STATE OF NORTH DAKOTA

COUNTY OF BURLEIGH

IN DISTRICT COURT

SOUTH CENTRAL JUDICIAL DISTRICT

Ranchers Rights Initiative, Kenneth Graner, Jeremy Maher, and Michael Heaton,

Plaintiffs,

v.

North Dakota Beef Commission, State of North Dakota, Kelly Armstrong, in his official capacity as Governor of North Dakota,

Defendants.

Case No. 08-2025-CV-02080

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

INTRODUCTION

[¶1] The Plaintiffs, Ranchers Rights Initiative ("RRI"), Kenneth Graner, Jeremy Maher, and Michael Heaton (collectively "Plaintiffs"), filed a *Complaint* on July 17, 2025, challenging the nomination and appointment process for the North Dakota Beef Commission ("Commission"). (R:2). They claim N.D.C.C. § 4.1-03-02 is unconstitutional because it gives specific private entities the exclusive right to submit names to the Governor for six of the nine positions on the Commission. (R:2:7-9:32-53). They also claim the requirement that a Commission member cannot have obtained a refund of any assessment paid on the sale of cattle for the preceding three years is unconstitutional. (R:2:9-11:54-65). The Plaintiffs claim these provisions violate Article I, Section 21, Article IV, Section 13, and Article I, Section 22 of the North Dakota Constitution. (R:2:18-25:116-171). The Plaintiffs also named Attorney General Drew Wrigley as a defendant, but the parties stipulated to dismiss him without prejudice on August 19, 2025. (R:31). This order refers to the Plaintiffs' claims by subject: the facial privileges and immunities claim (Count I), the as-

applied privileges and immunities claim (Count II), the participating producer claim (Count III), the special law claim (Count IV), and the uniform operation claim (Count V).

[¶2] This matter came before the Court on competing motions for summary judgment. On May 5, 2026, the Defendants, the North Dakota Beef Commission, the State of North Dakota, and Governor Kelly Armstrong (collectively "Defendants"), filed the *Defendants' Motion for Summary Judgment*. (R:96-116). Also on May 5, 2026, the Plaintiffs filed the *Plaintiffs' Motion for Summary Judgment*. (R:117-139).

[¶3] On May 4, 2026, the parties filed their *Stipulated Material Facts and Restatements of Law That Are Not in Dispute*. (R:88-95). Four declarations and the deposition transcript of the North Dakota Stockmen's Association's designated representative accompany the stipulated facts. (R:90-94). The parties also attached exhibits in support of their motions. The parties agree no genuine issues of material fact exist and this matter can be resolved on summary judgment. No trial is scheduled.

[¶4] The Defendants argue there are no genuine issues as to any of the material facts regarding the Beef Promotion Act, as found in N.D.C.C. ch. 4.1-03 (the "Act"). (R:98:3:9). They assert they are entitled to judgment as a matter of law. The Defendants maintain the Act enjoys a strong presumption of constitutionality and complies with Article I, Section 21, Article I, Section 22, and Article IV, Section 13 of the North Dakota Constitution. (R:98:5:13-39). Specifically, the Defendants argue the process of nominating and appointing members to the Commission, and the prohibition on cattlemen who have sought a checkoff refund from being appointed to the Commission, do not violate the Privileges and Immunities Clause. (R:98:9:22-39). The Defendants contend the Plaintiffs ignore the history of the Act and Commission appointments before 2009. (R:98:16:40-47). The Defendants caution that overturning the Act based on the nomination process

would affect over twenty different boards and commissions in the State. (R:98:19:48-50). Further, the Defendants urge the Court to uphold the Act, both facially and as applied, under rational basis review. (R:98:20:51). The Defendants also challenge the Plaintiffs' standing, both as individual plaintiffs and as an organization. (R:98:21:52-59). Finally, the Defendants argue the statute of limitations in N.D.C.C. § 28-01-22.1 bars the Plaintiffs' claims. (R:98:23:60-66). Accordingly, the Defendants request the Court grant summary judgment in their favor and dismiss all of the Plaintiffs' claims. (R:98:26:67).

