2025 HOUSE JUDICIARY

HCR 3021

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HCR 3021
2/17/2025

A concurrent resolution to amend and reenact sections 3 and 13 of article VI of the Constitution of North Dakota, relating to the judicial branch and supreme court.

10:59 a.m. Vice-Chairman Karls opened the hearing.

Members Present: Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Henderson, Johnston, S. Olson, Satrom, Tveit, VanWinkle, Wolff, Schneider

Members Absent: Chairman Klemin, Representatives Hoverson, McLeod

Discussion Topics:

- Status of justice's civil and criminal immunity
- Judicial Conduct Commission
- Challenging North Dakota Supreme Court decisions

11:00 a.m. Representative Lori VanWinkle, North Dakota Representative for District 3, introduced the bill and provided testimony #37880.

11:16 a.m. Chris Joseph, Legal Counsel for the Office of the Governor, testified in opposition.

11:21 a.m. Kara Erickson, Disciplinary Counsel for the North Dakota Supreme Court, testified in opposition.

11:22 a.m. Tony Weiler, State Bar Association of North Dakota, testified in opposition and provided testimony #37777.

Additional written testimony:
Paul Sorum, Sorum PC, submitted testimony in favor #37811, #37812
Debra Hoffarth, Self, submitted testimony in opposition #37813

11:40 a.m. Vice-Chairman Karls closed the hearing.

Wyatt Armstrong, Committee Clerk

House Concurrent Resolution 3021

Testimony of Tony J. Weiler

House Judiciary Committee

February 17, 2025

Chairman Klemin, and members of the House Judiciary Committee. My name is Tony Weiler, and I am the Executive Director of the State Bar Association of North Dakota (SBAND). We are the professional association of nearly 3,000 licensed North Dakota Lawyers. I work for a Board of 15 lawyers who meet to discuss all legislation that I put in front of them, and they voted that I appear before you today in Opposition to House Concurrent Resolution 3021, and I ask for a Do Not Pass recommendation.

The State Bar Association is a unified or mandatory bar association. That means that any licensed lawyer in North Dakota is a member of our association. We were the first mandatory bar association in the county, formed in 1921. There are currently 31 mandatory bars across the county. Because we are a mandatory bar, we are bound by the constitution to only take a position on issues that would improve the practice of law or discipline the profession. As such, we don't take a position on many issues at all. While there arguably may be many bills that would be considered improving the practice of law, we simply don't weigh in on many matters. You see me in the committee room a lot, because I feel it is important that the Bar is represented and acting as a resource to the legislature should questions arise.

This concurrent resolution could certainly impact the improvement of the legal profession in North Dakota and therefore I rise to testify in opposition. I have some serious concerns about Section 1 of HCR3021, including removing the Supreme Court's ability to promulgate rules and regulations regarding the admission to practice law, and discipline the profession. Further, removing judicial immunity may mean that we would have no judges in North Dakota, and we oppose these suggested changes that would be placed on a future ballot.

What I'd like to do primarily is focus Section 2 of the resolution regarding the Judicial Nominating Committee (JNC).

Section 13 of article VI of the Constitution requires that a judicial nominating committee be established by law, and that the governor shall fill any vacancies in the North Dakota Supreme Court, or a district court judgeship in the state. This resolution would remove the governor's power and replace that power with a bipartisan committee.

Currently, the JNC is established under Chapter 27-25 of the North Dakota Century Code. The JNC consists of 6 "permanent" members who serve with 3 "temporary members" for a District Court opening. The 6 permanent members work to fill a vacancy on the Supreme Court. The governor, chief justice, and president of SBAND each appoint 2 permanent members one of whom is a judge, former judge, or lawyer, and one whom is not a judge, former judge, or lawyer.

These are three-year terms, and a member may serve two consecutive terms. When a judicial district has a vacancy, each appointing authority shall appoint a temporary member of that judicial district. During Governor Burgum's term, he traditionally appointed a legislator from that district to serve in the temporary member role (including Rep. Satrom). The Executive Director of SBAND serves as the nonvoting secretary of the JNC.

When a district court or supreme court judge or justice resigns, or retires, Section 27-05-02.1 is triggered. That law requires the supreme court to determine, "within ninety days of receiving the notice of the vacancy from the governor" whether that judgeship should be retained in that district or transferred to another. Following that determination, the court may order the position filled in accordance with chapter 27-25, it may transfer the judgeship to another district, or it may abolish the judgeship.

Once the court makes its determination to retain and fill the judgeship, the JNC is convened by the governor and begins its work. We have sixty days to provide notice to members of the bar of the opening, do background work, hold interviews, and submit between two and seven names to the governor for appointment. Under section 27-25-04 the governor may fill the vacancy from the list submitted by the JNC, return the list and reconvene the JNC, or call a special election to fill the vacancy.

This resolution would put the question of taking the power to appoint away from the governor, and giving that power to a bipartisan committee established by law on the ballot (or the governor could call a special election). In my eleven and a half years serving as the secretary of the JNC, I've been involved in 35 nominating committee appointments. I have found the committee to be bipartisan and not focused on politics in the least.

