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APRIL 20, 2021
STATE OF NORTH DAKOTA

SUPREME COURT OF THE STATE OF NORTH DAKOTA

In the matter of an appeal from South	[	Supreme Court Docket number
Central District Court	]	20210063
	[	
State of North Dakota by	]	APPEAL FROM
Workforce Safety and Insurance,	[	SUMMARY JUDGMENT
Plaintiff and Appellee	[	OF CASE 22-2019-CV-00059
v.	]	
Terry Kemmet,	]	
dba K&K Well Drilling	[	
Defendant and Appellant	]	

Terry Kemmet, a natural born man on the land, North Dakota National by birth and choice, does hereby present this claim from South Central District Court.

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Respectfully submitted,

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cc.

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Statements made by Kemmet are true or believed to be true to the best of his knowledge and belief, upon pain and penalty of perjury.

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Western Union Telegraph Co v. Lenroot. 323 US 490,502 (1945)

Budd v. People of State of New York, 143 U.S. 517 (1892)

Hale v. Henkel. 201 US. 43 at 47 (1905)

see e.g. Tumey v Ohio 273 US 510

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30 Cal 596; 167 Cal 762

Luckenback v. The Thekla, 295 F 1020, 226 US 328

Lyders v. Lund, 32 F2d 308

374 US 865-66

383 US 1032, 1034 see Ashwander v. TVA 273 US 510

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Brookfield Construction Company v Stewart 284 F Sup. 94

Cohens v Virginia 6 Wheat 264

Johnson v Zerbst 304 US 458

DeLovio v Boit 2 Gall. 398

NJ Steam v Merchants Bank 6 How. 344

Rundle v. Delaware

Penhallow v. Doan's Administrators 3 US 54: 1 L.ed.57; 3 Dall 54

383 US 1032, 1034

RULES AND STATUTES

Blacks Law 4th edition

7th amendment of the Bill of Rights

chapter 28 of NDCC 32-46 and 47

Rules of Evidence…RULE 602

NDCC title 65

Clearfield Doctrine

Title 28 code of NDCC 28-32-46

NDCC 65-01-02(17)

CANONS OF CONSTRUCTION adapted from Scalia and Garner

Black's Law Dictionary, Sixth edition, p 423

Dunn and Bradstreet

NORTH DAKOTA CENTURY CODE

US Code Title 15

Constitution of the united States, Article one, section 10

International Covenant on Civil and Political Rights U N General Assembly Resolution

The State and Federal Rules of Civil procedure

US Constitution Article One, section 10

North Dakota Constitution Sections:

Section 1, 7,10, 18, 20, 21, 22, 24

Article Two, Section 59 of the original North Dakota Constitution

Article II of the Northwest Ordinance of 1787

Article I, Section 8, Cl.17

Article III, Section 2; see also Section 9 of the Judiciary Act of 1789

26 USC 7408(d)

ISSUES PRESENTED

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STATEMENT OF THE CASE

1. On October 5, Terry Kemmet received a summons and complaint delivered by the Sheriff of Kidder county by WSI. The summons and complaint had not been filed with the court.

2. On Monday, October 21, 2019 at 3:30, Kemmet stopped by the courthouse in Kidder county to file his answer and counter complaint. The answer and counter complaint was not able to be filed into the record at the courthouse because the complaint had not been filed by WSI.

3. On Monday, October 21, 2019, at 4:45 pm, WSI filed the summons and complaint with the court, 15 minutes before closing at 5 pm. Kemmet's Answer and Counter complaint to WSI was sent by Certified mail earlier that day to WSI without a case number.

4. On Wednesday, October 23, Kemmet received documents of "Affidavit of Default " by the attorney for WSI. These documents were notarized and mailed to Kemmet on Monday, October 21, before the post office had closed and before the case was even filed. Assistant Attorney General for the state of North Dakota, Jaqueline Anderson, knowingly mailed an affidavit of default, which she had no way of verifying, for the purpose of taking property from Kemmet.

5. In March, 2020, a scheduling call was set for scheduling times for hearing. A date was decided for September 13, which was subsequently changed to September 8, subsequently, with no input from Kemmet. During the hearing, Kemmet queried about the jury trial where he demanded a court of record according to Blacks Law 4th edition. Judge Schmitz didn't read my counter-claim as the request for a jury trial was in it. I told him that I was entitled to a trial by jury, as the basis for my claim was primarily constitutional questions and that I had a right to a jury trial in civil matters according to the 7th Amendment of the Bill of Rights. He stated that courts in ND do not use the 7th Amendment.

6. The motions hearing was held September 8, 2020 in Steele ND. Particulars from this hearing are the primary cause for this appeal.

LAW AND ARGUMENT

WSI – LYING UNDER OATH----JURISDICTION

7. The Assistant Attorney General, Ann Greene, sent documents in an affidavit during the notice process that Kemmet was in default before time had expired for mailing documents. The documents were prepared, notarized and mailed even before the state had filed the summons and complaint with the court. This was procedural trickery to attempt an illegal taking of property from Kemmet. This was nothing more than a lie under oath and trespass on the case and brought fraud on the court. The motion was denied, but the obvious lie never addressed. The court documents and dates are on the record.