[¶5] On June 12, 2026, the Plaintiffs filed a *Memorandum in Opposition to Defendants' Motion for Summary Judgment.* (R:144). The Plaintiffs argue the Defendants failed to develop or mention any arguments against the Plaintiffs' special and general law claims and thus, the Court should consider those arguments waived. (R:144:2-4:6-9). The Plaintiffs maintain the Defendants are not entitled to summary judgment on the Plaintiffs' facial challenges. (R:144:4:10-23). Specifically, they claim the participating producer requirement and limiting nominations to the legislatively favored private associations are facially arbitrary and lack a rational basis. *Id.* The Plaintiffs further argue the Defendants are not entitled to summary judgment on the Plaintiffs' as-applied challenges. (R:144:11:24-49). The Plaintiffs assert the facts before 2009 are irrelevant because the current version of the Act, which was enacted in 2009, is the only legislation the Plaintiffs challenge. (R:144:11:24-28). They contend that even if considered, the pre-2009 records do not support the Defendants' position. *Id.* The Plaintiffs urge the Court not to consider the pre-2009 facts because the Defendants did not produce them in discovery and the *Stipulated Material Facts* do not concern records before 2009. (R:144:13:29-32). They reason that even if the Defendants could identify an unaffiliated cattleman who served on the Commission, it would not defeat their as-applied challenges. (R:144:16-17:35-37). The Plaintiffs also fault the Defendants for failing to

identify a rational basis for why only members of the legislatively favored private associations should serve on the Commission, rather than unaffiliated cattlemen. (R:144:17-18:38-41). Finally, the Plaintiffs assert other statutory schemes are irrelevant to the constitutionality and substance of the Act. (R:144:18:42-49).

[¶6] On the procedural issues, the Plaintiffs argue they have standing because they suffered concrete injuries caused by the express language and application of the Act. (R:144:20:50-66). The Plaintiffs also maintain their constitutional claims are timely and the statute of limitations does not bar them. (R:144:26:67-76). Accordingly, the Plaintiffs request the Court deny the Defendants' motion for summary judgment. (R:144:31:79).

[¶7] On July 2, 2026, the Defendants filed their *Reply Brief in Support of Motion for Summary Judgment*. (R:169). The Defendants argue granting summary judgment in their favor is appropriate because the Plaintiffs have not overcome the strong presumption of a statute's constitutionality, the Act does not create a special law, the Plaintiffs lack standing, and the statute of limitations bars their claims. (R:169:1:2). Further, the Defendants contend they are entitled to summary judgment on the facial and as-applied challenges because the classifications made by the Legislature are reasonable. (R:169:4:11-21). The Defendants assert facts before 2009 are relevant as an aid to interpretation. (R:169:9:22-24). Accordingly, the Defendants request the Court dismiss the Plaintiffs' claims. (R:169:12:34).

[¶8] The Plaintiffs argue granting summary judgment in their favor is appropriate in their *Motion for Summary Judgment*. (R:119). First, the Plaintiffs claim the Act's nomination and appointment process is a special law that violates Article IV, Section 13 of the North Dakota Constitution. (R:119:17:49-69). Alternatively, the Plaintiffs contend the Act's nomination and appointment process is a general law that does not operate uniformly and violates Article I, Section

22 of the North Dakota Constitution. (R:119:26:70-74). Second, the Plaintiffs assert the Act's nomination and appointment process facially violates Article I, Section 21 of the North Dakota Constitution, the Privileges and Immunities Clause. (R:119:28:75-92). Alternatively, they maintain the Act's nomination and appointment process violates the Privileges and Immunities Clause as applied. (R:119:35:93-96). Accordingly, the Plaintiffs request the Court grant summary judgment in their favor on all causes of action in the *Complaint*. (R:119:37:97).

[¶9] On June 12, 2026, the Defendants filed the *Defendants' Response Brief in Opposition of Plaintiffs' Motion for Summary Judgment*. (R:149). The Defendants reiterate their argument that the Act does not create a special law and, even if it did, the classification is reasonable. (R:149:2-11:5-24). The Defendants argue the Plaintiffs conflate nomination authority with appointment authority. (R:149:6-8:14-18). Further, the Defendants contend the Act does not facially violate the Privileges and Immunities Clause because there is a rational basis for choosing the statutorily enumerated organizations and a legitimate reason for the "participating producer" requirement. (R:149:11-18:25-40). The Defendants also maintain the Act is a general law that does not violate Article I, Section 22 because it applies uniformly to the named entities and to individual cattlemen, and the North Dakota Stockmen's Association ("NDSA") has not influenced the Governor's at-large appointments. (R:149:18-24:41-51). The Defendants reassert their arguments that the Plaintiffs lack standing to bring an as-applied claim and that the statute of limitations bars the Plaintiffs' claims. (R:149:24-28:52-61; R:149:28-31:62-70). Accordingly, the Defendants request the Court deny the Plaintiffs' motion. (R:149:31:71).

