

**No. B-121088**

**No. B-121087**

**No. B-121085**

**No. B-121089**

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**Nebraska Liquor Control Commission**

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**In the Matters of the License Renewal Applications of:  
Stuart Kozal, "Jumping Eagle Inn",  
Sanford Holding LLC, "D & S Pioneer Service",  
Arrowhead Inn, Inc., "Arrowhead Inn",  
Clay Brehmer & Daniel Brehmer, "State Line Liquor"**

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**Post Hearing**

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**Closing Argument  
of  
Citizen Protestants (Domina Group)**

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**Attached: Ex 200:** LB 407, Laws 2017

**Ex 201:** Resolution No. 17-45XB, Exec. Comm., Oglala Sioux Tribe

## **Burden of Proof**

1. Closing argument must begin by recalling the burden of proof ... who bears it and what is it?

2. Decisions made by the Liquor Control Commission concerning license renewal must be based upon findings with a factual foundation in the administrative record. This means the record created at the April 6, 2017 hearing before the Commission. *American Drugstores, Inc., v. City of Lincoln*, 243 Neb 548, 551, 501 NW2d 278, 280 (1983); *Brannen v. Nebraska Liquor Control Comm'n*, 206 Neb 662, 294 NW2d 376 (1980.)

“[The burden is on the applicant for a liquor license to prove its fitness and willingness to provide the service proposed, its ability to conform to the Rules and Regulations of the *Nebraska Liquor Control Act*, that the management and control exercised over the premises will ensure compliance with such rules and regulations, and that the issuance of the license *is or will be required by the present or future public convenience and necessity*”.

*Kerrey's v. Nebraska Liquor Control Comm'n*, 213 Neb 442, 445, 329 NW2d 364, 366 (1983) (emphasis added.) The law imposing this burden of proof on applicants has been constant, since at least as early as *Lambert v. Stevens*, 29 Neb 283, 45 NW 457 (1890.)

3. The factual foundation to be proven must support the decision of the Commission. A scintilla is not enough. The proof must persuade the Commission that present or future public convenience and necessity will be served by issuance, or continuity, of a license.

4. In this case, the Applicants did not sustain the burden of proof. There is no evidence that any present or future “*public convenience and necessity*” whatsoever will be served by renewal of the four Class B beer off-sale licenses at Whiteclay, Nebraska. Not a single Nebraska market, or customer, was identified by the evidence.

## **Proven Facts**

These are the facts proven during the contested hearing of April 7, 2016:

5. Sheridan County, Nebraska's population is no more than 5,220 persons. (E139, Census data; E140, Profile of Demographics.)

6. Whiteclay is unincorporated and without defined boundaries. Its census is eight (8) persons. (Testimony of Neumann, Applicants.) Whiteclay, an unincorporated community, consists of approximately ten (10) buildings. (Testimony of Applicant, Stuart Kozal; E67.)

7. Two (2) of Whiteclay's eight (8) citizens consume beer, estimated at 100 or fewer cans be year—two (2) per week. (Neumann.) There is no contrary testimony.

8. There is no evidence of any sales of beer by any of the Applicants to Nebraska citizens. No Applicant, and no other witness, testified about any sales to any Nebraskans.

9. The Oglala Sioux Tribe of the Pine Ridge Reservation lies north of Sheridan County, and just a few hundred feet (or less) north of the Applicants' businesses. Forty Thousand (40,000) persons live there as proven by Attorney General Tatewin Means ("AG Means".) The largest city or town on the Reservation is Pine Ridge, a community of approximately 4,000 persons. (AG Means.)

10. Substantially all beer sales by the Applicants are to a) Tribal members who drive south on Highway 87 from the Pine Ridge Reservation a few hundred feet across the border to Whiteclay, buy beer, and either deliver it to street people living on the streets of Whiteclay, or turn around and drive it back to Pine Ridge, or b) street persons who are Tribal members. Transportation of beer from Applicants to the Reservation occurs hundreds of times daily. Every time beer is driven into South Dakota from White Clay a crime is committed ...*every time*. (Neumann, Bruce BonFleur, Marsha BonFleur, Applicants; and AG Means.) While enforcement of Tribal law is not a charge of the Liquor Control Commission, prevention of crime is within its duties.

It is only by alertness to proper occasions for prompt inquiries and investigation that effective prevention of crime and enforcement of law is possible. Commendation, rather than condemnation, should be accorded to the officers for their detection of the commission of a very serious offense.

*State v. Romonto*, 190 Neb 825, 830–31, 212 NW2d 641, 645 (1973.)

11. Alcohol-related crimes, including driving while intoxicated, public intoxication and illegal possession of beer are prosecuted in Oglala Lakota County, South Dakota. When they occur on the Reservation and involve Tribal members, they are within the exclusive criminal jurisdiction of the Tribe and Tribal courts. (AG Means.)

12. The most concentrated location where offenses occur is in the one-two mile stretch of highway immediately north of Whiteclay and to the south edge of Pine Ridge. (AG Means.) The intoxicants involved in the crimes prosecuted on the short stretch of road immediately north of Whiteclay are acquired at Whiteclay. (AG Means.)

13. The sale and possession of all alcohol, including beer, is illegal in Oglala Lakota County, SD, and throughout the two (2) million acres of the Pine Ridge Reservation. (AG Means.) These are also criminal acts on the Reservation:

- 13.1. Public intoxication.
- 13.2. Vagrancy.
- 13.3. Indecent Exposure.
- 13.4. Assault
- 13.5. Sexual Assault.
- 13.6. Human Trafficking.
- 13.7. Homicide.

(AG Means.)

14. Whiteclay's beer sellers promote lawlessness, and the harboring of fugitives sought by prosecuting authorities in South Dakota. (AG Means.) The Applicants know that substantial quantities of beer they sell will be transported from their stores immediately north to the Reservation where it is illegal. (Applicants.)

15. Nebraska public policy, including statutory and administrative policy of the Nebraska Commission on Indian Affairs, recognizes that indigenous people in the state suffer from alcoholism and alcohol-related illnesses disproportionately to the rest of the population. Nebraska commits funds and resources to combat these problems. Its

Commission on Indian Affairs is responsible for the implementation of this policy. (Testimony of Director Judi Gaiashkibos.)

16. Nebraska's public policy discourages the sale of alcohol to a population of Native American persons known to suffer from alcohol ailments. (Gaiashkibos.)

17. The Oglala Sioux are served by the Nebraska Commission on Indian Affairs. This service includes the efforts of the Commission on Indian Affairs in implementing policy directives of the Legislature to curb alcoholism and promote temperance among native persons. (Gaiashkibos.)

18. The Oglala Sioux of the Pine Ridge Reservation are entitled to have, and do have, an *ex officio* Commissioner of the Nebraska Commission on Indian Affairs for the purpose of representing the Tribe's members in Nebraska and South Dakota in connection with matters affecting the public policy of Nebraska concerning temperance in alcohol consumption among Native Americans. (Gaiashkibos.)

19. Alcohol is the number one criminal problem of law enforcement in Oglala Lakota County, South Dakota, and on the Reservation. (AG Means.)

20. The overwhelming and predominant source of illegal alcohol, causing law enforcement problems within a few hundred feet of the Applicants, is alcohol sold by the Applicants and transported across the state line. (AG Means.)

21. The alcohol-related problems at Whiteclay are so rampant that the Oglala Tribe constructed its new law enforcement center, the location of its court and its jail facilities within 200 meters of Whiteclay. (AG Means.)