8. During the scheduling hearing, Kemmet noted his request for a trial by jury according to the guarantee of the 7th amendment of the Bill of Rights. Judge Schmitz, on the record, stated that we don't use the 7th amendment in our system. This is a clear deprivation of rights enumerated by the Bill of Rights to the constitution of the United States especially since Kemmet was not disputing the facts of the case but the law as was the basis for his appeal and was his right according to the terms of chapter 28 of NDCC 32-46 and 47.

9. WSI lacked standing as it never presented a verified complaint to the court. A verified complaint was not filed in this matter. To obtain subject matter jurisdiction, a verified complaint must be filed and must be made under penalty of perjury. If perjury cannot reach the accuser, there is no accusation. Otherwise, anyone may accuse another falsely without risk. *"Without a valid complaint any judgment or sentence is rendered is "void ab initio"* Ralph v. Police Court of El Cerrito, 190 P.2d. 632, 634,84 Cal. App.2d 257 (1948) *"A formal accusation is essential for every trial of a crime. Without it the court acquires no jurisdiction to proceed, even with the consent of the parties, and where the indictment or information is invalid, the court is without jurisdiction."* Ex parte Carlson, 186 N.W. 722, 725, 176 Wis. 538 (1922) The State, represented by WSI, never made a verified complaint. There were affidavits in the complaint but the complaint was not verified. WSI never had a representative there at the hearing to answer any questions which could arise from a perspective of facts. The attorney for WSI was not qualified to be a witness for WSI. She was there as attorney for WSI. (Trinsey v Pagliaro DC Pa 1964, 229, F.Supp 647) *"An attorney for the plaintiff cannot admit evidence into the*

court. He is either an attorney or a witness." That is what happened here. If the attorney was a witness, all her evidence was hearsay, as she was not a part of the affidavit. If the attorney was an attorney, there was no competent witness. (Trinsey) *"Statements of counsel in Brief or argument are not facts before the court and are not sufficient for summary judgment."*

10. Porter v. Porter, (ND 1979) 274 N.W 2d 235. The practice of an attorney filing an affidavit on behalf of his client asserting the status of that client is not approved, inasmuch as not only does the affidavit become hearsay, but it places the attorney in a position of witness, thus compromising his role as advocate." This is exactly what happened in the case of WSI against Kemmet. No competent witness brought forth the complaint. There has to be a real person making the complaint and bringing evidence before the court. The motion for summary judgment was never argued by the real party of interest.

11. Rules of Evidence…RULE 602. NEED FOR PERSONAL KNOWLEDGE Effective Date: 3/1/2014 "A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Corporations are paper and can't testify. "Manifestly, [such statements] cannot be properly considered by us in the disposition of a case." United States v. Lovasco (06/09/77) 431 US 783, 97 S. Ct. 2044. 52 :. Ed. 2nd 752. When the judge asked the counsel a question of fact, counsel pleaded total ignorance.

12. Judge Schmitz states that Kemmet did not submit any affidavits or evidence. Kemmet affirms that his whole testimony, the cases, sites of cases, evidence of law, Response to complaint, counter complaint, Briefs and all court documents were submitted to the court under pain and penalty of perjury. It was the prosecuting attorney who perjured herself under oath with her documents of default leveled against Kemmet, issued even before the case was filed.

FALSE PRESUMPTIONS BY THE COURT

PRIVATE LAW NEED BE BY CONTRACT

13. The notice sent out by the court stated that the matter was a collection/contract issue. Kemmet submitted interrogatories to WSI and they used

canned answers to avoid answering any of them. Kemmet motioned the court to compel WSI to answer the interrogatories. No answer was received and the Motion to compel was denied. One such question dealt with the question of the contract I had with WSI. Judge Schmitz stated that Kemmet's case was not a contract case but a statutory obligation according to NDCC title 65. The notice of assignment sent to Kemmet stated the nature of the case: contract/collection. Clearfield Trust Co v. United States 318 US. 363-367 states in pertinent part, *"As the use of private corporate commercial paper (federal reserve notes), debt currency or securities [checks] is concerned, removes the sovereignty status of the government of "We the people" and reduces it to an entity rather than a government in the area of finance and commerce as a corporation or person. Governments descend to the level of a mere private corporation and take on the characteristics of a mere private citizen. This entity cannot compel performance upon its corporate statutes or rules unless it, like any other corporation or person, is the holder-in-due course of some contract or commercial agreement between it and the one upon whom the payment and performance are made and are willing to produce said documents and place the same evidence before trying to enforce its demands and statutes. For purposes of suit, such corporations and individuals are regarded as entities entirely separate from government."*. In the decision (US v. Burr. 309 US 242) *"When governments enter the world of commerce, they are subject to the same burdens as any private firm or corporation."*. By excluding themselves from this rule, WSI has committed fraud by omission. This Clearfield Doctrine, as stated by the Supreme Court, removes all immunity from the judiciary because they are acting in private business. **Absent contract, there is no jurisdiction**. How much more so would this apply when governments descend to the level of private business and act as a monopoly to prevent other business competition.

FALSE PRESUMPTIONS ABOUT DEFINITIONS

14. Judge Schmitz stated that Kemmets contention that he is not an employer was a "winding dissertation on his theory that K&K Well Drilling is not an employer, beginning with getting a bill from McDonalds and culminating in something about Amy Coney Barrett's confirmation hearing. Frankly I think it is gibberish. I agree that not

every person is an “employer”…”. Kemmet stated this explanation to make it simple enough, even for a judge to understand. It apparently did not work. Kemmet explained that the term “person” was only used in section (c.) “every person” The definition after the word “includes” did not describe an individual person but was describing a corporate person as every word following demonstrates. The following is an argument for two words that Judge Schmitz did not understand. The words are PERSON and INCLUDES.