The judicial nominating process in North Dakota works very well, and I don't see a need to make this change, take the power to appoint a judge or justice away from the governor and place it with a bipartisan committee. Therefore, I again encourage a DO NOT PASS. I'd be happy to answer any questions.

Tony Weiler

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701-220-5846

STATE OF NORTH DAKOTA COUNTY OF WILLIAMS		IN DISTRICT COURT NORTHWEST DISTRICT
Marvin Nelson, Michael Coachman, and Paul Sorum Petitioners, vs. Persons Unknown, Kenneth & Mary Schmidt, Wesley & Barbara J. Lindvig Respondents.	)	Civil No. 53-2023-CV-00400 BRIEF IN SUPPORT OF EVIDENTIARY HEARING

BRIEF IN SUPPORT EVIDENTIARY HEARING

PETITIONERS HAVE AN EQUITABLE INTEREST

[¶1.] Petitioners have an equitable interest in their subject minerals in the instant case.

[¶2.] Because of their equitable interest, Petitioners are entitled to quiet title their subject minerals pursuant to N.D.C.C. § 32-17-1.

[¶3.] Before the Act (N.D.C.C. § 61-33.1) became law on April 21, 2017, the State of North Dakota owned Petitioners' subject minerals in the Affected Area (the Affected Area as defined in N.D.C.C § 61-33.1-02) and held them in trust for the benefit of the people of this state including Petitioners:

> "However, North Dakota could not totally abdicate its interest to private parties because it held that interest, by virtue of its sovereignty, in trust for the public. *Illinois Central Railroad v. Illinois,* 146 U.S. 387, 13 S.Ct. 110, 36 L.Ed.

> 1018 (1892); ***670** *United Plainsmen Ass'n v. North Dakota State Water Conservation Commission,* 247 N.W.2d 457 (N.D.1976). Reep v. State, 2013 ND 253, *669, 841 N.W.2d 664.
> …
> We conclude that the State owned the mineral interests under the shore zone of navigable waters upon statehood in 1889 under the equal footing doctrine and that the enduring language of the anti-gift clause now found in N.D. Const. art. X, § 18, precludes construing the language now codified in N.D.C.C. § 47–01–15 as a gift of the State's mineral interests under the shore zone to the upland owners. Reep v. State, 2013 ND 253, ¶1, 841 N.W.2d 664.

[¶4.] Because in *Reep* the subject property was on the shore of Lake Sakakawea, it is a fact that the North Dakota Supreme Court decided in 2013 the state owned the bed of the lake and the minerals in entire bed of Lake Sakakawea until the Act was passed and the state's title to the minerals in the bed of Lake Sakakawea were abrogated in the Affected Area.

[¶5.] Petitioners were members of the "public" beneficiaries described in *Reep*. Petitioners have an equitable interest in their subject minerals because the U.S. Supreme Court defines the beneficiaries of a trust to have an equitable interest in the trust corpus:

> "The trust comprises the separate interests of the beneficiary, who has an "equitable interest" in the trust property, and the trustee, who has a "legal interest" in that property. *Greenough v. Tax Assessors of Newport*, 331 U.S. 486, 494, 67 S.Ct. 1400, 91 L.Ed. 1621 (1947)."
> North Carolina Dep't of Revenue v. The Kimberley Rice Kaestner 1992 Family Tr., 588 U.S. 262, *265, (2019).

[¶6.] Because Petitioners are members of the "public" beneficiaries, Petitioners have an equitable interest in their subject properties and are entitled to quiet title their subject minerals.

[¶7.] Petitioners do not claim to "create" their equitable interest – it existed before their quiet title action as a function of the State of North Dakota holding their subject properties in trust for the benefit of the public including Petitioners. (see *Reep Supra*). Nelson v. Lindvig, 2024 ND 208, ¶21, 14 N.W.3d 66, reh'g denied (Dec. 4, 2024).

[¶8.] Because Petitioners hold an equitable interest in their subject minerals, they are entitled to quiet title under *Dalrymple*:

> "Nor can we assent to the proposition that legal title in plaintiff is essential in this state to a recovery in an action when brought for the sole purpose of quieting title." Franklin S. Dalrymple, et al vs. The Security Loan & Trust Company. Supreme Court of North Dakota 9 N.D. 306; 83 N.W. 245; 1900 N.D. (R1:1:2 FN1)[1]

[¶9.] "The Court in *Dalrymple* concluded that "if this action were brought for the sole purpose of removing clouds and quieting title, plaintiffs would be in a position to institute the action if they could show either a legal title or an equitable interest in the premises in question."" Nelson v. Lindvig, 2024 ND 208, ¶21, 14 N.W.3d 66, reh'g denied (Dec. 4, 2024).

[¶10.] In the instant case, Petitioners have shown they hold an equitable title to their subject submerged mineral properties. Because of this legal reason, Petitioners are entitled to quiet title their subject minerals under equitable interest rule in *Dalrymple*.

[¶11.] Blacks Law Dictionary defines a frivolous claim as "A claim that has no legal basis or merit, esp. one brought for an unreasonable purpose such as harassment. N.D.R.Civ.P. 11(b)." Black's Law Dictionary (12th ed. 2024), frivolous claim.