22. It is common for intoxicated persons found on the short stretch of highway north of Whiteclay to be taken directly to the jail within 200 meters of Whiteclay. Unfortunately, it is often observed that upon discharge from jail, the discharged inmates walk directly back to Whiteclay for more beer. (AG Means.) It is fair to deduce they do so knowing they can get beer in Whiteclay.

23. The streets of Whiteclay are dangerous and become increasingly dangerous throughout the day due to criminal behaviors. The danger index rises as persons on the street become more intoxicated during the day and evening. (Neumann.)

24. Dangers on the streets of Whiteclay include these forms of criminal conduct, observed by Mr. Neumann and Mr. & Mrs. BonFleur:

- 24.1. Stabbing and use of knives.
- 24.2. Presence, use, and assault with firearms by drawing them and threatening killing.
- 24.3. Sexual assault, including gang rape and single perpetrator rape.
- 24.4. Human trafficking and human sex trafficking.
- 24.5. Public fighting and assault.
- 24.6. Public urination and defecation. This is so extreme that it has driven citizens from buildings they occupy.

(Neumann, BonFleurs, E179, E180.)

25. At Whiteclay for the one (1)-year period ending June 30, 2016, beer sales compared with these communities:

<b>Community</b>	<b>Population</b>	<b>Volume in Gallons (128 oz/gal)</b>	<b>Volume in 12 oz Cans</b>
Chadron	5,821	100,015	1,066,827
Gordon	1,612	141,521	1,509,557
Valentine	2,737	149,179	1,591,243
Whiteclay	8	331,416	3,535,104

(E143, E143 notes 12.8 cans (12 oz) / gallon.) Whiteclay sales total 85% of sales in the three (3) County Seat cities to the east and west of Whiteclay on the Nebraska-South Dakota border. This tends, strongly, to prove that the Whiteclay beer consuming population is *not* mobile or likely to seek beer to the south twenty (20) or more miles from Pine Ridge.

26. A makeshift homeless camp, where intoxicated persons stay overnight and sometimes live for extended times, is just across the Nebraska state line into South Dakota on the west side of the highway. It is called "Camp Justice". Street people of Whiteclay sleep there through summer and winter. (AG Means; Abram Neumann; Applicants.)

27. Despite the fact that compliance examinations, including tests for sale to minors, occur only about once a year, most of the Applicants have failed those tests at least once in the isolated setting in which they occur—even though the minors engaged by the liquor law enforcement agent were Caucasians and not Native Americans, and sales to Caucasians are rare. (Officer Troy Johnson; Applications of Applicants with histories.)

28. There is no evidence of any *Liquor Act* offense arrests by any member of the Nebraska State Patrol on regular or special patrol at Whiteclay. (Testimony of NSP Major Otte) (There is evidence of isolated DWI offenses on Hwy 87 between Rushville and Whiteclay.)

29. The Sheriff of Sheridan County admitted that his Department has made no *Liquor Act* arrests during years 2014, 2015, and 2016. (Testimony of Sheriff Robbins.)

30. Nebraska law enforcement is inadequate in that it does not collaborate with the professional law enforcement force or prosecutor at Pine Ridge. In five (5) years of service as Attorney General, there has been *no collaboration* between Nebraska law enforcement and Oglala Sioux law enforcement. (AG Means.)

31. No evidence of collaboration to enforce the law was adduced by the Applicants or offered by the Sheridan County Sheriff. (Absence of testimony by Applicants, Sheriff Robbins.)

32. Sheriff Robbins of Sheridan County, Major Otte of the Nebraska State Patrol, and Officer Johnson of Liquor enforcement were all unable to name (a) the Sheriff of Oglala Lakota County; (b) the Police Chief of the Oglala Sioux or Pine Ridge; or (c) the Chief Prosecutor and Law Enforcement Officer of the Oglala Sioux, AG Means. (Robbins, Otte, Johnson.)

33. While Major Otte testified that at one time an attempt was made to hold quarterly meetings with law enforcement representatives from Oglala Lakota County, South Dakota, these efforts have not continued in recent years. (Otte.) AG Means testimony makes it clear this is a Nebraska-based deficiency in law enforcement. Tribal officials want collaboration and cooperation. Nebraska has fallen off. Contrary to

testimony of the Applicants, is an example of a major negative change in circumstances that strongly stands against license renewal.

34. There is absolutely no proof of any convenience for Nebraskans proven by any one (1) of the four (4) liquor licenses in question. To the contrary, Sheridan County has found it necessary to double its law enforcement budget as of 2016, and the only evidence of any increase in law enforcement activity by the Sheriff's Department as a result is an alleged increase patrolling at White Clay. (Commissioner Krotz and Sheriff Robbins.)

35. The single officer responsible for enforcement of the *Liquor Control Act in the Panhandle* in a membership capacity with the Nebraska State Patrol, is Officer Johnson. Officer Johnson is responsible for 276 establishments, stretched out over the entire geography of eleven (11) counties, and stretching from Colorado to South Dakota, and from the Wyoming border to the Sheridan-Cherry county line. This area consists of approximately 14,200 square miles and about 18.5% of the State's total land. This compares with a national average of no more than 250 establishments in closely concentrated urban areas as explained by National Association of Liquor Law Enforcement Officers President, James Jones. (Jones.)

36. State law enforcement personnel conducted a single ten (10)-minute at-premises inspection at each store and observed no violations or suspected violations. Yet, there is uncontradicted evidence, including from the Applicants that 15-50, or 25-60 "street people" can be seen sitting, standing or lying passed-out on and just off the store premises day in and day out unless the temperature is below 20° F. (Neumann, Bruce BonFleur, Marsha BonFleur. Krotz who testified the Citizen Protestants told the truth. Also, Ex 179 & 180.) This fact is also supported by testimony of Sheriff Robbins who confesses persons sleep on the streets, in Camp Justice, and in abandoned buildings.

37. There is uncontradicted testimony that victims of rape and other assaults do not call Nebraska law enforcement because either "no one will come" or "they won't do anything anyway". (BonFleur and Mrs. BonFleur.) Notably, there was no contrary testimony from any Nebraska law enforcement official as not one law enforcement

officer testified about a single response resulting in intervention or an arrest after a report of a single sexual assault, physical assault, homicide, or other felony. (Neumann, Marsha BonFleur E180, Bruce BonFleur, Krotz affirmation of citizen testimony, and absence of contrary testimony by Robbins and NSP officers.)

38. No evidence was presented of a single investigation by a single Nebraska law enforcement agency of a single felony committed at Whiteclay or by persons who left Whiteclay in close time-proximity to the offense under investigation.

39. Absolutely no Nebraska necessity for any one (1) of the four (4) liquor licenses at issue was proven. There is no proof of any demand for beer by Nebraskans, need met by the Applicants to furnish beer to Nebraskans, and no proof of any benefit to Nebraskans from the business activities of the Applicants. *Despite having the floor for nearly 7 hours to prove their case, the Applicants failed to adduce proof of a single sale of a single can of beer to a single Nebraskan.* (Entire record of evidence.)

40. The testimony of the Applicants for themselves established only that (a) they have met bare minimum requirements for license, and (b) they claim nothing has changed with their stores. However, all Applicants concede they “shoo” intoxicated Native Americans off their premises to the next property to avoid liquor violations, but do not deny that the persons shooed away are human beings there because of the sales they make. (Testimony of all Applicants.)