15. Kemmet’s only contention was a contention of law and not facts. All judge Schmitz was concerned with was facts. Without Law proving jurisdiction, there are no facts. All the State had to go on was “presumptions”. Kemmet had the right to contest this entire action based on the NDCC title 65 definitions of the term “employer” and “employee” and also the Title 28 code of NDCC 28-32-46 which gives the defendant in a controversy with WSI remedy because of 1.) *The order is not in accordance with law*; and 2.) *The order is in violation of the constitutional rights of the appellant.* (3.) 28-32-47 *A rule published as a result of the rulemaking action appealed is on the face of the language adopted an arbitrary and capricious application of authority granted by statute.* Kemmet also in the scheduling hearing demanded a trial by jury at common law according to the 7th amendment of the Bill of Rights in the U S Constitution. But Judge Schmitz did not afford Kemmet any of his rights under the constitution but made the following presumptions, which were false.

16. Judge Schmitz states Kemmet is an employer under NDCC 65-01-02(17). Definitions of employer and employee do not fit the defendant. The definition for the word “employer” is included under the subsection 17. “Employer” means a person who engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the common-law test. The term includes: (a) the state and all political subdivisions thereof. (b) All public and quasi-public corporation in this state. (c) Every person, partnership, limited liability company, association and private corporation, including a public service corporation. (d) The legal representative of any deceased employer. (e) The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined. (f) The president, vice presidents, secretary, or treasurer of a business corporation but not members of the board of directors of a business

corporation who are not also officers of the corporation. (g) The managers of a limited liability company. (h) The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-13, 10-15, 36-08, or 49-21. (i) The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity. (j) A multidistrict special education unit. (k) An area career and technology center. (l) A regional education association.

17. The definition of the term "employer" is ambiguous. Read properly, using proper syntax: "17. 'Employer' …The term includes: (c) Every person…" This is an impossibility unless further defined. The term "person" in this set of definitions by WSI, is not defined. In the <u>"CANONS OF CONSTRUCTION"</u> adapted from Scalia and Garner, there is a Canon called <u>Ejusdem Generis</u>. Which states: *"Where general words follow an enumeration of two or more things, they apply only to persons or things of the same general kind or class specifically mentioned"* All the "persons" in the general class spoken of are artificial entities. They only exist at the discretion of the State. And the <u>Artificial-person Canon</u> states *"The word person includes corporations and other entities, but not the sovereign."* There are several types of persons I have discovered in law…One is a natural person; another is a "United States Citizen"; another is a corporate person. If this court makes the presumption that Terry Kemmet is a United States citizen or a corporate person, it is wrong in its' presumptions. Terry Kemmet is a man, living on the land jurisdiction, one of the people and sovereign according to law. The Avoidance Canon is germane to this interpretation as well: *"If a statute is susceptible to more than one reasonable construction, courts should choose an interpretation that avoids raising constitutional problems. In the US, this* cannon *has grown stronger in recent history. The traditional avoidance canon required the court to choose a different interpretation only when one interpretation was actually unconstitutional. The modern avoidance canon tells the court to choose a different interpretation when another interpretation merely raises constitutional doubts."*

THE TERM "INCLUDES"

18. "Includes" seems to be a term that is used to lead someone away from its legal definition. In the summary judgment hearing on 9/8/2020, Judge Schmitz seems

confused over the term "includes". He gave his definition in the hearing stating that the term "includes" just meant "these are some other examples". Obviously, the term "includes" is vague to him. Vague laws or statutes which do not as a whole define all that is included have the tendency to compel presumption and "politicize" the courts by forcing judges to become policymakers instead of factfinders and law enforcers. *"It is a basic principle of due process that an enactment* [435 US 982, 986] *is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges and juries for the resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.* [Graynard v City of Rockford, 1972]

19. When a judge adds to the definition of words that does not appear in the statutes, we end up with a "society of men and not law", which is based on the play of "arbitrary power" which the Supreme Court describes as "the essence of slavery itself". Such was the instance in the hearing with judge Schmitz when he provided his own definition for the term "includes" by saying "these are just some other examples". *"When we consider the nature and the theory of our institutions of government, the principles on which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power….the government of the commonwealth 'may be a government of laws and not of men.' For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of*

life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

[Yick Wo v. Hopkins, 118 US 356 (1886)]. The definition of "employer" and the definition of "employee" are listed in the definitions in Workforce Safety regulations but are incomplete unless the term person is defined…The term "person" is not defined in title 65, NDCC.

THE TERM "PERSON"

20. The definition of "person" is not listed in the definitions of WSI. I will take my definition of the term "person" from Scalia and Garners CANONS OF CONSTRUCTI0N: Artificial person Canon. *"The word person includes corporations and other entities, but not the sovereign."* The contention that was raised by Judge Schmitz that a person "who engages or receives the services of another person for remuneration" is an employer. That may be the case but not every person who does so is classified as an employer according to Title 65, NDCC nor do these employers fall under their rules. The "person" referred to by Judge Schmitz is an **artificial person**, according to the Canons of Construction, to wit: (negative implication canon) *"The expression of one thing implies the exclusion of others."* And the Artificial-person Canon states *"The word person includes corporations and other entities, but not the sovereign."* So, we can only conclude that the term "includes" encompasses all things that follow the term and excludes any thing and person that is not an artificial person which is defined by statutory rules of construction in the Canons of Construction. Kemmet is not an artificial person but a real man on the land and not a person included in the statute.