[¶10] On July 2, 2026, the Plaintiffs filed their *Reply Brief in Support of Motion for Summary Judgment*. (R:180). The Plaintiffs argue that expressly limiting nominations to legislatively favored private associations is an unconstitutional special law on its face and no rational basis

supports the Act's discriminatory privileges. (R:180:2-9:3-21). They contend the Act is a general law that does not operate uniformly. (R:180:9-11:22-25). The Plaintiffs reassert they have standing to bring their as-applied claims. (R:180:11-12:26-28). The Plaintiffs further assert the pre-2009 records are irrelevant because the 2009 Act was not merely a reorganization of the 1973 statute. (R:180:12:28). Accordingly, the Plaintiffs request the Court grant their motion. (R:180:12-13:29-30).

[¶11] The Court held a hearing on July 27, 2026. (R:166). The Court heard arguments from the parties and allowed the parties to submit supplemental briefs on whether similarly structured boards existed when the North Dakota Constitution was drafted and adopted.

[¶12] The Plaintiffs filed their *Post-Hearing Supplemental Brief in Support of Plaintiffs' Motion for Summary Judgment* on August 6, 2026. (R:184). The Defendants filed their *Supplemental Response to Court's Single Question at Oral Argument*, with exhibits, on August 13, 2026. (R:185-88).

[¶13] For the reasons set forth below, the Court holds as follows: The Court DENIES the Defendants' motion for summary judgment on standing and the statute of limitations. The Court GRANTS the Plaintiffs' motion for summary judgment on the special law claim and the facial privileges and immunities claim. The Court GRANTS the Defendants' motion for summary judgment on the participating producer claim. The Court GRANTS the Defendants' motion for summary judgment on the as-applied privileges and immunities claim and the uniform operation claim as they relate to the three at-large seats, and DISMISSES those claims as moot as they relate to the six phase-specific seats. The Court DECLARES invalid the words in section 4.1-03-02(2)(a)-(d), N.D.C.C., that limit the Governor to the named associations' lists. The rest of the Act remains in effect. The Court DENIES the Plaintiffs' alternative request for an injunction.

LAW AND ANALYSIS

A. Summary Judgment Standard

[¶14] The standard for summary judgment is well-established. "Summary judgment is a procedural device for the prompt resolution of a controversy on the merits without a trial if there are no genuine issues of material fact or inferences that can reasonably be drawn from undisputed facts, or if the only issues to be resolved are questions of law." *Kutcka v. Gateway Bldg. Sys., Inc.*, 2023 ND 91, ¶ 5, 990 N.W.2d 605 (quoting *Markgraf v. Welker*, 2015 ND 303, ¶ 10, 873 N.W.2d 26). "A party moving for summary judgment has the burden of showing there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Id.*

[¶15] In determining whether summary judgment is appropriate the evidence must be viewed "...in the light most favorable to the party opposing the motion, and that party will be given the benefit of all favorable inferences which can reasonably be drawn from the record." *Larson Latham Huettl LLP v. Burckhard*, 2022 ND 230, ¶ 10, 983 N.W.2d 169 (quoting *Poppe v. Stockert*, 2015 ND 252, ¶ 4, 870 N.W.2d 187). "On a motion for summary judgment, the district court's 'role is limited to determining whether the evidence and inferences to be drawn therefrom, when viewed in the light most favorable to the party opposing summary judgment, demonstrate that there are no genuine issues of material fact.'" *Farmers Union Oil Co. of Garrison v. Smetana*, 2009 ND 74, ¶ 10, 764 N.W.2d 665 (quoting *Heng v. Rotech Med. Corp.*, 2004 ND 204, ¶ 34, 688 N.W.2d 389). "In determining whether summary judgment is appropriate, the court may examine the pleadings, depositions, admissions, affidavits, interrogatories, and inferences to be drawn from the evidence." *Burris Carpet Plus, Inc. v. Burris*, 2010 ND 118, ¶ 11, 785 N.W.2d 164.

