

---

IN THE NEBRASKA SUPREME COURT

---

**RANDY THOMPSON, SUSAN LUEBBE and SUSAN DUNAVAN, Plaintiffs/Appellants,**

**v.**

**DAVE HEINEMAN, in his official capacity as Governor of the State of Nebraska;  
PATRICK W. RICE, in his official capacity as the Acting Director of the Nebraska  
Department of Environmental Quality; and DON STENBERG, in his official capacity as  
the State Treasurer of Nebraska, Defendants/Appellees**

---

APPEAL FROM THE DISTRICT COURT OF  
LANCASTER COUNTY, NEBRASKA

Honorable Stephanie F. Stacy, District Court Judge

---

**NEBRASKA CHAMBER OF COMMERCE & INDUSTRY, OMAHA FEDERATION OF  
LABOR, AFL-CIO, NEBRASKA RURAL ELECTRIC ASSOCIATION, ASSOCIATED  
GENERAL CONTRACTORS-NEBRASKA CHAPTER, ASSOCIATED GENERAL  
CONTRACTORS-NEBRASKA BUILDING CHAPTER, NEBRASKA PETROLEUM  
MARKETERS & CONVENIENCE STORE ASSOCIATION, NATIONAL FEDERATION  
OF INDEPENDENT BUSINESS, AND CHAMBER OF COMMERCE OF THE UNITED  
STATES OF AMERICA'S AMENDED MOTION FOR LEAVE TO FILE BRIEF OF  
*AMICI CURIAE* IN SUPPORT OF APPELLANTS**

---

COME NOW the Nebraska Chamber of Commerce & Industry (the "Nebraska Chamber"), the Omaha Federation of Labor, AFL-CIO, the Nebraska Rural Electric Association, the Associated General Contractors-Nebraska Chapter, the Associated General Contractors-Nebraska Building Chapter, the Nebraska Petroleum Marketers & Convenience Store Association, the National Federation of Independent Business, and the Chamber of Commerce of the United States of America (the "U.S. Chamber"), (collectively, "Movants"), and, pursuant to

Neb. Ct. R. App. P. § 2-106 and § 2-109(A)(4), request leave of this Court file an *amici curiae* brief in support of Defendants-Appellants Dave Heineman, Patrick W. Rice, and Don Stenberg’s appeal to this Court in the above-captioned matter. In support of their motion, the proposed *amici curiae* state as follows:

1. The Nebraska Chamber is a statewide, broad-based business association that represents the interests of more than 1,500 businesses of all sizes and sectors – in every county in Nebraska. Its members range from main street businesses to sole proprietorships, from leading industry associations to large corporations. A principal function of the Nebraska Chamber is to promote and protect Nebraska’s free enterprise system by advocating for economic development, job creation, a friendlier tax climate, and less burdensome regulation for business.

2. The Omaha Federation of Labor is member of the American Federation of Labor-Congress of Industrial Organizations, and works to make the voices of working people in the State of Nebraska heard by all branches of state and federal government.

3. The Nebraska Rural Electric Association (“NREA”) is the private non-profit trade association for 34 rural electric systems that provide electric service to consumers in most of the rural areas and many of the small towns in the State of Nebraska. Together, the more than 1,000 dedicated employees of NREA’s member-systems serve approximately 231,000 meters across more than 85,000 miles of line. NREA’s mission includes a broad range of activities to assist member-systems as they face the many challenges of providing low-cost, reliable electric service to the sparsely populated regions of Nebraska.

4. Associated General Contractors - Nebraska Chapter (the “AGC Nebraska”) is the only full-service statewide construction trade association that serves and represents highway, heavy, bridge, and municipal/utility contractors. AGC Nebraska represents more than 200

general contractors, subcontractors, suppliers and service providers. AGC Nebraska and its members support the expeditious permitting and construction of the Keystone XL pipeline.

5. Associated General Contractors-Nebraska Building Chapter (the “Building Chapter”) is a professional organization that represents over 120 firms involved in the vertical commercial construction industry in Nebraska. The Building Chapter exists to stimulate, encourage and support progress in the construction industry on behalf of and alongside its member firms. Specifically, the Building Chapter’s legislative philosophy supports initiatives that will jump-start privately-funded construction, grow the economy, enhance the state’s competitiveness, and continues to create high paying jobs in the state.

6. The Nebraska Petroleum Marketers & Convenience Store Association is a nonprofit trade association serving the needs of independent petroleum marketers, gasoline retailers, convenience store operators and truck stop owners throughout the state of Nebraska.

7. The National Federation of Independent Business (“NFIB”) is nonprofit, nonpartisan organization, and is the nation’s leading small business association, representing members in Washington, D.C., and all 50 state capitals. NFIB’s mission is to promote and protect the right of its members to own, operate and grow their businesses. NFIB represents 350,000 member businesses nationwide, including Nebraska, and its membership spans the spectrum of business operations, ranging from sole proprietor enterprises to firms with hundreds of employees. The NFIB membership is a reflection of American small business. According to NFIB’s Small Business Problems and Priorities, the cost of natural gas, propane, gasoline, diesel, or fuel oil ranked as the third-most important priority among NFIB’s members.