21. Judge Schmitz states that the contention of Kemmet that the term "employee" as defined by NDCC 65-01-02 (16) is limited to government workers, aliens and minors is ludicrous. Kemmet maintains the definition is clear. The term "includes" which is a part of the definition narrows the definition to mean "includes only." The things or classes of things described in a statutory definition "exclude" all things not specifically identified somewhere within the statute or other related sections of the title: *"When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning".* Meese v. Keene, 481 US 465, 484-485 (1987). *"It is axiomatic that the statutory definition of the term excludes unstated meanings of that*

term." Colautti v. Franklin. 439 US 379, 392, and n. 10 (1979*). "As a rule, 'a definition which declares what a term "means".... excludes any meaning that is not stated"* Western Union Telegraph Co v. Lenroot. 323 US 490,502 (1945); see also 2A N. Singer, Sutherland on Statutory Construction… Section 47.07, p 152, and n. 10 (5th ed. 1992) (collecting cases).

22. There were four subsections to the term "employee" in this section that defined what the term includes or means. And they are government workers, aliens and minors. In every definition of employee, the term is further defined to limit the definition to these classes of individuals. The definition does not include a man, a woman or one of the people, which are still sovereign. If the meaning of the word "includes" as used in the definitions is "and" or "in addition to" and the statutes as whole do not define **everything** that is added, then these statutes cannot define **any** of the words described, based on the definition of the word "definition" found in Black's Law Dictionary, Sixth edition, p 423: *definition: a description of a thing by its properties; an explanation of the meaning of a word or term. The process of stating the exact meaning of a word by means of other words. Such a description of the thing defined, including all essential elements and excluding all nonessential, as to distinguish it from all other things and classes*. It is therefore impossible to establish a government of finite, delegated, enumerated powers whose authority is not completely, unambiguously, and fully described in written law that is not open to subjective or arbitrary interpretation or presumption of any kind. The definition of "includes" in this instance and in this context of "in addition to" would create a statutory presumption, which it has. The judge in this instance, to avoid the work required to research this term "includes" took the easy path and granted a summary judgment, not based on law, but based on facts derived from law that does not exist and is effectively legislating from the bench.

WSI CORPORATION UNDER PRIVATE LAW

23. All corporations are legal fiction. They exist by the consent of the state. WSI is a government corporation with a DUNS number on Dunn and Bradstreet. It is a municipal corporation. The people of North Dakota are not under private law. Persons maybe are. The book entitled NORTH DAKOTA CENTURY CODE has as its first page

a copyright page. It is a book of private law as it is under copyright. Public law cannot be under copyright. NDCC Copyright page, Title 65

24. Plaintiff is a piece of paper called Workforce Safety Insurance. It cannot feel, think, sneeze or pick up a pencil. It is represented by an attorney, Jaqueline Anderson. Speaking on behalf of WSI, she made claims that I was an employer. She made claims that I had employees. She made a payroll report for me for the year 2017 -2018 and put my name over it as if I had filed it. Then she states in the WSI claim that I did file it. They assessed penalties and interest to the report that they said I filed, but did not. They say it is unlawful for me to engage employees when, by their own definitions, I had no employees nor am I an employer according to their own definitions. They have refused to show the contract that creates an enduring relationship with them and gives them permission to bring any type of suit for any reason. I did not give them any power of attorney to file any documents or sign my name over it as they claim they did.

25. The STATE OF NORTH DAKOTA is a Private corporation. The Supreme Court decision, Rundle v. Delaware says "a corporation cannot sue or contend with the living man". The Supreme Court also says the State cannot be the Plaintiff. The STATE OF NORTH DAKOTA is a Municipal corporation. The Supreme court decision Rundle v. Delaware says *"a corporation cannot sue or contend with the living man"*. The Supreme court also says a complaint can only be created with the affidavit from the injured party. Where is this affidavit? Who has been injured? Where is the affidavit from the injured party creating the complaint? How did Kemmet injure the WSI employee who submitted a false affidavit, who has not alleged injury?

WSI IS AN ILLEGAL MONOPOLY

26. Workforce Safety is an illegal Monopoly defined by US Code Title 15 Sec. 1: *Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000*

if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

Sec 2: *Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.*

I will not elaborate this point as I doubt the N D Supreme Court will address this issue but only to preserve it for future action. This point was admitted to in the Administrative hearing by representatives of WSI under oath and on record.

STATUS MATTERS

27. Terry Kemmet is a North Dakota National by birth and choice. Judge Schmitz stated that he doesn't think it bears much significance. The preamble to the North Dakota Constitution states that, "We the people, grateful to Almighty God for the blessings of liberty, do ordain and establish this constitution for the state of North Dakota." People are sovereign. A man is sovereign. A woman is sovereign. They are the creators of the government. There is little dispute over this issue. So, where did they all go? The men, women and people who are creators? There must be none left of those who created government to serve them. The statutes all call them persons or individuals. They changed the definitions of people to persons and individuals and hoped no one would notice. Persons are defined as subject to government, not as creators of government, as are people. The legal system by deception has created a new class of people subject to them instead of the legal system being subject to the people.

