

REFLECTION ON THE SIXTY-THIRD LEGISLATIVE SESSION:  
THE CONTROVERSIES AND OPPORTUNITIES OF  
PROSPERITY

SENATOR MAC SCHNEIDER\*

I.	THE DEBATE OVER REVENUE AND PRIORITIES.....	359
A.	ADDRESSING THE CHALLENGES OF THE OIL BOOM .....	360
B.	TAXES: THE DEBATE OF WHAT TO CUT .....	361
C.	ADDRESSING THE NEEDS OF THE STATE’S YOUTH.....	362
	1. <i>K-12 Funding</i> .....	364
	2. <i>The Struggle Over High Education: Chancellor or</i> <i>Commission</i> .....	364
II.	THE FIGHT OVER RIGHTS.....	365
A.	REPRODUCTIVE RIGHTS .....	365
B.	SEXUAL ORIENTATION AND DISCRIMINATION .....	366
C.	WORKERS’ COMPENSATION.....	366
D.	VOTES ON VOTING .....	367
III.	PUTTING OFF THE FUTURE UNTIL TOMORROW .....	368
IV.	LEVERAGING LUCK THROUGH HARD WORK AND SOUND POLICY.....	369

I. THE DEBATE OVER REVENUE AND PRIORITIES

More money. More days in session. More controversy. More opportunity. North Dakota’s Sixty-Third Legislative Assembly dealt with more of just about everything as priorities were debated by the members of our citizen legislature during the record-breaking eighty days of the 2013

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\* Mac Schneider is an attorney with Schneider, Schneider & Schneider in the firm’s Grand Forks, North Dakota office where he maintains a practice in the areas of civil litigation, Social Security disability, personal injury, and employment law. Senator Schneider also serves as Senate Minority Leader in the North Dakota Legislature, and represents District 42 in Grand Forks, North Dakota.

legislative session. For a state newly flush with cash that has been described by a prominent national newspaper as “[t]he Luckiest Place on Earth,”<sup>1</sup> legislating during a time of welcome abundance and rapid demographic changes gave rise to its own set of challenges. These additional challenges are sure to resurface when the legislature convenes in 2015, but lawmakers are also faced with limitless opportunities to make our present influx of natural resource wealth a lasting harvest for future generations of North Dakotans.

#### A. ADDRESSING THE CHALLENGES OF THE OIL BOOM

Few challenges proved more intractable than addressing the impacts of oil development in western North Dakota. Although oil production tax revenue saw a 400% increase from the 2011 biennium,<sup>2</sup> North Dakota came into the 2013 session lagging significantly behind other oil producing states in terms of funding directly provided to oil-impacted communities.<sup>3</sup> Indeed, these communities—which in a literal sense have paid the price for North Dakota’s prosperity—received only 11.2% of total state oil and gas revenue during the 2012-2013 fiscal year.<sup>4</sup>

A bipartisan bill, H.B. 1318, attempted to address this disparity by distributing approximately 80% of the oil production tax to political subdivisions in western North Dakota during the 2013 biennium.<sup>5</sup> This initial attempt to direct increased funding to western North Dakota was, unfortunately, defeated in the House.<sup>6</sup> However, another bipartisan effort, H.B. 1358, emerged from the House seeking to reallocate hundreds of millions of dollars from the state’s share of oil production revenue to oil-impacted counties, cities, and school districts.<sup>7</sup> While the Senate initially voted<sup>8</sup> to dramatically cut funding contained within H.B. 1358 to address

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1. Alec Soth, *The Luckiest Place on Earth*, N.Y. TIMES MAG., Jan. 31, 2013, [http://www.nytimes.com/interactive/2013/02/03/magazine/north-dakota-photos-audio.html?ref=magazine&\\_r=0](http://www.nytimes.com/interactive/2013/02/03/magazine/north-dakota-photos-audio.html?ref=magazine&_r=0).

2. N.D. OFFICE OF MANAGEMENT AND BUDGET, NORTH DAKOTA REV-E-NEWS 3 (2013) available at <http://www.nd.gov/fiscal/docs/revENews/201306news.pdf>.