[1] In *Dalrymple*, the petitioner for quiet title was also a beneficiary of trust property.

[¶12.] Merriam Websters dictionary defines frivolous as having no sound basis in fact or law. (See https://www.merriam-webster.com/dictionary/frivolous).

[¶13.] Because Petitioners have an equitable interest in their subject minerals, they are entitled to file the instant quiet title action pursuant to N.D.C.C. § 32-17-1 because their action is **NOT FRIVOLOUS**.

NO EVIDENCE EXISTS TO SUPPORT RESPONDENTS' STANDING

[¶14.] On January 22, 2025, Petitioners served Subpoenas for Respondents Barbara J. Lindvig (R187), Kenneth Schmidt (R188), Mary Schmidt (R189) and Wesley Lindvig (190) (collectively Respondents).

[¶15.] These subpoenas specifically stated:

> Provide a list of legal descriptions for submerged mineral properties located under Lake Sakakawea for which you hold title. Provide documents which show the origin, nature, and extent of your claim to these same submerged properties including general deeds, warranty deeds, and all other deeds and related documentation proving your ownership and title to mineral properties submerged under Lake Sakakawea. If you do not claim to hold title to mineral properties submerged under Lake Sakakawea, please admit this fact in your response.

[¶16.] The Subpoena required that Respondents provide this information to Petitioners by February 5, 2025 by 5:oo PM. Respondents have failed to provide this information and are potentially in contempt of court for failing to comply with Petitioners' subpoena.

[¶17.] In the record, the only evidence provided by Respondents is a list of legal descriptions (all on dry land) in an affidavit by their attorney Taylor Olson. (R140).

[¶18.] Taylor Olsons affidavit is not evidence nor is it testimony:

> **(a)** A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness unless:
>
> (1) The testimony relates to an uncontested issue;
>
> North Dakota Rules of Professional Conduct Rule 3.7;
> Sargent Cnty. Bank v. Wentworth, 500 N.W.2d 862, *780, (N.D. 1993).

[¶19.] Certainly, the fact that Respondents do not own Petitioners' subject submerge oil and gas properties is contested by Petitioners. Because of this reason, Taylor Olson's affidavit is not admissible.

[¶20.] Respondents must provide evidence, such a deed, which documents their ownership of a portion of Petitioners' oil and gas properties which are all submerged under Lake Sakakawea, but Respondents refuse to do so -- they cannot produce such evidence.

[¶21.] The U.S. Supreme Court has stated that courts cannot make factual determination when the facts have not been developed (emphasis added): "… courts cannot make factual determinations which may be decisive of vital rights where the crucial facts have not been developed. Cf. *Kennedy v. Silas Mason Co*., 334 U.S. 249, 68 S.Ct. 1031.

Price v. Johnston, 334 U.S. 266, *291, (1948).

[¶22.] This Court erred in not requiring Respondents to comply with the requirements of N.D.C.C. § 32-17-08 with regard to Respondents partial answers (R20) (R26) because there is no evidence in the record that Respondents own a "portion" of Petitioners subject properties.

[¶23.] This is a violation to Petitioners' right to due process and equal protection under

the fifth and fourteenth amendments of the U.S. Constitution.

[¶24.] Respondents must present this Court with a full and complete record of the material relevant facts in support of their Answer (emphasis added):

> We wish to impress upon the North Dakota legal profession the dire necessity of presenting a full and complete record of the material relevant facts to this Court in support of the issues presented. Even if the facts of the case are not disputed they nevertheless need to be properly presented in order for this Court to reach a fair and just determination of the matters before it. In brief, it is the responsibility of the parties to make available the material and relevant facts pertaining to the issues. This Court is required to base its decision upon "such papers, affidavits, and portions of the record as the parties present." Rule 9, NDRAppP, and Rule 46, NDRCrimP.
> State v. Engel, 284 N.W.2d 303, *305, (N.D. 1979).

[¶25.] Respondents cannot be awarded attorney fees because they lack evidence of facts that prove their standing:

> Obviously, however, a plaintiff cannot achieve standing to litigate a substantive issue by bringing suit for the cost of bringing suit. The litigation must give the plaintiff some other benefit besides reimbursement of costs that are a byproduct of the litigation itself. An "interest in attorney's fees is ... insufficient to create an Article III case or controversy where none exists on the merits of the underlying claim." *Lewis v. Continental Bank Corp., supra,* at 480, 110 S.Ct., at 1255 (citing *Diamond v. Charles,* 476 U.S. 54, 70–71, 106 S.Ct. 1697, 1707–1708, 90 L.Ed.2d 48 (1986)).
> Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, *107, (1998).

[¶26.] The court is in error because it is obligated to determine standing and has not done so - there is no finding of fact that Respondents have an interest in Petitioners subject properties and are entitled to litigate the merits of the instant case because Respondents

have provided no evidence that they own a "portion" (R20) (R26) of Petitioners' submerged oil and gas properties.

[¶27.] This Court "has an obligation to assure itself of litigants' standing under Article III before proceeding to the merits of a case. U.S. Const. art. 3, § 2, cl. 1." Department of Educ. v. Brown, 143 S. Ct. 2343 (2023) at *2351. DaimlerChrysler Corp. v. Cuno, 547 U.S. 332 *338 (2006).

