conveyed to it unconditionally. The plaintiff repurchased the land specifically subject to a reservation to the state of 50% of all oil, natural gas and minerals. Presumably the purchase price was agreed to on that basis and understanding. The plaintiff accepted a conveyance which included that reservation in specific language which could not be misunderstood. All this was done in accordance with the law then in effect.

Id. at 53.

[¶18] Here, unlike *Solberg*, there is no grant from the upland mineral owners to the State conveying unconditional fee title. Rather, at all times the upland mineral owners were vested with record title to the oil and gas rights by their contracts or agreements with the United States. To the extent the State purportedly leased and collected proceeds attributable to tracts of land above the historical OHWM, refunding royalties attributable to these tracts is not a gift, as the lands were never owned by the State. Unlike *Solberg*, the challenged Act does not donate, give, or transfer State

property to individuals; the Act creates a process for determining both the State's and private parties' property rights, including mineral rights.

2. The oil and gas lease agreements between the State and its lessees contractually obligate both parties to make lease bonus adjustments upon a final determination of the OHWM and acreage actually covered by the leases.

[¶19] As set forth in the Statement of Facts, State leases covering riverbed tracts included an addendum which provides that, if it is determined the State owns more or less acreage than originally leased, the State will refund lease bonus if it owns less, and Lessees shall tender additional bonus if it is determined the State owns more. ROA No. 495. Undoubtedly, the State's contractual obligation to refund lease bonus for riverbed leases provided assurance and incentivized potential buyers to bid higher bonuses than they would absent such assurance. It is undisputed that the Board, after 2011, and the Legislature in 2017, have reserved millions of dollars in the SIIF fund to fulfill these contractual commitments. It misses the mark to suggest that a contract between the State and its lessees agreeing to future lease bonus adjustments, together with consideration and mutually binding obligations, violates the anti-gift clause.

3. The effective date of January 1, 2006, for implementation of the Act is rational.

[¶20] The OHWM determination under Chapter 61-33.1 "is retroactive and applies to all oil and gas wells spud after January 1, 2006, for purposes of oil and gas mineral royalty ownership." S.L. 2017, ch. 426, § 4. The District Court stated in its Order, "[i]t is the retroactive portion of this statute that raises serious issues in regards to certain monetary payments made to mineral owners whose ownership rights have been clarified by this statute." ROA No. 612, ¶ 49.

[¶21] "Legislatures are not required to achieve a perfect equality when drafting economic or social laws. If a reviewing court can conceive of a reason justifying the choice made by the legislature in service of a legitimate end, that court must sustain the statute against constitutional challenge." *Best Prod. Co., Inc. v. Spaeth*, 461 N.W.2d 91, 97 (N.D. 1990). To find the Act unconstitutional on this ground, the Court would have to conclude that "no conceivable reasons exist" for the year chosen by the Legislature.

[¶22] The selection of January 1, 2006 as the effective date was a rational decision by the Legislature. Technological advancements in horizontal drilling and hydraulic fracturing were beginning to usher in unprecedented oil and gas drilling. ROA No. 516, ¶ 9. This fact was well known in the public domain and January 1, 2006 was generally considered the appropriate cut-off date to capture all Bakken wells drilled under the River and Lake. Nor was the rationale for January 1, 2006 ever contested during the lengthy legislative process. Further, Industrial Commission statistics show that Bakken production for the year 2005 was only 985,496 barrels, but by 2010 Bakken production increased to 85 million barrels. *See* NDIC Annual Production Reports *available at* www.dmr.nd.gov/oilgas/stats/statisticsvw.asp. Millions of dollars in disputed royalty proceeds have been and continue to be held in suspense or escrowed with the Bank of North Dakota. The Legislature, in enacting N.D.C.C. ch. 61-33.1 not only sought to clarify ownership rights prospectively, but sought to establish a means, with due process protections, to resolve ownership to millions of dollars in disputed royalties spanning over a decade. Such actions are not arbitrary or irrational.

