

2009 HOUSE FINANCE AND TAXATION

HCR 3063

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3063

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 03/24/09

Recorder Job Number: 11497

Committee Clerk Signature *Lou Enafuson*

Minutes:

**Chairman Belter** opened the hearing on HCR 3063.

**Rep. Craig Headland:** For the record Rep. Craig Headland from District 29. I'm here to introduce HCR 3063 which is a resolution that would affirm North Dakota sovereignty under the 10<sup>th</sup> Amendment of the constitution. First of all the constitution is written under the principle of positive grant which means the federal government is authorized to exercise only those powers which are positively granted to it by the constitution. The language of the 10<sup>th</sup> Amendment is clear and concise however. It's listed here in the whereases. What the constitution does not include is congressional power to override state laws. It also does not give the judicial branch unlimited jurisdiction over matters either. If congress had intended to carry out anything they claimed that would promote general welfare, what would be the point of listing its specific powers in Article 1, Section 8. The 10<sup>th</sup> Amendment was adopted under the constitutional ratification process to emphasize that the states remained individual in unique sovereignties and that they were powered in areas that the constitution did not delegate to the federal government. Tragically the 10<sup>th</sup> Amendment has become almost a nullity at this point in time. There are great reasons to bring it to the forefront now. I think most importantly we need to keep in mind the founding fathers envisioned a loose confederation states and that not

all states are the same so that a one size fits all approach really does not work. I think the governments and the political leaders are best held accountable to the will of the people when government was local.

**Chairman Belter:** Further testimony in support of 3063.

**Rep. Jim Kasper:** My name is Jim Kasper, District 46 in Fargo. I thought I would just share with the committee a couple of items out of the constitutional deliberation and the declaration of independence deliberation back in 1776. July 4, 1776, is when the declaration of independence was written by our founding fathers. Here is what they wrote in that declaration:

We, therefore, the representatives if the United States of America, in general congress, assembled appealing to the supreme judge of the world for the rectitude of our intentions, do, in the name, and by authority of the good people of these colonies, solemnly publish and declare, that these United Colonies are, and of right out to be free and independent states.

And then when our founding fathers convened in the federal convention in Philadelphia on May 14, 1787, according to the record here was what was said about part of their deliberation:

All through the summer in closed session, the delegates debated and redrafted the articles of the new constitution. Among the chief points at issue were how much power to allow the central government. Then in the constitution of the United States under Article 1, Section 8, they outlined the powers of the federal government.

Section 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, provide for the common defense and general welfare of the United States;

To borrow money;

To regulate commerce with foreign nations and with the Indian tribes;

To establish a uniform rule of naturalization and laws over bankruptcy;

To coin money;

To provide for the punishment of counterfeiting;

To establish post offices;

To provide the exclusive rights to the writings of authors and discoveries;

To constitute tribunals inferior to the Supreme Court;

To declare war;

To raise and support armies;

To provide for a navy;

To call forth the militia

Then we got to the bill of rights in the 10<sup>th</sup> Amendment which this current resolution is all about. The powers not delegated to the United States by the constitution nor prohibited by and to the states are reserved to the states respectively or to the people. For further information, there are other states that are working on an amendment such as what we have before us.

Five more states are now in the process of looking at this concurrent resolution to protect our 10<sup>th</sup> Amendment rights. I think this is a good resolution and sends a message to the United States congress that the states are individual and have our own rights.

**Rep. Pinkerton:** On line 3 it says, assuming powers and imposing mandates. Do you have some specifics there? Powers and mandates that they have assumed?

**Rep. Kasper:** There are numerous. The Department of Education. The recent Obama stimulus package wherein they are mandating that certain laws of the various states be changed to accept dollars.

**Rep. Pinkerton:** The stimulus package, that's a funded mandate, isn't it?

**Rep. Kasper:** In some areas it is. In some areas it isn't. The unemployment insurance bill. Part of the stimulus package. It says that if you accept certain dollars, you must change your state law for your unemployment insurance benefits. The federal government has no business telling the states what to do.

**Rep. Pinkerton:** Isn't that a funded mandate? I understand on the stimulus we only have to do that if we accept the money.

**Rep. Kasper:** It is a funded mandate for approximately 2 ½ to 3 years. The part that would change forever, according to the stimulus package, is that under unemployment insurance, we currently pay for 26 weeks of benefits. If we accept those dollars, we would have to change our benefit to 52 weeks. We would have to change our formula and could never change it again.

**Rep. Pinkerton:** It's still funded. If you take something now, it involves taking money to change, doesn't it?

**Rep. Pinkerton:** Your definition of funded is apparently quite different than mine. If you change the formula in unemployment insurance, that forever forward you must provide 52 weeks benefits, which currently we provide 26 weeks benefits. The funded mandate would be that the federal government will fund the extra 26 weeks forever. There is a small amount of dollars that are in there that would last anywhere from 2 to 4 ½ years. After that the dollars are gone, and the mandate stays.

**Rep. Pinkerton:** Is there other examples on line 15 whereas, man powers assumed by the federal government and federal mandates are directly in violation of the 10<sup>th</sup> Amendment. Do you have any examples for that?

**Rep. Kasper:** One good example would be the Department of Education where nowhere in this constitution does it state that the federal government will be involved in the education of the people of the United States. We have a Department of Education in the Congress that has written rules that we must go by. We're doing that because that's the way the system works.

The system has been broken for years.

**Rep. Headland:** Wouldn't it be true that about three sessions ago when we were forced by the federal government to go to .08 to receive our total amount of transportation dollars that they said that they would hold hostage if we didn't go there. Isn't that an example of abuse of power by the federal government over state's rights.

**Rep. Kasper:** That's another good example.

**Rep. Headland:** Would you agree that the example you cited in the Job Service area amounts to nothing more to a state than a bribe to enact federal policy that we probably don't agree with?

**Rep. Kasper:** As I think Rep. Pomeroy stated that when we developed the stimulus package we were not aware or didn't even consider a state like North Dakota who had your circumstance. So therefore whether it's a bribe or whether it's a mandate, it is usurping the power of the various states to determine whether unemployment compensation formula benefits should be. It's another example of the federal government getting further and further into the area of the state's rights, and this resolution simply says stop.