41. Though the Applicants testified nothing has changed, the Sheridan County Commission has seen it necessary to double the county law enforcement budget. This has occurred without any proven increase in population or lawlessness outside of Whiteclay. (Krotz.) This testimony is not consistent with Nebraska programs to combat alcoholism (Gaiashkibos.)

42. The Governor’s Task Force made the unanimous finding, supported by the Applicants, that more law enforcement is essential. (BonFleur, Krotz, E180.)

43. The Governor’s Task Force on Whiteclay also recommended detox treatment facilities—in a community where the only source of intoxicating beverages sold is the Applicants—and better relations with the Oglala Sioux Tribe. (E80.) Again,

there is no coordination between Nebraska law enforcement and the Tribe which has criminal jurisdiction over all native persons in all of Oglala Lakota County, and across the two (2)-million acre Reservation. (AG Means.)

### **Judicial Notice Requested**

44. Judicial notice may be taken “whether requested or not,” at “any stage of the proceeding. *Neb Rev Stat* § 27-201. The Commission is asked by the Protestants to take judicial notice that the Nebraska Legislature voted 42-0 in support of forming a Whiteclay Public Health Task Force. A copy of LB 407 is subject to judicial notice under *Neb Rev Stat* § 27-201 at any stage in these proceedings. It is attached to this Brief as **Attachment 1** and offered as Exhibit 200.

45. Judicial notice is also requested, on the same basis, for the Oglala Sioux Tribe’s Resolution, as it contains action memorialized under official seal and recounts the efforts, and importance of efforts, to terminate the Applicants’ licenses. It is attached to this Brief as **Attachment 2** and offered as Exhibit 201.

### **Argument**

#### **I. Introduction**

46. This portion of the Citizens’ Closing Argument is an *Argument*. No attempt is made to objectively summarize facts here. Deductions drawn, inferences observed, and conclusions reached in this Argument are admittedly from the perception of citizens who want Whiteclay’s beer stores closed.

#### **II. The Governor & Legislature Have Spoken**

47. Nebraska’s statutes give no jurisdictional regulatory authority over alcohol sales, or enforcement of the *Liquor Control Act*, to the Governor or Legislature. Responsibility for licensure and enforcement is reposed exclusively in the Liquor Control Commission’s three (3) incumbent members. It is up to the LCC to do what is right, necessary, and proper for Nebraska.

48. But, the Governor and the Legislature have made it clear the time has come to end beer sales in Whiteclay and rid Nebraska of the abomination that is Whiteclay.

49. Nebraska's Governor threw a spotlight on Whiteclay. His Task Force was convened to study the problem. Its thoughtful recommendations make clear these inferences from its array of recommendations:

49.1. Law enforcement is woefully inadequate to police the hostile consequences of beer sales at Whiteclay in Nebraska. In addition, the evidence from Attorney General Means makes it clear law enforcement is also inadequate for this purpose in South Dakota.

49.2. This is because the lawlessness bred by indiscriminate beer sales to, and for, intoxicated persons, constitutes the overwhelming majority, and near totality of the business conducted by the Applicants.

50. The Nebraska Legislature made it clear by its action on LB407, Laws of Nebraska 2017, to day [awaits vote on final reading; unopposed to date] that the time has come for the Liquor Control Commission to rid Nebraska of the pernicious Whiteclay liquor licenses. LB 407 is attached as Ex 200.

51. Both the Governor and the Legislature have signaled, as forcefully as they can, that Nebraska has had it with the Applicants.

### **III. Abject Whiteclay**

52. "Abject" is the proper word to describe Whiteclay. And the Applicants make it abject. No one can doubt that Whiteclay is more of, and worse than, the worst of addiction promoting centers in Nebraska's most forsaken urban ghettos, or most forlorn centers of urban or suburban circulation for purveyors of addictive substances.

52.1. Whiteclay is like no other place. Its air is filled with the stench of human urine and fecal material, left by its perpetually intoxicated transients from the North.

52.2. Whiteclay's "commercial club's" key members are the Applicants. Their solution is to "shoo" addicts of alcohol a few feet away, off their premises to the lot next door – and to then sell more beer, knowing a significant part of what they sell is going directly to those

they shooed ever so slightly out of the faces of their establishments like human flies – pretending that off premises is sufficient. (Yes, it is fair to see this action as “shooing” people like flies. The Applicants chose the work “shoo” by using it at the April 6 hearing.)

52.3. Whiteclay is lawless. It permits vagrancy, public intoxication, and public indecency because it is an unincorporated place... and these laws are left by Nebraska’s criminal code to legislation and enforcement by local government.

52.4. Whiteclay is ungoverned. It is unincorporated and has no civil or criminal village code. And lack of government is inherently a major part of lawlessness.

52.5. Whiteclay harbors fugitives from justice. This is undenied, and proven by the Stanford and University of Minnesota educated, selfless, remarkable Chief Law Enforcement Officer and Attorney General of the Oglala Sioux people, Tatewin Means.

52.6. Whiteclay’s abjection is chronic. It can only be relieved by the Liquor Control Commission. The Protestants urge consideration of this proverb: “One is guilty of all abjection one does not help to relieve.”

53. Law enforcement has adopted a “hands off” attitude toward Whiteclay and has chosen to treat the problems of its victims as problems that belong to Nebraska’s Oglala Sioux neighbors and to Oglala Lakota County’s citizens. Yet, Nebraska has a public policy, administered by its Commission on Indian Affairs, to provide education and support to achieve temperate use of alcohol among Native Americans. The Commission recognizes they are especially vulnerable to alcohol addiction. As Executive Director, Judi Gaiashkibos, testified, this is at the core of the Commission’s mission, purposes, and goals. *Neb Rev Stat* §§ 81-2504 *et seq.*

54. The Commission chose to center its inquiry on the adequacy of law enforcement. On this issue, and each issue, the burden of proof is borne by the

Applicants to establish that law enforcement is adequate for the task of protecting the public—all the public—from the sale of alcohol at Whiteclay. The Applicants failed to meet this burden of proof.

55. Three (3) law enforcement officers were called by the Applicants to testify. They were Major Kyle Otte, Nebraska State Patrol; Liquor Law Enforcement Officer, Troy Johnson, Nebraska State Patrol; and Sheriff Terry Robbins, Sheridan County. None of these officers:

- Knew the *name* of the Sheriff of Oglala Lakota County, South Dakota.
- Knew the *name* of the Police Chief at Pine Ridge, South Dakota.
- Had ever met, or until the hearing, known the name, of the Chief Law Enforcement Officer of the Oglala Sioux Tribe—Attorney General Tatewin Means. (*Imagine the Hall County Attorney not knowing who is County Attorney, or Sheriff, in Buffalo County; or the Omaha Police Chief not knowing his or her counterpart in Council Bluffs.*)
- Testified about a single incident of collaboration to effectuate a single arrest for a single crime of any kind.
- Testified about a single episode of law enforcement, with the exception of sales to minors by three (3) of the licensees during tests conducted by the Liquor Law Enforcement Officer using non-native American minors to make purchases. (Johnson testimony.)
- Testified about a single meeting or a single conversation with a single law enforcement officer from South Dakota about any matter of law enforcement concern.

56. In fact, no law enforcement officer testified about a single arrest ever having been made or a single customer, or patron, of a Whiteclay alcohol establishment for anything. Yet, more than 3.5 million cans of beer are sold by the stores each year.

