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Nebraska Supreme Court

Randy Thompson,  
Susan Luebbe, and  
Susan Dunavan,

Plaintiffs,

v.

Dave Heineman, Governor of Nebraska,  
Michael J. Linder, Director, Nebraska  
Department of Environmental Quality,  
and  
Don Stenberg, State Treasurer of Nebraska,

Defendants.

Original Action

No. \_\_\_\_\_

MAY 23 2012

CLERK  
NEBRASKA SUPREME COURT  
COURT OF APPEALS

Application for Leave to  
Commence Original Action

And

Statement of Basis Of  
Supreme Court Jurisdiction

Plaintiffs respectfully apply for leave to commence an original action in the Nebraska Supreme Court pursuant to *Neb Ct R App P* § 2-115, and under the authority of *Neb Const Art V* § 2, and *Neb Rev Stat* § 24-204, conferring discretionary original subject matter jurisdiction on this Court.

Filed with this submission is the Statement Setting forth the basis for the Court's jurisdiction and the reasons it is necessary to commence the action here. Tendered with this filing are the docket fees of \$125 as provided by *Neb Rev Stat* § 33-103 and *Neb Ct R App* § 2-101(G). In addition, a cash deposit is made with the Clerk of \$75.00 as a cost bond to satisfy the requirements of *Neb Rev Stat* § 25-1914, and this Court's Rule 2-101(G)(2), as no specific statutory exemption is perceived to exist. The total sum of \$200 is paid and deposited.

Filed separately, but simultaneously is Plaintiffs' Verified Petition setting forth the action.

**Basis of Court's Jurisdiction; Reasons Making it  
Necessary to Commence Action Here**

This Court has subject matter jurisdiction pursuant to *Neb Const Art V*, § 2 and *Neb Rev Stat* § 24-204. The case presented involves revenue of the State because *LB 1161*, the statute challenged on constitutional grounds, contains a specific provision allocating revenue of the State and providing for its expenditure for the purpose of implementing *LB 1161*. These

expenditures, if made, are from the State of Nebraska's public funds and its treasury. Accordingly, this is a case "relating to revenue." *Neb Const* Art V § 2.

*LB 1161*, Laws of Nebraska, was enacted by the Legislature in 2012. It became the law when it was signed by the Governor, with the emergency clause, on April 17, 2012. *LB 1161* purports to delegate authority for certain classes and categories of action to the Governor of Nebraska, though they involve crude pipelines and common carriers and, therefore, are within the constitutional purview of the Public Service Commission. *LB 1161* suffers from other flaws raised in the Verified Petition.

This Court has discretion to exercise its original jurisdiction.<sup>1</sup> It is urged to do so because:

6.1 The challenged statute is of great public interest. This interest extends across, and transcends, Nebraska.

6.2 The subject of routes for crude oil pipelines resulted in a Special Session of the Nebraska Legislature in November 2011, in which legislation then known as *LB 1* was enacted.<sup>2</sup> Thereafter, the regular session of the Nebraska Legislature in 2012 enacted additional legislation, including *LB 1161*, which largely eviscerated the action of the Legislature's Special Session in 2011.

6.3 Questions of Nebraska State constitutional law are enacted. At issue are matters of significant public importance and interest.<sup>3</sup> The questions presented are legal ones; trial below is not necessary and it is not anticipated that a "record" of evidence will illuminate the issues. If a record is made, Plaintiffs expect it will consist of Legislative History only. Other matters cited in this submission are noted to help the Court understand the public importance of the issues raised.

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<sup>1</sup> Plaintiffs will file a Complaint substantially identical to their Verified Petition in District Court, Lancaster County, to assure that the issues they seek a doctrinal pronouncement upon are working through the court system in case this Court exercises its discretion against immediate review of the issues.

<sup>2</sup> For the complete record of the Special Session's actions, see [http://nebraskalegislature.gov/session/bill\\_indexes.php](http://nebraskalegislature.gov/session/bill_indexes.php)


<sup>3</sup> As this submission was prepared a Google general search using "Nebraska interest TransCanada Keystone xl pipeline" disclosed 196,000 "hits" in 0.26 seconds. Public interest and political groups from across the spectrum of philosophical differences have been expressive of concerns about the issues.

6.4 A proposed crude oil pipeline across Nebraska has commanded the attention of the President of the United States,<sup>4</sup> United States Congress,<sup>5</sup> which included the pipeline as a subject in legislation that passed the House of Representatives in early 2012, the United States Department of State<sup>6</sup>, and the Secretary of State.<sup>7</sup> The pipeline that is proposed to cross Nebraska would also cross the US-Canada international border, an act requiring consideration by the State Department, and a Presidential permit.

6.5 The proposed pipeline crossing Nebraska requires a permit from the President of the United States to authorize a border crossing of the US-Canada border. Accordingly, the pipeline has commanded the attention of the President of the United States, and it has been, and continues to be, a matter of considerable public debate and substantial public attention across the United States, and particularly in Nebraska

May 23, 2012.

Randy Thompson, Susan Luebbe, and Susan  
Dunavan, Plaintiffs

By  \_\_\_\_\_

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<sup>4</sup> The official statement of President Barack Obama may be read at <http://www.whitehouse.gov/the-press-office/2012/01/18/statement-president-keystone-xl-pipeline>

<sup>5</sup> For a summary of some congressional action about the pipeline, see <http://energycommerce.house.gov/keystonexl.shtml>

<sup>6</sup> A home page for access to State Department materials about TransCanada's Keystone XL Pipeline project can be viewed at: <http://www.keystonepipeline.state.gov/clientsite/keystone.nsf?Open>  
This U S Government site provides access to myriad related materials.

<sup>7</sup> *Id.*

**Certificate of Service**


On May 23, 2012, a copy of **Plaintiffs' Application for Leave to Commence Original Action** was served by First Class U S Mail to:

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