

District Court, Holt County, Nebraska

Byron Terry “Stix” Steskal and Diana Steskal,
Allpress Brothers, LLC,
Germaine G. Berry,
Karen G. Berry,
Cheri G. Blocher and Michael J. Blocher,
L.A. Breiner and Sandra K. Breiner,
Jerry Carpenter and Charlayne Carpenter,
CHP 4 Farms, LLC,
Larry D. Cleary and Wynona D. Cleary,
Cottonwood Ridge, LLC,
Jeanne Crumly and Ronald C. Crumly,
Ken Dittrich,
Lloyd Z. Hipke and Vencille M. Hipke.
R. Wynn Hipke and Jill Hipke,
Richard Kilmurry,
Rosemary Kilmurry,
Beverly Krutz and Robert Krutz,
LJM Farm, LLC,
Carol Manganaro,
Frankie Maughan and Sandra Maughan,
Beverly Miller and Earl Miller,
Edna Miller and Glen Miller,
Milliron Ranch, LLC,
Larry D. Mudloff, J.D. Mudloff, and Lori Mudloff,
Nicholas Family Limited Partnership,
Ann A. Pongratz and Richard J. Pongratz,
Donald Rech,
Schultz Brothers Farms, Inc.,
Connie Smith and Verdon Smith,
Joshua R. Stelling,
Richard Stelling and Darlene Stelling,
Todd Stelling and Lisa Stelling,
Arthur R. Tanderup and Helen J. Tanderup,
TMAG Ranch, LLC,
Tree Corners Farm, LLC,
Dave Troester and Sharyn Troester,
Judy M. Wagner n/k/a Judy M. Wagner-

No. CI 15-6

Judge: Mark D. Kozisek

1st Amended Complaint for Declaratory Judgment
Temporary and Permanent Injunction

Notice “Constitutionality of Statutes Challenged”

**Olson,
Gregory Walmer and Joanne Walmer,
and
Susan “Suz” Straka Heyden**

Plaintiffs,

v.

**TransCanada Keystone Pipeline, LP, and
Andrew Craig,**

Defendants.

Plaintiffs allege for their 1st Complaint that:

Case Overview

1. LB1161 (*Laws of Nebraska 102nd Leg 2d Sess*) is challenged on the grounds that it, or parts of it, are unconstitutional. Declaratory judgment is sought declaring LB1161 unconstitutional and void and to prevent action by Defendants, TransCanada Keystone Pipeline, LP, (“TransCanada”) and Andrew Craig, (“Craig”) thereunder, including action to take property from Plaintiffs under color of LB1161 and a purported gubernatorial authorization or approval under it. Temporary and permanent injunctions are sought against Defendants who seeks to take or attempt to take property and property rights from the Plaintiffs under the provisions of the challenged law. Because the challenged law is unconstitutional and void, the Defendants are without authority to proceed and must be enjoined.

2. Plaintiffs are real parties in interest with standing. Plaintiffs have ownership interests in real estate Defendants intend, by their own declarations, to take from Plaintiffs by using the power of eminent domain for the purpose of constructing TransCanada’s Keystone XL pipeline (“KXL”) for the transportation of tar sands or other crude oil. Defendants claim TransCanada was granted eminent domain powers under LB 1161 and as a result of a purported authorization, permit, or approval granted to TransCanada by the Nebraska Governor pursuant to LB 1161. Plaintiffs contend this occurred in violation of provisions of the Nebraska Constitution. Plaintiffs also have standing because they are taxpayers with interests in unlawful expenditures of state funds

as required by LB1161, and because the issues raised in this Complaint and are matters of great public concern to the citizens of Nebraska, and the United States, and involve, directly, requested action of the President of the United States, the United States Department of State, and, the United States Congress.¹

3. LB1161 is unconstitutional in one or more of these ways. It:

3.1 Unlawfully delegates to the Governor, powers over a common carrier contrary to *Neb Const Art IV, § 20*.²

3.2 Unlawfully delegates to the Governor the Legislature's plenary authority and responsibility to decide what designees of the Legislature may exercise the power of eminent domain, which is an attribute of sovereignty, and thereby violates *Neb Const Art II, § 1*.³

3.3 Violates the doctrine of separation of powers by permitting action to occur without judicial review contrary to *Neb Const Art II, § 1* and *Neb Const Art V, § 1*⁴ *et seq.* and by failing to provide for notice to affected parties, thereby depriving them of due process of law, contrary to *Neb Const Art I, § 3*.

3.4 Unlawfully allocates to the Department of Environmental Quality the sum of \$2.0 million to implement the unconstitutional provisions outlined above.

¹ *Thompson v Heineman*, 289 Neb 798 (2015).

² *Neb Const Art IV, § 20* provides:

There shall be a Public Service Commission, consisting of not less than three nor more than seven members, as the Legislature shall prescribe, whose term of office shall be six years, and whose compensation shall be fixed by the Legislature. Commissioners shall be elected by districts of substantially equal population as the Legislature shall provide. The powers and duties of such commission shall include the regulation of rates, service and general control of common carriers as the Legislature may provide by law. But, in the absence of specific legislation, the commission shall exercise the powers and perform the duties enumerated in this provision

³ *Neb Const Art II, § 1* provides:

(1) The powers of the government of this state are divided into three distinct departments, the legislative, executive, and judicial, and no person or collection of persons being one of these departments shall exercise any power properly belonging to either of the others except as expressly directed or permitted in this Constitution.

⁴ *Neb Const Art V, § 1* provides:

The judicial power of the state shall be vested in a Supreme Court, an appellate court, district courts, county courts, in and for each county, with one or more judges for each county or with one judge for two or more counties, as the Legislature shall provide, and such other courts inferior to the Supreme Court as may be created by law. In accordance with rules established by the Supreme Court and not in conflict with other provisions of this Constitution and laws governing such matters, general administrative authority over all courts in this state shall be vested in the Supreme Court and shall be exercised by the Chief Justice. The Chief Justice shall be the executive head of the courts and may appoint an administrative director thereof.

3.5 Unlawfully pledges funds and credit of the State for at least 60 days to a pipeline applicant who is to repay the funds later. Neb Const Art XIII, §3⁵ prohibits the State from pledging its credit or loaning funds in these circumstances.

4. LB1161 cannot remain law or be enforced because it violates the Nebraska Constitution. Statutes are subservient to the Constitution as “[a] constitution represents the supreme written will of the people regarding the framework for their government and is subject only to the limitations found in the federal Constitution. . . .” The state Constitution must be read as a whole.”⁶ It is the supreme will of the people of Nebraska, as expressed in their State Constitution, that (A) matters involving public common carriers, including crude oil pipelines, be committed to the Public Service Commission, not to the Governor, as the Legislature directs; (B) the Public Service Commission, and the governor, are both constitutionally-created components of Nebraska State Government of equal constitutional stature. (C) The Office of Governor is not superior to the Public Service Commission. Instead, each must perform separate constitutionally assigned and authorized duties, functions and responsibilities. The Legislature may not override the supreme will of the people as expressed in their Constitution.

5. The Governor’s actions are invalid because they were taken under authority of LB1161. TransCanada is without eminent domain authority or an approved pipeline route across Nebraska because LB1161 and the Governor’s actions are TransCanada’s sole basis for claiming an approved route or power of eminent domain.

Jurisdiction, Venue, and Parties

6. This Court has subject matter jurisdiction of this action for declaratory judgment pursuant to *Neb Rev Stat* § 24-302 & *Neb Rev Stat* §§ 25-24,129 *et seq*. The latter statute is the *Nebraska Declaratory Judgments Act*. An actual case and controversy exists

⁵ *Neb Const* Art XIII, § 3 provides:

The credit of the state shall never be given or loaned in aid of any individual, association, or corporation, except that the state may guarantee or make long-term, low-interest loans to Nebraska residents seeking adult or post high school education at any public or private institution in this state. Qualifications for and the repayment of such loans shall be as prescribed by the Legislature.

⁶ *Jaksha v State*, 241 Neb 106, 110, 486 NW2d 858, 863 (1992); *accord, Pony Lake Sch. Dist. v. State Committee for Reorg.*, 271 Neb 173, 710 NW2d 609 (2006).

and arises under an enactment of the Legislature which is now a Nebraska statute.⁷ The controversy concerns, and calls into a question, LB1161's constitutional validity.