57. No Applicant testified about any collaboration or cooperation, or even awareness, of the identities of law enforcement personnel from a few hundred feet to the north, in South Dakota.

58. Sheridan County Commissioners, aware that their Sheriff has served for more than twenty (20) years and is near the end of his service, more than doubled his budget in 2016 because it is so painfully obvious that law enforcement in the County, and especially at Whiteclay, is utterly deficient. (Krotz.)

59. There is no evidence of a single law enforcement initiative involving Whiteclay with the exception of a six (6)-week grant paying for overtime focused on Whiteclay. And, during those six (6) weeks—forty-two (42) days—sixty-six (66) arrests were made at Whiteclay. None of the arrests were identified as alcohol offenses or alcohol-related offenses. We were left to wonder about that. But, the only time when arrests at Whiteclay of any kind were made, as disclosed by the evidence, was during a period when a special grant for additional law enforcement services by the Nebraska State Patrol for Whiteclay was in place, and during that time, the arrest rate was approximately 1.55 arrests per day. (Otte.)

60. Yet, there is abundant evidence that in South Dakota, in the single mile immediately north of Whiteclay's northern edge and the state line, more than twenty-five percent (25%) of all arrests for all liquor offenses on the entire Pine Ridge Indian Reservation, spanning three (3) counties and 2 million acres, are made. (AG Means.) Those arrests are of people traveling north from Whiteclay after purchasing beer there. Attorney General Means left no doubt about this lawlessness.

61. One (1) Sheridan County Commissioner testified about the adequacy of law enforcement. His Commission adopted a Resolution recommending renewal of the licenses at issue. But, there is no evidence that the Commissioners heard any testimony that law enforcement was inadequate from (a) any law enforcement officer [the Sheriff was present but did not testify], (b) any official from the Tribe [no evidence they were invited or informed], (c) any evidence from any South Dakota law enforcement official [no evidence they were invited or informed], and (d) any witness who reconciled the

Commissioners' recommendation to the LCC with previous statements, under oath, to the Legislature, received in evidence and made by Sheridan County Commissioner Anderson.

62. Commissioner Krotz, the witness who appeared on behalf of the Board at the April 6 hearing, pointedly testified that, based on his knowledge and experience, the sworn testimony of Abram Neumann, Marsha BonFleur, and Bruce BonFleur was truthful. Those witnesses testified about rapes, gang rapes, incidents with guns, knife wounds, assaults, physically breaking up fights, and binding up wounds, all of which they engaged in while ministering to street people because Nebraska law enforcement did not respond, or did not respond timely when called.

63. Mrs. BonFleur testified there is such resignation among people victimized by crime that they do not call the police believing "they won't come anyway", or "they won't do anything anyway". These statements were uttered by the victim of a vicious single-attacker rape, and another women victimized by a gang rape.

64. This point has been made before, but it is so telling, it deserves elaboration. The Attorney General of the Lakota People, a person whose position is more substantial than that of the County Attorney of Nebraska's fifth largest county, testified that during her five years of service, there was *no collaboration* between Nebraska law enforcement officers and the professional law enforcement force of the Tribe. First, Attorney General Tatewin Means testified she has had no communication or assistance from law enforcement or prosecutorial officials in Nebraska, though she routinely works with civilian officials in all surrounding jurisdictions in South Dakota. Since the Oglala Sioux Nation has its own constitution and laws, and criminal jurisdiction on the Reservation over its own people, its need to interact with civilian law enforcement in South Dakota is identical to the need to do so in Nebraska. From Tribe to South Dakota, and from Tribe to Nebraska, —these both involve interjurisdictional legal proceedings requiring cooperation. The Tribe has an extradition procedure and offers it. Nebraska does not. Instead, the Attorney General testified that she has a duty to know, and actually knows, of

these matters protected by the lack of law enforcement, lack of collaboration and coordination, and circumstances created by the beer store licensees in Whiteclay:

- 64.1. Human sex trafficking occurs by taking victims to Whiteclay from the Reservation. Lack of cooperation is present, even though the crime begins in South Dakota where the female subject to the trafficking is captured, and ends in Whiteclay where the sex activity occurs.
- 64.2. Homicides, resulting in death in Pine Ridge, but the infliction of mortal wounds in Whiteclay, have gone either uninvestigated, or inadequately investigated without cooperation. They are unsolved.
- 64.3. Assaults and aggravated assaults are not cooperatively investigated, though they often involve two (2)-state actions and consequences.
- 64.4. Victims raped in Whiteclay, rescued by Mrs. BonFleur, lacked any confidence in law enforcement and were fearful of making reports.

65. The Nebraska State Patrol's Major Otte projected a willingness to cooperate and try to improve the lack of collaboration described so eloquently by Attorney General Means. Yet, the Nebraska police officers seemed surprised and caught off-guard or uninformed of the existence of the problem. This may mean things will improve. We can hope so. Even after the Whiteclay stores are gone, Nebraska law enforcement officials must work with the Tribe or the political border becomes a way for fugitives from justice in each jurisdiction to flee from the other.

66. The same charitable comments cannot be made about the Sheriff of Sheridan County. His furtive glances backward from the witness stand toward the store owners for affirmations that his testimony was satisfactory gave him away. So did the Sheriff's oblivion at the failures of his Department, and his inability to recognize that his County is totally unprotected when his deputies are off duty, and he, alone, considers himself on call, even if he is at home asleep.

67. The Sheriff's highly questionable new set of books, containing as they do logs that are obviously not consistent with actual occurrences in view of how they end, suggests a cover up for overt inadequacy. (E147.)

68. But, even if the logs are disregarded, these facts cannot be:

68.1. The Sheriff was unable to identify a single arrest for a single felony involving a single occurrence originating at, or involving witnesses from, or relating to liquor sold at Whiteclay, despite the evidence that such offenses occur on a multi-weekly basis.

68.2. The Sheriff admitted that no arrests were made for violations of liquor laws in Whiteclay.

68.3. The Sheriff did not deny, and in fact admitted, delayed response times and offered no response to the compelling descriptions by the Citizen Protestants of their attempts to get law enforcement from Sheridan County to respond on an emergency basis.

69. The Sheriff did admit that in recent weeks, since much attention was focused on Whiteclay, he began to have someone drive there during the evening hours, after the liquor establishments are supposed to be closed, to look for homeless persons who might be left in the streets or in vulnerable circumstances. Apparently, this is designed as interventive action to protect persons from death by exposure, but it does not achieve the enforcement of the law. In fact, while it is humane, it displays an utter lack of an attempt at law enforcement. More time by law enforcement officials to provide social services is not equivalent to increased law enforcement.

70. The Sheriff also made condescending comments about occasional contacts with tribal officials. These were made as he attempted to claim that his department or he drive people from Whiteclay home. This testimony came after he denied knowing whether the persons were "homeless". When the Sheriff was cross-examined, the store owners' lawyer tried to point out a log entry showing he did transport a homeless person from Whiteclay, but the best he could do was prove that a family member of a person at the hospital was taken to the hospital.

71. Over and over again, the Sheriff, like the Applicants, testified that things are unchanged in Whiteclay. Applicants claim things are no worse now than they were years ago, apparently. Yet, the proof is of prevalent, unmitigated lawlessness and the abject exploitation of vulnerable people who do not choose alcoholism, but cannot resist it, for the sake of the profit of four (4) stores, four (4) Applicants on the skid row of the plains. Former wrongs do not justify present or future wrongs.