3. See HEADWATERS ECONOMICS, UNCONVENTIONAL OIL AND NORTH DAKOTA COMMUNITIES: STATE FISCAL POLICY UNPREPARED FOR IMPACTS OF ENERGY DEVELOPMENT 5 (Apr. 2012) available at <http://headwaterseconomics.org/wphw/wp-content/uploads/NDUnconventionalOilCommunities.pdf>.

4. *Id.*

5. H.B. 1318, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013).

6. See H. JOURNAL, 63rd Leg. Assemb., Reg. Sess. 823, 831 (N.D. 2013), <http://www.legis.nd.gov/assembly/63-2013/journals/hr-dailyjnl-38.pdf>.

7. H.B. 1358 FISCAL NOTE, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013), <http://www.legis.nd.gov/assembly/63-2013/fiscal-notes/13-0134-10000-fn.pdf?20140319204119>.

8. S. JOURNAL, 63<sup>rd</sup> Leg. Assemb., Reg. Sess. 1119, 1136 (N.D. 2013), <http://www.legis.nd.gov/assembly/63-2013/journals/sr-dailyjnl-61.pdf>.

oil impacts in western North Dakota, the bulk of these funds were restored. After much debate, the bill was sent to the Governor's desk for his signature.<sup>9</sup>

Despite the changes to the oil production formula instituted by H.B. 1358, the bill has not been received as a total victory by oil impacted communities. A sunset clause included in the bill has been widely viewed as a mistake that has the potential to impede local governments' ability to issue bonds. Several prominent leaders throughout western North Dakota have supported calls for a special session to deal with the ongoing challenges facing oil-impacted communities in North Dakota.<sup>10</sup> When the Sixty-Fourth Legislative Assembly convenes in 2015, addressing the impacts associated with the swift development of our natural resources will continue to be a critical topic.

#### B. TAXES: THE DEBATE OF WHAT TO CUT

Interestingly, the debate about addressing impacts in western North Dakota occurred simultaneously with the debate about the proper level of taxation on oil extraction in the state. S.B. 2336, a bill sponsored by the chairman of the Senate Finance and Tax Committee and co-sponsored by the House and Senate Majority Leaders, sought to reduce the state's 6.5% oil extraction tax by approximately 30%.<sup>11</sup> This bill, estimated to reduce oil extraction revenue by \$1.3 billion in the first five years alone, passed the Senate sharply on party lines before being defeated in the House.<sup>12</sup> Another proposal to reduce the extraction tax, H.B. 1234, also was defeated late in the session<sup>13</sup>, resulting in a truly unique situation whereby both chambers voted to reduce the oil extraction tax without ultimately passing an extraction tax cut into law.

The tax debate was not isolated to oil. To the contrary, it extended to nearly all other revenue streams, including property taxes, sales taxes, and corporate and personal income taxes. With regard to property taxes, the

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9. See H.B. 1358, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013).

10. See Mike Nowatzki, *Democrats Seek Special Session to Address Western ND Needs*, BAKKEN.COM, Feb. 24, 2014, <http://bakken.com/news/id/81427/democrats-seek-special-session-address-western-nd-needs/>.

11. S.B. 2336, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013) (as engrossed by the Senate, Feb. 21, 2013), <http://www.legis.nd.gov/assembly/63-2013/documents/13-0417-05000.pdf?20140319213455>.

12. S. JOURNAL, 63rd Leg. Assemb., Reg. Sess., 603, 608-11 (N.D. 2013), <http://www.legis.nd.gov/assembly/63-2013/journals/sr-dailyjnl-36.pdf>; H. JOURNAL, 63rd Leg. Assemb., Reg. Sess., 1001, 1005 (N.D. 2013), <http://www.legis.nd.gov/assembly/63-2013/journals/hr-dailyjnl-50.pdf>.