[¶28.] Because this Court has failed to make a finding of standing, Petitioners constitutional rights under U.S. Const. art. 3, § 2, cl. 1 has been violated.

[¶29.] "A district court must make the specific factual findings upon which it bases legal conclusions. *Nelson*, 2017 ND 152, ¶ 5, 896 N.W.2d 923. The district court errs as a matter of law when its findings are insufficient or do not support the legal conclusions." Interest of G.L.D., 2019 ND 304, 936 N.W.2d 539 ¶5.

[¶30.] Because there is no finding of facts, no evidence that Respondents hold title to Pettioners' submerged minerals, and evidence does exist that Respondents do not hold title to submerged minerals, this court must find that Respondents lack standing and this Court must vacate its Order for Petitioners pay attorney fees.

[¶31.] Because no party answered Petitioners' published summons (R61) pursuant to N.D.C.C. § 32-17-08, this Court has also failed to follow N.D.R.Civ.P. Rule 8(6)(b).

[¶32.] Because no party answered Petitioners' published summons (R61) pursuant to N.D.C.C. § 32-17-08, this Court has also failed to follow the requirements of N.D.C.C. § 32-17-10.

[¶33.] Because no party answered Petitioners' published summons (R61) pursuant to N.D.C.C. § 32-17-08, this Court has violated N.D.R.Civ.P. Rule 52(a)(3), N.D.R.Civ.P. Rule 55 (a), N.D.C.C. § 61-33.1-05, v, and N.D.C.C. § 28-26-01(02).

[¶34.] Because no party answered Petitioners' published summons (R61) pursuant to N.D.C.C. § 32-17-08, this Court has violated N.D.R.Civ.P. Rule 55 – Petitioners are entitled to a default judgment.

THE STATE OF NORTH DAKOTA OWNED THE MINERALS IN THE BED OF LAKE SAKAKAWEA BEFORE THE ACT BECAME LAW

[¶35.] All of Petitioners' subject minerals are submerged under Lake Sakakawea. The boundary line of these oil and gas properties are the Ordinary High Water Mark of Lake Sakakawea as it exists today.

[¶36.] It is not possible for Respondents to own mineral properties under the current Ordinary High-Water Mark of Lake Sakakawea because these oil and gas properties were owned by the State of North Dakota before the Act be came law on April 21, 2017.

[¶37.] Respondents do not refute this fact and have now waived their right to do so.

[¶38.] There is no evidence provided by any party, nor by the Court, that the State of North Dakota did not own the bed of Lake Sakakawea and the minerals in the bed of Lake Sakakawea before the Act became law.

[¶39.] In addition to *Reep* (*Supra*), there is extensive case law and statutes that clearly

provide well settled law and a solid evidentiary foundation for the fact that the State of North Dakota did own the bed of Lake Sakakawea and the minerals in the bed of Lake Sakakawea up to the OHWM.

[¶40.] The OHWM is the boundary of the States' ownership of the bed of Lake Sakakawea even after the Garrison dam was inundated:

> In *State v. Loy*, supra, it was held that title to the lands under navigable waters vested in the State of North Dakota as an incident of sovereignty …
> Hogue v. Bourgois, 71 N.W.2d 47, *52, (N.D. 1955).

> The State, however, argues that the doctrine of reliction is inapplicable to Devils Lake because the fluctuations of Devils Lake have not been permanent. This court, however, has recognized the applicability of the doctrines of accretion and reliction in situations involving something less than "permanent" change. *See, e.g., Oberly v. Carpenter, supra,* ("shifting" water lines); *Jennings v. Shipp, supra* ("undulating" Missouri River causes accretion and reliction); *Hogue v. Bourgois, supra,* (state's title is "coextensive with the bed of the stream as it may exist from time to time.").
> Matter of Ownership of Bed of Devils Lake, 423 N.W.2d 141, *144, (N.D. 1988).

> Although § 47-06-05, N.D.C.C., refers only to rivers and streams, this court has applied it to lakes as well. In *Roberts v. Taylor,* 47 N.D. 146, 181 N.W. 622, 625 (1921), this court observed that "a lake is differentiated from a water course only in that it is simply an enlarged water course wherein the waters ... are quiescent."
> Matter of Ownership of Bed of Devils Lake, 423 N.W.2d 141,FN 3, (N.D. 1988).

> Given the development of the Field Code in North Dakota, this conclusion follows logically. The Territorial Legislative Assembly recognized that our state would receive title to the beds of navigable waters at statehood. Accordingly, by 1877, it had enacted a code that would secure title of the state to such lands and modify common law so that the state's title would follow the movement of the bed of the river. This accords with the underlying public policy, since the purpose of a state

holding title to a navigable riverbed is to foster the public's right of navigation, traditionally the most important feature of the public trust doctrine. Moreover, it seems to us that other important aspects of the state's public trust interest, such as bathing, swimming, recreation and fishing, as well as irrigation, industrial and other water supplies, are most closely associated with where the water is in the new riverbed, not the old.
J.P. Furlong Enterprises, Inc. v. Sun Expl. & Prod. Co., 423 N.W.2d 130, *140, (N.D. 1988).