72. Many observers in the hearing room, around the State, and across the nation, saw a Sheriff who was reminiscent in many ways of those in the Deep South, 60 years ago, steeped so thoroughly in bias as to be oblivious to the fact that a bias is even present. After all, one cannot perceive and reflect “guilt” at a bias so deep that it is a part of a person’s being, and not just a part of a person’s chosen elements of attitude.

73. Nebraska prohibits contributing to the delinquency of a minor by one who purchases alcohol for the under-aged. Yet, Whiteclay’s beer stores contribute to lawlessness a stone’s throw outside their doors and thrive on the business of doing so. How, in the name of all that is rational and sane, can that be beneficial to the *present or future public necessity and convenience* of any Nebraskan, or anyone anywhere... other than the Applicants. And, what is beneficial *to the Applicants* is not a statutory factor for consideration at the time of attempts to renew their liquor licenses. Banks are not chartered to make owners rich; they are chartered to meet public necessity and convenience requirements. The same is true for hospitals, nursing homes, private schools, and common carriers. And, it is true for off-sale beer sellers, too.

74. The circumstances at Whiteclay would not be tolerated at any location in Omaha—not at 16<sup>th</sup> & Lake Street, not at 24<sup>th</sup> & Y Streets, and not at 168<sup>th</sup> & Burt Street. They would not be tolerated in Lincoln—not at 8<sup>th</sup> & P Street, not at 27<sup>th</sup> & Cornhusker Highway, not at 27<sup>th</sup> & Superior Street, and not at 65<sup>th</sup> & Nebraska Highway. These circumstances would not be tolerated in Kearney—not at 2200 2<sup>nd</sup> Avenue, not at 1200 NW 24<sup>th</sup> Street, and not at 16<sup>th</sup> & Highway 30.

75. There is no justification for this activity anywhere in Nebraska. Whiteclay is anathematic to what is so rhythmically enshrined in the Official State Song (adopted 31-4 by Neb Legislature, June 21, 1967; codified at *Neb Rev Stat* § 90-111):

Beautiful Nebraska, peaceful prairieland,  
Laced with many rivers, and the hills of sand;  
Dark green valleys cradled in the earth,  
Rain and sunshine bring abundant birth.

Beautiful Nebraska, as you look around,  
You will find a rainbow reaching to the ground;  
All these wonders by the Master's hand;  
Beautiful Nebraska land.

We are so proud of this state where we live,  
There is no place that has so much to give.

There “is no place like Nebraska”. And there is no space in Nebraska for the likes of Whiteclay.

76. The Oglala Sioux Tribe (Ex 201, Offer of Proof, remarked) provided some powerful information in its Resolution supporting nonrenewal of the licensees:

- Alcohol is a pernicious threat to the well-being of tribal members and to the peace, safety, health, lawfulness, and general welfare of the Tribe.
- The Tribe banned all sale and possession of alcohol on its Reservation.
- Yet alcohol offenses constitute the overwhelming majority of all criminal activity of tribal members and crimes occurring on the Reservation.
- Alcohol and alcohol-related diseases contribute to demands for medical care, depression, suicide, diminished longevity, and premature death among tribal members.
- The professional police force of the Tribe is at approximately fifty percent (50%) of necessary manpower.

- Ambulance demands and tribal resources are often called to Whiteclay, leaving service inadequate elsewhere.
- Alcohol's metabolism within the human body involves enzymes that are genetically different in Native American people, and this is believed to explain why tribal members have higher rates of alcohol-related crimes, and makes them five (5) times more likely than other ethnic groups in the United States to die from alcohol-related causes.
- The vast majority of alcohol-related crimes and illnesses, and deaths on the Pine Ridge Reservation occur as a result of the ingestion of beer sold by the licensees.

77. Sales by Applicants before this Commission are the primary contributing cause of the following problems of the Tribe:

- Crimes of violence against persons.
- Crimes including suicide, motor vehicles, and persons on the roadways.
- Domestic crimes, including spousal abuse and child neglect.
- Property crimes, including theft, vandalism, larceny, and burglary.

78. The sole step that Nebraska's law enforcement agency, this Commission, can take to make a material contribution to resolving these problems is to deny renewal of the liquor license applications before it.

79. Certainly, this will not eradicate alcoholism on the Pine Ridge Reservation. The Attorney General and Ms. Gaiashkibos acknowledged this. So did the tribal Council in Ex 201. But, this "will constitute a major step that can be undertaken and accomplished by the State of Nebraska to materially aid and assist". *Id.*

80. This Commission is charged, by *Neb Rev Stat* § 53-101.05, to liberally construe the *Act* "to the end that the health, safety, and welfare of the people of the State are protected". The Oglala Sioux people are in Nebraska—in Lincoln, Omaha, Gordon, Rushville, Chadron, Grand Island, Kearney, South Sioux City—and in Whiteclay. This

Commission owes them protection, in precisely the way it is owed to every other person in the State.

81. Three (3) residents of Whiteclay testified. All said law enforcement was inadequate. No other resident testified. Even the Applicants voted as members of the Governor's Commission on Whiteclay that law enforcement was not adequate. (BonFleur.) No Applicant denied this fact.

82. Sheridan County Commissioner Jack Anderson's testimony before the General Affairs Committee (received upon offer by the Deputy AG Wiles) contradicts the testimony of Commissioner Krotz given on April 6. And, Commissioner Krotz's testimony was internally inconsistent. Mr. Krotz admitted the descriptions given by the citizens were truthful and accurate. He admitted that the recommendations of the Governor's Task Force were correctly recited in the record by others.

83. The forceful testimony of the Attorney General of the Oglala Sioux cannot be overlooked. If the County Attorney of Buffalo County, a county with a population approximately the same as that of the Reservation, was informed that the most significant law enforcement problem in Buffalo County was emanating from beer sales by four (4) licensees in an unincorporated wide spot in the road just inside Sherman County, this Commission would, without the slightest hesitation, act to close down those Sherman County applicants. These circumstances are not different—*except* that the person who gave the testimony in this case, a distinguished lawyer and an accomplished person—was able to add that she and her law enforcement personnel try to combat the alcohol problem among her people but are thwarted by lack of cooperation from Nebraska. In all probability, Sherman County's law enforcement would at least try to work cooperatively with officials in Buffalo County.

84. Testimony by a remarkable young man, Abram Neumann, is uncontradicted and compelling. Abram knows the names of the street people, considers many of them his friends. Abram, diminutive, pleasant, and boyish looking, has put his own defenseless body between others to break up or prevent fights. He sees violence on a regular basis. He goes out on the streets in the mornings because it is too dangerous to

be there at other times. And, regardless of testimony given by others, he sees law enforcement in his community no more often than once a week.

85. Not one of the Applicants tried to adduce any evidence that he operates a beer store that makes efforts to sell to Nebraskans, and not to exploited alcohol addicts. There is no evidence of a single advertisement, a single charitable donation, a single community outreach service (except a couple hours of picking up junk one time), or a single act of human charity toward a single homeless person, except to “shoo” them like flies away from the sales premises of the Applicant’s stores. In short, not one Applicant adduced even a scintilla of redeeming evidence about any difference in attitude, operations, or community concerns from every other Applicant. Instead, the four (4) of them chose to hang together in their indifference.