**Rep. Weiler:** No child left behind would be a classic example.

**Rep. Winrich:** There are also a number of examples in some cases with the stimulus package, there are examples involving no child left behind, where states have refused the federal grants because they did not wish to comply with the requirements. It seems that that is always an option, is it not?

**Rep. Kasper:** I don't think it was an option on whether or not the states could comply with no child left behind. The way the law was drafted, every state had to comply. It's a mandate by the federal government requiring rules and regulations that they established. This says they don't have that right.

**Rep. Winrich:** I seem to remember some state not accepting some of the funds of no child left behind. You seem to be suggesting that when the federal government develops a program for aid or something like this, there should be no conditions on the acceptance of the funds. Are you seriously supporting that position?

**Rep. Kasper:** Yes I am. I seriously support the constitution. If you want to read the powers enumerated under Article I, Section 8, under strict construction which I believe in, this is the power of the federal government. And then Amendment 10 says the powers not delegated to the United States by the Constitution nor prohibited via to the states are reserved to the states respectively or to the people. You can try to read into the constitution whatever you want to, but I think the specific words are strong enough. I happen to be one that believes that this is what our founding fathers meant, and this is what we ought to be following. Not only by the state as we draft our own laws under North Dakota constitution but by also following the constitution of the United States.

**Rep. Winrich:** The whereas clause that starts on line 14 that asserts that any powers assumed by the federal government mandates are directly in violation of the 10<sup>th</sup> Amendment. Who would determine that under the constitution?

**Rep. Kasper:** We have, under the constitution, three branches of government: The executive, the legislative and the judicial. According to our history, if you are looking for a constitutional interpretation, you go to the judicial branch, and ultimately it rests in the Supreme Court of the United States.

**Rep. Winrich:** Is that an explicit power granted to the judicial branch of the constitution?

**Rep. Kasper:** Yes, it is. It's part of the constitution.

**Rep. Winrich:** I was under the impression that the Doctrine of Judicial Review was defined in an early Supreme Court case.

**Rep. Kasper:** Not being an attorney, I can't tell you whether it does or not. What I do know is when there is a constitutional issue, the Supreme Court hears the issue and makes a decision. Their ruling is final. Then of course with separation of powers, the legislative branch, after a ruling by the Supreme Court, can choose to make legislation that might overturn the Supreme Court ruling, but because of the separation, once the Supreme Court rules, the ruling stands. The legislature can override. The executive can sign the law. Then the Supreme Court can review again.

**Rep. Grande:** As far as special education, there's a mandated policy without money. But we have to adhere to the policy yet they haven't funded it so there would be a separation of issues whereas the state is already handling one issue and didn't have the funding, we already passed a resolution dealing with another area where the federal government is taking away state's rights. That would be what was called the freedom of choice act. We have that passed at this point, and it's on its way to the governor. The issue being, we have state laws that have been passed, but the federal government is going to nullify our state laws by passing, in part or in whole, what's called the freedom of choice act. Another one is the right to vote act. The federal government is now looking at policy for union voting. North Dakota happens to be a right-to-work state so passage of that directly affects North Dakota. We're not talking money. We're talking policy issues. There are many cases where you can look at that. We passed yesterday on the floor the safe act mandate from the federal government. We don't comply. We take over. It wasn't a money issue. It was a policy issue. They wanted to take over our banking areas by their safe act if we did not comply with their wishes.

**Rep. Drovdal:** We recently passed SB 2160 which related to the state lending act where we were told we either pass that, or the federal government would mandate it to us, and that



ended up increasing the cost to the business people in North Dakota by increased fees. Is that what you are referring to?

**Rep. Kasper:** At that point a threat is really not a mandate. I think this was probably preemptive legislation that we don't want the federal government to mandate unconstitutionally. Therefore we will pass that legislation.

**Rep. Schmidt:** On line 19 it appears that the Supreme Court did protect New York. Maybe the time they came out with no child left behind, North Dakota should have taken them to court and see what happens.

**Rep. Pinkerton:** I think you could have declined that if you had declined all the title funding. To the act, what was the bill, 2060, that defined lending regulations, I think that involved interstate commerce. Interstate commerce would not be affected by the 10<sup>th</sup> Amendment.

**Rep. Kasper:** The regulation of interstate commerce is granted to the federal government in the constitution. That is a power that the government has.

**Rep. Pinkerton:** if you were selling investments that would be traded across state lines, wouldn't that be interstate commerce?

**Rep. Kasper:** I don't know how you could sell investments or trade them across the state line. What you do if you are in the business of selling investments, you are located in a certain state and your customers may be located in other states, so therefore we have uniformity of securities laws that are federally instituted that provide uniform guidelines on interstate commerce for securities.

**Rep. Pinkerton:** The greatest states' rights issue was the issue of slavery. Would you have advocated that slavery was permissible until the Emancipation Proclamation?

**Rep. Kasper** offers his opinion on the issue of slavery.

**Chairman Belter:** Further questions.

**Rep. Blair Thoreson:** I'm Rep. Blair Thoreson, District 44 in Fargo. I also stand before you in support of this resolution. It's really too bad we have to be here today debating this. The constitution is very specific in what it says in the 10<sup>th</sup> Amendment. If you want examples of where federal policy is mandated to the states, you need to look no further than what has happened with the help America vote. We were forced to change the way we run our elections in our state because of federal policy. Yes, there are dollars included in that. Unfortunately the dollars do not come to the states. They have been allocated, but they haven't been appropriated. I think this is an area where we can talk about if we don't do this, we don't have to take the money. That's also fine, but do we have that choice when they take our money out of our pockets? No. We have to pay our taxes because we are mandated to do so. If not, they will come after us.

**Chairman Belter:** Further testimony in support of 3063.

**Robert Harms:** My name is Robert Harms. The question that 3063 really presents to you is whether the federal government is big enough. Should it get bigger, or maybe is it too big? I agree with the comments with respect to the 10<sup>th</sup> Amendment. I also wondered if this is going to do any good. It might serve some small purpose to remind congress that there is a constitutional structure that we should follow that allows the states to be the laboratories of our government. (Mr. Harms cites examples of where federal government has directed policy to the states.) This isn't a Republican or Democrat issue. It's really an example of how the states should reassert their rights and tell the federal government to slow down a little bit.