13. H. JOURNAL, 63rd Leg. Assemb., Reg. Sess., 2079, 2140 (N.D. 2013), <http://www.legis.nd.gov/assembly/63-2013/journals/hr-dailyjnl-78.pdf>.

legislature continued its approach of “buying down” local property taxes that fund education with the passage of H.B. 1013, increasing the state’s share of funding for K-12 education.<sup>14</sup> Alternatives to this method of property tax relief were also proposed and debated, with the House defeating a bill that would have exempted from taxation the first \$75,000 from the value of a primary residence<sup>15</sup> and the Senate voting down a proposal that would provided a state tax credit directly to North Dakota homeowners to offset the cost of local property taxes.<sup>16</sup> Indeed, the debate over property tax relief extended literally into the eleventh hour. On the last day of the eighty day session, the House majority voted to reconsider and defeat H.B. 1319, which contained the state’s K-12 education funding formula and hundreds of millions of dollars in property tax relief.<sup>17</sup> Causing “a sense of chaos” to “fill[] the capitol[,]” as one legislative observer remarked, the funds for education and tax cuts were hurriedly rolled into another bill and passed in the early morning hours just prior to adjournment.<sup>18</sup>

Unlike this property tax relief, which hinges largely on the state continuing current funding levels for K-12 education, members of the legislative majority passed \$250 million in permanent reductions to the corporate and personal income tax,<sup>19</sup> defeating a competing proposal by the Dem-NPL minority that instead would have provided an equal amount of deeper property tax cuts.<sup>20</sup> Bills to provide a property tax credit to renters<sup>21</sup> and eliminate the sales tax on clothing<sup>22</sup> were also rejected by the legislative majority.

### C. ADDRESSING THE NEEDS OF THE STATE’S YOUTH

In a session that focused much on the development of our valuable natural resources, many believed the legislature could do more to invest in North Dakota's most valuable natural resource: our children. “It’s beyond

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14. See H.B. 1013, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013).

15. See H.B. 1044, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013).

16. See S.B. 2290, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013).

17. H. JOURNAL, 63rd Leg. Assemb., Reg. Sess. 2245 (N.D. 2013), <http://www.legis.nd.gov/assembly/63-2013/journals/hr-dailyjnl-80.pdf>.

18. Jerry Burns, *K-12 Property Tax Relief Go Down to the Wire*, WILLISTON HERALD, May 4, 2013, available at [http://www.willistonherald.com/news/k--property-tax-relief-go-down-to-the-wire/article\\_a5b93e16-b512-11e2-8a9a-0019bb2963f4.html](http://www.willistonherald.com/news/k--property-tax-relief-go-down-to-the-wire/article_a5b93e16-b512-11e2-8a9a-0019bb2963f4.html).

19. S.B. 2156, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013).

20. S.B. 2156, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013) (amendment moved by Sen. Dotzenrod, Feb. 26, 2013).

21. See S.B. 2290, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013); H.B. 1221, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013).

22. S.B. 2277, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013).

critical, it's beyond crisis” is the way one social services worker described access to child care in the booming oil patch.<sup>23</sup> In fact, studies conducted prior to the 2013 legislative session indicated that \$28 million in funding would be needed in the next half decade to meet the childcare demand in the city of Williston alone.<sup>24</sup> Far from being isolated to western North Dakota, however, national reports have since confirmed that the average cost of child care in North Dakota actually exceeds the price of college tuition at many universities in the state.<sup>25</sup>

The legislature’s response to this “beyond crisis” was contained largely in H.B. 1422,<sup>26</sup> which appropriated \$1 million for child care provider incentive grants and \$300,000 for early childhood services specialists. The legislation also directed that the eligibility requirement for federal child care assistance be raised from 50% of the state median income to 85%.<sup>27</sup> By any objective measure, however, these actions are paltry compared to the needs that have been identified empirically by childcare experts, and experienced personally by families throughout North Dakota.