[¶16] However, "[a] party opposing a motion for summary judgment cannot simply rely on the pleadings or on unsupported conclusory allegations." *Larson Latham Huettl LLP v. Iversen*, 2023

ND 16, ¶ 5, 985 N.W.2d 662 (quoting *Cuozzo v. State*, 2019 ND 95, ¶ 7, 925 N.W.2d 752). "'Factual assertions in a brief do not raise an issue of material fact...'" *Zuger v. State*, 2004 ND 16, ¶ 8, 673 N.W.2d 615 (quoting *Kemp v. City of Grand Forks*, 523 N.W.2d 406, 408 (N.D.1994)). "Rather, a party opposing a summary judgment motion must present competent admissible evidence by affidavit or other comparable means that raises an issue of material fact and must, if appropriate, draw the court's attention to relevant evidence in the record raising an issue of material fact." *Iversen*, at ¶ 5 (quoting *Cuozzo*, 2019 ND 95 at ¶ 7). "In summary judgment proceedings, neither the trial court nor the appellate court has any obligation, duty, or responsibility to search the record for evidence opposing the motion for summary judgment." *Zuger*, at ¶ 8 (quoting *Iglehart v. Iglehart*, 2003 ND 154, ¶ 10, 670 N.W.2d 343).

[¶17] "The opposing party must also explain the connection between the factual assertions and the legal theories in the case, and cannot leave to the court the chore of divining what facts are relevant or why facts are relevant, let alone material, to the claim for relief." *Id.* at ¶ 8 (quoting *Iglehart*, 2003 ND 154, ¶ 10, 670 N.W.2d 343). "Mere speculation is not enough to defeat a motion for summary judgment, and a scintilla of evidence is not sufficient to support a claim." *Id.* "When no pertinent evidence on an essential element is presented to the trial court in resistance to the motion for summary judgment, it is presumed that no such evidence exists." *Kummer v. City of Fargo*, 516 N.W.2d 294, 297 (N.D. 1994).

[¶18] Summary judgment is an appropriate way to resolve this case. Both parties moved for summary judgment, and the parties stipulated to the material facts. (R:88). Both parties also treat the central issues as questions of law. The Defendants state the case "concerns purely a question of law." (R:98:2:5). The Plaintiffs state "[t]he constitutionality of a statute is a question of law[.]" (R:119:16:48) (quoting *State v. Norman*, 2003 ND 66, ¶ 21, 660 N.W.2d 549). In the alternative,

the Plaintiffs argue disputes of material fact preclude summary judgment for the Defendants. (R:144:1:2). The only dispute they identify is the NDSA's testimony that it may have nominated some non-members, which the NDSA could not confirm. (R:144:12-13:26 n.3). The parties also disagree about whether the Court should consider records from before 2009. (R:144:11-15:24-32; R:169:9-10:22-24). These disagreements concern the relevance and weight of evidence, not facts material to the legal questions before the Court. The material facts are not in dispute, and the remaining issues are questions of law. The Court can decide them on summary judgment.

B. Standing

[¶19] "...[T]he Legislature may not expand the scope of a judge's duties beyond the judiciary's institutional role." *Kjolsrud v. MKB Mgmt. Corp.*, 2003 ND 144, ¶ 12, 669 N.W.2d 82 (citing *City of Carrington v. Foster County*, 166 N.W.2d 377, 385 (N.D.1969)). "Under our constitutional framework for the separation of powers, it is well established that courts perform judicial functions and do not render advisory opinions on abstract disagreements." *Id.* "A party is entitled to have a court decide the merits of a dispute only after demonstrating the party has standing to litigate the issues placed before the court." *Dakota Res. Council v. Stark Cnty. Bd. of Cnty. Comm'rs*, 2012 ND 114, ¶ 5, 817 N.W.2d 373. "'Standing is a concept utilized to determine if a party is sufficiently affected so as to insure that a justiciable controversy is presented to the court.'" *Billey v. N. Dakota Stockmen's Ass'n*, 1998 ND 120, ¶ 7, 579 N.W.2d 171 (quoting *Black's Law Dictionary* 1405 (6th ed. 1990)). "The question of standing focuses upon whether the litigant is entitled to have the court decide the merits of the dispute." *Flatt v. Kantak*, 2004 ND 173, ¶ 38, 687 N.W.2d 208 (quoting *State v. Carpenter*, 301 N.W.2d 106, 107 (N.D. 1980)). "Standing is a question of law which is reviewed de novo on appeal." *Dakota Res. Council*, at ¶ 5.