**Chairman Belter:** Further testimony in support of 3063. Any opposition to 3063. If not we will close the hearing on 3063. What are the committee's wishes?

**Rep. Grande:** Do pass.

**Rep. Headland:** Second.

**Rep. Pinkerton:** I don't think I feel real comfortable to send real broad statements about if we like 1 and 2 and 3 (inaudible). I have a little problem supporting this. (Inaudible) I would propose that we strike those lines.

**Rep. Schmidt:** I am kind of mixed on this. You talk about the voters' rights. The big one coming down that is really a nightmare is going to be the real ID act. I agree with some of this here, but the other side of the coin, if we had a little more regulation, we wouldn't be in the trouble we are today. I'm probably going to support this, but we do have to have some regulation from the federal government.

**Rep. Winrich:** It's difficult for me to see how this is going to change anything. As Rep. Kasper said, the Supreme Court is under current practice whether that is in fact enumerated in the constitution or it stems from the Marbury v. Madison decision. The Supreme Court determines whether an act is constitutional or not. We have a presumption in North Dakota that if the legislature passes a law, it is assumed constitutional until it is ruled unconstitutional. I think this is true of federal law so that the remedy exists under current practice. If you believe that a particular law is in violation of the 10<sup>th</sup> Amendment, there is a way to establish that. This doesn't change any of that.

**Rep. Headland:** What I think this does do, it may not accomplish anything, but what it will do is it will provide a record that we have in this state. Told the federal government that we are better left to operate under the laws that we decide are appropriate for our state and not require us to go by federal laws that basically assert our constitutional rights. I think it's important that we establish a record of what we believe are our rights.

**Chairman Belter:** Any other discussion. We have a **do pass** on HCR 3063. All those in favor of the proposed resolution, signify by saying aye. Opposed. Motion carries.

**Rep. Headland was assigned to carry the bill.**

Date: March 24, 2009

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. ACR 3063

House FINANCE AND TAXATION Committee

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Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Representative Froelich		
Vice Chairman David Drovdal			Representative Kelsh		
Representative Brandenburg			Representative Pinkerton		
Representative Froseth			Representative Schmidt		
Representative Grande			Representative Winrich		
Representative Headland					
Representative Weiler					
Representative Wrangham					

*Voices*

Total (Yes) 7 No 3

Absent 3

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Motion Carried

**REPORT OF STANDING COMMITTEE (410)**  
March 24, 2009 4:30 p.m.

**Module No: HR-53-5746**  
**Carrier: Headland**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HCR 3063: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (7 YEAS, 3 NAYS, 3 ABSENT AND NOT VOTING). HCR 3063 was placed on the Eleventh order on the calendar.**

2009 SENATE FINANCE AND TAXATION

HCR 3063

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3063

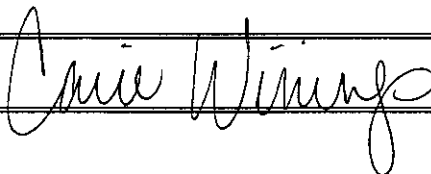
Senate Finance and Taxation Committee

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Hearing Date: 04/13/2009

Recorder Job Number: 11822

Committee Clerk Signature



Minutes:

**Chairman Cook:** Opened the hearing in HCR 3063.

**Representative Craig Headland, District 29:** Testified as a sponsor and in support of the bill. It is fairly simple however some make believe that it is meant to express ideology and in some ways it may. The resolution simply asks for the federal government to cease and desist on imposing their mandates on us as states. The Constitution in the Tenth Amendment is clear on what powers the federal government has and what are left to the states. (Uses an example of a prior situation in the state where the federal government decided to withhold highway funding over bumpers on trucks) It is my belief that is the wrong type of decision coming out of Washington DC. The Constitution recognizes that all states are different. What works in some states may not make sense in others. This simply asks for them to quit sending us this type of legislation to act on. There are several reasons that I would like to talk about. The Constitution itself was written under the principle of positive grant in that the federal government specifically mentions in the constitution what their powers are. It says that everything that isn't positively granted to the federal government is specifically left to the states. I think congress now is in some fashions imposing their will – there has just been a huge stimulus package passed on us and there are many things within it that we are not even aware of. Congress doesn't even

know. It has become obvious in one area of bonuses. I think this resolution is meant to signal to congress to hold up a bit and think about the types of things they are imposing on states.

**4.28 Chairman Cook:** What if they don't listen?

**Representative Headland:** I think we are all aware that more than likely they won't. But it does not mean that the message does not need to be sent. This is a movement that is happening across the country. I believe there are 18-25 states that are offering their legislatures similar types of resolutions. Maybe they will get the message.

**Chairman Cook:** I certainly hope so.

**Vice Chairman Miller:** Have any of the states passed something like this?

**Representative Headland:** I am not sure if any have passed.

**Senator Hogue:** I noticed that the proposal is to send this to the President and to Congress.

Have you thought about sending it to the Supreme Court justices?

**Representative Headland:** That did not occur to me when I had it drafted, but does seem to be something that would be appropriate.

**6.40 Representative Jim Kasper, District 46:** Testified as sponsor and in support of the bill. In the House I have become known as sort of the North Dakota Constitution person. We pass legislation every day in this chamber that is in my opinion that is unconstitutional. I have begun to bring up on the floor of the House areas where I think a bill is unconstitutional just to draw attention to what our North Dakota Constitution says. In this case we are talking about federal intervention in the state's rights. (Reads from Declaration of Independence and the Tenth Amendment to point out the words the founders wrote regarding the independence of states) (Gives an example of IBL committee bill and how the stimulus package affects it) See

Attachments #1 and #2 for additional information to the bill.



12.07 **Chairman Cook:** In the two hundred plus years that our country has existed is it safe to assume there have been some court challenges on the Tenth Amendment in the past?

**Rep. Kasper:** I would assume so. There is a court challenge that was cited in the draft of the concurrent resolution and that is on lines 19 and 20. (Reads from a Supreme Court ruling)

There are other instances that I certainly cannot site that I am certain are there. Look at the education department and no child left behind – the list goes on and on.