Access to pre-kindergarten education was also debated during the 2013 legislative session. Even as states like Alabama, Oklahoma, and Georgia<sup>28</sup> moved towards universal access to pre-kindergarten in budget environments that are far less favorable than North Dakota’s, legislators rejected efforts to provide state funding for this priority.<sup>29</sup> However, a bipartisan coalition of legislators was able to successfully shepherd a bill authorizing the implementation of pre-kindergarten programs by local school districts in North Dakota, laying the groundwork for expansion of the program with state support in future legislative sessions.<sup>30</sup>

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23. Lauren Donovan, *Child Care Crisis Reveals Hole in Social Fabric of the Oil Patch*, BISMARCK TRIB., June 6, 2013, available at [http://bismarcktribune.com/news/state-and-regional/child-care-crisis-reveals-hole-in-social-fabric-of-the/article\\_fe4f2cd6-b719-11e1-9e7d-0019bb2963f4.html](http://bismarcktribune.com/news/state-and-regional/child-care-crisis-reveals-hole-in-social-fabric-of-the/article_fe4f2cd6-b719-11e1-9e7d-0019bb2963f4.html).

24. See TEZIKIAH GABRIEL, EXPANSION OF QUALITY CHILD CARE IN WILLISTON NORTH DAKOTA: A SOLUTION BASED PLAN 23 (2012), <http://www.firstchildrensfinance.org/wp-content/uploads/2012/10/Williston-Plan.pdf>.

25. Susanna Kim, *Where Child Care is More Expensive than College: States Ranked*, ABC NEWS, Nov. 5, 2013, <http://abcnews.go.com/Business/oregon-tops-list-affordable-states-child-care/story?id=20787563>.

26. H.B. 1422, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013) (enacted), <http://www.legis.nd.gov/assembly/63-2013/documents/13-0773-06000.pdf>.

27. *Id.*

28. Motoko Rich, *In Alabama, a Model for Obama's Push to Expand Preschool*, N.Y. TIMES, Feb. 14, 2013, available at [http://www.nytimes.com/2013/02/15/education/details-emerge-on-obamas-call-to-extend-preschool.html?\\_r=0](http://www.nytimes.com/2013/02/15/education/details-emerge-on-obamas-call-to-extend-preschool.html?_r=0).

29. S.B. 2229, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013) (House Education Committee amendment) <http://www.legis.nd.gov/assembly/63-2013/documents/13-0670-02004m.pdf>.

30. H.B. 1429, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013) (enacted).

### 1. *K-12 Funding*

A new funding formula and record state dollars for education were passed as part of H.B. 1013, raising the state's share of K-12 funding to more than 80% and setting per pupil spending at \$9,092.<sup>31</sup> This increase in funding for primary and secondary education garnered widespread bipartisan support, but debates regarding the proper use of this funding nevertheless roiled. For instance, a proposal to raise minimum starting teacher salary in North Dakota to \$32,000 was defeated along partisan lines, in favor of setting the state minimum at \$27,500.<sup>32</sup> The debate over how to best spend increased state funding for education is certain to continue as North Dakota looks to improve indicators like reading proficiency (34%) and college readiness (23%).<sup>33</sup>

### 2. *The Struggle Over High Education: Chancellor or Commission*

Regarding higher education, the tumult surrounding the tenure of Chancellor Hamid Shirvani led to legislative backlash. Both chambers approved a constitutional resolution, H.C.R. 3047, set to be voted on by North Dakotans during the November general election in 2014. If approved by voters, the resolution would eliminate the State Board of Higher Education, replace it with a three member "commission of higher education," and repeal the entirety of Section 6 of article VIII of the North Dakota Constitution.<sup>34</sup> This section of the North Dakota Constitution presently provides a measure of independence with regard to the administration of higher education in North Dakota because it gives the state board "full authority over the institutions under its control" when it comes to functions like "the courses offered at the several institutions."<sup>35</sup> With at least one key lawmaker publicly stating that the legislature would have the authority to dictate course selection at our institutions of higher education if North Dakotans vote in favor of the constitutional change, the

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31. Tim Anderson, *North Dakota bucks school finance trends, and reshapes how its K-12 schools are funded*, STATELINE MIDWEST, Nov. 2013, at 3, <http://www.csgmidwest.org/policyresearch/documents/1113slmw.pdf>.