86. It is hard—very hard—to see the Applicants before the Commission as anything other than callous, insensitive, and greedy. And, it is utterly impossible to see them as providing any service or any benefit that is consistent with the purposes of the *Liquor Control Act*, the responsibilities of the Liquor Control Commission, or the public necessity and convenience of Nebraska.

87. It is time to close Whiteclay beer sales. And upon closing them, to recall the closing stanza of the State’s formally adopted official song:

Beautiful Nebraska, as you look around,  
You will find a rainbow reaching to the ground;  
All these wonders by the Master's hand,  
Beautiful Nebraska land.

#### **IV. The Law and Legal Arguments**

88. Four (4) Applicants for renewal of Class B off-sale beer licenses seek to renew their privileges to sell alcohol in the State of Nebraska at retail. The Nebraska Liquor Control Commission has subject matter jurisdiction over all such proceedings. The Commission has this jurisdiction:

The power to regulate all the control of the manufacturer, distribution, sale, and traffic of alcoholic liquor, except as

specifically delegated in the *Nebraska Liquor Control Act*, is vested exclusively in the Commission.

*Neb Rev Stat* § 53-116.

89. The Commission implements this power, in part, by wielding its power to investigate and to suspend, cancel or revoke licenses. § 53-116.01.

90. The Commission [also] has the following powers, functions and duties:

(1) To receive applications for and to issue licenses to and suspend, cancel, and revoke licenses . . . in accordance with the Nebraska Liquor Control Act.

\*\*\*

*Neb Rev Stat* § 53-117 (selected portions.)

Any licensee may renew his, her or its license at the expiration thereof in the manner set forth in section 53-135 if the licensee is then qualified to receive a license and the premises for which such renewal license is sought are the same premises licensed under the license to be renewed and are suitable for such purpose. The renewal privilege provided for in this section *shall not be construed as a vested right which shall in any case prevent the commission from decreasing the number of licenses to be issued within its jurisdiction.*

*Neb Rev Stat* § 53-135.02 (emphasis added.)

91. All actions of the Commission are, of course, necessarily designed to implement the over-arching policy of the *Liquor Control Act*. Recalling that basic policy is especially important in this case. It is as follows:

(1) It is hereby declared to be the policy of the legislature to:

(a) Regulate, restrict, license, or prohibit the manufacture, distribution, sale and traffic of alcoholic liquor and regulate the transportation or importation of alcoholic liquor into the state when such alcoholic liquor is intended for delivery or use within the state as permitted by the United States Constitution, the Constitution of Nebraska and the laws of Nebraska;

(b) Promote the public interest of liberal construction of the Nebraska Liquor Control Act to remedy the abuses inherent in the traffic of alcoholic liquor;

(d) Encourage temperance and restrict the consumption of alcoholic liquor; and

\*\*\*

(3) It is the declared policy of the state of Nebraska that it is necessary to regulate and control the manufacture, sale and distribution of alcoholic liquor within the state for the purpose of fostering temperance in consumption and respect for and obedience to the law.

*Neb Rev Stat* § 53-101.01

92. There is, of course, no right to renewal of a liquor license. The Nebraska Supreme Court has consistently held that a license “to engage in the sale of intoxicating liquors involves a mere privilege; and restrictive regulations or even a suppression of the traffic do not deprive persons of property without due process of law . . .” where licenses are not renewed. This language has appeared in decisions of the Nebraska Supreme Court originating with *Marsh & Marsh v. Carmichael*, 136 Neb 797, 801-02, 287 NW 616, 619 (1995), and continued to be repeated until at least as recently as *Bosselman, Inc. v. State*, 230 Neb 471, 474, 432 NW2d 226, 228 (1998.)

93. The *Act* itself expresses this legal point clearly at *Neb Rev Stat* § 53-135.02. The statute delineates factors to be considered. They include:

- The recommendation of the local governing bodies.
- The existence of citizen protests.
- Population and projected population.
- Nature of the neighborhood or community of the location.
- Existence or absence of other retail licenses and [whether or not there is] an undue concentration of licenses with similar privileges . . . [such as to] require the use of additional law enforcement resources.
- The existing motor vehicle and pedestrian traffic flow in the vicinity.

- The adequacy of existing law enforcement.
- Zoning.
- Sanitation or sanitary conditions on or about the proposed licensed premises.
- Whether the type of business or activity proposed . . . is and will be consistent with the public interest.

*Neb Rev Stat* § 53-132(2) & (3.)

94. Finally, the Commission must consider whether licensed premises being reviewed for renewal should not be renewed because of any factor that might make them be, or become, a “common nuisance” or “common nuisances” which the statutes require to “be abated”. *Neb Rev Stat* § 53-190 & § 53-198.

95. The premises of the Applicants deserve a comment, too. The Citizens who protest these licenses recognize that building structures identical to those owned by the retailers here might operate lawfully in one location where they are not a nuisance, but do not so operate in their locations at Whiteclay. This observation is consistent with nuisance tort jurisprudence, which recognizes that a lawful business can be so offensive to its neighborhood that its owners must pay damages for the actionable level of annoyance they cause the neighbors to experience. *Kopecky v. Nat’l Farms Inc.*, 244 Neb 846, 510 NW2d 41 (1994) (livestock operations); *Bargmann v. Soll Oil Co*, 253 Neb 1018, 574 NW2d 478 (1998) (petroleum contamination); *State ex rel Spire v. Strawberries, Inc.*, 239 Neb 1, 473 NW2d 428 (1991) (gaming devices case.) See generally Restatement 2d Torts § 825 *et seq.* (nuisance defined and elements delineated.)

### **Conclusion**

96. None of the Applicants for Whiteclay beer license renewals meet a need of any kind in Nebraska. There is no public necessity or convenience met by any of the Applicants, or by alcohol sales to Native Americans at Whiteclay. And none is likely in

the future. The evidence of any such public necessity or convenience is wholly missing. There is none in the record.

97. The embarrassment and scorn that Whiteclay's beer sellers engender against Nebraska is near its conclusion. The licenses are not vested rights; licenses are privileges conferred when evidence proves they may be entrusted to fit applicants. The evidence here does not do so.

98. The record is lopsided against the Applicants. They have not sustained their burden of proof. And the wheel of history has finally turned against them. Now, it coincides with lopsided public sentiment against continued abjection at Whiteclay. Whiteclay bespeaks human exploitation; not "the Good Life". Whiteclay's infamy as a harbor for human abuse can end -- with this Commission's votes against renewal of the liquor license of each Applicant.

99. Now is the time for this work to be done. "It always seems impossible until it's done." – Nelson Mandela.

100. The Commission can do this work. Its time has come.

**Attached: Judicial Notice Requested as Noted Above.**

Ex 200 LB 407, Nebraska Legislature 2017.

Ex 201 Resolution 17-45XB, Exec. Comm. Oglala Sioux Tribe (2017)

April 13, 2017.