**Chairman Cook:** Is it safe to say that the most successful argument over the years is on the Interstate Commerce Clause?

**Rep. Kasper:** I cannot tell you what the successful arguments have been. I would assume that is what the congress says, but I don't know if that is sited or not in various areas. To me what the Commerce Clause means is that no state can enact legislation that will be a barrier to interstate commerce. I don't see the reverse of it. So in that case it prohibits the states. Here we are saying we want to prohibit the federal government.

13.50 **Glen Baltrusch, Resident of North Dakota:** See Attachment #3 for testimony in support of the bill.

18.25 **Sandy Clark, North Dakota Farm Bureau:** Testified in support of the resolution. A lot of the very basic premise of our philosophy is rooted in supporting states rights and individual freedoms. We just want to go on record in support of this resolution.

19.26 **Chairman Cook:** Further testimony? (no) Closed the hearing on HCR 3063.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3063

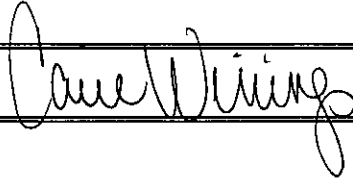
Senate Finance and Taxation Committee

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Hearing Date: 04/14/2009

Recorder Job Number: 11848

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened discussion on HCR 3063. See Attachment #1 for amendments proposed.

**Senator Hogue:** See Attachment #2 for additional amendments proposed.

**Chairman Cook:** Reviews how resolution would read with amendments.

**Vice Chairman Miller:** Clarifies.

**Senator Hogue:** Moved amendments 93128.0302.

**Vice Chairman Miller:** Seconded.

**Chairman Cook:** Discussion? (no)

**A Voice Vote was taken: Yea 6, Nay 0, Absent 1 (Anderson).**

**Motion passed.**

**Vice Chairman Miller:** Moved amendments proposed with omitting "the United States Supreme Court from page 2, line 16.

**Senator Hogue:** Seconded.

**Chairman Cook:** Discussion?

**Senator Triplett:** On page 2, line 3, the second part of that there is a typo, it should be hereby claims. Despite the fact that we are elected to make laws for the people of North Dakota, I just

don't think we have the right to say that the state of North Dakota claims something. I just don't think that is our position on a situation like this. I guess I would like some discussion on what the point of that particular language is.

**Senator Oehlke:** I would like to hear some more discussion on that. That North Dakota verses the 61<sup>st</sup> Assembly jumped out at me too. I know we represent our constituents, but I wasn't sure about that when I initially saw it. It was the only thing that jumped out to me on this amendment. I would like to hear what the rest of you think about that.

**Chairman Cook:** Quite frankly I like it the way it is without that amendment of page 2, line 3. I like affirms. I don't have a problem with the 61<sup>st</sup> legislative assembly because that is really all we can speak for.

**Senator Oehlke:** That was my initial thought, yes.

8.05 **Senator Triplett:** I think the first way is a crisper way to say it. I don't know that it changes the meaning in particular but it is a little less muddy. So I think the amendment there is a clerical clean up. I think it is a more straight forward language.

**Chairman Cook:** Would you like to make this a friendly amendment to your amendment?

**Vice Chairman Miller:** Yes.

**Chairman Cook:** Senator Hogue are you alright with this?

**Senator Hogue:** Yes.

**A Voice Vote was taken: 6 yea, 0 nay, 1 absent (Anderson).**

**Motion passed.**

**Chairman Cook:** Any other amendments/discussion?

**Senator Dotzenrod:** On page 2, lines 12 and 13, I would like to remove starting with the third or and go to after funding, because the federal government should always have the right to make an offer to it's states to say – here is our offer, if you pass this law, we will give you this

money. It seems to me that if you are saying we are going to pass this resolution and tell the federal government that we don't want any more offers, it seems that there is really no gain for us to do that. It seems that we should always be in a position as a state to say that we want to hear the offer and decide whether we want to do it. I don't think that there is any damage to the state by having the federal government make an offer to us that we have a right to accept or reject. This language that I am asking about it seems to not be in our state's best interest.

**Chairman Cook:** Let me ask you to look at it this way. I think the most common example of where they play this card – the federal government funds a lot of roads in the country, within the state highway system. North Dakota fairs quite well with the money that we get because we have a whole lot of miles of road in this state compared to the number of people that live here. So they can justify it by funding it because they recognize there is a need for some federal money involvement into roads. We need interstate commerce to move stuff from state to state, so they send money and they have been doing it for years. Then all of the sudden, they started saying that along with that money they would impose other mandates along with the money funding the roads. They start imposing their will on state blood alcohol content levels for DUI, seat belt laws, and those are things that I have always had a hard time with. Quite frankly I want to say to them to keep their money. There is a place where they should be doing it and if they could just not cross that line, but they always want to cross the line and get into the business that is the sovereign right of states

**Senator Dotzenrod:** You are saying that they are making offers that really aren't related?

**Chairman Cook:** Right.

**Senator Dotzenrod:** So you are saying that if you want the highway money then they have to do something that is somewhat related.

**Senator Triplett:** I agree with you wholeheartedly on the magnitude issue. Two years ago we had the situation with the bumpers on trucks where we were going to start to lose a ton of highway money if we didn't put into place a law regulating bumpers on old trucks that we really didn't want to do for various reasons. I think that sometimes the people in those agencies don't understand the difference in lifestyle in a really rural setting. It really wasn't the safety issue for us in this state. I agree with you when things are kind of almost unrelated, but at the same time if there is a real serious quick pro quo sort of arrangement, for example the no child left behind where they said if you want the federal dollars then you have to institute the whole other thing. It really was like an offer made to the states and frankly I said on the floor last time around that I thought we should have rejected those monies. I think that it was not in the benefit of North Dakota to receive those federal monies with all of the strings that were attached. When it is a program that is just getting started and it is an offer being made across the board to all of the states and states can take it or leave it; I don't think that is any violation of the Constitution. I do object when they start, after getting you hooked, nipping around the edges at things. I don't know how to say that in a way that gets at both of those ideas. You said crossing the line, but how do you say it in technical terminology that we are OK with the one part of it, but we are not OK with the other part of it.