"[T]he law governing riparian rights has no regard for artificial boundary lines." *Oberly v. Carpenter,* 67 N.D. 495, 274 N.W. 509, 513 (1936). "Where a water line is the boundary of a given lot, that line, no matter how it shifts, remains the boundary." *Jefferis v. East Omaha Land Co.,* 134 U.S. 178, 196, 10 S.Ct. 518, 523, 33 L.Ed. 872 (1890); *Oberly,* 274 N.W. at 513.
101 Ranch v. United States, 905 F.2d 180, *185, (8th Cir. 1990).

[¶41.] No matter how the OWHM shifts, it remains the boundary of the State's sovereign lands:

The state owns the beds of all navigable waters within the state. *E.g., J.P. Furlong Enterprises, Inc. v. Sun Exploration and Production Co.,* 423 N.W.2d 130, 132 (N.D.1988). As established in *Mills I,* the state has rights in the property up to the ordinary high watermark. The ordinary high watermark is ambulatory, and is not determined as of a fixed date. *See In re Ownership of the Bed of Devils Lake,* 423 N.W.2d 141, 143–44 (N.D.1988). Thus, the state's ownership of land along the Missouri River is determined by "the bed of the stream as it may exist from time to time." *Hogue v. Bourgois,* 71 N.W.2d 47, 52 (N.D.1955); *see also Devils Lake,* 423 N.W.2d at 144; *Jennings v. Shipp,* 115 N.W.2d 12, 13 (N.D.1962). "Where a water line is the boundary line of a given lot, that line, no matter how it shifts, remains the boundary." *Oberly v. Carpenter,* 67 N.D. 495, 274 N.W. 509, Syll. ¶ 5 (1937), *quoted in Devils Lake,* 423 N.W.2d at 144.

State ex rel. Sprynczynatyk v. Mills, 1999 ND 75, 592 N.W.2d 591 ¶5.

[¶42.] Regarding impact of dams on OHWM, the U.S. Supreme Court has recognized

that the construction and operation of dams can alter the OHWM. For instance, in *U.S. v. Kansas City Life Ins. Co*., the construction of a dam on the Mississippi River raised the water level to a new permanent stage, which was recognized as the new OHWM (United States v. Kansas City Life Ins. Co., 339 U.S. 799, *805, (1950)). This case illustrates that the OHWM can be redefined by the effects of a dam and the extent of the state's ownership of the new bed is up to the new OHWM. This Court must adhere to the U.S. Supreme Court decision.

[¶43.] The fact that that the state owned the entire Bed of Lake Sakakawea before the Act became law is state in North Dakota's Sovereign Land's Act N.D.C.C. § 61-33 61-33-01. Which states:

> "Ordinary high water mark" means that line below which the presence and action of the water upon the land is continuous enough so as to prevent the growth of terrestrial vegetation, destroy its value for agricultural purposes by preventing the growth of what may be termed an ordinary agricultural crop, including hay, or restrict its growth to predominantly aquatic species.

[¶44.] Before the Act became law, the State owned the beds of all navigable water including Lake Sakakawea up to the current OHWM pursuant to N.D.C.C. § 61-33-03.

[¶45.] The North Dakota Land Department leased minerals in the Affected Area before the Act became law and Respondents made no objection to the leasing of these minerals. This is evidence that Respondents do not own a "portion" of Petitioners' subject minerals and they have waived their right to defend these submerged minerals.

[¶46.] Petitioners ask this court to take mandatory Judicial Notice of the fact that the State of North Dakota owned the bed of Lake Sakakawea and the minerals in the bed of

Lake Sakakawea up to the current Ordinary High Water Mark before the Act was passed on April 21, 2017.

CONCLUSION

[¶47.] It is a fact that Petitioners have an equitable interest in their subject oil and gas properties.

[¶48.] Because Petitioners have an equitable interest in their subject submerged oil and gas properties, this case is not frivolous.

[¶49.] The cases cited in this brief are binding on this case.

[¶50.] There is extensive evidence that the state did own Petitioners' submerged oil and gas properties before the Act became law.

[¶51.] Because of this legal reason, there is **no possibility** that Respondents own a portion of Petitioners' subject properties.

[¶52.] Petitioners' Constitutional rights to due process and equal protection under the U.S. Constitution have been violated repeatedly in the instant case.

[¶53.] Because of these legal and factual reasons, N.D.C.C. § 28-26-01 does not apply and this Court's order for attorney fees does violence to the law and must be vacated.

DEPRIVATION OF RIGHTS

[¶54.] By repeatedly ignoring Petitioners cited facts and authorities and repeatedly ignoring the rules of procedure and the statutes listed above, this court has established a pattern of depriving Petitioners of their constitutional rights to due process and equal protection under the fifth and fourteenth amendments of the U.S. Constitution. 18 U.S.C.A. § 242.

[¶55.] Petitioner Michael Coachman is a member of a protected class pursuant to 42 U.S.C.A. § 1981.

[¶56.] Petitioner Michael Coachman is entitled "to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens ..." 42 U.S.C.A. § 1981 Equal rights under the law.