32. H.B. 1319, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013) (Senator Heckaman proposed amendment), <http://www.legis.nd.gov/assembly/63-2013/documents/13-0278-04034m.pdf>.

33. ALLIANCE FOR EXCELLENT EDUCATION, *State Data: North Dakota*, available at <http://all4ed.org/state-data/north-dakota/>.

34. See H.C.R. 3047, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013).

35. See N.D. CONST. art. VII, § 6(6)(b).

ballot measure represents a Pandora's Box that is now exclusively in the hands of our state's citizens.<sup>36</sup>

## II. THE FIGHT OVER RIGHTS

The legislature's foray into the rights afforded its citizens often proved contentious and difficult. North Dakota legislators debated rights in the context of health, employment, and housing. Consensus was elusive, and what is certain is that the debate over these intractable issues did not end with the session's eightieth day.

### A. REPRODUCTIVE RIGHTS

North Dakota drew national attention for the actions of the Sixty-Third Legislative Assembly on the charged topic of reproductive rights.<sup>37</sup> The emotional nature of the issue aside, bills passed by the legislature and signed into law by Governor Jack Dalrymple have unsurprisingly faced legal challenges. This includes H.B. 1456.

Of the multiple bills that placed restrictions on abortions performed in North Dakota, the passage of H.B. 1456,<sup>38</sup> which—for all practical purposes—banned abortions after approximately six weeks into pregnancy, arguably received the most criticism and legal scrutiny. In fact, less than a year after the legislature adjourned, H.B. 1456 was struck down in United States District Court, with the court describing the law as “troubling” and “an invitation to an expensive court battle over a law . . . that is a blatant violation of the constitutional guarantees afforded to all women.”<sup>39</sup> While North Dakota's twenty week abortion ban, S.B. 2368, has not been challenged in either state or federal court, its legality has been brought into question as a result of recent judicial activity. In 2013, the Ninth Circuit Court of Appeals invalidated a similar law enacted in Arizona,<sup>40</sup> and the United States Supreme Court has recently declined to hear an appeal of the

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36. H.C.R. 3047, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013) (statement of Sen. Hogue at 4:47), <http://www.legis.nd.gov/assembly/63-2013/bill-video/bv3047.html>.

37. Erik Eckholm, *Bill in North Dakota Bans Abortion After Heartbeat is Found*, N.Y. TIMES, Mar. 15, 2013, <http://www.nytimes.com/2013/03/16/us/north-dakota-approves-bill-to-ban-abortions-after-heartbeat-is-found.html>; Louise Radnofsky, *States Harden Views Over Laws Governing Abortion*, WALL ST. J., Mar. 31, 2013, <http://online.wsj.com/news/articles/SB1000142412788732488360457839487311337780>.

38. See H.B. 1456, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013).

39. MKB Management Corp. v. Birch Burdick, No. 1:13-CV-071, 2014 WL 1653201, at \*15 (D.N.D. April 16, 2014) (order granting plaintiffs' motion for summary judgment).

40. See Isaacson, et al. v. Home, et al., 716 F.3d 1213 (9th Cir. 2013).

Ninth Circuit's decision.<sup>41</sup> To understate matters, the issue continues to defy easy answers in spite of the legislature's actions.

### B. SEXUAL ORIENTATION AND DISCRIMINATION

The legislature also considered the creation of new rights under North Dakota law that would have prohibited discrimination based on sexual orientation in housing and employment through amendments to the North Dakota Human Rights Act.<sup>42</sup> Although S.B. 2252 was passionately debated by both parties, the bill ultimately met its defeat in the Senate by only a few votes.<sup>43</sup>

In response to the failed legislative efforts in codifying a ban on discrimination based on sexual orientation or gender identity, supporters focused their efforts at the local level. In October 2013, the Grand Forks City Council approved a ban on discrimination based on an individual's sexual orientation or gender identity in the housing context, becoming the first city in North Dakota to extend this protection to its residents.<sup>44</sup> In addition, the city of Fargo passed a similar resolution in an effort to encourage acceptance and inclusion of the LGBT community.<sup>45</sup> The issue of whether to provide these protections at the state level is sure to be considered in future sessions.