7. Venue is proper in York County, Nebraska where Plaintiffs reside, the real estate to be taken is located, Defendants' threats were made, and these claims arose.

8. Plaintiffs are:

<p>Byron Terry "Stix" Steskal & Diana Steskal</p>	<p>The Steskals are citizens, residents, taxpayers, and electors, of Holt County, Nebraska. Mr. Steskal owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiffs written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiffs decline and refuse to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiffs and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 480 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the N1/2 and the SE1/4 of Section 29, Township 31 North, Range 13 West of the 6th P.M., as recorded in Book 178, Page 241 and Book 174, Page 462 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Allpress Brothers, LLC</p>	<p>Allpress Brothers, LLC, a Nebraska limited liability company, is a taxpayer of Keya Paha County, Nebraska. Allpress Brothers owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p>

⁷ *Neb Rev Stat* § 25-21,150

	<p>A tract of land containing 551.05 acres, more or less, situated in the County of Keya Paha, in the State of Nebraska, being further described as the W1/2 NE1/4; N1/2 NW1/4; SE1/4 NW1/4; SE1/4; E1/2 SW1/4; NW1/4 SW1/4; SW1/4 NW1/4; and Lot 2 of Section 13, Township 34 North, Range 17 West of the 6th P.M., as recorded in Book 42, Page 240 in the Deed Records of Keya Paha County, Nebraska; less and except any conveyances heretofore made.</p> <p>Less and Except: An irregular tract of land located in the SE1/4 of Section 13 and in Government Lot 5 of Section 24 described as follows: Commencing at the Southeast corner of said SE1/4 of Section 13, assuming a bearing of North 00°00'00" East on the East line of said SE1/4 of Section 13; thence South 88°38'25" West, a distance of 1887.29 feet to the true point of beginning; thence North 01°29'29" East, a distance of 335.08 feet; thence North 88°30'31" West, a distance of 650.00 feet; thence South 01°29'29" West, a distance of 335.08 feet; thence South 88°30'31" East, a distance of 650.00 feet to the point of beginning, as recorded in Book 42, Page 655.</p> <p>A tract of land containing 189.7 acres, more or less, situated in the County of Keya Paha, in the State of Nebraska, being further described as the NE1/4 of the NE1/4, Lots 4, 5, and 6 of Section 24, Township 34 North, Range 17 West of the 6th P.M., as recorded in Book 42, Page 240 in the Deed Records of Keya Paha County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Germaine G. Berry</p>	<p>Ms. Berry is a citizen, resident, taxpayer, and elector, of Antelope County, Nebraska. Ms. Berry owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 159.62 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NE1/4 of Section 17, Township 27 North, Range 7 West of the 6th P.M., as recorded in Book 104, Page 59 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Karen G. Berry</p>	<p>Ms. Berry is a real estate owner of property in Antelope County, Nebraska. Ms. Berry owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015.</p>

	<p>TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 79 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the W1/2 of the SW1/4 of Section 36, T28N, R8W of the 6th P.M., as recorded in Book 95, Page 557 and Book 95, Page 423 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Cheri G. Blocher & Michael J. Blocher</p>	<p>The Blochers are citizens, residents, taxpayers, and electors, of Antelope County, Nebraska. The Blochers owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiffs written notice on January 15, 2014, of their intention to commence condemnation proceedings against Plaintiffs' property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiffs decline and refuse to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiffs and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 160.82 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NW1/4 of Section 32, T23N, R5W of the 6th P.M., as recorded in Book 130, Page 98 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p>
<p>L.A. Breiner & Sandra K. Breiner</p>	<p>The Breiners are citizens, residents, taxpayers, and electors, of Holt County, Nebraska. Mr. Breiner owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiffs written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiffs' property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiffs decline and refuse to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiffs and identified by Defendants as property to be taken or partially taken by it is:</p>

A tract of land containing 327.61 acres , more or less, situated in the County of Holt, in the State of Nebraska, being further described as All of Section 14, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 179, Page 195 in the Deed Records of Holt County , Nebraska.

Less and Except: An irregular tract of land located in Section 14, Township 32 North, Range 15 West of the 6th P.M., and Holt county , Nebraska, and more particularly described as follows : Beginning at the Southwest corner of said Section 14; thence N 88 59' 37" E (assumed bearing) on the South line of Section 14, a distance of 2363.46 feet; thence N 44 55' 46" W, a distance of 412.49 feet ; thence N 01 38' 36" E, a distance of 26.70 feet; thence N 44 17' 52" E, a distance of 395.70 feet to a non-tangential curve concave Westerly having a radius of 1449.62 feet; thence Northerly on said curve an arc distance of 2279.25 feet through an angle of 90 05' 14"; thence N 88 47' 12" E, a distance of 749.32 feet to a non-tangential curve concave Westerly having a radius of 1434.63 feet; thence Northerly on said curve an arc distance of 3371.96 feet through an angle of 134 40' 07" to the north line of said Section 14; thence S 88 54' 45" W, on said North line of Section 14, a distance of 2166.37 feet; thence S 01 00' 39" E, a distance of 1253.14 feet to a non-tangential curve concave Easterly having a radius of 1482.14 feet; thence Southerly on said curve an arc distance of 967.34 feet through an angle of 37 23' 42"; thence S 42 04' 17"E, a distance of 170.26 feet; thence N 89 49' 42" W, a distance of 511.66 feet; thence S 78 09' 16" W, a distance of 235.96 feet; thence S 63 51' 41" W, a distance of 365.24 feet; thence S 55 58' 59" W, a distance of 717.07 feet to the West line of said Section 14; thence S 00 57' 23" E on said West line of Section 14, a distance of 2421.51 feet to the point of beginning, of which the West 33 feet is occupied by a public road, referred to as (Survey Tract B), as recorded in Book 199, Page 9.

A tract of land containing 507.52 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as all of Section 10, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 179, Page 195 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

Less and Except: An irregular tract of land located in Section 10, T32N, R15W of the 6th P.M., Holt County, Nebraska, described as follows: Beginning at the Southeast corner of said Section 10, thence S89° 26' 00" W (assumed bearing) on the south line of said Section 10, a distance of 2377.73 feet; thence N 45° 23' 53" W, a distance of 161.16 feet; thence N 35° 58' 23" W, a distance of 256.12 feet; thence N 16° 37' 13" W, a distance of 182.11 feet; thence N 01° 47' 23" W, a distance of 1117.67 feet; thence N 33° 18' 07" E, a distance of 120.12 feet; thence N 54° 19' 00" E, a distance of 1018.88 feet; thence N 70° 22' 41" E, a distance of 239.64 feet; thence N 80° 02' 11" E, a distance of 104.08 feet; thence N 89° 18' 05" E, a distance of 185.48 feet to a non-tangential curve concave southerly having a radius of 2224.95 feet; thence on said curve an arc distance of 561.99 feet through an angle of 14° 28' 20"; thence S 68° 25' 19" E, a distance of 371.44 feet; thence S 57° 26' 08" E, a distance of 167.84 feet; thence S 54° 15' 09" E, a distance of 319.07 feet to the east line of said Section 10; thence S 00° 51' 47" E on said east line of Section 10, a distance of 1856.88 feet to the point of beginning, of which the east 33 feet is occupied by a public, as recorded in Book 199, Page 9.

