

**NORTH DAKOTA LAW REVIEW**  
**CONSTITUTIONAL  
LAW SYMPOSIUM**

**MONDAY, AUGUST 17, 2020**

**NORTH DAKOTA HERITAGE CENTER & STATE MUSEUM  
BISMARCK, NORTH DAKOTA**

**UND** SCHOOL OF LAW  
UNIVERSITY OF NORTH DAKOTA



# 2020 NORTH DAKOTA LAW REVIEW CONSTITUTIONAL LAW SYMPOSIUM SCHEDULE

## 9:00 AM: Welcome Remarks

*Michael McGinniss, Dean, University of North Dakota School of Law*

## 9:15 – 10:00 AM: The Secret Sources of the North Dakota Constitution

*Nicholas Samuelson, Stutsman County Assistant State's Attorney*

## 10:00 – 10:45 AM: Evolution of the Initiated Measure Process by Constitutional Amendment

*Senator David Hogue, District 38*

## 10:45 – 11:00 AM: Break

## 11:00 – 11:30 AM: Legalized Marijuana in North Dakota

*Assistant Attorney General Tara Brandner*

## 11:30 – 12:00 PM: Sorum v. State

*Terrance Moore, Hellmuth & Johnson, PLLC*

## 12:00 PM – 1:00 PM: Lunch

## 1:00 PM- 2:00 PM: Originalism and the North Dakota Constitution

*Justice Jerod Tufte, North Dakota Supreme Court*

**2:00 – 3:00 PM:**  
**51 Imperfect Solutions: States and the Making of American  
Constitutional Law**

*Judge Jeffrey Sutton, United States Court of Appeals for the Sixth Circuit*

**3:00 – 3:15 PM:**  
**Break**

**3:15 – 4:15 PM:**  
**North Dakota Legislative Assembly v. Burgu**

*Deputy Solicitor General Jim Nicolai*

**4:15 – 5:00 PM:**  
**Birchfield v. North Dakota**

*Assistant Federal Public Defender Rachel Steenholdt*

**5:00 - 6:00 PM:**  
**Ethics Commission Panel**  
*Levi Andrist, GA Group, PC*  
*Senator Erin Oban, District 35*  
*Representative Shannon Roers Jones, District 46*  
*Moderated by Leslie Bakken Oliver, General Counsel, Office of the  
Governor*

**6:00 PM: Closing Remarks**

# SYMPOSIUM PRESENTERS

## **NICHOLAS SAMUELSON, Attorney Stutsman County Assistant State's Attorney**

Nick Samuelson is a graduate of North Dakota State University (2016) and the University of North Dakota School of Law (2019). He clerked for Justice Jerod E. Tufte of the North Dakota Supreme Court from 2019-20, and he is currently an assistant state's attorney in Stutsman County, North Dakota.

## **DAVID HOGUE, Senator District 38**

David Hogue, a native of Bismarck, ND, has worked in the private practice of law since 1988. He served as a JAG officer in the North Dakota Army National Guard for 23 years. He was elected to the North Dakota Senate in 2008 and continues his service for the people of District 38 in the state senate. Mr. Hogue is the prime sponsor of Measure # 2 on this fall's election ballot, a proposal to change the method of amending the North Dakota Constitution. related assets.

## **TARA BRANDNER, Assistant Attorney General**

Tara B. Brandner is an Assistant Attorney General in the State and Local Government Division of the North Dakota Office of the Attorney General. She has been with the office since June of 2016. She represents the Aeronautics Commission, Board of Accountancy, Board of Dental Examiners, Board of Examiners for Nursing Home Administrators, Commission on Legal Counsel for Indigents, Council on the Arts, Department of Commerce, Department of Health, Department of Labor, Human Resources Management Services, Information Technology Department, and State Library. Prior to working in the Attorney General's Office, Tara was employed with the Minnesota Department of Human Services in St. Paul, Minnesota. Tara received her J.D. from the University of St. Thomas School of Law and M.B.A. from the University of St. Thomas Opus College of Business.