### C. WORKERS' COMPENSATION

Regarding the rights of injured workers,<sup>46</sup> the legislature narrowly passed legislation which codified pain as a "symptom" and not a "substantial worsening of a preexisting condition" for purposes of payment of workers' compensation benefits in spite of opposition to the bill by the North Dakota Medical Association.<sup>47</sup> Separate legislation passed into law during the 2013 session also limited the evidentiary weight given to the opinions of injured workers' treating doctors.<sup>48</sup> By any fair standard, these bills made it more difficult for injured workers to receive workers'

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41. *Isaacson*, 716 F.3d 1213, *cert. denied*, 134 S. Ct. 905 (2014).

42. S.B. 2252, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013).

43. See S. JOURNAL, 63rd Leg. Assemb., Reg. Sess. 383 (N.D. 2013).

44. Brandi Jewett, *Rental Discrimination Ban Approved in Grand Forks*, GRAND FORKS HERALD, Oct. 7, 2013, available at <http://www.grandforksherald.com/content/rental-discrimination-ban-approved-grand-forks-0>.

45. *Fargo City Commission Passes Anti-LGBT Discrimination Resolution*, KVRR NEWSROOM, Oct. 28, 2013, [http://www.kvrr.com/index.php?option=com\\_content&task=view&id=23114&Itemid=57](http://www.kvrr.com/index.php?option=com_content&task=view&id=23114&Itemid=57).

46. The author has represented injured workers in claims for benefits before North Dakota Workforce Safety and Insurance in his private law practice.

47. See H.B. 1163, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013).

48. S.B. 2298, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013).

compensation benefits in a state that has the incongruous and ignominious distinction of having one of the highest rates of workplace deaths<sup>49</sup> and the lowest workers' compensation premiums in the country.<sup>50</sup> In the future, lawmakers must seriously consider efforts to strike the appropriate balance between fair and efficient compensation for work-related injuries and reasonable employer premiums to ensure the health and well-being of both our workers and our economy.

#### D. VOTES ON VOTING

Legislators also cast their votes in a manner that will impact how North Dakotans will cast theirs, as numerous bills dealing with elections were passed into law during the 2013 session. With passage of H.B. 1332, North Dakota voters will now be required to show picture identification before casting their ballot.<sup>51</sup> Uniquely, the law does not allow for the casting of provisional ballots if a voter lacks the appropriate form of identification with their present address. According to the National Conference of State Legislatures,<sup>52</sup> North Dakota is the only state in the country that requires voter identification while prohibiting the use of provisional ballots.

When it comes to identification of those attempting to influence North Dakota's elections, the legislature laudably took steps to provide strict disclosure of "independent expenditures" that have exploded in the wake of the *Citizens United*<sup>53</sup> and *American Tradition Partnership*<sup>54</sup> cases, which struck down federal and state bans on political spending by corporations and unions. In response, the Sixty-Third Legislative Assembly passed S.B. 2299, which requires the disclosure of contributions to any person (a term which includes corporations and unions) that makes an independent expenditure, as well as disclosure of persons making independent expenditures.<sup>55</sup> While the statutory change has not yet been tested during the crucible of a general election, the law stands to make North Dakota a

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49. AFL-CIO, DEATH ON THE JOB 183 (23d ed. 2014), <http://www.aflcio.org/content/download/126621/3464561/DOTJ2014.pdf>.

50. IQ: Study: N.D. has Lowest Workers' Comp Rates, INDUSTRY IQ, Jan. 31, 2013, <http://www.propertycasualty360.com/2013/01/01/iq-study-nd-has-lowest-workers-comp-rates>.

51. See H.B. 1332, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013). See also T.J. Jerke, *Voter ID Bill Passes Senate with changes*, F. NEWS SERVICE, Apr. 4, 2013, available at [https://secure.forumcomm.com/?publisher\\_ID=1&article\\_id=395291](https://secure.forumcomm.com/?publisher_ID=1&article_id=395291).