28. The only time a government can take away your property without compensation in return and without your consent is when you have hurt someone with it, and that deprivation can only occur AFTER the injury, not BEFORE. Any deprivation BEFORE the injury must involve your express consent to donate the property or some interest in the property to a "public use", "public purpose", and/or "public office". These rules were identified by the U.S. Supreme Court as follows: *"Men are endowed by*

their Creator with certain unalienable rights,- 'life, liberty, and the pursuit of happiness;' and to 'secure,' not grant or create, these rights, governments are instituted. ***That property [or income] which a man has honestly acquired he retains full control of, subject to these limitations: First, that he shall not use it to his neighbor's injury, and that does not mean that he must use it for his neighbor's benefit [e.g. SOCIAL SECURITY, Medicare, and every other public "benefit"]; second, that if he devotes it to a public use, he gives to the public a right to control that use; and third, that whenever the public needs require, the public may take it upon payment of due compensation."***

[Budd v. People of State of New York, 143 U.S. 517 (1892)]

29. Kemmet did not contract his property rights away. Kemmet hurt no one in his "pursuit of happiness". Kemmet did not donate any part of his property to public use. Any action to take private property with no injury done would be an unlawful conversion. The Cannon of Construction of Scalia and Garner state explicitly: "*The word person includes corporations and other entities, but not the sovereign."*

30. *"Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all sovereignty exists and acts. And law is the definition and limitation of power."* Yo Wick v. Hopkins, 118 US 356 (1886)

31. "*The individual may stand on his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no such duty [to submit his books and papers for an examination] to the State, since he receives nothing there from, beyond the protection of his life and property. His rights are such as existed by the law of the land (Common Law) long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights."* Hale v. Henkel. 201 US. 43 at 47 (1905) This case has been used over 1600 times in federal court and has yet to be overturned. Constitution

of the united States, Article one, section 10. *"No state shall make any law impairing the obligation of contracts."* Also found in the Constitution of North Dakota.

32. In accord with the International Covenant on Civil and Political Rights adopted by the United Nations General Assembly Resolution 2200A on December16, 1966 and signed onto by the United States and ratified in 1992. Part one (Article 1) recognizes the right of all peoples to self-determination, including the right to "freely determine their political status", pursue their economic, social, and cultural goals, and manage and dispose of their own recourses. It recognizes the right of a people not to be deprived of its means of subsistence, and imposes an obligation on those parties still responsible for non-self governing and trust territories to encourage and respect their self-determination" My political status is, and has always been, a natural man, living on the land, not a corporate citizen.

LAWS IN NDCC OF UNCERTAIN ORIGIN

33. An enacting clause specified in the Original Constitution of North Dakota states that all legislation approved by the legislature of North Dakota shall have an enacting clause on the face of every bill enacted into law by the legislature of North Dakota. No enacting clause…no law. The North Dakota Century Code has a copyright page in the front of every chapter. Since no public law can be under copyright, these laws are all private laws. Private law only applies by a contract of some sort. There is no contract. None was produced. The burden of proof was upon the state to show proof of a contract. None was shown. The Century Code is not public law and private law with no contract has no standing to proceed nor jurisdiction that follows.

34. The North Dakota Century Code is a body of law assembled by a private firm. The NDCC is not public law because it is copyrighted. The 'NORTH DAKOTA CENTURY CODE" is published under the direction of the NORTH DAKOTA Legislature, but is copyrighted by the publisher. The "Session Laws" were never copyrighted as they are true public documents. In fact, no true public document of this State or of any state or of the United States has been or can be under a copyright. Public documents are in the public domain. A copyright infers a private right over the contents of a book, suggesting that the laws in the "NORTH DAKOTA CENTURY CODE" is

derived from a private source, and thus are not true public laws. Every volume of the "NORTH DAKOTA CENTURY CODE" contains a copyright page which *states "(copyright) 2017, Matthew Bender & Company, Inc., a member of the LexisNexis group. All rights reserved – 701 E. Water St., Charlotte, VA 22902 – Copyright is assigned to the State of North Dakota for official use, subject to reservation of contractual rights by Mathew Bender & Company, Inc. a member of the LexisNexis Group."* The reader of the copyright page has no idea what the "contractual rights' of the State of NORTH DAKOTA are, leaving only conjecture and confusion on the part of the people. Without an enacting clause on the face of the law and an enabling clause by the executive branch showing the table of authorities that makes the NDCC positive public law, it is color of law. The burden of proving jurisdiction rests on the party asserting it.

COURT PREJUDICIAL AGAINST "PERSONS"

35. Court exceeded its authority, assuming arguendo, that it had any jurisdiction in the first place, allowing WSI attorney to act as both counsel and witness, NOT an act required of a purportedly neutral magistrate (see e.g. Tumey v Ohio 273 US 510) With total lack of jurisdiction, Court acted as agent with prejudicial bias on behalf of WSI (see Tumey, above, noting how that one 'state' association member "judge" could possibly be a fact finder in ANY case involving another sBA attorney, which can and will lead to a Directed Verdict of Guilt in a 'court' exercising federal regional martial law rule.