**Chairman Cook:** That raises a good question. This issue is not a partisan issue. I think if you look at where it has passed other states, it is not a partisan issue their either. It is a state's rights issue. I think as legislators we always have to and should be defenders of the sovereign rights of states to conduct state business. This to me is just a way of us trying to communicate with congress and let them know we are getting tired of this and maybe the timing of this with all the stimulus money coming out is what is generating all this interest. All I say is that that may have been the one that has broken the camel's back; the people that have been doing

this in congress who have not been recognizing the sovereign rights of states on both sides of the isle. It doesn't matter who is in charge. The fact is that they all do it. I look at the tax policy and this is all about tax policy. This is where congress is sticking their nose in to what I believe is the sovereign rights of states to determine what their tax policy is. Sooner or later I believe we have to send them a message that they have gone too far.

17.30 **Senator Hogue:** I was thinking when I was listening to our congressman this morning; I almost wanted to remove his name from this. I think he gets it. He understands that the local people need the flexibility to deal with their local issues. There are a lot in congress that just don't get it.

**Senator Dotzenrod:** The other day we passed a resolution in the Senate that was calling on the federal government to come in on the Red River Valley in South Dakota, North Dakota, and Minnesota and basically impose sort of an ability to get all these little water management districts and if you are every really going to get a solution you are going to have create some kind of monster that can have eminent domain and have the powers to tell the states what they have to do. That is what it appeared we passed. It appeared we were appealing to the federal government to come in and that could really get ugly. If they actually did what we asked them to do and they came in here and set up the federal organization that could use eminent domain and go and start taking land independent of what that state legislature - I can't quite see it getting that out of hand.

**Chairman Cook:** We do have multiple states and also another country that are affected.

**Senator Dotzenrod:** We will probably be passing resolutions, if that comes to be and it overrides local water management districts and takes land away from people, to ask them to stop doing that. I think, maybe not. It seemed unusual for us as a legislature to appeal to the federal government in that way and ask them to come in and take over.

**Chairman Cook:** (Comments on a piece of legislation that he is working on that has to do with the Quill decision)

**Senator Dotzenrod:** I withdraw my request to take this out. There are times that I can see what your argument is that if you have two disparate subjects and you use one to put leverage on the other then this sentence belongs in there if that is what they are getting at. I was concerned about keeping opportunities to get some federal money in the future.

**Chairman Cook:** What do we want to do with this? Do we want to deal with it the way that it is or work on it some more?

**Senator Triplett:** I am going to vote against it no matter what we do.

**Senator Dotzenrod:** I am probably going to vote against it either way as well, given the fact that there are a lot of things going on with the disaster in the state and the federal requirements that we are asking the federal government to do; even if we got that sentence cleared up.

**Chairman Cook:** Again, I think the issue here is the sovereign rights of state to conduct the business of states. If there was a way that we could do this so that it is non partisan, I would probably do it. If we are not then we will go ahead.

**Vice Chairman Miller:** Moved a Do Pass As Amended twice.

**Senator Hogue:** Seconded.

**Chairman Cook:** Any final discussion?

**A Roll Call Vote was taken: Yea 4, Nay 3, Absent 0.**

**Senator Miller will carry the bill.**

#2  
93128.0302  
Title.

Prepared by the Legislative Council staff for  
Senator Hogue

April 13, 2009

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3063

Page 2, line 15, after the first comma insert "each justice of the Supreme Court of the United States, each judge in the United States Court of Appeals for the Eighth Circuit,"

Renumber accordingly



Date: 4/14/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. :

3063

Senate Finance and Taxation Committee

Check here for Conference Committee Amendment

Legislative Council Amendment Number 93128.0302

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Senator Hogue Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	/		Sen. Arden Anderson	/	
Sen. Joe Miller - Vice Chairman	/		Sen. Jim Dotzenrod	/	
Sen. David Hogue	/		Sen. Constance Triplett	/	
Sen. Dave Oehlke	/				

*All in favor*

Total: Yes 4 No 0

Absent Anderson

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

~~XX~~ /

PROPOSED AMENDMENTS TO HOUSE RESOLUTION NO. 3063

Page 1, line 14, replace “powers assumed by the federal government and federal mandates” with “federal laws”

Page 2, line 3, replace “Sixty-first Legislative Assembly affirms this state's” with “State of North Dakota herby claims”

Page 2, line 16, after the comma insert “the United States Supreme Court, the Speaker of the House of Representatives and the President of the Senate of each state’s legislature of the United States of America,”

Renumber Accordingly



Date: 04/14/09

Roll Call Vote #: 3

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.: 3063

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended <sup>AS</sup> 2x's

Motion Made By Senator Miller Seconded By Senator Hogue

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson		✓
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod		✓
Sen. David Hogue	✓		Sen. Constance Triplett		✓
Sen. Dave Oehlke	✓				

Total: Yes 4 No 3

Absent \_\_\_\_\_

Floor Assignment Senator Miller

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HCR 3063: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HCR 3063 was placed on the Sixth order on the calendar.

Page 1, line 14, replace "powers assumed by the federal government and federal mandates" with "federal laws"

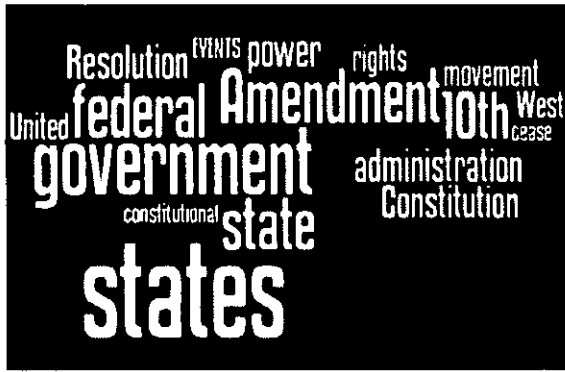
Page 2, line 15, after the first comma insert "each justice of the Supreme Court of the United States, each judge in the United States Court of Appeals for the Eighth Circuit,"

Page 2, line 16, after the comma insert "the presiding officer of each state legislative body in the United States of America,"

Renumber accordingly

2009 TESTIMONY

HCR 3063



Last week, HUMAN EVENTS reported that eleven states, Washington, New Hampshire, Arizona, Montana, Michigan, Missouri, Oklahoma, Minnesota, Georgia, South Carolina, and Texas, had all “all introduced bills and resolutions” declaring their sovereignty over Obama’s actions in light of the 10th Amendment.