52. *Voter Identification Requirements*, NAT'L. CONF. OF STATE LEGIS., Mar. 26, 2014, <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>.

53. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010).

54. *Am. Tradition P'ship, Inc. v. Bullock*, 132 S. Ct. 2490 (2012).

55. S.B. 2299, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013).

leader nationally when it comes to shining light on the so-called dark money that has proliferated since *Citizens United* was decided in 2010.

The legislature has also asked the citizens to rein in their own power to change the North Dakota Century Code and the state's constitution through the initiated measure process. H.C.R. 3011, which will be considered by voters in November 2014, would “prohibit the approval for circulation of any petition to initiate a constitutional amendment that would make a direct appropriation of public funds for a specific purpose or require the legislative assembly to appropriate funds for a specific purpose[.]” essentially prohibiting any initiated measure that involves money.<sup>56</sup> Will the citizens willingly give up a large measure of their power to check their elected representatives in this regard? Without making a prediction, the question appears reasonably capable of answering itself.

### III. PUTTING OFF THE FUTURE UNTIL TOMORROW

While the contentious topics discussed throughout this article largely dealt with the two-year budget window within which government is funded in North Dakota, the larger issue of what kind of North Dakota we will have two decades from now was largely left unaddressed. On the one hand, oil revenue deposited into the Legacy Fund, which was established by voters in 2010, rose to nearly \$1.8 billion in January 2014, and is expected to approach \$3 billion by June 2015.<sup>57</sup> On the other hand, the legislature failed to identify a use for the fund that would turn North Dakota's one-time harvest of natural resources into a permanent investment in our people.

Demonstrating a kind of two-mindedness about such forward thinking was the Senate's consideration of a concurrent resolution, S.C.R. 4026, which would have set aside \$450 million from the Legacy Fund to create a “legacy scholarship fund.”<sup>58</sup> Based on the successful Hathaway Scholarship Program established by Wyoming utilizing that state's considerable natural resource revenue, the resolution—if ultimately passed by voters—would have set aside \$450 million from the Legacy Fund as principal, declared this principal inviolate, and directed that the earnings on the principal “be expended by the legislative assembly only for the purpose of granting” college “scholarships to eligible residents of this state[.]”<sup>59</sup> In other words, the resolution would have turned revenue from a valuable, non-renewable resource into a permanent investment in a resource that will

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56. H.C.R. 3011, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013).

57. Ben Geman, *Funding the Future With Fracking*, NAT'L J., Feb. 24, 2014, available at <http://www.nationaljournal.com/magazine/funding-the-future-with-fracking-20140224>.

58. S.C.R. 4026, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013).

59. *Id.*

never be in short supply: our talented, well-educated young people. Excitingly, the Senate approved the resolution by a vote of 25-21 on March 14, 2013.<sup>60</sup> The next day, however, the body moved to reconsider its actions and defeated the resolution by a vote of 29-14, somewhat emblematically showing a greater concern for what happened yesterday than planning for future generations.<sup>61</sup>

#### IV. LEVERAGING LUCK THROUGH HARD WORK AND SOUND POLICY

The word “more” defined, in part, the 2013 legislative session, and it is likely to be an operative term in the future as we seek to maximize the good fortune bestowed upon our state. It is one thing to be described as the “Luckiest Place on Earth,” but in order to continue our present prosperity without losing the quality of life that makes our state so special, “more” is exactly what will be required of our policymakers. More to address the immediate challenges of the oil boom, more long term planning to ensure a strong economy after the boom subsides, and more permanent investments in educating North Dakota’s young people. To live up to our state’s unlimited potential, North Dakota’s policymakers should take to heart the words of Teddy Roosevelt: “Do what you can, with what you have, where you are.” North Dakota has been blessed with so much. With a lot of hard work, a little imagination, and a good dose of North Dakota humility, policymakers can ensure our state’s best days are in front of us.

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60. S. JOURNAL, 63rd Leg. Assemb., Reg. Sess. 737 (N.D. 2013), *available at* <http://www.legis.nd.gov/assembly/63-2013/bill-actions/ba4026.html>.

61. *Id.* at 747.