

November 13, 2019

VIA EMAIL ONLY

Penny L. Miller
Clerk of the Supreme Court
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Bismarck, ND 58505-0530
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FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
NOVEMBER 13, 2019
STATE OF NORTH DAKOTA

RE: Citation of Supplemental Authorities - N.D.R.App.P. 28(k) - *Environmental Law & Policy Center v. North Dakota Public Service Comm'n*, Supreme Court No. 20190220

Dear Ms. Miller:

This is a letter pursuant to N.D.R.App.P. 28(k) to advise the Court of citations to authorities that were discussed at the oral argument yesterday, November 12, 2019, but not cited in the briefs.

- (1) *North Dakota ex rel. Stenehjem v. United States*, 2019 WL 5653959 (D.N.D. Oct. 31, 2019) (Hovland, J.): This is a follow-up ruling to the decision at 257 F.Supp. 3d 1039 (D.N.D. 2017), which appellee Meridian Energy Group, Inc. cited at paragraph 32 of their brief. In the more recent ruling, Judge Hovland declined to decide jurisdictional issues under the Quiet Title Act on motions, finding that they would have to go to trial.
- (2) *Fort Bend County v. Davis*, 139 S.Ct. 1843 (2019): This is the U.S. Supreme Court decision from late in the last Term, extending the line of recent Supreme Court cases since *Arbaugh v. Y & H Corp.*, 546 U.S. 500 (2006), holding that limits on a statute's coverage are not to be construed as jurisdictional unless that meaning is "clearly state[d]" in the statute. *Fort Bend County*, 139 S.Ct. at 1850. Appellants Environmental Law & Policy Center and Dakota Resource Council discussed *Arbaugh* on page 7 of their reply brief. A list of Supreme Court decisions on this issue is provided on pages 1849 and 1850 of the *Fort Bend County* opinion.
- (3) *Department of Commerce v. United States*, 139 S.Ct. 2551, 2575 (2019): This is the citation for Chief Justice Roberts' quote that judges are "not required to exhibit a naiveté from which ordinary citizens are free," quoting *United States v. Stanchich*, 550 F.2d 1294, 1300 (2nd Cir. 1977) (Friendly, J.).

Thank you for your consideration.

Sincerely,

/s/ Scott Strand

Scott Strand

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Attorney for Appellants

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

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Environmental Law and Policy Center,)
and Dakota Resource Council) Supreme Court No. 20190220
)
) Burleigh County District Court Case
Appellants,) No.: 08-2018-CV-02937
)
vs.)
) **CERTIFICATE OF SERVICE**
North Dakota Public Service)
Commission, and Meridian Energy)
Group, Inc.,)
)
Appellees.)
)
)
)

I hereby certify that on November 13th, 2019, I submitted via email only to the
Clerk of the North Dakota Supreme Court the following document:

1. LETTER RE: CITATION OF SUPPLEMENTAL AUTHORITIES –
N.D.R.App.P. 28(k) – OF DAKOTA RESOURCE COUNCIL AND
ENVIRONMENTAL LAW & POLICY CENTER

and served the same electronically upon the following:

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/s/ Scott Strand
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