These actions are in response to the Obama administration’s faux-“stimulus” legislation which directly assaults the rights of states to reject the money coming from the federal government. So far, several Republican governors — among them South Carolina’s Mark Sanford and Louisiana’s Bobby Jindal — have said they would refuse all or part of the stimulus money because of the constitutional infringements and because of the additional unfunded liabilities they impose on the states.

This week, HUMAN EVENTS is happy to report that five more states have decided to invoke the 10th as well.

These five — Tennessee, Kentucky, Kansas, Indiana, and West Virginia — have all begun their action under the 10th Amendment in a bid to protect themselves from what they view as nothing less than an unconstitutional usurpation of power on the part of the Obama administration.

On February 23, HJR 108 was put forth in the Tennessee legislature, indicating that legislators in that state decided “it [was] time to affirm state sovereignty under the Tenth Amendment to the Constitution of the United States and demand the federal government halt its practice of assuming powers and of imposing mandates upon the states for purposes not enumerated by the Constitution,” according to Truman Bean.

The very next day, February 24, Kentucky State Representative John Will Stacy (D), “introduced House Concurrent Resolution 168... serving notice to the federal government to cease mandates beyond its authority.”

In declaring their sovereignty these states have joined what has come to be known as “the 10th Amendment movement.” It is a grassroots, conservative movement that seeks to defend the separation of powers as originally set forth by our Founders in the Constitution.

Through this movement, conservatives are throwing down the gauntlet against tyranny and the abuse of power. They are invoking the 10th Amendment at the state level against abuses of power by the federal government, and doing so with appeals to the extra-constitutional writings of our Founding fathers.

For example, Indiana’s resolution calls attention to the words of Alexander Hamilton, a Federalist and Founder who “expressed his hope that ‘the people will always take care to preserve the constitutional equilibrium between the general and the state governments.’” Hamilton “believed that ‘this balance between the national and state governments forms a double security to the people. If one [government] encroaches on their rights, they will find a powerful protection in the other. Indeed, they will both be prevented from over-passing their constitutional limits by [the] certain [rivalry] which will ever subsist between them.’”

Kansas’ Senate Concurrent Resolution No. 1609 delves even deeper into the mechanics of the matter by reminding the Obama administration, as well as the House and Senate, that “the scope of power defined by the Tenth Amendment means that the federal government was created by the states specifically to be an agent of the state.” In other words, the federal government exists by and for the states, not the other way around.

The resolution headed to West Virginia’s 79th Legislature couples its action under the 10th Amendment with a reminder directed to Speaker of the House Nancy Pelosi (D-Calif.) and Senate Majority Leader Harry Reid (D-Nev.): “[The] United States Supreme Court has ruled in *New York v. United States*, 112 S. Ct. 2408 (1992), that Congress may not simply commandeer the legislative and regulatory processes of the states.” This reminder is followed by a pronouncement that “a number of proposals from previous administrations and some now pending from the present administration and from Congress may further violate the Constitution of the United States.”

In light of these violations of the Constitution, the stated purpose of West Virginia's resolution is, in part, to "serve as Notice and Demand to the federal government, as our agent, to cease and desist, effective immediately, mandates that are beyond the scope of these constitutionally delegated powers."

Our rights as citizens are under assault by an administration of leftist ideologues with an insatiable appetite for power. There is little difference between them and the appeasement-drunken, government-expanding leftists in Lyndon Baines Johnson's administration of whom Ronald Reagan said in 1964, "Inalienable rights are now considered to be a dispensation of government...and freedom is close to slipping from our grip."

Every state assembly and legislature that has joined "the 10th Amendment movement" understands that Reagan's words about freedom's fragility in 1964 are no less true for our day when not only freedom, but also the America ideal, is "close to slipping from our grip."

We must stand shoulder to shoulder with states like Tennessee, Kentucky, Kansas, Indiana, and West Virginia in demanding that the federal government immediately "cease and desist" its usurpation of our liberties.

HUMAN EVENTS columnist A.W.R. Hawkins has been published on topics including the U.S. Navy, Civil War battles, Vietnam War ideology, the Reagan Presidency, and the Rebirth of Conservatism, 1968-1988. More of his articles can be found at [www.awrhawkins.com](http://www.awrhawkins.com).

**Possibly related posts: (automatically generated)**

- [United States of Argentina: How inflation turned a rising power into a pauper](#)
- [Oklahoma tries to rectify Federal usurpation of state's rights ...](#)
- [Lawmakers in 20 states move to reclaim sovereignty](#)
- [Oklahoma Declares Sovereignty Under Tenth Amendment](#)

This entry was posted on March 6, 2009 at 10:54 am and is filed under [States declare sovereignty](#). Tagged: [10th Amendment](#), [reaction against Obama Stimulus Package](#). You can follow any responses to this entry through the [RSS 2.0](#) feed. You can [leave a response](#), or [trackback](#) from your own site.

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XHTML: You can use these tags: `<a href="" title="">` `<abbr title="">` `<acronym title="">` `<b>` `<blockquote cite="">` `<cite>` `<code>` `<del datetime="">` `<em>` `<i>` `<q cite="">` `<strike>` `<strong>`

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**gardener, and violation of the 10th amendment**

*Federal  
Legislation proposed*



Posted by LydiaScott on 03/06/09 03:36 AM

SHARE

[Older: [Is this an opportunity to push the Indiana Honest Money act?](#)]

HR 875? <http://thomas.loc.gov/cgi-bin/query/F?c111:1:./temp/~c1112RD9bb:e11439:>

This bill is sitting in committee and I am not sure when it is going to hit the floor. One thing I do know is that very few of the Representatives have read it. As usual they will vote on this based on what someone else is saying. Urge your members to read the legislation and ask for opposition to this devastating legislation. Devastating for everyday folks but great for factory farming ops like Monsanto, ADM, Sodexo and Tyson to name a few.