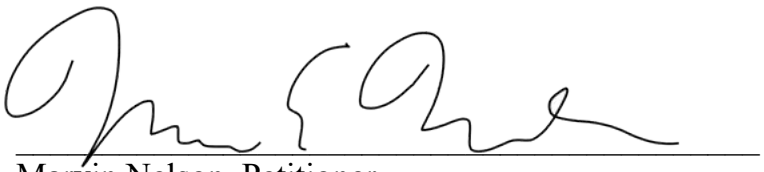
[¶57.] Petitioner Michael Coachman has been repeatedly denied his rights to equal protection under the North Dakota Rules of Civil Procedure and under the North Dakota Century Code by this Court.

[¶58.] The pattern of deprivation of rights in the instant case is proof by a "preponderance of the evidence a prima facie case of discrimination" pursuant to a modified version of the federal McDonnell Douglas formula. Spratt v. MDU Res. Grp., Inc., 2011 ND 94, 797 N.W.2d 328 ¶ 10.

[¶59.] Petitioner Coachman is a victim in the instant case of racial discrimination.

[¶60.] Petitioners Marvin Nelson and Paul Sorum, by association, are also victims of the Court's pattern of deprivation of rights.

Dated this 16th day of February, 2025,



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February 16, 2025

Paul Sorum
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RE: HCR 3021 Relating to judicial branch and supreme court.

House Judiciary Committee Public Hearing
February 17, 2025 9:00 AM - 12:00 PM
327B Room - ND State Capitol

Dear Judiciary Committee Chairman:

Please support HCR 3021. Today, when a district judge or an attorney violates the law or violates our constitutional rights, litigants have no recourse. There is no recourse because the North Dakota Supreme court is in a significant conflict of interest – it regulates and licenses the very attorneys who argue cases in front of them.

The result leaves citizens with no remedy at law when a district judge or an attorney violates the rules of procedure or violates the law because the North Dakota Supreme Court often ignores or goes along with these violations of the rules and the law.

Another affect of the North Dakota Supreme Court's authority over licensed attorneys is when government (state or local) launches a legal assault on a citizen defendant. Such a defendant usually has difficulty hiring an attorney because most North Dakota attorneys will not take a case to defend against the government for fear they will lose their license to practice. This is a sad but true fact.

I have attached a brief in case number Civil No. 53-2023-CV-00400. This case is on remand from the North Dakota Supreme Court. This brief explains the violations of our rights at the hands of the District Judge and the opposing attorney who will not comply with the requirements of the law. The North Dakota Supreme Court ignored historical facts on appeal (they denied that the State of North Dakota owned the bed of all of Lake Sakakawea before N.D.C.C. § 61.33.1 was passed!) The North Dakota Supreme Court also ignored the multiple violations of the rules of procedure, violations of statutes, the many violations of our constitutional rights to due process and equal protection. This system leaves us with no recourse to restore our constitutional rights.

Please vote yes to recommend this much need resolution to fix our judicial system and restore justice to North Dakota.

Thank you,

/s/ Paul J. Sorum

Written Testimony in Opposition to HCR 3021

House Judiciary Committee

Date of Hearing: February 17, 2025

Debra L. Hoffarth, 1320 11th Street SW, Minot, ND 58701

This written testimony is presented in opposition to HCR 3021, which would remove all civil or criminal judicial immunity for members of the judiciary; render any judgment in violation of due process, state or federal law, or the Constitution of North Dakota or the Constitution of the United States void; and require each judicial vacancy in the supreme court or district court to be filled through appointment by a bipartisan committee.

While accountability in government is essential, the proposed resolution would severely undermine the independence and effectiveness of our judicial system, ultimately harming the fair administration of justice.

The legislative, executive, and judicial branches are coequal branches of government. The judicial branch is non-partisan. Judges make decisions based upon the facts and the law. Their fealty is to the law, ensuring justice is administered fairly and without political influence.

JUDICIAL IMMUNITY

The doctrine of judicial immunity exists to protect judges from undue influence, undue pressure, and politically motivated lawsuits, discouraging them from making difficult but necessary rulings. Judges are not immune from liability for illegal acts or acts outside their judicial capacity. Judges are also subject to rules of ethics, complaints to the Judicial Conduct Commission, appeals, and elections. Without immunity, judges would be subject to public or political pressure for specific outcomes, rather than legal principles. Judges should enjoy the same immunity as other state employees, including legislators, under North Dakota Century Code § 32-12.2-02(3)(d). The proposed resolution will erode the public trust in the judicial system as people will question the impartiality of the court

DECLARATION OF VOID JUDGMENTS

The language in the proposed resolution relating to "void" judgments is ambiguous and could cause confusion in the judicial system. Whether a judgment is void is a determination to be made by the Court, including the appeals process.