A tract of land containing 640 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as all of Section 24, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 202, Page 501 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

Jerry &

The Carpenters are citizens, residents, taxpayers, and electors in Antelope County, Nebraska. They own real estate on the proposed TransCanada KXL pipeline route as evidenced by

<p>Charlayne Carpenter</p>	<p>TransCanada’s documents.</p> <p>Defendants gave Plaintiffs written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiffs’ property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiffs decline and refuse to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiffs and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 157.40 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NE1/4 of Section 22, Township 26 North, Range 6 West of the 6th P.M., as recorded in Book 125, Page 738 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p>
<p>CHP 4 Farms, LLC</p>	<p>CHP 4 Farms, LLC, a Nebraska limited liability company, is a taxpayer of Antelope County, Nebraska. CHP 4 Farms, LLC, owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada’s documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff’s property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 310.04 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the N1/2 of Section 19, T28N, R8W of the 6th P.M., as recorded in Book 128, Page 447 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Larry D. Cleary</p>	<p>Mr. Cleary is a citizen, resident, taxpayer, and elector, of Holt County, Nebraska. Mr. Cleary is Trustee of the Irene Cleary Trust Agreement which owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada’s documents.</p> <p>Defendants gave Plaintiffs written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiffs’ property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiffs decline and refuse to voluntarily convey ownership rights to Defendants.</p>

	<p>The real estate owned by Plaintiffs and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 240 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the E1/2 of the SW1/4 and the SE1/4 of Section 8, T30N, R12W of the 6th P.M., as recorded in Book 187, Page 182 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p> <p>A tract of land containing 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SE1/4 of Section 15, T30N, R12W of the 6th P.M., as recorded in Book 187, Page 182 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Cottonwood Ridge, LLC</p>	<p>Cottonwood Ridge, LLC, a Nebraska limited liability company, taxpayer of Antelope County, Nebraska. Cottonwood Ridge owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada’s documents.</p> <p>Defendants gave Plaintiff written notice on or about December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff’s property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to TransCanada.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 120 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the North 120 acres of the NW1/4 of Section 17, Township 27 North, Range 7 West of the 6th P.M., as recorded in Book 126, Page 45 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Jeanne Crumly & Ronald C. Crumly</p>	<p>Crumlys are citizens, residents, taxpayers, and electors, of Holt County, Nebraska. The Crumlys own real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada’s documents.</p> <p>Defendants gave Plaintiffs written notice on December 8, 2014, of their intention to commence condemnation proceedings against Plaintiffs’ property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiffs decline and refuse to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiffs and identified by Defendants as property to be taken or partially taken by it is:</p>

	<p>A tract of land containing 150.71 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as a part of the SE1/4 of Section 23, Township 29 North, Range 10 West of the 6th P.M., as recorded in Book 195, Page 572 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p> <p>A tract of land containing 157.75 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SE1/4 of Section 25, T29N, R10W of the 6th P.M., as recorded in Book 178, Page 383 and Book 154, Page 362 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p> <p>Less and Except: The East 330 feet of the South 190 feet of the Southeast Quarter of Section 25, Township 29 North, Range 10 West of the 6th P.M., Holt County, Nebraska, as recorded in Book 183, Page 118.</p>
<p>Ken Dittrich</p>	<p>Ken Dittrich is a citizen, resident, taxpayer, and elector, of Antelope County, Nebraska. Mr. Dittrich owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada’s documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff’s property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 161.60 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NW1/4 of Section 29, T24N, R5W of the 6th P.M., as recorded in Book 127, Page 734, Book 127, Page 85, Book 125, Page 445, Book 115, Page 458, and Book 101, Page 441 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Lloyd Hipke & Vencille M. Hipke</p>	<p>The Hipkes are citizens, residents, taxpayers, and electors, of Holt County, Nebraska. Hipkes owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada’s documents.</p> <p>Defendants gave Plaintiffs written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiffs’ property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiffs decline and refuse to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiffs and identified by Defendants as property to be taken or partially taken by it is:</p>

	<p>A tract of land containing 349.89 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as a part of the E1/2 and the NE1/4 of the NW1/4, except North 25 acres of Section 4, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 200, Page 638, Book 180, Page 128 and Book 179, Page 743 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p> <p>Less and Except: A tract of land containing 2.30 acres, more or less, and being out of the NE1/4 of Section 4, Township 32 North, Range 15 West of the 6th P.M., Holt County, Nebraska, and being more particularly described as follows: Commencing at the Northeast Corner of said Section 4; thence West 1100 feet to the point of beginning; thence South 500 feet; thence West 200 feet; thence North 500 feet; thence East 200 feet to the point of beginning, as recorded in Book 175 and Page 271.</p> <p>A tract of land containing 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SW1/4 of Section 3, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 182, Page 189 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p>
<p>R. Wynn Hipke & Jill Renee Hipke</p>	<p>The Hipkes are citizens, residents, taxpayers, and electors, of Holt County, Nebraska. Hipkes owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiffs written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiffs' property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiffs decline and refuse to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiffs and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 440 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the W1/2, W1/2 of the NE1/4, and the NE1/4 of the SE1/4 of Section 33, Township 33 North, Range 15 West of the 6th P.M., as recorded in Book 188, Page 29, Book 180, Page 131, and Book 179, Page 742 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Richard M. Kilmurry</p>	<p>Mr. Kilmurry is a citizen, resident, taxpayer, and elector, of Holt County, Nebraska. Mr. Kilmurry owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015.</p>

	<p>TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 480 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SE1/4, SW1/4, and the NW1/4 of Section 13, Township 32 North, Range 15 West of the 6th P.M., as recorded in Book 182, Page 681, Book 181, Page 450, and Book 181, Page 424 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Rosemary Kilmurry</p>	<p>Rosemary Kilmurry is a citizen, resident, taxpayer, and elector in Holt County, Nebraska. Ms. Kilmurry is Trustee of the Frank W. Kilmurry Trust which owns real estate on the proposed KXL route as evidenced by TransCanada's documents. Ms. Kimurry also individually owns the property.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p>

	<p>A tract of land containing 480 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the E1/2 and the NW1/4 of Section 29, Township 32 North, Range 14 West of the 6th P.M., as recorded in Book 192, Page 664 and Book 168, Page 65 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p> <p>A tract of land containing 640 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as all of Section 33, Township 32 North, Range 14 West of the 6th P.M., as recorded in Book 192, Page 664 and Book 168, Page 65 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p> <p>A tract of land containing 319.19 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the W1/2 of Section 3, Township 31 North, Range 14 West of the 6th P.M., as recorded in Book 192, Page 664 and Book 168, Page 65 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Robert R. Krutz & Beverly J. Krutz</p>	<p>The Krutzes are citizens, residents, taxpayers, and electors in Antelope County, Nebraska, and own real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiffs written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiffs' property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiffs decline and refuse to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiffs and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 314.20 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the E1/2 of Section 34, Township 28 North, Range 8 West of the 6th P.M., as recorded in Book 120, Page 539 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p>
<p>LJM Farm, LLC</p>	<p>LJM Farm, LLC, a Nebraska limited liability company, is a taxpayer of Holt County, Nebraska. LJM Farm owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership</p>

	<p>rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SE1/4 of Section 32, Township 29 North, Range 9 West of the 6th P.M., as recorded in Book 199, Page 733 and Book 176, Page 230 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p> <p>A tract of land containing 154.87 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the NE1/4 of Section 5, T28N, R9W of the 6th P.M., as recorded in Book 199, Page 731 and Book 176, Page 230 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p> <p>A tract of land containing 156.07 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SW1/4 of Section 30, T29N, R9W of the 6th P.M., as recorded in Book 199, Page 731, Book 189, Page 507, and Book 189, Page 34 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Carol J. Manganaro</p>	<p>Ms. Manganaro is the Personal Representative for the estate of Florian Dittrich, which owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 161.60 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NW1/4 of Section 29, T24N, R5W of the 6th P.M., as recorded in Book 127, Page 734, Book 127, Page 85, Book 125, Page 445, Book 115, Page 458, and Book 101, Page 441 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p>

	<p>A tract of land containing 157.92 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the SW1/4 of Section 29, T24N, R5W of the 6th P.M., as recorded in Book 127, Page 733, Book 127, Page 83, Book 119, Page 631, Book 116, Page 437, Book 115, Page 456, and Book 114, Page 671 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Frankie and Sandra Lee Maughan</p>	<p>Frankie and Sandra Lee Maughan are citizens, residents, taxpayers, and electors in Antelope County, Nebraska. The Maughans owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiffs written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiffs' property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiffs decline and refuse to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiffs and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 317.98 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the N1/2 of Section 8, T25N, R5W of the 6th P.M., as recorded in Book 111, Page 121 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Earl R. Miller and Beverly A. Miller</p>	<p>The Millers are citizens, residents, taxpayers, and electors, of Holt County, Nebraska. Mr. Miller owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiffs written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiffs' property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiffs decline and refuse to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiffs and identified by Defendants as property to be taken or partially taken by it is:</p>