Citizen Protestants,

By: 

David A. Domina, #11043

DOMINALAW Group pc llo

2425 S. 144th Street

Omaha, NE 68114

(402) 493-4100

Fax: (402) 493-9782

[ddomina@dominalaw.com](mailto:ddomina@dominalaw.com)

*Protestants' Lawyers*

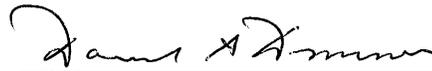
**Certificate of Service**

On April 13, 2017, the foregoing was served by email, to:

State of Nebraska  
Nebraska Liquor Control Commission  
PO Box 95046  
Lincoln, NE 68905  
Hobert.rupe@nebraska.gov

Andrew W. Snyder  
Chaloupka, Holyoke, Snyder, Chaloupka &  
Longoria, LLC  
1714 2<sup>nd</sup> Ave  
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asw@chhscla.net

Milissa Johnson-Wiles  
Assistant Attorney General  
Office of the Attorney General  
2115 State Capitol  
Lincoln, NE 68509  
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David A. Domina

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

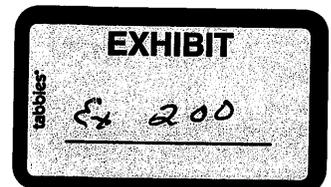
**LEGISLATIVE BILL 407**

Introduced by Pansing Brooks, 28; Baker, 30; Brewer, 43; Crawford, 45;  
Kolterman, 24; Lindstrom, 18; McDonnell, 5; Wishart, 27.

Read first time January 13, 2017

Committee: Executive Board

- 1 A BILL FOR AN ACT relating to public health; to create and provide duties
- 2 for a task force; and to provide for termination.
- 3 Be it enacted by the people of the State of Nebraska,



1           Section 1. (1) The Whiteclay Public Health Emergency Task Force is  
2 created. The task force shall be composed of an executive committee and  
3 an advisory committee.

4           (2) The executive committee of the task force shall consist of five  
5 voting members: The chairperson of the State-Tribal Relations Committee  
6 of the Legislature, the chairperson of the Health and Human Services  
7 Committee of the Legislature, and three at-large members. One of the at-  
8 large members shall be an official of the University of Nebraska Medical  
9 Center appointed by the Chancellor of the University of Nebraska Medical  
10 Center. The remaining at-large members shall be appointed by the  
11 Executive Board of the Legislative Council. The voting members of the  
12 executive committee shall choose a chairperson and vice-chairperson from  
13 among the voting members.

14           (3) The executive committee shall also include the following  
15 nonvoting, ex officio members: The chief executive officer of the  
16 Department of Health and Human Services or his or her designee, the  
17 executive director of the Commission on Indian Affairs or his or her  
18 designee, and the executive director of the Department of Economic  
19 Development or his or her designee, a public health expert, and a data  
20 analysis expert from the University of Nebraska Medical Center appointed  
21 by the Chancellor of the University of Nebraska Medical Center.

22           (4) The advisory committee of the task force shall consist of at  
23 least ten members who shall be nonvoting members appointed by the  
24 executive committee of the task force through an application and  
25 selection process and shall represent (a) advocacy groups that focus on  
26 public health issues and economic development issues, (b) academic  
27 experts in health care and economic development issues, (c) service  
28 providers, (d) educational institutions, (e) workforce development  
29 agencies, and (f) experts in public health issues for Native American  
30 people.

31           Sec. 2. (1) The Whiteclay Public Health Emergency Task Force shall

1 examine public health implications of alcohol sales in Whiteclay,  
2 Nebraska, on the Whiteclay community and surrounding areas, including the  
3 neighboring Pine Ridge Reservation. The task force shall: (a) Collect,  
4 examine, and analyze data on fetal alcohol syndrome and other health  
5 conditions related to alcoholism in such areas; (b) collect, examine, and  
6 analyze data on access in such areas to detoxification, treatment  
7 facilities, telehealth, distance learning, and other health resources for  
8 those affected by the consumption of alcohol, including affected  
9 children; (c) collect, examine, and analyze data on children in such  
10 areas who are at risk of continuing a cycle of alcoholism unless outside  
11 intervention is made available; (d) encourage participation and obtain  
12 input from academic and medical experts, including, but not limited to,  
13 the University of Nebraska Medical Center; (e) encourage and obtain input  
14 from nonprofit organizations, faith-based institutions, and city, county,  
15 and tribal government officials to evaluate and develop strategies and  
16 solutions to help victims escape alcoholism; (f) study, evaluate, and  
17 report on the status and effectiveness of policies, procedures, and  
18 programs implemented by other states directed toward Native American  
19 populations as they relate to preventing and combating alcoholism; (g)  
20 evaluate the adequacy of interagency data sharing and policy coordination  
21 and recommend changes as necessary; (h) examine sources of federal,  
22 state, and private funds that may be available for prevention,  
23 detoxification, treatment, rehabilitation, and economic development; (i)  
24 create a long-range strategic plan containing measurable goals and  
25 benchmarks, including future action needed to attain those goals and  
26 benchmarks, for decreasing the incidence of alcohol-related health  
27 problems through prevention programs and increasing treatment, access to  
28 detoxification services, and economic growth in Whiteclay, Nebraska, and  
29 the surrounding areas; and (j) recommend data-supported changes to  
30 policies, procedures, and programs to address the needs of children  
31 affected by alcohol-related health issues and to help those children

1 escape the cycle of alcoholism, including the steps that will be required  
2 to make the recommended changes and whether further action is required by  
3 the Legislature or local governments.

4 (2) To accomplish the objectives set forth in subsection (1) of this  
5 section, the task force may: (a) Request, obtain, review, and analyze  
6 information relating to public health issues in Whiteclay, Nebraska, and  
7 surrounding areas, including, but not limited to, reports, audits, data,  
8 projections, and statistics; and (b) appoint one or more special  
9 committees to advise and assist the task force. Members of any such  
10 special committee shall be appointed by the chairperson of the task force  
11 and may be members of the task force or individuals from the private or  
12 public sector. Any such special committee shall regularly report to the  
13 task force on the progress of the special committee. Members of a special  
14 committee appointed under this section shall not receive reimbursement or  
15 payment for work done in relation to the special committee.

16 Sec. 3. On or before December 15, 2017, and on or before December  
17 15, 2018, the Whiteclay Public Health Emergency Task Force shall submit a  
18 preliminary report to the Governor, the executive director of the  
19 Commission on Indian Affairs, and electronically to the State-Tribal  
20 Relations Committee of the Legislature and the Executive Board of the  
21 Legislative Council. On or before December 31, 2019, the task force shall  
22 submit a final report to the Governor, the executive director of the  
23 Commission on Indian Affairs, and electronically to the State-Tribal  
24 Relations Committee of the Legislature and the Executive Board of the  
25 Legislative Council. The preliminary reports and the final report shall  
26 include: (1) The long-range strategic plan required pursuant to section 2  
27 of this act; (2) a summary of the actions taken by the task force to  
28 fulfill its statutory purposes and duties during the time period covered  
29 by the report; (3) a description of the policies, procedures, and  
30 programs that have been implemented or modified to help rectify the  
31 Whiteclay public health emergency; and (4) the task force's

1 recommendations on how the state should act to solve issues relating to  
2 the Whiteclay public health emergency and the economic and social issues  
3 contributing to the emergency.

4 The Whiteclay Public Health Emergency Task Force shall terminate on  
5 December 31, 2019.

RESOLUTION OF THE EXECUTIVE COMMITTEE  
OF THE OGLALA SIOUX TRIBE  
(An Unincorporated Tribe)

RESOLUTION OF THE EXECUTIVE COMMITTEE OF THE OGLALA SIOUX TRIBE URGING THE NEBRASKA LIQUOR CONTROL COMMISSION TO REFUSE TO AUTHORIZE THE REISSUANCE OF OFF-SALE BEER, OR OTHER LIQUOR LICENSES TO THE CURRENT APPLICANTS WHO SELL BEER IN WHITE CLAY, NEBRASKA.