JUDICIAL NOMINATING COMMITTEE

The Judicial Nominating Committee is nonpartisan, and its role and obligations are outlined in North Dakota Century Code 27-25. The proposed resolution to change judicial appointments from the Judicial Nominating Committee to a "bipartisan committee established by law" is vague. It does not state with particularity how such a committee would be chosen. This proposed legislation

also takes authority from the Executive Branch and places it with the Legislature. Partisan politics has no place in the judiciary. The North Dakota judiciary system is designed to be impartial. The Judicial Nominating Committee is selected by the Governor, the Chief Justice, and the President of the State Bar Association. The committee's role is to hire the most qualified judicial candidate, considering legal knowledge and ability, judicial temperament, experience, and moral character. Use of a bipartisan committee could cause delays in appointment of judicial vacancies, lack of public oversight, and put politics over judicial qualifications. The current process of the Judicial Nominating Committee has led to the successful appointment of qualified and ethical judges throughout the North Dakota judicial system.

Please oppose HCR 3021.

Debra L. Hoffarth

My testimony for why HCR 3021 is before you is as follows:

In 2015 in a case of Obergefell versus Hodges, Supreme Court Justice Kennedy made a ruling accusing Christians of animus. Animus is having hatred or hostility for believing marriage is defined as the union of one man and one woman.

The purpose of the Supreme Court is to determine constitutionality of a law, not to create a law, nor demand a law, nor reinterpret the constitution in light of culture or political pressures.

We might ask how did the five majority justices make that ruling, where an over 4000 year old foundational Judeo-Christian value was able to be treated like that?

They abused the 14th amendment to grant a privilege to redefine the institution of marriage.

The 14th amendment was also where they very maliciously created a fake " right to privacy" in Roe V wade. Which that was an effort trump the unborn child's right to be recognized as a person, so essentially, they could murder children in the womb.

We know this has been an egregious ruling, and we know that in ND law, if a child in the womb is killed along with the mother, that that constitutes a double murder, or if a child in the womb is killed by anyone else even if the mother survived, we know they would be charged for murder, but because of a Supreme Court case from 52 years ago, that life was reduced to being a type of property, a property that has had no legal protection as long as the mother choose to murder the child herself or by an abortionist.

Fortunately, Roe V wade has been overturned, and States think this battle belongs to them, but murder of the innocent is getting the scrutiny it deserves. Justice is being demanded and trying to prevail. The topic is not over.

Then we have the Supreme Court lemon test, which was a Supreme Court ruling in Lemon versus Kurtzman. Where the 1st amendment was used to remove Christian doctrine and action in public square, in the name of a violation of the Establishment Clause. However this Terrible Supreme Court ruling was also just recently overturned and the Supreme Court has given the test new guidelines that decide Constitutionality based on history and tradition as the new plumbline of scrutiny.

Then we have actions that have recently occurred specifically in North Dakota, where a justice overturned our law for a partial ban on abortion. We are awaiting a final Supreme Court decision. But why I bring that up, is because it will be interesting what occurs, and whether we will render that law constitutional or unconstitutional, because either way, it

still will allow for murder, even if it's reduced down to only the mother being allowed to be the murder. The question still needs to be asked, is any of this legitimate ruling, since our federal Constitution protects life? That is why this resolution is needed.

Another reason is because not too long ago I sat in a North Dakota Supreme Court case where all matters of facts seemed to favor the plaintiffs, but it appeared because of who was being sued, that politics may have played a larger role in the Supreme Court ruling against the plaintiffs. That ruling appears to depict that true justice was never going to play a part as much as politics was going to. This too is wrong. And there is testimony in support on the record that explains that case and ruling more deeply and the violations of justice and attorneys.

For these reasons I find it important to scrutinize the ND Supreme Court. It is time we review the actions done by our judicial system! We need to recognize if there is an abuse of power, as there seems to be an intent to ignore, reinterpret, or politicize our constitution of the United States, as well as the constitution of North Dakota, and interpret things however the wind is blowing on a particular matter and one particular justices choices versus the standard of the Constitution.

Without scrutiny by We the People, the Supreme Court will be left on a trajectory that is a great danger to the future of sound justice for North Dakota law.

Justices are supposed to be adhering to a strict constructionism view and original intent in determining Constitutionality, but those tests seem to be overlooked. If they are allowed to be overlooked, for whatever reason, whether political favoritism, or shadow penumbras, where they claim revisionist ideas and new rights enable them to create law, then original intent and strict constructionism will be disregarded then we no longer have our state Constitution checked against the light of our Federal Constitution, And it should be, because that should be the Plumb line to determine how things should be understood and ruled upon in regard to constitutionality. Anything else continues to be a violation.

If you wonder how good justices should operate, Lets go back to the same sex marriage topic and ask how they would go about deciding constitutionality on that matter. They should look to the historical intent of our federal constitution! Then they can logically conclude a state constitutional matter on an issues like same sex marriage would Logically conclude that our founders could not have ever intended our document to afford same sex marriage as a right, because sodomy was already decided in that culture to be a crime in all 13 colonies. It's that easy. Constitutionalism isn't cultural relativism, its concrete, sound and timeless.

How would a matter like abortion be approached? Well Likewise you would look at historical facts and those facts would point out that our founders would have never considered murdering babies as Constitutional. Why? Because they never would have believed that murder was OK for one class of individuals, since it was wrong for every other class of individuals. They were Neither so woke and weak as to wonder if that inside the mother's womb was a human or not! They knew life was valuable, and they knew in order to populate a society in their new world that every child would be a blessing and need equal protection and a right to life, so as to further the future of their new world and society. Again, it should be that simple.