	<p>A tract of land containing 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SE1/4 of Section 27, T30N, R11W of the 6th P.M., as recorded in Book 185, Page 62 and Book 174, Page 389 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p> <p>A tract of land containing 320 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the E1/2 of Section 34, T30N, R11W of the 6th P.M., as recorded in Book 185, Page 62 and Book 174, Page 389 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Glen A. and Edna Miller</p>	<p>The Millers are citizens, residents, taxpayers, and electors, of Holt County, Nebraska. Mr. Miller owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiffs written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiffs' property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiffs decline and refuse to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiffs and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the E1/2 of the E1/2 of Section 11, Township 28 North, Range 9 West of the 6th P.M., as recorded in Book 186, Page 351 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p> <p>A tract of land containing 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the NE1/4 of Section 13, T28N, R9W of the 6th P.M., as recorded in Book 186, Page 352 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Milliron Ranch Corporation</p>	<p>Milliron Ranch Corporation, a Nebraska Corporation, is a taxpayer of Holt County and Antelope County, Nebraska. Milliron Ranch owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p>

	<p>A tract of land containing 640 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as all of Section 32, Township 32 North, Range 14 West of the 6th P.M., as recorded in Book 153, Page 623 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p> <p>A tract of land containing 314.20 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the E1/2 of Section 34, Township 28 North, Range 8 West of the 6th P.M., as recorded in Book 120, Page 539 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p>
<p>J.D. Mudloff</p>	<p>Mr. Mudloff is a citizen, resident, taxpayer, and elector, of Holt County, Nebraska. Mr. Mudloff owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 156.07 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SW1/4 of Section 30, T29N, R9W of the 6th P.M., as recorded in Book 199, Page 731, Book 189, Page 507, and Book 189, Page 34 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Larry D. Mudloff</p>	<p>Mr. Mudloff is a citizen, resident, taxpayer, and elector, of Holt County, Nebraska. Mr. Mudloff owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p>

	<p>A tract of land containing 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SE1/4 of Section 32, Township 29 North, Range 9 West of the 6th P.M., as recorded in Book 199, Page 733 and Book 176, Page 230 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p> <p>A tract of land containing 154.87 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the NE1/4 of Section 5, T28N, R9W of the 6th P.M., as recorded in Book 199, Page 731 and Book 176, Page 230 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p> <p>A tract of land containing 156.07 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SW1/4 of Section 30, T29N, R9W of the 6th P.M., as recorded in Book 199, Page 731, Book 189, Page 507, and Book 189, Page 34 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Lori Mudloff</p>	<p>Ms. Mudloff is a citizen, resident, taxpayer, and elector, of Holt County, Nebraska. Ms. Mudloff owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 156.07 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SW1/4 of Section 30, T29N, R9W of the 6th P.M., as recorded in Book 199, Page 731, Book 189, Page 507, and Book 189, Page 34 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Nichols Family Limited Partnership</p>	<p>Nichols Family Limited Partnership, a Nebraska limited partnership, is a taxpayer of Holt County, Nebraska. The Nichols Family Limited Partnership owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p>

	<p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the NE1/4 of Section 22, T29N, R10W of the 6th P.M., as recorded in Book 195, Page 118A in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Richard J. and Ann A. Pongratz</p>	<p>The Pongratzs are citizens, residents, taxpayers, and electors, of Holt County, Nebraska. And own real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada’s documents.</p> <p>Defendants gave Plaintiffs written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiffs’ property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiffs decline and refuse to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiffs and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 240 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SW1/4 and the S1/2 of the SE1/4 of Section 35, Township 30 North, Range 11 West of the 6th P.M., as recorded in Book 200, Page 216 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p> <p>A tract of land containing 83.85 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the N1/2 of the NE1/4 of Section 2, Township 29 North, Range 11 West of the 6th P.M., as recorded in Book 200, Page 216 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Donald J. Rech</p>	<p>Mr. Rech is a citizen, resident, taxpayer, and elector, of Boyd County, Nebraska. Mr. Rech owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada’s documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff’s property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or</p>

	<p>partially taken by it is:</p> <p>A tract of land containing 319.14 acres, more or less, situated in the County of Boyd, in the State of Nebraska, being further described as Lots 3 and 4 (a/k/a N1/2 NW1/4), S1/2 NW1/4, and the SE1/4 of Section 2, T33N, R16W, of the 6th P.M., as recorded in Book 53, Page 142, in the Deed Records of Boyd County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Schultz Brothers Farms, Inc.</p>	<p>Schultz Brothers Farms, Inc., a Nebraska corporation, is a taxpayer of Boyd County, Nebraska. Schultz Brothers Farms, Inc. owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiff written notice on or about December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to TransCanada.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 348.64 acres, more or less, situated in the County of Boyd, in the State of Nebraska, being more particularly described as Lots 6, 7, 8, 9; E1/2 of the NE1/4; NW1/4 of the NE1/4; and the NE1/4 of the NW1/4 of Section 19, Township 34 North, Range 16 West of the 6th P.M., as recorded in Book 47, Page 692 in the Deed Records of Boyd County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Verdon L. Smith and Connie M. Smith</p>	<p>The Smiths are citizens, residents, taxpayers, and electors, of Holt County, Nebraska. Ms. Smith owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiffs written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiffs' property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiffs declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiffs and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 319.61 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the E1/2 of Section 4, Township 31 North, Range 14 West of the 6th P.M., as recorded in Book 201, Page 746 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p>

<p>Joshua R. Stelling</p>	<p>Josh Stelling is a citizen, resident, taxpayer, and elector, of Holt County, Nebraska. Mr. Stelling owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 173.85 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the N1/2 of Section 35, Township 28 North, Range 8 West of the 6th P.M., as recorded in Book 125, Page 640, Book 125, Page 530, and Book 125, Page 529 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p> <p>Less and Except: An irregular tract of land located in the Northwest Quarter of Section 35, Township 28 North, Range 8 West of the 6th P.M., Antelope County, Nebraska, described as follows: Beginning at the NW corner of said NW1/4; thence N89°08'26"E on the north line of said NW1/4, a distance of 1289.33 feet; thence S01°01'09"E, a distance of 264.12 feet to a non-tangential curve concave Northeasterly with a radius of 2060.01 feet, a chord bearing of S30°10'51"E and a chord distance of 1560.24 feet; thence on said curve, an arc distance of 1600.17 feet; thence S05°09'39"W, a distance of 447.35 feet to the south line of the North 92 feet of the S1/2 S1/2 of said NW1/4; thence S89°06'50"W on said South line of the North 92 feet of the S1/2 S1/2 of said NW1/4; thence S89°06'50"W on said south line of the North 92 feet of the S1/2 S1/2 NW1/4, a distance of 1990.30 feet to the west line of said NW1/4; thence N01°19'39"W on said west line of the NW1/4, a distance of 2070.34 feet to the point of beginning, containing 76.705 acres of land, more or less, of which the north 33 feet and the west 33 feet are occupied by a public road, as recorded in Book 125, Page 754.</p> <p>A tract of land containing 151.87 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NW1/4 of Section 6, Township 27 North, Range 7 West of the 6th P.M., as recorded in Book 126, Page 185 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Richard E. and Darlene R.</p>	<p>Richard and Darlene Stelling are citizens, residents, taxpayers, and electors, of Holt County, Nebraska. Stelling's own real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiffs written notice on December 15, 2014, of their intention to</p>

<p>Stelling</p>	<p>commence condemnation proceedings against Plaintiffs’ property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiffs decline and refuse to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiffs and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 59.17 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NE1/4 of the SE1/4 and the S1/2 of the SE1/4 of the NE1/4 of Section 35, Township 28 North, Range 8 West of the 6th P.M., as recorded in Book 123, Page 751 and Book 123, Page 750 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Todd J. Stelling and Lisa J. Stelling</p>	<p>Todd Stelling and Lisa Stelling are citizens, residents, taxpayers, and electors, of Holt County, Nebraska. Mr. and Mrs. Stelling own real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada’s documents.</p> <p>Defendants gave Plaintiffs written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff’s property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiffs and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 159.97 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NW1/4 of Section 1, Township 27 North, Range 8 West of the 6th P.M., as recorded in Book 118, Page 515 and Book 118, Page 453 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Arthur R. Tanderup and Helen J. Tanderup</p>	<p>The Tanderups are citizens, residents, taxpayers, and electors, of Holt County, Nebraska, and own real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada’s documents.</p> <p>Defendants gave Plaintiffs written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiffs’ property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiffs decline and refuse to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiffs and identified by Defendants as property to be taken or partially taken by it is:</p>