## **TERRANCE MOORE, Attorney Hellmuth & Johnson, PLLC**

Terry Moore represented North Dakota Taxpayers before the North Dakota Supreme Court, challenging the constitutionality of N.D.C.C. 61-33.1, which gave away some \$1.5 billion of State-owned Missouri River mineral rights and leases plus \$187 million from the SIIF fund. Terry will discuss the dynamics of this case, including the Anti-Gift clause, Flowing Waters clause and Equal Protection clause, as well as



the fundamental differences between facial and as-applied challenges. Terry Moore is a principal with the Hellmuth and Johnson Law Firm in Minneapolis, where he advises business leaders on matters ranging from strategic thinking to contracts to litigation. Terry has been practicing constitutional law for thirty years. Terry has represented individuals, businesses and classes in State and Federal Courts, including the Eighth Circuit and State Supreme Courts, on many constitutional issues, including First Amendment, Due Process, Illegal Taxation and other issues. Terry has received many awards, including Attorney of the Year and the Minnesota State Bar Association's highest award, the president's award.

### **JEROD TUFTE, Justice, North Dakota Supreme Court**

Justice Jerod Tuftte was elected to a ten-year term on the North Dakota Supreme Court in 2016. Before serving on the Supreme Court, he was a district court judge in the Southeast Judicial District with chambers in Valley City. From 2011-14, he served as Legal Counsel to Governor Jack Dalrymple. During his time at the Governor's office, he was also a senior policy advisor to the Governor with a portfolio including tribal-state relations, courts, corrections, workforce safety, emergency management, and energy issues. A native North Dakotan, Justice Tuftte grew up in Grand Forks and West Fargo. His undergraduate education was in Computer Engineering and Economics at Case Western Reserve University in Cleveland, Ohio. After working as a software engineer for Motorola on its cellular telephone network equipment, he earned a law degree from Arizona State University, graduating first in his class. Following law school, Jerod served as law clerk to Judge Roger Wollman, U.S. Court of Appeals for the Eighth Circuit. He and his wife Mylynn have three children.

### **JEFFREY S. SUTTON, Judge United States Court of Appeals for the Sixth Circuit**

Jeffrey S. Sutton has served on the United States Court of Appeals for the Sixth Circuit since 2003. Before that, he was the State Solicitor of Ohio and a partner at Jones Day in Columbus. He has argued twelve cases in the United States Supreme Court and numerous cases in the state supreme courts and federal courts of appeal. Judge Sutton served as a law clerk to Justices Lewis F. Powell, Jr. (Ret.) and Antonin Scalia, as well as Judge Thomas Meskill of the United States Court of Appeals for the Second Circuit. Judge Sutton received his B.A.

from Williams College and his J.D. from The Ohio State University College of Law. Judge Sutton served as Chair of the Federal Judicial Conference Committee on Rules of Practice and Procedure from 2012 to 2016. He was appointed to that committee by Chief Justice Roberts. He has also served on the Advisory Committee on Appellate Rules. He was appointed to that committee by Chief Justice Rehnquist in 2005, and Chief Justice Roberts appointed him to be Chair of that committee in 2009. Since 1993, Judge Sutton has been an adjunct professor at The Ohio State University College of Law, where he teaches seminars on State Constitutional Law, the United States Supreme Court, and Appellate Advocacy. He also teaches a class on State Constitutional Law at Harvard Law School. Among other publications, he is the author of *51 Imperfect Solutions: States and the Making of American Constitutional Law*, and the co-author of a casebook, *State Constitutional Law: The Modern Experience*, as well as *The Law of Judicial Precedent*. In 2006, Judge Sutton was elected to the American Law Institute (ALI) and in 2017 he was elected to its Council.

### **JIM NICOLAI, Deputy Solicitor General**

Jim Nicolai joined the North Dakota Attorney General's office in February 2017 to work as the Deputy Solicitor General in the Civil Litigation Division. Jim represents the State and its agencies in federal and state court, with an emphasis on appellate litigation before the North Dakota Supreme Court and the Eighth Circuit Court of Appeals. He was involved in the briefing for *North Dakota Legislative Assembly v. Burgum*. Before joining the AG's office, Jim worked from 2000 to 2016 as a judicial clerk for Judge Kermit Bye in the Eighth Circuit Court of Appeals, as well as a short time in 2016 for Judge Myron Bright in the Eighth Circuit Court of Appeals. Jim also enjoyed a two-year clerkship from 1990-1992 with Judge Rodney Webb, United States District Court for the District of North Dakota, after graduating from law school at the University of North Dakota in May 1990. Jim was in private practice from 1992 through 2000 with the McLarnan Hannaher Law Firm in Fargo-Moorhead, working primarily in the areas of personal injury, insurance defense, and municipal prosecution.