36. *"When acting to enforce a statute and its subsequent amendments to the present date, the judge of the municipal court is acting as an administrative officer and not in a judicial capacity; courts administrating or enforcing statutes do not act judicially, but merely ministerially…but merely act as an extension as an agent for the involved agency---but only in a "ministerial" and not a "discretionary* capacity…" Thompson v Smith, 154 S.E. 579, 583; Keller v. P.E.,261 US 428; F.R.C. v. GE.,281 US 464

37. *".....judges who become involved in enforcement of mere statutes (civil or criminal in nature and otherwise), act as mere 'clerks' of the involved*

*agency…"*K.C.Davis, ADMIN.LAW, Ch.1 (CTP. West's 1965 Ed.*)* *"It is the accepted rule, not only in state courts, but, of the federal courts as well, that when a judge is enforcing administrative law, they are described as mere 'extensions of the administrative agency for superior reviewing purposes' as a ministerial clerk for an agency…*" 30 Cal 596; 167 Cal 762, and *when a judge becomes a Clerk working for the prosecutor, he is NOT acting in his official capacity, but is acting in his private capacity,…* "*…where any state proceeds against a private individual in a judicial forum, it is well settled that the state, county, municipality, etc. waives any immunity to counters, cross claims and complaints, by direct or collateral means regarding the matters involved."* Luckenback v. The Thekla, 295 F 1020, 226 US 328; Lyders v. Lund, 32 F2d 308

RULES OF CIVIL PROCEDURE BARS CONSTITUTIONAL REMEDY

38. The State and Federal Rules of Civil procedure were revised and effective October 20, 1949 by the USSC. Justice Hugo Black and William Douglas dissented from the adoption of the FRCP, which provide in relevant part, "Mr Justice Black and Mr Justice Douglas are opposed to the submission of these rules to congress under a statute which permits them to 'take effect' and to repeal 'all laws in conflict with such rules' without any affirmative consideration, action of approval of the rules by Congress or by the President. We believe that while some of the rules are simply housekeeping details, many determine matters so substantially affecting the rights of litigants in lawsuits that in practical effect, they are the equivelant of new legislation, which in our judgment, the Constitution requires to be initiated by the Congress and approved by the President, not by mere failure of the Congress to reject proposals of an outside agency…" "Even were not this constitutional limitation, the authorizing statute itself qualifies this Court's power by imposing upon it a solemn responsibility not to submit rules that 'abridge, enlarge, or modify any substantive right' and by specifically charging the Court with the duty to 'preserve the right to a trial by jury at common law and as declared by the 7th amendment to the Constitution'. Our chief objection to the rules, relate essentially to the fact that many of their provisions do 'abridge, enlarge, or modify substantive rights' and do not preserve the right to trial by jury but actually encroach upon it."

39. Justice Black and Douglas dissenting from the adoption of changes to Federal Rules of Civil Procedure 374 US 865-66 "…These suggestions chiefly center around rules that grant broad discretion to trial judges (FRCP 56, FRCP 12(b)(6)) with reference to class suits, pretrial procedures, and dismissal of cases with prejudice. Cases coming before the federal courts over the years now filling 40 volumes of Federal Rules Decisions show…grievances….about the way many trial judges exercise their almost unlimited discretionary powers to use pretrial procedures to dismiss cases without trials. In fact, many of these cases indicate a belief of many judges and legal commentators that the cause of justice is best served in the long run not by trials on the merits but by summary dismissals based on out-of-court affidavits, pretrial depositions, and other pre-trial techniques. My belief is that open court trials on the merits where litigants have the right to prove their case or defense best comport with due process of law…"

40. Justice Black and Douglas dissenting from the adoption of changes to the Federal Rules of Civil Procedure 383 US 1032, 1034 see Ashwander v. TVA 273 US 510 in which the following 'rules', without any known definitions, save for the unfettered discretion of the Justices at any given time, include the following: 'Rule 4' "The court will not pass upon a Constitutional Question, though properly presented by the record, if there is also present some other ground (not defined) upon which the case may be disposed of." 'Rule 6' "The court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of the benefits."

41. Kemmet maintains that the "Court System", by its actions and inactions in hearings and procedures, works as an agency to effectively bar the people from access to their God given rights as guaranteed in their founding documents.

CONSTITUTIONAL ISSUES TO BE PRESERVED

42. The United States Constitution states in: Article one, Section 10 : *"No state shall….make any law… impairing the obligation of contracts"* The North Dakota Constitution, in its Declaration of Rights, Section 18 states: *"No…law impairing the obligation of contracts shall ever be passed."* The words are clear. And they were written to constrain government. As I told one of the WSI employees, "I have a right to contract. Another person has the same right to work. If he wants to work and I have

work for him and we come to a mutual agreement, that is a contract. When WSI steps in and says…"Wait, you have to hire us too or we won't let you make that contract"…That is an impairment." It is as simple as that. How did it get so screwed up? In a free state, that won't happen. In a fascist state, it is required. These words are the basis for laws that are derived from them. The making of a statute should never overshadow the purpose and intent of the constitution.

43. Section 7, ND Bill of Rights states: *"Every citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor."* It appears WSI is a corporation that is maliciously interfering or hindering some or all citizens from obtaining or enjoying employment already obtained. And they should be guilty of a misdemeanor. Funny, but we never think of government as the lawbreaker. After making so many laws on top of laws, it becomes inevitable that at some point in time, it will. Where does one go for relief when government usurps the rights of men and then adjudicates them?