	<p>A tract of land containing 160.29 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the SW1/4 of Section 5, Township 26 North, Range 6 West of the 6th P.M., as recorded in Book 116, Page 168 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p>
<p>TMAG Ranch, LLC</p>	<p>TMAG Ranch, LLC, is a taxpayer of Holt County, Nebraska. TMAG Ranch, LLC, owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 362 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the NE1/4, NW1/4 of the SE1/4, and SW1/4 of Section 18, Township 33 North, Range 15 West of the 6th P.M., as recorded in Book 198, Page 543 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p> <p>A tract of land containing 72.03 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as Lot 7 of Section 7, Township 33 North, Range 15 West of the 6th P.M., as recorded in Book 198, Page 543 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p> <p>A tract of land containing 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the NW1/4 of Section 17, Township 33 North, Range 15 West of the 6th P.M., as recorded in Book 198, Page 543 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Tree Corners Farms, LLC</p>	<p>Tree Corners Farm, LLC, is a taxpayer of Antelope County, Nebraska. Tree Corners Farm, LLC, owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p>

	<p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 77.86 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the N1/2 of the SE1/4 of Section 25, T26N, R6W of the 6th P.M., as recorded in Book 127, Page 9 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p> <p>A tract of land containing 392.24 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NE1/4, E1/2 of the SW1/4, and a part of the SE1/4 of Section 30, Township 26 North, Range 5 West of the 6th P.M., as recorded in Book 127, Page 9 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Sharyn L. Troester and David W. Troester</p>	<p>Sharyn L. Troester and David W. Troester are citizens, residents, taxpayers, and electors, of Holt County, Nebraska. The Troesters owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Ms. Troester is also the Personal Representative for the Estate of Hazel V. Nichols, which owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Ms. Troester and identified by Defendants as property to be taken or partially taken by it is:</p> <p>A tract of land containing 3.27 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as a part of the NE1/4 of the NE1/4 of Section 26, Township 29 North, Range 10 West of the 6th P.M., as recorded in Book 190, Page 433 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p> <p>A tract of land containing 313.57 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as a part of the N1/2 of Section 25, T29N, R10W of the 6th P.M., as recorded in Book 174, Page 560 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p> <p>The real estate owned by the Estate of Hazel V. Nichols and identified by Defendants as property to be taken or partially taken by it is:</p>

	<p>A tract of land containing 153.66 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as a part of the NE1/4 of Section 26, Township 29 North, Range 10 West of the 6th P.M., as recorded in Book 171, Page 432 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.</p>
<p>Judy M. Wagner n/k/a Judy M. Wagner-Olson and Ray Olson</p>	<p>Ms. Wagner is a citizen, resident, taxpayer, and elector, of Antelope County, Nebraska. Ms. Wagner owns real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiff written notice on December 15, 2014, of their intention to commence condemnation proceedings against Plaintiff's property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiff declines and refuses to voluntarily convey ownership rights to Defendants.</p> <p>The real estate owned by Plaintiff and identified by Defendants as property to be taken or partially taken by it is:</p> <p><u>A tract of land containing 160.29 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NW1/4 of Section 23, Township 26 North, Range 6 West of the 6th P.M., as recorded in Book 110, Page 620, Book 122, Page 328, and Book 125, Page 90 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</u></p>
<p>Gregory Walmer and Joanne Walmer</p>	<p>Greg Walmer is a citizen, resident, taxpayer, and elector, of Antelope County, Nebraska. Mr. Walmer holds a remainderman interest and his mother, Joanne Walmer, holds a life estate interest in real estate on the proposed TransCanada KXL pipeline route as evidenced by TransCanada's documents.</p> <p>Defendants gave Plaintiffs written notice on or about December 15, 2014, of their intention to commence condemnation proceedings against Plaintiffs' property in January 2015. TransCanada threatens to condemn unless it is granted an Easement and property ownership rights without condemnation. Plaintiffs decline and refuse to voluntarily convey ownership rights to TransCanada.</p> <p>The real estate owned by Plaintiffs and identified by Defendants as property to be taken or partially taken by it is:</p>

A tract of land containing 379.37 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NE1/4, except highway and railroad right of way, E1/2 of the NW1/4, except highway and railroad right of way, and the SW1/4 of Section 8, Township 27 North, Range 7 West of the 6th P.M., as recorded in Book 114, Page 241 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.

Less and Except: A tract of land located in part of the E1/2 of the NW1/4 of Section 8, Township 27 North, Range 7 West of the 6th P.M., Antelope County, Nebraska, described as follows: Referring to the NW corner of said NW1/4 section; thence Easterly along the North line of said NW1/4 section, a distance of 1317.93 feet to the NW corner of said E1/2 of the NW1/4 section; being the point of beginning; thence continuing Easterly deflecting 00°00'00", along the North line of said E1/2 of the NW1/4 section, a distance of 1317.93 feet to the NE corner of said E1/2 of the NW1/4 section; thence Southerly deflecting 90°37'08" right, along the East line of said E1/2 of the NW1/4 section, a distance of 79.36 feet; thence Westerly deflecting 87°45'18" right, a distance of 561.50 feet; thence Westerly deflecting 03°48'21" right, a distance of 757.10 feet to the West line of said E1/2 of the NW1/4 section; thence Northerly deflecting 88°28'13" right, along the West line of said E1/2 of the NW1/4 section, a distance of 66.50 feet to the point of beginning, containing an area of 2.53 acres, more or less, which includes 1.21 acres, more or less, previously occupied as public Right of Way, as recorded in Book 122, Page 495

Less and Except: A tract of land located in part of the NE1/4 of Section 8, Township 27 North, Range 7 West of the 6th P.M., Antelope County, Nebraska, described as follows: Beginning at the NW corner of said NE1/4 section; thence Easterly along the North line of said NE1/4 section, a distance of 2636.65 feet to the NE corner of said NE1/4 section; thence Southerly deflecting 90°35'27" right, along the East line of said NE1/4 section, a distance of 258.07 feet; thence Westerly deflecting 90°27'47" right, a distance of 33.00 feet to the West Right of Way line of an existing county road; thence Northerly deflecting 78°43'25" right, a distance of 177.32 feet; thence Westerly deflecting 79°21'02" left, a distance of 1163.24 feet; thence Westerly deflecting 00°58'42" right, a distance of 656.37 feet; thence Westerly deflecting 03°01'10" left, a distance of 751.31 feet to the West line of said NE1/4 section; thence Northerly deflecting 92°14'42" right, along the West line of said NE1/4 section, a distance of 79.36 feet to the point of beginning, containing an area of 4.61 acres, more or less, which includes 2.59 acres, more or less, previously occupied as public Right of Way; as recorded in Book 122, Page 495.