[¶20] "[The North Dakota Supreme Court's] seminal case on standing is *State v. Carpenter*, 301

N.W.2d 106, 107 (N.D.1980), in which a two-pronged test was established to determine whether a litigant has alleged such a personal stake in the outcome of the controversy as to justify the exercise of the court's remedial powers to decide the merits of the dispute." *N. Dakota Fair Hous. Council, Inc. v. Peterson*, 2001 ND 81, ¶ 65, 625 N.W.2d 551 (Kapsner, J., dissenting). "First, the plaintiff must have suffered some threatened or actual injury resulting from the putatively illegal action." *Carpenter*, at 107 (citing *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973)). "Secondly, the asserted harm must not be a generalized grievance shared by all or a large class of citizens; the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights and interests of third parties." *Id.* (citing *Warth v. Seldln*, 422 U.S. 490 (1975); *United States v. Raines*, 362 U.S. 17 (1960)). As Justice Scalia memorably said, standing requires a plaintiff first answer a basic question: "What's it to you?" A. Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 882 (1983).

[¶21] The North Dakota Supreme Court has recognized an organization may have standing to sue on its members' behalf if certain requirements are met: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *First Int'l Bank & Trust v. Peterson*, 2011 ND 87, ¶ 12, 797 N.W.2d 316 (citations omitted).

[¶22] The Defendants argue none of the Plaintiffs have standing. (R:98:21-23:52-59; R:149:24-28:52-61; R:169:10-11:25-28). They assert Maher was simply not appointed, and no one has a right to appointment to a state board. (R:149:26:57; R:169:10:26). They note Graner and Heaton never sought a seat on the Commission. (R:98:21-22:54-55). They also contend RRI cannot serve on the Commission and does not pay the checkoff, and none of its members has standing. (R:98:22-

23:56-59; R:149:25-26:54-56). The Plaintiffs claim the Act excludes them from consideration for the six phase-specific seats, that Heaton is ineligible because he obtained refunds, and that the law does not require them to make futile applications. (R:144:20-24:50-59; R:180:11:26).

[¶23] Standing must exist for each claim, but not for each plaintiff. "In a multi-plaintiff case such as here, the standing of any one plaintiff is sufficient for a claim to proceed and, upon finding that one plaintiff has standing, the standing of the other parties does not merit inquiry." *Northwest Landowners Association v. State* ("*NWLA II*"), 2025 ND 147, ¶ 12, 25 N.W.3d 220 (quoting *Barrett v. State*, 547 P.3d 630, 641 (Mont. 2024)) (cleaned up). The Court, therefore, asks whether at least one plaintiff has standing for each claim.

[¶24] Maher has standing to bring the claims against the nomination and appointment process. Maher is a North Dakota beef producer. (R:88:2:10). He has never belonged to the NDSA or any other statutory association. (R:91:1:3). He nominated himself for the Commission in 2023, 2024, and 2025, and the Governor did not appoint him. (R:88:2:10; R:88:6-7:36-38). He also states he would seek a beef producer seat if the Act allowed him to do so. (R:146:2:5-7). Under section 4.1-03-02(2)(a), N.D.C.C., the Governor may fill a beef producer seat only from the NDSA's list. Maher cannot be considered for any of those seats unless the NDSA puts his name forward.

[¶25] The Defendants frame Maher's injury as the loss of an appointment he had no right to receive. That misstates the claim. Maher does not claim a right to a seat. He claims the Act denies him an equal chance to be considered for one. The injury is the barrier to equal consideration, not the loss of the seat itself. *See Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993). The text of Section 21 points to the same kind of injury. It asks whether a law grants some citizens a privilege that others cannot obtain on the same terms. N.D. Const. art. I, § 21; *T.D. by and through Dolney v. Wrigley*, 2026 ND 162, ¶ 122 (Tufte, J.,

concurring specially). Maher claims that injury. The Act lets four named associations decide who is considered for six seats. Maher cannot obtain that consideration on the same terms as the people those associations choose.