So to my point, if the Supreme Court deters from proper scrutiny of strict constructionism of the constitution, or scrutiny to original intent, bad things get ruled as constitutional when they shouldn't be, and we need to recognize that those things need to be challenged, held accountable and where needed rendered null and void!

Maybe you wonder what Supreme Court judges would do if the constitution wasn't clear on a matter, well they should look to The Federalist Papers to ascertain intent of law and constitutionalism, versus turn to legal scholars with a contemporary relativistic or revisionist theory mindset, and who think our constitution is ever changing and fluid. Because it is NOT.

You may wonder as I do if Justices have decided they are above the law! It appears that in some instances they might have begun to think so, and in so doing have made our constitutional interpretations, protections, privileges, rights, and liberties to mean whatever the majority of justices feel like they should be and that has done egregious things and caused many violations to our freedoms and they should be accountable and not immune from civil liability because there is no statue or Constitutional authority for judicial civil immunity, it violates the equal protection clause of the Federal Constitution.

Our nation and ND are a constitutional republic, and to protect our rights we need to resist the new age of fluidity approach to the constitution. It cannot mean what the judges decide it means, we must return to the standard of scrutiny.

If we don't then we allow justices to become false witnesses, who will knowingly lye about what the Constitution says, and that violates their oath of office, just like we violate our oath of office by intentionally passing unconstitutional laws. When we or they do that it brings destruction to justice in the courts, and to due process of law, and that all violates our rights!

Violations of judicial integrity need to be held accountable! We cannot allow good to be evil and evil to be good!

So, I ask you to stand with me on this resolution to bring light and accountability to the judicial system. I ask that we have courage to do this and that we not just turn a blind eye to our judicial system and its flaws!

I just want to leave you with something to remember, and that's that the constitution has been removed from public education for decades. Why? Because that document contains power, wisdom, and authority! It is time we take up that sword again and remove the violations and violators from power if need be! The judicial system is about to collapse unless we act swiftly.

The Supreme Court may be supreme over other courts, but it is not supreme over We the People, or over other branches of government, and it's time we recognize this again!

The Supreme Court's corrupt rulings we've been told are "the law of the land," but NO, No it they are not!

The sixth article of the constitution says the constitution is the Supreme Law of the land and the judicial branch is bound by that supremacy!

The executive branch and legislative branch are Co-equals with the Supreme Court, but above all is a Supreme Judge, the Judge of all judges, God. Who is the hand of Providence spoken of in forming this nation and referred to in our Declaration of Independence and pledge of allegiance.

Supreme Court justices and judges shall not be allowed to ignore facts, ignore evidence, and continue to violate our rights and distort constitutional law or God's lawNorth Dakota Supreme Court regulates the industry of attorneys, there lies a conflict of interest in having the Supreme Court as the disciplinarian of attorneys. And that is why that power is being removed. Because at this rate if a judge or an attorney violate the law, Constitution, or rules of Civil Procedure, the citizens have no recourse! Why? Because the courts are in charge of disciplining attorneys and since they are regulated by them, nothing gets done to punish any corruption!

This resolution is here because the citizens need their right to constitutional access to the courts. Right now there is a Fraternity of judges and attorneys which leaves the citizens without true justice, without judicial remedy, and without fair representation, and thus no right upheld for due process of law. The epic conflict of interest violates our citizens and needs to change.

Lastly there is a problem that our citizens can't get lawyers to defend them against the state, a city, political subdivision, or state agencies, because those lawyers are in fear of losing their license if they defend a citizen against the government. There again the citizens

no longer have their constitutional right to due process and cannot access the courts with justice, it is denied because of weaponization.

If our citizen's rights to due process of law and justice is violated then this problem demands correction, and this resolution seeks to address the injustices.

Mr. chairman and members of the judicial committee that is the sum of my testimony for my resolution I will stand for questions.

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HCR 3021
2/17/2025

A concurrent resolution to amend and reenact sections 3 and 13 of article VI of the Constitution of North Dakota, relating to the judicial branch and supreme court.

4:08 p.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Henderson, Hoverson, Johnston, S. Olson, Satrom, Tveit, VanWinkle, Wolff, Schneider

Members Absent: Representative McLeod

Discussion Topics:

- Appointment of judges
- Judiciary Standards Committee

4:09 p.m. Representative Karls moved a Do Not Pass.

4:09 p.m. Representative Schneider seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	Y
Representative Nels Christianson	N
Representative Donna Henderson	N
Representative Jeff Hoverson	N
Representative Daniel Johnston	N
Representative Carrie McLeod	A
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	N
Representative Lori VanWinkle	N
Representative Christina Wolff	Y

4:22 p.m. Motion passed 7-6-1

4:22 p.m. Chairman Klemin will carry the bill.

4:22 p.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk

REPORT OF STANDING COMMITTEE
HCR 3021 (25.3045.01000)

Judiciary Committee (Rep. Klemin, Chairman) recommends **DO NOT PASS** (7 YEAS, 6 NAYS, 1 ABSENT OR EXCUSED AND NOT VOTING). HCR 3021 was placed on the Eleventh order on the calendar.