Additional real estate owned by Plaintiff and identified by Defendants on December 29, 2014 as property to be taken or partially taken for a Main Line Valve is:

	<p>Full Legal Description: A tract of land containing 379.37 acres, more or less, situated in the County of Antelope, in the State of Nebraska, being further described as the NE1/4, except highway and railroad right of way, E1/2 of the NW1/4, except highway and railroad right of way, and the SW1/4 of Section 8, Township 27 North, Range 7 West of the 6th P.M., as recorded in Book 114, Page 241 in the Deed Records of Antelope County, Nebraska; less and except any conveyances heretofore made.</p> <p>Less and Except: A tract of land located in part of the E1/2 of the NW1/4 of Section 8, Township 27 North, Range 7 West of the 6th P.M., Antelope County, Nebraska, described as follows: Referring to the NW corner of said NW1/4 section; thence Easterly along the North line of said NW1/4 section, a distance of 1317.93 feet to the NW corner of said E1/2 of the NW1/4 section; being the point of beginning; thence continuing Easterly deflecting 00°00'00", along the North line of said E1/2 of the NW1/4 section, a distance of 1317.93 feet to the NE corner of said E1/2 of the NW1/4 section; thence Southerly deflecting 90°37'08" right, along the East line of said E1/2 of the NW1/4 section, a distance of 79.36 feet; thence Westerly deflecting 87°45'18" right, a distance of 561.50 feet; thence Westerly deflecting 03°48'21" right, a distance of 757.10 feet to the West line of said E1/2 of the NW1/4 section; thence Northerly deflecting 88°28'13" right, along the West line of said E1/2 of the NW1/4 section, a distance of 66.50 feet to the point of beginning, containing an area of 2.53 acres, more or less, which includes 1.21 acres, more or less, previously occupied as public Right of Way, as recorded in Book 122, Page 495</p> <p>Less and Except: A tract of land located in part of the NE1/4 of Section 8, Township 27 North, Range 7 West of the 6th P.M., Antelope County, Nebraska, described as follows: Beginning at the NW corner of said NE1/4 section; thence Easterly along the North line of said NE1/4 section, a distance of 2636.65 feet to the NE corner of said NE1/4 section; thence Southerly deflecting 90°35'27" right, along the East line of said NE1/4 section, a distance of 258.07 feet; thence Westerly deflecting 90°27'47" right, a distance of 33.00 feet to the West Right of Way line of an existing county road; thence Northerly deflecting 78°43'25" right, a distance of 177.32 feet; thence Westerly deflecting 79°21'02" left, a distance of 1163.24 feet; thence Westerly deflecting 00°58'42" right, a distance of 656.37 feet; thence Westerly deflecting 03°01'10" left, a distance of 751.31 feet to the West line of said NE1/4 section; thence Northerly deflecting 92°14'42" right, along the West line of said NE1/4 section, a distance of 79.36 feet to the point of beginning, containing an area of 4.61 acres, more or less, which includes 2.59 acres, more or less, previously occupied as public Right of Way; as recorded in Book 122, Page 495.</p>
<p>Susan "Suz" Straka Heyden</p>	<p>Mrs. Heyden is a citizen, resident, taxpayer, and elector, of Holt County, Nebraska. Mrs. Heyden is beneficiary of a trust holding Nebraska real estate previously under threat of condemnation for the proposed TransCanada KXL pipeline as evidenced by TransCanada's documents.</p> <p>Mrs. Heyden's standing to sue was recognized by the majority and controlling opinion of the Nebraska Supreme Court in a January 9, 2015, decision related to issues raised in this case.⁸</p>

⁸ See fn 1.

9. On or about January 20th 2015, TransCanada initiated condemnation proceedings against Plaintiffs.

10. In each of its condemnation petitions, TransCanada states “Keystone is authorized to exercise the power of eminent domain pursuant to Neb. Rev. Stat. § 57-1101 because it complied with Neb. Rev. Stat. § 57-1503, and received the approval the Governor of Nebraska for the route of the pipeline.” TransCanada incorporates by references the Governor’s January 22, 2013 “approval” of their proposed route and further asserts this and only this as the basis for their purported eminent domain powers.

11. Defendants fail to affirmatively state that no other agency approval or Presidential Permit approval is necessary to proceed with this proposed condemnation. In fact Defendant TransCanada’s Keystone XL pipeline cannot be built unless the President of the United States issues a border crossing permit, and the State of South Dakota authorizes construction and operations in that State, and Nebraska law upon which Defendants rely passes constitutional muster against the challenges in this Amended Complaint.

12. Defendants are:

12.1 TransCanada Keystone Pipeline, LP, a limited partnership organized under Delaware law, and registered to do business in Nebraska. Defendant TransCanada has its principal place of business at 13710 FNB Parkway, Suite 300, Omaha, NE 68154. Its agent to receive service of process is CT Corporation System, 5601 South 59th St, Lincoln NE 68516. It also conducts business at 1106 Benjamin Avenue Suite 600, Norfolk, NE 68701.

12.2 Andrew Craig, Land Manager – Keystone Projects, is a resident of Nebraska who executed threats to Plaintiffs and other landowners that he will take actions for TransCanada to condemn Plaintiffs’ land with and for TransCanada. Craig signed correspondence making demands, sent by certified mail to Plaintiffs. Craig is sued in his capacity with TransCanada. Craig resides or is otherwise domiciled in Douglas County NE.

13. Plaintiffs assert the unconstitutionality of LB1161. They know that the burden of establishing the unconstitutionality of a statute is on the one attacking its validity. Plaintiffs understand they bear this burden, and contend their claims meet and

exceed it. The unconstitutionality of a statute must be clearly established before it will be declared void.⁹ The Nebraska Supreme Court's four member majority, including all Justices who expressed opinions on constitutionality, concluded that LB 1161 is unconstitutional and void.¹⁰ Three Justices of the Court have not yet expressed opinions on this subject. The District Court of Lancaster County, Nebraska concluded that the statute is unconstitutional, too.¹¹ No Nebraska judge who has been called upon to consider the constitutionality of LB 1161 and has expressed a judicial opinion or conclusion on the subject has concluded that LB 1161 is constitutional. Plaintiffs contend LB1161's unconstitutionality is clearly disclosed by its terms, and its repugnancy to the Constitution's requirements. Judicial notice of the Nebraska Supreme Court and Lancaster County District Court decisions is respectfully requested.¹² Only state law questions are presented in this Complaint.

14. LB1161 provides for the expenditure of funds for its implementation. The expenditure is for an unlawful purpose, i.e., to fund the operations of LB1161. Plaintiffs, as taxpayers, have standing to challenge LB1161 and this expenditure.¹³

15. The Governor of Nebraska purports to have acted pursuant to LB 1161 to a) grant a permit to TransCanada authorizing it to locate and construct a pipeline across Nebraska in a location that crosses Plaintiffs' real estate, b) authorize TransCanada to commence the use of eminent domain to acquire right-of-way for its pipeline across Nebraska and c) have reported in his letter to President Barack Obama and Secretary of State Hillary R. Clinton, the Governor's decision to approve a route for TransCanada's Keystone XL Pipeline project through Nebraska under the authority of LB1161. Plaintiffs contend, and seek a declaration, that both the statute and this action by the Governor are null and void. As a result TransCanada has no approved pipeline route across Nebraska, and no authority to exercise powers of eminent domain. Plaintiffs seek an injunction to enjoin and prevent TransCanada and Craig from proceeding under the unconstitutional law,

⁹ *Sarpy County Farm Bureau v Learning Community of Douglas & Sarpy Cos.*, 283 Neb 212, 808 NW2d 598 (2012); *Kiplinger v Nebraska Dept. of Nat Resources*, 282 Neb 237, 803 NW2d 28 (2011).

¹⁰ *Thompson v Heineman*, 289 Neb 798 (2015).

¹¹ *Thompson v Heineman, Dist Ct, Lancaster Co NE CH12-02060* (decided Feb 19, 2014).

¹² *Neb Rev Stat* § 27-201.

¹³ *Project Extra Mile v Nebraska Liq Control Comm'n*, 283 Neb 379, 810 NW2d 149 (2012).

and unconstitutional gubernatorial action to take property from Plaintiffs or others for the purpose of constructing a pipeline upon, across, under, or connecting with, Plaintiffs’ real estate.

LB1161, Laws (2012)

16. The genesis for LB1161 precedes the 102nd Legislature, 2nd Session, and requires examination of actions that occurred in the 102nd Legislature, 1st Special Session, held in November 2011. *LB 1 (Laws of Nebraska 102nd Leg 1st Sess)* enacted a framework and structure that committed to the Nebraska Public Service Commission (“PSC”) responsibility for certain actions involving the applications of major crude oil pipeline companies for establishment of a route and construction of a crude oil pipeline within, or across, Nebraska.