[¶26] Maher's injury is not a generalized grievance shared by all citizens. The Act operates on cattle producers who pay the checkoff and who wish to serve on the Commission that spends it. The North Dakota Supreme Court has held that cattlemen who pay fees under a challenged statute administered by the NDSA "clearly have an interest and are affected by the challenged statutes." *Billey*, 1998 ND 120, ¶ 7. The fact that other unaffiliated cattlemen share Maher's injury does not make it abstract. His injury is personal, concrete, and caused by the statute he challenges. A ruling in his favor would redress it.

[¶27] Maher also has standing to bring his as-applied claim regarding the at-large seats. He applied for those seats three times and was passed over each time. The Defendants argue the Governor's discretion, not the Act, caused that result. (R:149:26:57). That argument goes to whether the Plaintiffs can prove their as-applied claim. It does not defeat standing. Standing "in no way depends on the merits of the plaintiff's contention that particular conduct is illegal." *Warth*, 422 U.S. at 500.

[¶28] Heaton has standing to challenge the participating producer requirement. Heaton is a beef producer who has obtained state checkoff refunds within the last three years. (R:88:2:11; R:92:1:7). Under sections 4.1-03-01(8) and 4.1-03-02(3)(b), N.D.C.C., that fact alone makes him ineligible to serve. He states he did not apply because the refund requirement made him ineligible, and he would apply if the Act did not bar him. (R:147:2:6-7).

[¶29] The Defendants argue Heaton must first apply and be rejected, and that a general wish to serve is not enough. (R:149:27:59; R:169:10-11:27) (citing *Carney v. Adams*, 592 U.S. 53, 66

(2020)). The Court disagrees. The statute itself disqualifies Heaton. An application would accomplish nothing. "When a person's desire for a job is not translated into a formal application solely because of his unwillingness to engage in a futile gesture he is as much a victim of discrimination as is he who goes through the motions of submitting an application." *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 365-66 (1977). Unlike the plaintiff in *Carney*, Heaton has sworn he would apply if the bar did not exist. His injury is also present now. Each time he sells cattle, the Act forces him to choose between his refund and his eligibility to serve. The Defendants have not identified any other reason Heaton would be ineligible.

[¶30] Graner and Maher have not sought refunds within the last three years. (R:88:2:9-10). The participating producer requirement does not affect them. Only Heaton could bring the participating producer claim, and he has standing to do so.

[¶31] Because Maher and Heaton have standing, the Court need not decide whether Graner or RRI independently has standing. *NWLA II*, 2025 ND 147, ¶ 12. A court decides only what the case before it requires. *See SCS Carbon Transp. LLC v. Malloy*, 2024 ND 109, ¶ 8, 7 N.W.3d 268. The relief the Plaintiffs request does not depend on whether Graner or RRI also has standing.

[¶32] The Plaintiffs have standing to bring each of their claims. Maher has standing to bring the facial and as-applied privileges and immunities claims, the special law claim, and the uniform operation claim. Heaton has standing to bring the participating producer claim. The Court denies the Defendants' motion for summary judgment on the issue of standing.

C. Statute of Limitations

[¶33] Section 28-01-22.1(1), N.D.C.C., provides that, "[w]hen not otherwise specifically provided by law, an action against the state or its employees and officials acting within the scope of their employment or office must be commenced within three years after the claim for relief has

accrued." The North Dakota Supreme Court has discussed statutes of limitations as follows:

> Statutes of limitations are a legal bar to a cause of action and begin to run when the underlying cause of action accrues. The determination of when a plaintiff's cause of action has accrued is generally a question of fact, but if there is no dispute about the relevant facts, the determination is for the court. A cause of action accrues when the right to commence the action comes into existence and can be brought in a court of law without being dismissed for failure to state a claim. We have recognized statutes of limitation ordinarily began to run from the commission of the wrongful act giving rise to the cause of action, ..., and an injury usually arises contemporaneously with the wrongful act causing the injury.