4. The three-year statute of limitations in N.D.C.C. § 28-01-22.1 has not accrued, and, regardless, it is not a constitutional restriction on the Legislature.

[¶23] The District Court stated the three-year limitations period in N.D.C.C. § 28-01-22.1 would bar any refund under the Act for proceeds "which have been collected by the State more than three years prior to the Act and for which no action had been brought [and] could not be legally claimed by the newly determined mineral owner." ROA No. 612, ¶ 49. This conclusion was erroneous, both because the statute of limitations would not have accrued, even assuming it applies, and because the Act abrogates any statute of limitations contrary to the Act.

[¶24] First, the statute of limitations in Section 28-01-22.1 should be read in harmony with the Act, if possible. "Whenever a general provision in a statute is in conflict with a special provision in the same or in another statute, the two must be construed, if possible, so that effect may be given to both provisions." N.D.C.C. § 1-02-07. The Court can give effect to both the statute of limitations and the Act, because Section 28-01-22.1 never barred the types of refund claims dealt with by the Act.

[¶25] As discussed in Paragraph 6, *supra*, the State and its lessees contractually agreed during the term of the leases that, if the riverbed acreage was adjusted, the State would be obligated to return bonuses for tracts in which it leased acreage it did not own. This is a continuing obligation "during any time prior to expiration of the lease" and, therefore, cannot be barred by Section 28-01-22.1 while the leases are still in effect. "Where a duty imposed prior to a limitations period is a continuing one, the statute of limitations is not a defense to actions based on breaches of that duty occurring within the limitations period." 54 C.J.S. Limitations of Actions § 199. Here, the lessee's contractual claim for a refund does not accrue until "it is determined by a court or by

Lessor that the Lessor owns less acreage than that set forth in this lease." ROA No. 495. Under the Act, as amended in 2019, such claims will not accrue until after "the adoption of the acreage determination by the [Board]," which triggers the statutory deadlines for refunds. N.D.C.C. § 61-33.1-04. This triggering event has yet to occur.

[¶26] Regarding disputed royalties, the Board, recognizing the ongoing difficulties in determining riverbed ownership and acreage issues, added Section 85-06-06-08.1 to its mineral leasing rules. The rule provides, in part:

> Any lessee . . . that proposes to withhold royalty payments based upon an ownership dispute must establish an escrow deposit account and must deposit the disputed payments into this account. The account must be established at the Bank of North Dakota, or other state or national chartered insured financial institution approved by the Commissioner, with the Board as a party to the escrow agreement. Upon final resolution of the dispute, and with consent of the Commissioner, the escrow agent shall be authorized to release all monies held in the account to the entity that established the escrow account for proper distribution to the rightful owners.

N.D. Dept. of Trust Lands Rule § 85-06-06-08.1 (2010) (emphasis added). Operators have escrowed millions of dollars in disputed royalties with the Bank of North Dakota "to keep it in a safe place until we can decide these issues." ROA No. 134 at 80. The Rule provides that disputed royalties shall be distributed only "[u]pon final resolution of the dispute, and with the consent of the Commissioner." At its May 28, 2015 meeting, the Board formally recognized its long-standing commitment to reimburse "any paid bonus, rentals or royalties on minerals where the State did not own all of the purported interest that was the subject of the oil and gas lease." ROA No. 518 at ¶ 4. Thus, claims for royalty refunds could not accrue until "final resolution" of mineral ownership, which has yet to occur under N.D.C.C. § 61-33.1-04. Concerning escrowed or suspended funds,

competing claims obviously exist. It would be non-sensical to conclude that a statute of limitations bars release of the funds to their rightful owners simply because they have been escrowed or suspended more than three years.