WHEREAS, the Oglala Sioux Tribe has adopted its Constitution and By-Laws by referendum vote on December 14, 1935, in accordance with Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 5123), and under Article III of the Oglala Sioux Tribe Constitution, the Oglala Sioux Tribal Council is the governing body of the Oglala Sioux Tribe, and

WHEREAS, the Tribal Council recognizes that alcohol is a pernicious threat to the well-being of Tribal Members and to the peace, safety, health, lawfulness, physical and general welfare of the Tribe, and

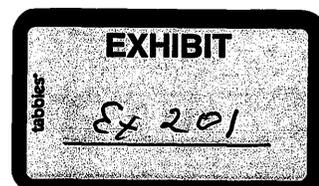
WHEREAS, the Pine Ridge Reservation and Oglala Lakota Counties in the State of South Dakota have banned sale of all alcohol and beer for the purpose of reducing availability, and diminishing consumption to promote the peace, safety, health, lawfulness, physical and general welfare of the Tribe, and

WHEREAS, alcohol related offenses constitute the overwhelming majority of all criminal activity of Tribal Members and all crimes occurring on the Pine Ridge Reservation, and

WHEREAS, alcohol related diseases constitute the overwhelming majority of demands for medical care, treatment and detention, and contribute to unemployment, depression, suicide, diminished longevity, and premature death, and

WHEREAS, the Oglala Sioux Tribe has a professional Police Force that is well-trained by training officials at State Law Enforcement Training Academies with a slotted compliment of more than fifty (50) officers, but with approximately twenty-five (25) officers currently serving so the force is operating at approximately 50% of necessary manpower and capacity, and

WHEREAS, the Oglala Sioux Tribe's professional Police Force is repeatedly called to the State of South Dakota State border with Nebraska at White Clay, and beyond it into White Clay to accompany ambulance crews, provide security, or assist with law enforcement, thereby causing a significant drain on policing resources for the remainder of the Reservation, which consists of approximately 2.1 million acres, but finds its Law Enforcement Personnel committed to rendition of disproportionately great volumes of services in a small area of less than 2000 acres adjacent to White Clay, and



WHEREAS, it is scientifically established that alcohol is metabolized by several pathways, the most common of which involves two (2) key enzymes: alcohol dehydrogenase (ADH) and aldehyde dehydrogenase (ALDH). Genetic differences in these enzymes may help to explain why some groups of people, including Tribal Members, have higher or lower rates of alcohol-related problems and this helps to explain why Native Americans, including Tribal Members, are five times more likely than other ethnic groups in the United States to die from alcohol-related causes as shown by the research of the National Institute on Alcohol Abuse and Alcoholism, and

WHEREAS, four off-sale beer stores in White Clay, Nebraska, an unincorporated community of approximately 12 persons adjacent to the Pine Ridge Reservation, but across the South Dakota-Nebraska state line, sell annually 3.5 million cans of beer or more, the vast majority of which is sold to Tribal Members, and the vast majority of which provides the alcohol that causes or perpetuates alcoholism among Tribal Members, and alcohol-related law enforcement and public health problems, and

WHEREAS, these four off-sale beer stores in White Clay, Nebraska, have applied to the Nebraska Liquor Control Commission to renew their licenses to continue to sell beer, as in the past; now

THEREFORE BE IT RESOLVED, that the Executive Committee of the Oglala Sioux Tribe hereby expressly finds that the continuing of sales of the four off-sale beer stores in White Clay, Nebraska, is a primary contributing cause of the following problems for the Oglala Sioux Tribe:

- \* Crimes of violence against persons and criminal conduct, without sufficient Law Enforcement Personnel or resources to enforce the law,
- \* Crimes, including suicide without sufficient Law Enforcement Personnel or resources to enforce the law. Crimes involving motor vehicles and persons on the roadways without sufficient Law Enforcement Personnel or resources to enforce the law,
- \* Domestic crimes, including spousal abuse and child neglect without sufficient Law Enforcement Personnel or resources to enforce the law,
- \* Property crimes, including theft, vandalism, larceny and burglary without sufficient Law Enforcement Personnel or resources to enforce the law,
- \* Demands on jail facilities without sufficient personnel to provide for prisoners,

- \* Public health demands, including, but not limited to, cirrhosis of the liver, cardiac arrest and stroke, diabetes, alcoholism, miscarriage, and abortion of fetuses, fetal alcohol syndrome, chronic inflammation of the pancreas or alcoholic pancreatitis, and cancer of the organs and tissues of the respiratory, upper digestive tract, liver, rectum, and breast, and sexually transmitted diseases,
- \* Demands upon the hospital, ambulance services, emergency responders, physicians, and professional personnel of the Pine Ridge Indian Health Service and ambulance service without sufficient personnel provide for public needs,

and Oglala Lakota County, South Dakota lacks resources to deal effectively to assure public safety and complies with the law, and

BE IT FURTHER RESOLVED, that the Executive Committee of the Oglala Sioux Tribe acknowledges that the sole step that can be taken by Nebraska's Liquor Law Enforcement Agency, the Nebraska Liquor Control Commission, to cause or contribute to the reduction in the foregoing crimes and adverse consequences of alcohol upon Tribal Members and members of the public in South Dakota and Nebraska in the area of White Clay is to refuse to allow persons to hold licenses to sell beer or other alcohol at White Clay, where the consuming public consists almost entirely of Tribal Members, and

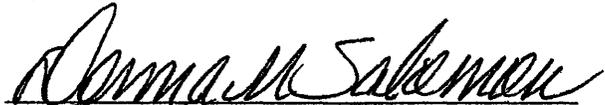
BE IT FURTHER RESOLVED, that the Executive Committee of the Oglala Sioux Tribe acknowledges that elimination of beer sales at White Clay will not halt alcoholism on the Reservation, but it will constitute a major step that can be undertaken and accomplished by the State of Nebraska to materially aid and assist in the effort to protect Tribal Members from the adverse consequences of alcohol availability and consumption, as reduced availability does reduce consumption, and

BE IT FURTHER RESOLVED, that the Executive Committee of the Oglala Sioux Tribe respectfully requests and forcefully urges the Nebraska Liquor Control Commission to refuse to authorize the reissuance of off-sale beer, or other liquor licenses to the current applicants who sell beer at White Clay, Nebraska, and

BE IT FINALLY RESOLVED, that the following persons are authorized to appear before the Nebraska Liquor Control Commission and to present a certified copy of this Resolution in opposition to applications to renew the off-sale beer retail licenses of existing White Clay, Nebraska, beer and/or other liquor sale licensees: Robin Tapio, Tribal Council Representative and Bryan V. Brewer, former President of the Oglala Sioux Tribe (2012-2014).

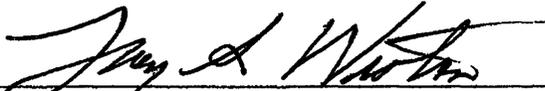
C-E-R-T-I-F-I-C-A-T-I-O-N

I, as the undersigned Secretary of the Executive Committee of the Oglala Sioux Tribe, do hereby certify that this Resolution was adopted by a vote of: 3 For; 0 Against; 0 Abstain; and 0 Not Voting; during a SPECIAL SESSION held on the 29<sup>TH</sup> day of MARCH, 2017.



DONNA M. SALOMON  
Secretary  
Oglala Sioux Tribe

A-T-T-E-S-T:



TROY S. WESTON  
President  
Oglala Sioux Tribe