NWLA II, 2025 ND 147, ¶ 28 (citations and quotations omitted). Whether a constitutional claim is a facial or as-applied claim is not controlling regarding whether a claim has accrued for statute of limitations purposes. *Id.* at ¶ 29 (citation omitted). "[T]he accrual date of a facial or as-applied challenge is identical to the accrual date of other substantive claims-the date upon which the plaintiff's injury occurred and the cause of action became complete." *Id.* (citation omitted). "[A] case alleging facial unconstitutionality is ripe not simply when the law is passed but, just like an as-applied challenge, when the government acts pursuant to that law and adversely affects the plaintiff's rights." *Id.* (citations omitted).

[¶34] Section 28-01-22.1(2), N.D.C.C., provides that "the claim for relief is deemed to have accrued at the time it is discovered or might have been discovered in the exercise of reasonable diligence."

[¶35] The Defendants argue the Plaintiffs' claims accrued no later than 2006. (R:98:23-26:60-66; R:149:28-31:62-70). They point to the Plaintiffs' years of lobbying, through I-BAND, to change how Commission members are chosen. (R:98:24-25:62-64). They contend the 2009 recodification did not restart the limitations period. (R:149:30:67-68; R:169:12:33). They also assert the Plaintiffs' knowledge is imputed to RRI. (R:98:25-26:65). The Plaintiffs respond that their claims accrue each time the government applies the Act to them. (R:144:26-30:67-76).

[¶36] The Plaintiffs filed their *Complaint* on July 17, 2025. (R:2). Their claims are timely if they accrued on or after July 17, 2022.

[¶37] The Defendants tie accrual to the Plaintiffs' knowledge of the Act. That is not the test. A claim accrues when the plaintiff's "injury occurred and the cause of action became complete." *NWLA II*, 2025 ND 147, ¶ 29. The discovery rule in N.D.C.C. § 28-01-22.1(2) may delay accrual until the plaintiff discovers a claim, but it does not start the clock before the injury occurs. Lobbying against a law is not an injury. The Plaintiffs' long opposition to the Act shows awareness, not injury. The same is true of their statements that they have opposed the Act since 2009. (R:145:1:2; R:146:1:2; R:147:1:2).

[¶38] In *NWLA II*, the State argued facial challenges accrue when the law is enacted. 2025 ND 147, ¶ 29. The North Dakota Supreme Court rejected that argument. *Id.* at ¶¶ 29-31. It explained that an enactment itself causes the injury in a regulatory taking, because "it is passage of the ordinance that injures a property's value or usefulness." *Id.* at ¶ 30 (quotation omitted). The landowners' claims were different. They accrued "when the NDIC acted under the authority of the law." *Id.* at ¶ 31.

[¶39] The same reasoning applies here. The Act did not injure these Plaintiffs on the day it was enacted in 1973 or recodified in 2009. It injures them when the government applies it to them. Each year, the Governor fills a beef producer seat from the NDSA's list and fills an at-large seat. (R:149:12-13:30). The Governor passed over Maher's applications in 2023, 2024, and 2025. (R:88:6-7:36). Heaton obtained refunds within the three years before the *Complaint*, which made him ineligible to serve. (R:88:2:11). Each of these events occurred after July 17, 2022.

[¶40] The Defendants argue that if each appointment cycle starts a new limitations period, the period would never run. (R:169:12:31). The Court recognizes the concern, but it does not change

the result. The Plaintiffs seek only declaratory and injunctive relief against a statute that continues to operate on them. They do not seek damages for past appointments. When the government acts under a statute and adversely affects a plaintiff's rights, that act is a new injury. *NWLA II*, 2025 ND 147, ¶ 29. The Court notes the North Dakota Supreme Court applied this rule to a physical taking. The Court concludes the same rule governs a statute that excludes the Plaintiffs from public service each time it is applied.

[¶41] Because the claims accrued within the limitations period, the Court need not decide whether the 2009 recodification restarted the period. The Defendants' argument that the Plaintiffs' knowledge is imputed to RRI also fails, because knowledge did not start the period. Appointments made before July 17, 2022 are not separate injuries on which the Plaintiffs may sue. They remain relevant evidence of how the Act has operated.

[¶42] Section 28-01-22.1, N.D.C.C., does not bar the Plaintiffs' claims. The Court denies the Defendants' motion for summary judgment on the statute of limitations.