17. LB1161 (*Laws of Nebraska 102nd Leg 2d Sess*) purports to amend *LB 1*. It does so unconstitutionally. LB1161 was approved by the Governor and became the law of Nebraska, with the emergency clause, on April 17, 2012. The Bill’s title recites that it changes provisions of *LB 1*, 102nd Legislature First Special Session 2011. Summarized for general background, but not to serve as a substitute for LB1161’s terms, these are the provisions of the challenged statute:

LB1161 §§	Summary
§1	<p><i>Neb Rev Stat</i> § 57-1101 is amended to provide that the procedure is for oil pipeline companies to, as conditions precedent to exercising the power of eminent domain in Nebraska, secure route approval from either:</p> <p>the Governor, or</p> <p>the Public Service Commission under the Major Oil Pipeline Oil Siting Act if the Governor does not approve.</p> <p>Condemnation must commence within two (2) years of approval by the Governor for the PSC.</p>
§2	<p>Technical provision. No explanation required.</p>

LB1161 §§	Summary
§3	Provides that public documents will not be withheld unless withholding is authorized by § 84-712.05 of the Public Records Act or federal law
§4	Eliminates a provision of <i>LB 1</i> that provided: “The Major Oil Pipeline Siting Act shall not apply to any major oil pipeline that has submitted an application to the United States Department of State pursuant to Executive Order 13337 prior to the effective date of this Act.”
§5	Defines Commission as the Public Service Commission. Note the term “department” is not defined in LB1161, but there is a reference in § 8 to the Nebraska Department of Environmental Quality.
§6	Provides that “[i]f a pipeline carrier proposes to construct a major oil pipeline to be placed in operation across Nebraska after the effective date of this Act and the pipeline carrier has submitted a route for an oil pipeline within, through, or across Nebraska but the route is not approved by the Governor . . . the pipeline carrier shall file an application with the commission” If a carrier proposes a substantive change to a route submitted but not approved by the Governor, the carrier must file an application with the commission and receive approval pursuant to § 9 of the Act.
§7	Empowers the department (presumably the Department of Environmental Quality) to conduct an evaluation of the pipeline, including a supplemental environmental impact study of the proposed route and alternate routes, and make a report to the Governor. Section 7 amends <i>LB 1</i> § 3, part 4 to require that the Governor must act on the submission within thirty (30) days or, if he does not approve any of the routes, notify the pipeline carrier that it must receive approval from the public service commission.
§8	\$2 million appropriated to the DEQ.
§9	Severability clause.

LB1161 §§	Summary
§10	Repealer clause for inconsistent provisions.
§ 11	Emergency Clause. ¹⁴

Unconstitutionality

18. LB1161 is unconstitutional and void. It suffers from individual and distinct constitutional infirmities each of which alone, and all of which collectively, require adjudication that the Bill, and its pertinent provisions as described below or so much thereof as offends any constitutional guarantee, be declared null and void. The constitutional infirmities of LB1161 *are*:

18.1 **Unlawful Delegation of Authority.** LB1161 constitutes an unlawful delegation of authority over a common carrier to the Governor of Nebraska contrary to *Neb Const* Art IV, § 20. *Neb Const* Art IV, § 20 commits exclusively to the Public Service Commission the authority over common carriers and the regulation of common carriers when regulation is necessary. The Legislature is empowered to prescribe circumstances under which the PSC may regulate, or leave all regulatory control to the PSC, but the Legislature is powerless to delegate authority, dominion, or state sovereign control over common carriers to the Governor, or any organization or department of state government other than the PSC. Because LB1161 §§ 1-7 purport to do so, they are unconstitutional and void.

18.2 **Unlawful Delegation of Authority.** LB1161 constitutes an unlawful delegation of the Legislature’s plenary authority over the power of eminent domain.¹⁵ It does so by empowering the Governor to decide what company shall be approved to build a pipeline and use the power of eminent domain to acquire real property rights for a pipeline route in and across Nebraska. Only the Legislature has authority to delegate the power of

¹⁴ The slip law copy of *LB1161* may be read at <http://nebraskalegislature.gov/FloorDocs/Current/PDF/Slip/LB1161.pdf>

¹⁵ *Burnett v. Central. Neb Pub Power & Irr. Dist.*, 147 Neb 458, 466, 23 NW2d 661, 666 (1946).

eminent domain to individuals; it cannot lawfully assign this delegation responsibility or empowerment authority to the Governor or any other department of Nebraska state government.¹⁶ For these reasons, LB1161 also violates the unlawful delegation of authority provisions of *Neb Const* Art II, § 1, and Art V, § 1, and the doctrine of separation of powers. It also thereby violates *Neb Const* Art I, § 3 by failing to require notice before action by the Governor or by PSC, as due process of law requires.

18.3 **Separation of Powers; Due Process.** LB1161 is unconstitutional and void because it violates Nebraska's requirement that state government be divided into executive, legislative, and judicial departments. It does so because it contains no provision for judicial review of decisions of the Governor to approve or to disapprove, or to decline to act upon applications for authority to acquire property and erect crude oil pipelines across Nebraska. Statutes that permit quasi-judicial functions to be exercised by boards but fail to provide for notice of hearing or judicial review are unconstitutional and void.¹⁷ This infirmity is also present for the separate, distinct reason that LB1161 fails to provide for judicial review of action of the Public Service Commission.

18.4 **Unlawful Expenditure.** LB1161 unlawfully allocates to the Department of Environmental Quality the sum of \$2.0 million to implement the unconstitutional provisions outlined above. This constitutes an unlawful expenditure of taxpayer funds for all the reasons asserted for LB1161's unconstitutionality. In addition, the Bill constitutes special legislation for the benefit of an unconstitutional class of persons contrary to *Neb Const* Art I, § 3, *Neb Const* Art IV, § 8, and the equal protection guarantee and special legislation prohibitions of the Nebraska Constitution. Plaintiffs have standing to challenge LB1161 and this expenditure. Only citizens of the State with interests in its environmental quality and the lawful expenditure of State funds are proper parties to challenge the Bill. The NDEQ has advanced more than \$5 million dollars of public funds under LB1161. Although *Neb. Rev. Stat.* § 57-1503(1)(b) requires reimbursement from the applicant carrier within sixty days after notification from the department of the cost, there are no mechanisms for collection and no guarantee of repayment.

¹⁶ *Lincoln Dairy Co. v. Finigan*, 170 Neb 777, 780, 104 NW2d 227, 230 (1960).

¹⁷ *First Fed Sav & Loan Ass'n v Department of Banking*, 187 Neb 562, 568, 192 NW2d 736, 740 (1971).

18.5 **Pledge of State Credit.** LB1161 § 8 pledges funds and credit of the State for at least 60 days to a pipeline applicant who is to repay the funds later. *Neb Const Art XIII, §3*¹⁸ prohibits the State from pledging its credit or loaning funds in these circumstances. LB1161 violates this constitutional mandate. Contrary to *Neb Const Art XIII, § 3*, the extension of credit and sixty (60) day reimbursement period in Section 7 of LB1161 unconstitutionally directs the State to lend funds to “borrower” pipeline carriers that have submitted a route for application or review:

A pipeline carrier...shall reimburse the department for the cost of the evaluation or review within sixty days after notification from the department of the cost. (emphasis added).

LB1161 § 7; *Neb Rev Stat § 57-1503(1)(b)*

This is an unconstitutional extension of credit by the State to a private corporation contrary to *Neb Const Art XIII, § 3*.

18.6 **No Standards.** LB1161 constitutes an unlawful delegation of legislative authority to the Governor because it fails to describe or prescribe standards, conditions, circumstances, or procedures which are constitutionally mandatory for the action it purports to delegate. By doing so, it constitutes an unlawful delegation of legislative authority contrary¹⁹ to *Neb Const Art II, § 1, Art V, § 1*, and standards prescribed by the Nebraska Supreme Court. It fails to require notice prior to action by the Governor or Public Service Commission.²⁰

Injunction

19. Plaintiffs have well-established rights not to be damaged by unconstitutional and unlawful condemnation proceedings under an invalid Nebraska statute.²¹ There is no adequate remedy at law except for declaratory judgment and

¹⁸ *Neb Const Art XIII, § 3* provides:

The credit of the state shall never be given or loaned in aid of any individual, association, or corporation, except that the state may guarantee or make long-term, low-interest loans to Nebraska residents seeking adult or post high school education at any public or private institution in this state. Qualifications for and the repayment of such loans shall be as prescribed by the Legislature.

¹⁹ *Lincoln Dairy Co. v. Finigan*, 170 Neb 777, 780, 104 NW2d 227, 230 (1960).

²⁰ *Id.*

²¹ *U.S. Const Amend V; Neb Const Art I, Sec 21. Jaksha v State*, 241 Neb 106, 486 NW2d 858 (1992).

injunctive relief. On January 20, 2015 TransCanada publically announced its actions directly impacting Plaintiffs and other similarly situated:

“Today [January 20, 2015], TransCanada has filed the necessary court documents to acquire the remaining 14 percent of Nebraska easements for Keystone XL through eminent domain...”