8. The U.S. Chamber is the world’s largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than 3 million companies

and professional organizations of every size, in every industry sector, and from every region of the country. The U.S. Chamber's members range from sole proprietorships and local chambers of commerce to leading industry associations and large national corporations, thousands of which conduct business and own property in Nebraska. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and courts across the country and at every level of the judicial system. To that end, the U.S. Chamber regularly files amicus curiae briefs in cases that raise issues of concern to the nation's business community.

9. Movants have a vested interest in the outcome of this case because this Court's decision will have a long-term, lasting impact on the future of businesses and workers not only in Nebraska, but throughout the country. Such businesses rely on the availability of secure sources of energy—the backbone of industry and sustainable growth.

10. Movants are also interested in the outcome of this case because the constitutionality of LB 1161 affects the rights of members of the Nebraska Chamber and other Movants who hold property in Nebraska.

11. Furthermore, Movants recognize that the outcome of this case has the potential to affect thousands of new jobs and the growth of the economy throughout the United States, including Nebraska.

12. Movants respectfully request this Court grant them the opportunity to participate in this appeal to express the public policy concerns presented by the district court's decision. Movants will ask this Court to reverse the district court's determination that LB 1161 unconstitutionally divests the Nebraska Public Service Commission of control over the routing decisions of oil pipelines within the State, and impermissibly vests such regulatory control with

the Nebraska Department of Environmental Quality and the Governor, in violation of Nebraska Constitution Article IV § 20.

13. This case involves issues and legal principles that directly impact Movants. Due to the broad range of interests represented by the diversity of Movants' constituencies, Movants are uniquely situated to provide essential legal argument to this Court, and their brief may assist this Court in ultimately ruling on this appeal. Therefore, the proposed *amici curiae* parties would like to share with the Court their perspective on the rights at issues under applicable Nebraska law and public policy.

WHEREFORE, the Nebraska Chamber of Commerce & Industry, Omaha Federation of Labor, AFL-CIO, the Nebraska Rural Electric Association, the Associated General Contractors - Nebraska Chapter, the Associated General Contractors-Nebraska Building Chapter, the Nebraska Petroleum Marketers & Convenience Store Association, the National Federation of Independent Business, and the Chamber of Commerce of the United States of America respectfully request the Court grant them leave to file a brief of *amici curiae* in this appeal.

Dated this 30th day of May, 2014.

Respectfully submitted,

**NEBRASKA CHAMBER OF COMMERCE  
& INDUSTRY, OMAHA FEDERATION OF  
LABOR, AFL-CIO, NEBRASKA RURAL  
ELECTRIC ASSOCIATION,  
ASSOCIATED GENERAL  
CONTRACTORS-NEBRASKA CHAPTER,  
ASSOCIATED GENERAL  
CONTRACTORS-NEBRASKA BUILDING  
CHAPTER, NEBRASKA PETROLEUM  
MARKETERS & CONVENIENCE STORE  
ASSOCIATION, NATIONAL  
FEDERATION OF INDEPENDENT  
BUSINESS, AND CHAMBER OF  
COMMERCE OF THE UNITED STATES  
OF AMERICA**

By: 

Thomas H. Dahlk, #15371

D. David DeWald, #24765

KUTAK ROCK LLP

1650 Farnam Street

Omaha, NE 68102

(402) 346-6000

thomas.dahlk@kutakrock.com

david.dewald@kutakrock.com

*Attorneys for Proposed Amici Curiae*

**AFFIDAVIT OF SERVICE**

STATE OF NEBRASKA     )  
   ) ss  
 COUNTY OF DOUGLAS    )

D. David DeWald, being duly sworn on oath, states as follows:


1. That I am an attorney for the Nebraska Chamber of Commerce & Industry, the Omaha Federation of Labor, AFL-CIO, the Nebraska Rural Electric Association, the Associated General Contractors-Nebraska Chapter, the Associated General Contractors-Nebraska Building Chapter, the Nebraska Petroleum Marketers & Convenience Store Association, the National Federation of Independent Business, and the Chamber of Commerce of the United States of America.

2. That on May 30, 2014, I served a copy of the foregoing Motion for Leave to File Brief of *Amici Curiae* Brief by placing a copy in the United States Mail, first class postage prepaid, addressed to the attorneys representing the parties of record:

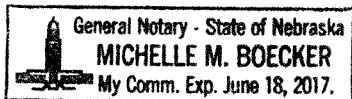
David A. Domina 2425 S. 144 <sup>th</sup> Street Omaha, NE 68144 <i>Attorney for Plaintiffs</i>	Katherine J. Spohn 2115 State Capitol Building Lincoln, NE 68509 <i>Attorney for Defendants Dave Heineman,          Michael J. Linder, Don Stenberg and Nebraska          Department of Environmental Quality</i>
--	--


FURTHER AFFIANT SAITH NAUGHT.

DATED this 30<sup>th</sup> day of May, 2014.

  
 \_\_\_\_\_  
 D. David DeWald, #24765

SUBSCRIBED and SWORN before me this 30<sup>th</sup> day of May, 2014.



  
 \_\_\_\_\_  
 Notary Public