44. Section 1 states: *"All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property and the state, and for lawful hunting, recreational, and other purposes, which shall not be infringed."*

45. The right to contract is an inalienable right. It is not a right given to men by government. Men made government to protect rights given to them by the Maker Himself. How is government now above its maker, the men, who through war and strife and loss, provided us with these words? We are fortunate when we get to enjoy them freely… but they came at a cost. It seems we may need to go through it yet again. The servant government has now taken over the master bedroom and put the master in the basement.

46. These 3 rights, section 1, 7, 18, enumerated in our national and state constitution have as their purpose the right and necessity of work. Our entire society is

based on the free exercise of our right to work. Ronald Reagan describes fascism as private ownership of property, but government control. That is today what we have in the states of America, to some a more or lesser degree of encroachment. "*The basic purpose of a written constitution has a two-fold aspect, first securing, [not granting] to the people of certain unchangeable rights and remedies, and second, the curtailment of unrestricted governmental activity within certain defined spheres"* Du Pont v Du Pont, 85 A 724. Also in Brookfield Construction Company v Stewart 284 F Sup. 94: "*An officer who acts in violation of the constitution ceases to represent the government."*

47. To secure these rights among the people, the North Dakota Declaration of Rights adds two special sections. Section 21 states; "No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens."
NDCC 65-01-02 section 20 defines the term *"Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment* ***except:*** *a) Agricultural or Domestic service. b) any employment of a common carrier by railroad c.) any employment for the transportation of property or persons by nonresidents,….*

48. I have never been able to reconcile in my head that the constitution could be so clear to say "No special privileges shall ever be granted….; nor shall any citizen or class of citizens be granted special privileges or immunities which upon the same terms shall not be granted to all citizens." I want the immunities that farmers have; Railroad workers; truck drivers; clergy. How, in the name of fairness can these be exempted out of hazardous employment over a manicurist, a librarian or a waitress? Special privileges and immunities for one class of citizens and not granted to other citizens. What a blatant violation. We have come to a time when good is called evil and evil is called good. And no one notices. Are not these words to be the guideposts for our society? The rules of WSI are in blatant disregard to one of the main principles of equality under the law and when inequality becomes law….there is no law.

49. And Section 20: *"To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall remain forever inviolate."*

50. Section 24 states*: "All provisions of this constitution are mandatory and prohibitory unless, by express words, they are declared to be otherwise."*

51. That is a nice sentiment, but the only safeguard to make them mandatory and prohibitory is the judicial branch of government. And whoever wishes to use this safeguard pays a cost… a cost of time, money and uncertainty....for a safeguard that was meant to be a right and a warning against government encroachment, largely ignored. The authority for the constitution is given in the preamble**: *"We The people of North Dakota, grateful to Almighty God for the blessings of civil and religious liberty, do ordain and establish this constitution."***

52. In my interrogatories, I asked counsel for plaintiff to provide the implementing regulations and tables of authority which give validity to the statutes. Counsel for Plaintiff thought that was a legal conclusion. The Table of Authorities is merely a statement of fact as to where the authority comes from…It is a necessity to the authority of the statute, to show its authority and the implementing regulation by the executive branch and the enactment clause required by the legislature, Article Two, Section 59 of the original North Dakota Constitution where it states: *"The enacting clause of every law shall be as follows: Be it enacted by the Legislative Assembly of the State of North Dakota"* Refusal to provide a Table of authorities for a law proves there is no law.

53. The Plaintiff was unable to produce such an enacting clause in the NDCC for chapter 65 or tables of authority giving these statutes the force of law. The laws in the "NORTH DAKOTA CENTURY CODE" do not show on their face the authority by which they are adopted and promulgated. There is nothing on their face which declares they should be law, or that they are of the proper legislative authority in this State. They are merely color of law.

54. WSI is guilty of a constitutional overreach of authority. It has, in literal terms, violated its first obligation to the safety of the people by taking away God given rights and replacing them with permission slips from the state. As the only article with a

penalty, section 8…our right to work…was trampled on by WSI. Maybe it was written for this day. WSI should be charged with a misdemeanor for interfering with the right to work…as the constitution, section 8, says. Their failure to state a claim is based on their refusal to provide the authority of the laws they claim are legitimate. I am only saying, "Show me they are legitimate. Show me the table of authorities for the law you bring forth against me. The burden of proof is yours"

55. Other issues have come to light while doing research that I haven't been able to fully explore but will need to be addressed in the form of a supplement.

CONCLUSION

56. My right to constitutional guarantees is property. Since my constitutional guarantees to a trial by a jury of my peers at common law was taken, so was my property. The 7th amendment jury was a guarantee of those constitutional rights in the US Constitution. The constitution is a trust provided to me by the founders of the country as an inalienable right. An inalienable right is one that cannot be aliened or encroached upon by either man or government.

57. WSI lacked standing as it never presented a verified complaint to the court or suffered (***any***) loss (***cognizable to the trial 'court'***)

58. WSI lacked standing as it never proved subject matter jurisdiction when challenged.

59. Court exceeded its authority, assuming it had jurisdiction, allowing a WSI attorney to act as both counsel and witness, not an act of a ***required***, albeit ***purportedly neutral,*** magistrate (see e.g. ***Tumey v Ohio 273 US 510***)4.