I have no doubt that this legislation was heavily influenced by lobbyists from huge food producers: This legislation is so broad based that technically someone with a little backyard garden could get fined and have their property siezed? It will effect anyone who produces food even if they do not sell but only consume it. It will literally put all independent farmers and food producers out of business due to the huge amounts of money it will take to conform to factory farming methods. If people choose to farm without industry standards such as chemical pesticides and fertilizers they will be subject to a vareity of harassment from this completely new agency that has never before existed. That's right, a whole new government agency is being created just to police food, for our own protection of course.

**DO NOT TAKE MY WORD FOR IT, READ THIS LEGISLATION FOR YOURSELF.** The more people who read this legislation the more insight we are going to get and be able to share. Post your observations and insights below. Urge your members to read this legislation and to oppose the passage of this legislation.

Pay special attention to

- Section 3 which is the definitions portion of the bill-read in it's entirety.
- section 103, 206 and 207- read in it's entirety.

Red flags I found and I am sure there are more.....

- Legally binds state agriculture depts to enforcing federal guidelines effectively taking away the states power to do anything other than being food police for the federal dept.
- Effectively criminalizes organic farming but doesn't actually use the word organic.
- Effects anyone growing food even if they are not selling it but consuming it.
- Effects anyone producing meat of any kind including wild game.
- Legislation is so broad based that every aspect of growing or producing food can be made illegal. There are no specifics which is bizarre considering how long the legislation is.
- Section 103 is almost entirely about the administrative aspect of the legislation. It will allow the appointing of officials from the factory farming corporations and lobbyists and classify them as experts and allow them to determine and interpret the legislation. Who do you think they are going to side with?
- Section 206 defines what will be considered a food production facility and what will be enforced up all food production facilities. The wording is so broad based that a backyard gardener could be fined and more.

- Section 207 requires that the state's agriculture dept act as the food police and enforce the federal requirements. This takes away the states power and is in violation of the 10th amendment.
- There are many more but by the time I got this far in the legislation I was so alarmed that I wanted to bring someone's attention to it. (to the one person who reads my blog)

Didn't Stalin nationalize farming methods that enabled his administration to gain control over the food supply? Didn't Stalin use the food to control the people?

Last word..... Legislate religion and enforce gag orders on ministers on what can and can't be said in the pulpit, instituting regulations forcing people to rely solely on the government, control the money and the food. What is that called? It is on the tip of my tongue.....

I haven't read any of the Senate's version of the bill as I have been poring thru the House's version. Here is the link and I hope some of you can take a look and post your observations and insights below. One thing I am pretty sure of is that very few if any Senator's have actually read the legislation and when it comes up for a vote they will more than likely take someone else's word on how they should vote. The other thing I am pretty sure about is that the legislation was probably written by lobbyists and industry experts.

S 425 [http://thomas.loc.gov/cgi-bin/bdquery/z?d111:s425:](http://thomas.loc.gov/cgi-bin/bdquery/z?d111:s425)

Things you can do

1. Contact your members at 202-224-3121 and ask them to oppose HR 875 and S 425. While you are at it ask them if they personally have read the legislation and what their position is? If they have not read the legislation ask them to read it and politely let them know that just because other representatives are not reading the legislation and voting on it does not mean they can do the same.
2. Get in touch with local farmers and food producers by attending a local farmers market and asking them how business is.
3. Attend a local WAPF meeting, this is a good start to learning about what is going on in farming and local & state initiatives . The website is <http://www.westonaprice.org/localchapters/index.html>
4. Check out the Farmers Legal Defense Fund at <http://www.ftclfd.org/index.html>
5. Find out who sits on your states agriculture and farming committee and contact them with your concerns.
6. Continue to contact your elected officials and let them know your position on legislation and why.
7. Get active at the local and state levels, this is the quickest way to initiate change.

Categories: [Health Freedom](#), [Grassroots News](#), [Action Item](#), [US Constitution](#), [Federal Legislation](#), [Current Events](#), [Social Issues](#), [State Legislation](#), [Economy](#), [Congress](#)

Tags:

Showing comments 1—9 of 9

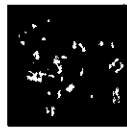
Posted 03/06/09 06:27 AM



Thanks for the post.

**MidWestLadyFarmer**  
Winigan, MO

Posted 03/06/09 08:07 AM



Yes, thanks for bringing this to our attention. I will be contacting farmers in the Peoria, IL area.

**BBLiberty**  
Peoria, IL

Posted 03/06/09 08:21 AM



I also appreciate your post and will be letting others know about this. I will be bringing this up, as well, when I contact my congressman today about a couple of other issues.

**libertyspirit**  
Modesto, CA

Posted 03/06/09 08:52 AM



Thanks for posting this!

digg it  
[http://digg.com/politics/HR\\_875\\_The\\_Food\\_Police\\_Criminalizing\\_Organic\\_Farmin](http://digg.com/politics/HR_875_The_Food_Police_Criminalizing_Organic_Farmin)

**Freedom**  
London,  
United  
Kingdom

Thanks Lydia,

Posted 03/06/09 09:03 AM

**United  
We  
Stand  
Sigy380**

Jackson, TN

You can't deny that they have done their homework. As so many people have prepared themselves to be able to grow their own food while awaiting the worst, they have to come up with a plan.

If the worst actually becomes our reality and we have the Real ID, they have to have some way to control our being able to simply feed ourselves.

Conspiracy doesn't have to be a theory!

Posted 03/07/09 9:56 PM



**thudson**  
Seattle, WA

I've read the text of this bill several times, and there is nothing restricting backyard gardeners or organic farmers. This bill would affect large agro-business, and insure that their desire for profits would not mean the death of our children.

Please point out what text prohibits backyard gardening. Also, you should divulge any consulting contracts you have with interested parties.

thudson said: "Please point out what text prohibits backyard gardening. Also, you should divulge any consulting contracts you have with interested parties."