### **RACHEL STEENHOLDT, Assistant Federal Public Defender**

Rachel Steenholdt is an Assistant Federal Public Defender with an emphasis on appeals and retroactive projects. Prior to the FPD's office, I worked at human rights organizations in Minneapolis and India, a legal aid clinic in Philadelphia, and an international criminal tribunal in the Netherlands. I travel, I read, I fix up old houses, I am an Airbnb superhost, and I dote on my big geriatric bear of a dog, Walter. My presentation will center on *Birchfield v. North Dakota*: a 2016 Supreme

Court case exploring the 4th Amendment implications of mandatory breath tests and blood tests in drunk driving investigations.

### **LEVI ANDRIST, Attorney GA Group, PC**

Levi Andrist engages in an active government relations practice, working with state and local decision makers to create solutions on his clients' behalf. He has a broad array of legislative and executive branch lobbying experience. Levi attended the University of North Dakota School of Law where he graduated with distinction, was elected to the Order of the Coif, and served as editor in chief of the North Dakota Law Review. He then served as law clerk to Chief Justice Gerald W. VandeWalle of the ND Supreme Court. Before law school, Levi graduated summa cum laude from Concordia College with a bachelor of arts degree in music. He also interned on Capitol Hill in Washington, D.C. He and his wife, Bethany, spent summers performing as Burning Hills Singers in the Medora Musical, and now enjoys serving on the Theodore Roosevelt Medora Foundation's board of directors. He is an active member of the State Bar Association of North Dakota and has received its outstanding chair award for his leadership as chair of the Pro Bono committee. Levi is also an Eagle Scout. Levi and Bethany are proud parents of three children. They are active members of Lord of Life Lutheran Church and enjoy the arts, food, fitness, being outside, gardening, and family. Levi is a native of Crosby, North Dakota.

### **ERIN OBAN, Senator District 35**

Erin Oban lives in Bismarck, North Dakota. She has served as a senator for District 35 since 2015. Oban got her BS in Mathematics from the University of Mary and was a member of the Governing Institute Women in Government Class of 2015. She serves as the Director of Community Engagement for Central Regional Education Association (CREA). Oban also serves on the board of directors for YouthWorks, the F5 Project, and Designer Genes. Senator Oban was named a 2020 Aspen SOAR Fellow. She was also a 2015 BILLD Fellow. Senator Oban and her husband, Chad Oban, have one son together.

### **SHANNON ROERS JONES, Representative District 46**

Shannon Roers Jones is a North Dakota native dedicated to serving the people of District 46. Raised near Horace, N.D., Shannon's parents instilled in her the values important to North Dakotans: hard work; service; and sacrifice. As a mother, attorney and independent voice, Shannon is committed to bringing these values to Bismarck. Shannon received her undergraduate degree from the College of St. Benedict, where she studied business guided by the Benedictine values of respect for all people, stewardship and service. After graduation from the

College of St. Benedict, Shannon attended the University of St. Thomas, earning a Master's in Business Administration. After working in the real estate industry for five years, Shannon returned to North Dakota and graduated from the University of North Dakota School of Law. Known for her independent leadership and commitment to public service, Shannon has been actively involved in service organizations including the United Way, Jeremiah Program, and Churches United for the Homeless as well as being on the board of directors for the NDSU Research and Technology Park. Additionally, Shannon is involved with the Cass County United Republican Committee and is a member of the District 46 Executive Committee. Shannon also serves on the Board of Directors for the F5 Project. Shannon resides in south Fargo with her husband Ross and their daughters Olivia, Kendall and Kate.

**LESLIE BAKKEN OLIVER General Counsel, Office of the Governor**

Leslie Bakken Oliver is a graduate of the University of North Dakota School of Law. Following law school, Leslie served as a judicial law clerk for the Honorable Herbert Meschke of the North Dakota Supreme Court. After her clerkship, Leslie joined the Vogel Law Firm. Currently, Leslie serves as general counsel in the Office of Governor Doug Burgum.