19.1 Unless injunctive relief is granted, Plaintiffs’ real estate will be taken by a foreign private company without lawful authorization to exercise eminent domain in accord with the Nebraska Constitution. The threat that this will occur is imminent and grave as TransCanada has announced, unequivocally, its intention to initiate condemnation proceedings under the authority of LB 1161 and the Governor’s action in January 2015 and has in fact filed petitions for condemnation of land across Nebraska in the days immediately prior to filing of this 1st Amended Complaint. Prior to filing this lawsuit, Plaintiffs received the communications from TransCanada, signed by Craig, of their immediate intentions to condemn Plaintiffs land. It is public record of the condemnation petitions now filed against Plaintiffs and others. Irreparable harm will occur from TransCanada’s taking of legal rights within, over, under, above, and/or through the unique real estate interests of Plaintiffs, unless injunctive relief is granted. As alleged and as shown though publically available records, injury to Plaintiffs is certain and great, it is actual and not merely theoretical, and the injury transcends purely economic loss.

19.2 Plaintiffs are highly likely to succeed on the merits of their claim that LB 1161 and the gubernatorial action challenged are unconstitutional and, therefore, TransCanada is without condemnation authority. This is true because of the opinions and decisions of the Nebraska Supreme Court and the Lancaster County District Court.²² Every judge who was weighed in on the question of whether or not the law by which Defendants assert their alleged power of eminent domain has found that law to be unconstitutional. No judge has ever found otherwise.

19.3 No harm will be incurred by TransCanada or Craig if injunctive relief is issued. LB 1161 applies only to applicants before authority to build pipelines across

²² *Thompson v Heineman*, 289 Neb 798 (2015). *Thompson v Heineman, Dist Ct, Lancaster Co NE C112-02060* (decided Feb 19, 2014).

Nebraska who filed permits to construct those pipelines across the US Canadian border, or the border of the United States with another nation. Procurement of a Border Crossing Permit from the President of the United States is necessary before the pipeline can be built. The President of United States has not issued such a permit and has publicly stated that he will veto congressional legislation, if passed, which attempts to compel him to do so. TransCanada has no Border Crossing permit and cannot proceed with its project accordingly. In addition, TransCanada has no permit from the lawful authorities of South Dakota, and, perhaps Montana, to proceed with this project. Craig is a TransCanada employee or agent. Temporarily enjoining TransCanada from taking legal rights in land from Plaintiffs creates no harm because there is no approval for the project TransCanada claims the land is necessary for and an open issue as to if TransCanada's claimed right to eminent domain is derived from a constitutional process. Accordingly, injunctive relief in this case will cause no harm to TransCanada or Craig.

19.4 Injunctive relief will protect the Plaintiffs and the public and will not cause harm to the public. This is true for several reasons: A) there is no Border Crossing Permit issued by the President, so the project cannot be built by TransCanada; B) there are no authorizations from one or more other states so there is no risk of harm to the public from that the requested injunction; C) TransCanada has not constructed its line across South Dakota, so there is nothing to connect to the proposed Nebraska line; D) TransCanada has voluntarily elected against proceeding to the Nebraska Public Service Commission for proper authorizations in accord with the Nebraska Constitution. TransCanada has an alternative procedure under Nebraska law which it has chosen not to employ; E) the proposed project provides no access in Nebraska to place product into or to extract it from the pipeline, there is no opportunity for any Nebraskan to transport anything via the pipeline or benefit directly from the transport of tar sands or crude oil through the pipeline as proposed. The proposed pipeline would dissect our state without any person in our state able to use, access, or benefit from its existence. Accordingly, the public purpose of the project requiring for a valid taking under *Neb Const* Art I, § 21 has not been established following public hearing and due process procedures required by law. Depriving the public of these processes and procedures harms it; F) If eminent domain is

used, land is taken, and the pipeline is built but must be removed because these things occurred unlawfully, remedial costs will be great; G) Finally, if unlawful takings occur, lands with common ownership will be severed by the easements and rights taken; uses and rights to use land will be diminished, and Nebraska land will be adversely affected on a long-term basis.

20. Permanent injunctive relief against Defendants is sought pursuant to *Neb Rev Stat* § 25-1062 *et seq.*, Temporary injunction is also sought at the time of filing of this Complaint. Though Nebraska has no statute authorizing injunctive relief to prevent enforcement of an unconstitutional statute, the judicial power of the courts inherently authorizes issuance of such injunctions.²³ Nebraska's courts also have authority to enjoin unconstitutional and unlawful actions purported to be taken under the authority of invalid laws. The decision of the Nebraska Supreme Court rendered January 9, 2015 makes it clear that this action is ripe when eminent domain proceedings are threatened or commenced.²⁴

21. Plaintiffs request that TransCanada and Craig be enjoined from proceeding with steps to acquire property from them or others for its project until after a decision on the merits in this case has been rendered. When a decision on the merits is rendered, they request that the Court declare that LB 1161, and the gubernatorial action described above be declared unconstitutional, null and void, and that TransCanada has no approved pipeline route across Nebraska and has no legal authority to exercise the power of eminent domain for its Keystone XL pipeline project across this State. Plaintiff's further request that the decision on the merits declare that TransCanada and Craig have no authority to condemn, or acquire by eminent domain, all or any part of the real estate owned by plaintiffs and described above.

22. The Plaintiffs seek to protect their well-established constitutional rights to enjoy private ownership of real estate without having it taken under color of state authority to use eminent domain by a for profit, private company without lawful eminent domain

²³ “[T]he court’s power to enjoin unconstitutional acts... is inherent in the Constitution itself”, *Hubbard v EPA*, 809 F2d 1,11 n15 (DC Cir 1986). See also, *Hartman v Moore*, 547 US 250, 126 S Ct 1695, 1701 (2006). Accord, *Marbury v Madison*, 5 US 137 (1803); *Mitchum v Hurt*, 73 F3d 30 (3d Cir 1995).

²⁴ *Thompson v Heineman*, 289 Neb 798 (2015).

powers. Plaintiffs' right is well established under US Const Amend V and Neb Const Art I Sec 21. Defendants eminent domain proceedings violate these rights.

Requests for Relief

23. On the foregoing basis, Plaintiffs request relief as follows:

23.1 A Declaratory Judgment be rendered declaring LB1161 is unconstitutional and is null and void, and an Injunction be rendered preventing its enforcement.

23.2 A Declaratory Judgment be rendered declaring that TransCanada and Craig have no approved construction route for its KXL pipeline project in Nebraska and has no lawful authority to acquire interests in property with the power of eminent domain;

23.3 A Declaratory Judgment be rendered declaring LB1161, the actions of the Governor and the purported authority of TransCanada and Craig to take land with the power of eminent domain each and all violate one or more of *Neb Const* Art I, § 3, Art I, §21, Art II §1, Art IV § 20, Art V § 1, Art XIII, § 3, and is unconstitutional and void.

23.4 A Temporary Restraining Order and a Temporary Injunction be issued to prevent TransCanada and Craig from taking any real estate from Plaintiffs or others under the purported authority of LB1161 or gubernatorial action thereunder, or for its KXL pipeline project.

23.5 A Temporary Restraining Order and a Temporary Injunction be issued enjoining the County Courts in the cases in which TransCanada has sued Nebraska landowners for eminent domain takings of property interests from proceeding in any manner with any action in any of eminent domain proceedings initiated by Defendants against in all counties, and further restraining and enjoining Defendants from any action to advance or move forward in any way with the process of eminent domain.

23.6 A Permanent Injunction be issued to prevent TransCanada and Craig from taking any real estate from Plaintiffs or others under the purported authority of LB1161 or gubernatorial action thereunder, for for its KXL pipeline project.

23.7 Court costs and attorney's fees be awarded to Plaintiffs to the extent allowed by case law and customs and usages of the Courts, the laws of the United States, and law of

Nebraska and to redress Defendants' violations and attempts to violate the well established rights of Plaintiffs.

23.8 Any additional relief be rendered as the Court finds just, equitable, and proper.

Terry Byron Steskal, et al, Plaintiffs



By _____

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