

Northwest Landowners Association Fights for Landowner Rights and Wins

NWLA has been engaged in a fight to protect the property rights of landowners in ND since S.B. 2344 was introduced. Today ND landowners prevailed.

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Landowners Association has been engaged in a fight to protect the property rights of private landowners in North Dakota since Senate Bill 2344 was introduced during the 2019 legislative session. Through lobbying, public outreach and education, and direct litigation, Northwest Landowners Association took on this fight to protect the rights of North Dakota's citizens to their pore space.

From day one we said "this is a bald-faced taking, and it's not right," said Troy Coons, chair of NWLA.

Northwest Landowners Association filed a Complaint in state district court asking the court to declare Senate Bill 2344 an unconstitutional taking of private property. On January 21, 2021, the Northeast Judicial District Court issued its decision in favor of the Landowners, agreeing that it is an unconstitutional taking, and striking the law down in full.

The Court explained in its opinion: "There is no choice in the matter. This is an unconstitutional taking of an inherent, inalienable property right...." The Court ruled that the law is also unconstitutional under the North Dakota Constitution because the taking is "for the improper purpose of economic development, by giving all value of those property rights to a private party, for a non-public purpose." The Court concluded that "The provisions of SB 2344, both individually and taken together, prohibit landowners from obtaining any compensation for any oil and gas operators' use of their pore space estate, whether reasonable or unreasonable,



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whether at large or small volumes, whether at a large financial detriment or small financial detriment. These provisions act as an absolute bar to not just money damages, but to all other meaningful remedies, including trespass, nuisance or other torts. The three provisions at issue here, enacted or amended within SB 2344, render the pore space worthless in every instance of its application, and it is unconstitutional on its face.” The judge also made it clear that the law also violated the North Dakota constitution because “the taking of pore space from surface owners is clearly and unambiguously for the constitutionally impermissible purpose of economic development to benefit private parties, i.e. the oil and gas industry.” The statute “acts to give North Dakota landowners’ value from pore space to the oil and gas industry, for free, under the guise of the North Dakota Industrial Commission. The citizens of North Dakota are protected from such action by both the state and federal constitutions.”

Northwest Landowners Association has never been engaged in litigation, but as board member Patty Jensen said with respect to taking on the responsibility of challenging the constitutionality of Senate Bill 2344, “It’s just the right thing to do.” Troy Coons, the chairman of the Association, said “it is always our goal to work cooperatively with the government and industry to address issues related to use of the land for energy development. Unfortunately, on this issue, the state and the industry chose to ignore our concerns and forced us to raise them in a court of law.

Today the North Dakota Supreme Court agreed with the landowners, stating: “Senate Bill 2344 constitutes a per se taking. It allows third party oil and gas operators to physically invade a landowner’s property by injecting substances into the landowner’s pore space....Allowing such usage takes away one of the most treasured property rights because it takes away landowners’ right to exclude oil and gas operators from trespassing and disposing waste into their pore space. Surface owners have a right to compensation for the use of their pore space for disposal and storage operations.”

NWLA testified before the legislature on SB 2344, and told the ND Legislative Assembly: “We as landowners are not opposed to the storage of gas or to CO2 injection. Almost all of the saltwater disposals in this state are operated through voluntary contracts with landowners. As an organization we have always tried to work with industry and regulators to address our concerns ... We remain committed to working cooperatively with industry, and our invitation to sit down and address the concerns raised by this bill is an open offer. But this bill remains offensive to what we stand for. See S.B. 2344 Legislative History, p. 138, Testimony of Troy Coons for NWLA.

Derrick Braaten said, “We are very happy to know that the system of checks and balances in our government works, and that landowners can rely on the protections of the United States and North Dakota constitutions when other efforts fail to protect private property rights. In the end, it is the landowners of North Dakota who won today.”

Supreme Court No. 20210148

Bottineau County Case No. 2019-CV-00085

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