The bill does not explicitly prohibit backyard gardening. What it does is include backyard gardens in the definition of Food Production Facilities. Here's the definition (section 3-14)

-----  
(14) FOOD PRODUCTION FACILITY- The term "food production facility" means any farm, ranch, orchard, vineyard, aquaculture facility, or confined animal-feeding operation.  
-----

Posted 03/07/09 11:28 PM



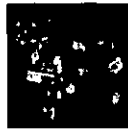
**altamira**  
Lockhart, TX

This is a broad definition that could include backyard gardens, a backyard chicken pen with 2 or 3 hens, a backyard bee hive, etc. One might hope that regulations and courts would clarify the law in such a way as to exempt food produced for one's own use. But don't forget U.S. Supreme Court decisions, such as the New Deal era opinion which held that a farmer growing corn to feed his own pigs was engaged in interstate commerce, because growing his own corn meant that he did not purchase as much corn, thus having an effect on the interstate market for corn. Having laws on the books that could conceivably be construed in such a way as to regulate backyard or homestead food production is awfully risky.

In addition to this, the law could very well put small farmers out of business, as it is generally far more burdensome for them to comply with regulations than it is for large companies -- plus small farmers do not have the wherewithal to bribe regulators, whereas large corporations do (I use the term bribe somewhat

broadly to include such things as free trips, pretty women, and cases of expensive whiskey).

Posted 03/08/09  
12:38 PM



**Lil Merc**  
San Diego, CA

Thank you for directing our attention to this vital information. I will pass this on to everyone that I can.

These people should be charged for even attempting this! This is our right, it is our body. What's next? We are so past the need for another Tea Party!

This issue should be larger than anything else currently on the table. Just the fact it is so little publicized is a red flag.

Posted 03/08/09 2:42  
PM



**wilsonpwt**  
Groveport, OH

HR 875 and Senate Bill 425 under the guise of 'Food Safety' helps the goals of Codex Alimentarius and the World Trade Organization.

Absolute Control of our food and medicine is the ultimate control. As it is already, pharmaceuticals kill 100,000 per year in the United States.

Common Law vs Napoleon Law - HR875 uses Napoleon Law

You must be a member to post comments. [[Become a member](#)]

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*"Educate and inform the whole mass of the people... They are the only sure reliance for the preservation of our liberty."*

—Thomas Jefferson

#3

**HOUSE CONCURRENT RESOLUTION 3063 TESTIMONY**

**Before the Senate Finance and Taxation Committee**

**April 13, 2009 at 9:00 A.M.**

**Submitted by Glen E. Baltrusch**

Good afternoon Chairman Cook and committee members,

My name is Glen Baltrusch. I was born and raised in the great state of North Dakota, and I reside in Harvey, North Dakota, which is in District 14. I stand before you today in support of **House Concurrent Resolution 3063** and respectfully request that this committee recommends a “**DO PASS**” to the floor of the Senate.

Mr. Chairman, committee members, **House Concurrent Resolution 3063** is exactly what is required by several of the states of the Union, and North Dakota must be included as one of the several states. As members of the North Dakota Legislative Assembly, you may be aware that several of the other states in the Union have; are in the process of; or will be introducing state sovereignty resolutions in relation to the *Tenth Amendment* in *The Bill of Rights of The Constitution of the United States* in the near future. The North Dakota Legislature, over many years has, or has had to comply with federal mandates, including unfunded mandates which have had ramifications at every level of governance within the State of North Dakota; including the citizens of this state.

Talk about Washington perfecting the habit of cost-shifting to the states, here are a few examples:

- 1.) The State Child Health Insurance Program (Schip);
- 2.) Medicaid;
- 3.) State Criminal Alien Assistance Program;
- 4.) Real ID; and there are more examples.

Here are a few of the policy areas: banking, transportation, immigration, taxation, education, identification, licensing, and the lists go on. Because the United States government has over the years overstepped its constitutional authority as stated in *Article IV, Section 4 of The*

*Constitution of the United States*; and the *Tenth Amendment of The Bill of Rights of The Constitution of the United States*. If the people, and the states, allow the federal government to continue to get away with ignoring the legitimate legislatures of the several states, and acts like *The Constitution of the United States* does not even exist, what will this nation begin to resemble? And what are they capable of doing?

Mr. Chairman, committee members, my point is that **House Concurrent Resolution 3063** is a reasonable demand of a government that is our agent to cease and desist; not the several States of the Union should be acting as agents for the federal government. The founding fathers of our great country; the framers of *the United States Constitution* and *the Bill of Rights* had the grace of God to provide them with great guidance. We must not forget that they created the best form of governance in the world, a Republic with a Democratic form of government.

Chairman Cook, and committee members, in reading **House Concurrent Resolution 3063**, I request that you consider adoption of the proposed amendments to **House Concurrent Resolution 3063** as follows:

**On page 1:**

- 1) Line 1; remove "10<sup>th</sup>" and insert "Tenth".
- 2) Line 3; capitalize the letter "S" in the word "states".
- 3) Line 5; remove "10<sup>th</sup>" and insert "Tenth".
- 4) Line 7; capitalize the letter "S" in the two words "states".
- 5) Line 8; remove "10<sup>th</sup>" and insert "Tenth".
- 6) Line 10; remove "10<sup>th</sup>" and insert "Tenth".
- 7) Lines 14 and 15; remove "many powers assumed by the federal government and federal mandates are directly in violation of the 10<sup>th</sup>" and insert "many federal laws are directly in violation of the Tenth".
- 8) Line 16; remove "10<sup>th</sup>" and insert "Tenth".

**On page 2:**

- Line 3; remove "Sixty-first Legislative Assembly affirms this state's" and insert "State of North Dakota hereby claims".
- 9) Line 4; remove "10<sup>th</sup>" and insert "Tenth".

10) Line 16; after "Representatives," insert "the Speaker of the House of Representatives and the President of the Senate of each state's legislature of the United States of America,"

**House Concurrent Resolution 3063** as written or engrossed with the proposed amendments; does not, will not, and is not, the first step(s) towards secession; splitting up the Union; nor does it stop collection of the income tax. House Concurrent Resolution 3063 simply reasserts the sovereignty of the State of North Dakota as one of the several States of the Union and to stop the uncontrolled expansion of power of the federal government.

Chairman Cook, committee members, thank-you for your time and consideration in this pertinent matter. I respectfully request your support with a "**Do Pass**" recommendation to the Senate. If you have any questions, I will try to answer them for you.