60. Kemmet was falsely named as employer when WSI misrepresented their own definition (almost certainly ***reversible*** error pursuant to a failure to sustain burden of proof of jurisdiction)

61. In total lack of jurisdiction, Court failed to compel WSI to produce contract with Kemmet (yet another ***REQURED*** element of, for all apparent intents, at least a quasi-criminal action, especially with a trial by Jury according to the course of the common law.

62. With total lack of jurisdiction, Court acted as agent with prejudicial bias on

behalf of WSI (see ***Tumey***, above, noting that one 'state' ***BAR ASS*OCIATION** (***sBA***) member "judge" ***CANNOT*** possibly be a ***neutral*** fact finder in ***ANY*** case involving another ***sBA*** attorney, which can and ***will*** lead to a ***Directed Verdict of Guilt*** in a 'court' exercising ***federal regional martial law rule***.

63. With total lack of jurisdiction, Court denied Kemmet due process on matters of law (***BETTER*** yet is a denial of ***judicial*** process and trial by Jury according to the course of the common law, a ***Right*** secured to even "***inhabitants*** of ***territories***" (like North Dakota !) by ***Article II of the Northwest Ordinance of 1787*** as reenacted by the 1st Congress)

64. With total lack of jurisdiction, Court allowed tort violations against Kemmet (part and parcel of multiple counts of ***Treason*** to the ***Constitution*** notwithstanding whether or not ND is a State, by exercising jurisdiction the (***neutral***) magistrate knew, or ***SHOULD have known***, did ***NOT*** exist, while, at the same time, denying all 'timely', not to mention ***unopposed***, challenges to jurisdiction which ***WOULD*** have been vested in a North Dakota court of common law general jurisdiction which ***should*** have existed – ***Cohens v Virginia 6 Wheat 264***, excerpts attached)

65. With total lack of jurisdiction, Court allowed statutory violations against Kemmet

66. With total lack of jurisdiction, Court ignored the status of Kemmet (which ***should*** have been a lawful, de jure, ***jus sanguinis*** State Citizen ***IF*** ND is a State).

67. With total lack of jurisdiction, Court failed to address constitutional questions of Kemmet (clear and unambiguous proof that the trial 'court' was not a judicial Court, to which we are entitled from day ***ONE***, and that any ***allegedly applicable*** statutory scheme was and ***IS*** a Bill of Attainder /aka/ ***Writ of Praecipe***, the 'taking of life, liberty or property ***WITHOUT judicial*** process !);

68. Also duly noted is that ***NO*** proof was introduced by WSI of any "***voluntary, knowing and intelligent***" waiver of ***at least*** these Rights (***THE*** reference standard of the US supreme Court – see e.g. ***Johnson v Zerbst 304 US 458***)

69. And all of the above is ***ESPECIALLY*** true when WSI was, ***on who knows what factual foundation and legal basis***, executing a 'qui tam' action in the name of the (***NON*** existent) "State of North Dakota";

70. and even ***IF*** ND somehow exists, it does ***NOT*** help, since ***Article III, Section 2 of the Constitution for the united States {1787-1791}***provides that "in ***ALL*** cases in which a State shall be a party, the supreme Court shall have ***ORIGINAL*** jurisdiction", meaning that the "trial" would had to have been in **Wa**shington DC, ***NOT*** Bismarck, ND !;

71. and ***ALL*** of the above is true ***a fortiori*** since WSI is some or another ***insurance*** company, evidently engaged in interstate commerce, noting that ***ALL*** insurance is ***admiralty*** jurisdiction (DeLovio v Boit 2 Gall. 398) ***AND*** that the US supreme Court has ***RULED*** that the "interstate commerce powers of Congress are ***CLOSELY*** associated with the ***admiralty*** jurisdiction" (***NJ Steam v Merchants Bank 6 How. 344***), a "jurisdiction ***foreign*** to our Constitution and ***unacknowledged*** by our laws" /aka/ the central cause of the American Revolution, which State Courts are ***BARRED*** from exercising (***Article III, Section 2; see also Section 9*** of the ***Judiciary Act of 1789***);

72. also noted is that WSI Inc. is an artificial, corporate entity which thus "owes its ***birthright citizenship***" to Section 1 of the ***NON***-existent 14th "amendment" and accordingly has ***NO*** legal existence anywhere, with the possible exception of its '***residence***' in the territory of North Dakota /aka/ for all ***apparent*** jurisdictional purposes as the District of Columbia (see e.g. 26 USC 7408(d); ***Article I, Section 8, Cl.17***), while the victims of the "***Just us system***" are, seemingly at one and the same time, ***domiciled*** in a ***judicial*** District of a State admitted into "***this Union***" or have somehow been relegated to a condition of ***statelessness***; and/or as ***undocumented enemy aliens*** (see e.g. ***Trading with the Enemy Act of 1917***).

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Attachments:	supreme Court 20210063 brief (Autosaved).pdf

Affidavit of Service by Terry Kemmet

As the electronic record shall show….

Supreme Court of the State of North Dakota

In matter of appeal from South Central District court

State of North Dakota by WSI , Plaintiff and Appellee

V.

Terry Kemmet dba K&K Well Drilling, Defendant and Appellant

Supreme Court Docket 20210063

APPEAL FROM SUMMARY JUDGMENT OF CASE 22-2019-CV-00059

Terry Kemmet, the living Man on the land, does hereby certify this Brief above was sent by electronic email service. All rights of Terry Kemmet are preserved and protected by Common Law jurisdiction