[¶27] Next, even if N.D.C.C. § 28-01-22.1 could have been read to bar some claims for bonus or royalty refunds, the Legislature abrogated that statute of limitations as to the subject matter of the Act. Assuming for the sake of argument that the three-year statute of limitations applies and conflicts with the Act, then the Act prevails. "[I]f the conflict between the two provisions is irreconcilable the special provision must prevail and must be construed as an exception to the general provision, unless the general provision is enacted later and it is the manifest legislative intent that such general provision shall prevail." N.D.C.C. § 1-02-07. The Act's refund provisions and time limits thereon constitute special provisions that supersede a general statute of limitations. The Act was enacted later than the general statute of limitations, and it is the manifest legislative intent that the Act prevail, as evidenced by the specific refund procedures and time limitations set forth in the Act. Moreover, the statute of limitations in N.D.C.C. § 28-01-22.1 applies only "[w]hen not otherwise specifically provided by law." To the extent that the limitations would have applied to any refund claims covered by the Act, the Act has "specifically provided" that such claims are covered by the Act and not N.D.C.C. § 28-01-22.1. The statute of limitations is not a constitutional provision, and the Legislature had every right to pass laws amending or narrowing its application.

[¶28] The District Court's analysis erroneously assumes that an unconstitutional "gift" arises any time the Legislature passes a law allowing claims against the State that previously would have been barred. Were that the case, every statute waiving sovereign

immunity in any fashion would constitute an unconstitutional "gift," because such statutes by definition allow claims against the State that otherwise would have been barred. Such statutes are common, however, and they manifest the Legislature's valid decisions to allow certain claims against the State. *See, e.g.*, N.D.C.C. § 32-12-02; N.D.C.C. § 32-12.2-02. In fact, under the District Court's logic, previous decisions by this Court narrowing the State's sovereign immunity would constitute unconstitutional "gifts," by allowing suit against the State in violation of the anti-gift clause. *See, e.g., Bulman v. Hulstrand Const. Co.*, 521 N.W.2d 632 (N.D.1994) (abolishing common-law sovereign immunity for tort claims against the State). This overbroad construction of what constitutes a "gift" implies absurd results and is contrary to how courts must read the Constitution. *See Kelsh v. Jaeger*, 2002 ND 53, ¶ 7, 641 N.W.2d 100.

CONCLUSION

[¶29] The NDPC respectfully requests this Court to uphold the Constitutionality of Chap. 61-33.1 in its entirety.

Dated November 13, 2019.

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CERTIFICATE OF COMPLIANCE WITH RULE 32(e)

[¶30] This Brief contains 19 pages, excluding any addendum. I certify that this Brief complies with the typeface requirements of N.D.R.App.P. 32 and the type style requirements of that rule, because it has been prepared in a proportionally-spaced typeface using a Microsoft Word, Times New Roman, 12 point font.

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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Paul Sorum, Marvin Nelson, Michael Coachman, Charles Tuttle and Lisa Marie Omlid, each on behalf of themselves and all similarly situated tax payers of the State of North Dakota Plaintiffs, Appellees, and Cross-Appellants vs. The State of North Dakota, The Board of University and School Lands of the State of North Dakota, The North Dakota Industrial Commission, The Hon. Douglas Burgum, in his official capacity as Governor of the State of North Dakota, and The Hon. Wayne Stenehjem, in his official capacity as Attorney General of North Dakota, Defendants, Appellants, and Cross-Appellees.	Supreme Court No. 20190203 Civil No. 09-2018-CV-00089

CERTIFICATE OF SERVICE

[¶1] I hereby certify that on November 13, 2019, the following documents:

1. Motion for Leave to File *Amicus Curiae* Brief by North Dakota Petroleum Council in Support of the Constitutionality of N.D.C.C. Ch. 61-33.1; and

2. *Amicus Curiae* Brief of the North Dakota Petroleum Council in Support of the Constitutionality of N.D.C.C. Ch. 61-33.1

were filed electronically with the Clerk of Supreme Court and served by electronic mail upon the following:

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Dated this 13th day of November, 2019.

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