D. Constitutional Challenges

[¶43] "All legislative enactments are imbued with a strong presumption of constitutionality, and the presumption is conclusive unless it is clearly shown that the statute contravenes the state or federal constitution." *North Dakota Council of School Administrators v. Sinner*, 458 N.W.2d 280, 285 (N.D. 1990) (citations omitted). "Any doubt must be resolved in favor of the constitutionality of the statute." *Id.* (citation omitted). "The presumption of constitutionality is so strong that a statute will not be declared unconstitutional unless its invalidity is, in the judgment of the court, beyond a reasonable doubt." *MCI Telecommunications Corp. v. Heitkamp*, 523 N.W.2d 548, 552 (N.D. 1994) (citation omitted). "The power to hold an Act of the Legislature invalid is one of the highest functions of the courts, and such power should be exercised with great restraint." *Id.*

(citation omitted).

[¶44] "Judicial review is part of our constitutional form of government." *Access Indep. Health Servs., Inc. v. Wrigley*, 2025 ND 26, ¶ 40, 16 N.W.3d 902. "'The judiciary's proper function and duty is to say what the law is and what the Constitution means.'" *Id.* (quoting *Grisham v. Van Soelen*, 539 P.3d 272, 285 (N.M. 2023) (cleaned up)). "...[P]roperly restrained judicial review of a statute is merely the fulfillment of [the court system's] constitutional duty as a co-equal branch of the government." *Id.*

[¶45] The North Dakota Supreme Court has stated, "[i]n interpreting constitutional provisions, we apply general principles of statutory construction." *MKB Mgmt. Corp. v. Burdick*, 2014 ND 197, ¶ 25, 855 N.W.2d 31 (citing *Thompson v. Jaeger*, 2010 ND 174, ¶ 7, 788 N.W.2d 586). "Our overriding objective is to give effect to the intent and purpose of the people adopting the constitutional provision." *Id.* (citing *City of Bismarck v. Fettig*, 1999 ND 193, ¶ 8, 601 N.W.2d 247). "The intent and purpose of constitutional provisions are to be determined, if possible, from the language itself." *Id.* (citing *Thompson*, at ¶ 7). "In construing a constitutional provision we must undertake to ascribe to the words used that meaning which the people understood them to have when the constitutional provision was adopted." *Kadrmas v. Dickinson Pub. Sch.*, 402 N.W.2d 897, 899 (N.D. 1987)(citing *State ex rel. Sanstead v. Freed*, 251 N.W.2d 898 (N.D. 1977)). "We may consider contemporary legal practices and laws in effect when the people adopted the constitutional provisions." *MKB Mgmt. Corp.*, at ¶ 25 (citing *State v. Orr*, 375 N.W.2d 171, 177-78 (N.D. 1985)). As explained by Thomas M. Cooley, the leading jurist and scholar of state constitutions, who addressed the North Dakota Constitutional Convention,

> A Constitution is not to be made to mean one thing at one time, and another at some subsequent time when the circumstances may have so changed as perhaps to make a different rule in the case seem desirable. A principal share of the benefit expected from written Constitutions would be lost if the rules they established were so

flexible as to bend to circumstances or be modified by public opinion.

Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 67, ch. IV. (5th ed. 1883).

[¶46] "We must be mindful that our state Constitution is different in nature than the federal constitution." *Access Indep. Health Servs.*, 2025 ND 26, ¶ 7, 16 N.W.3d 902. The Supreme Court has read the state constitution in light of its history. *See State v. Allesi*, 216 N.W.2d 805, 817 (N.D. 1974). "Compared to the U.S. Constitution, the North Dakota Constitution has its origins in a dramatically different historical context." Jerod E. Tufte, *The North Dakota Constitution: An Original Approach Since 1889*, 95 N.D. L. Rev. 417, 419 (2020). "North Dakota adopted its constitution more than 100 years after ratification of the U.S. Constitution, following the Civil War and the significant reconstruction amendments, but before the U.S. Supreme Court incorporated the Bill of Rights against the states." *Id.* "The delegates to the North Dakota Constitutional Convention did not use the federal constitution as a model in formulating our state constitution." *State v. Jacobson*, 545 N.W.2d 152, 157 (N.D. 1996) (Levine, J., dissenting) (citing Hon. Robert Vogel, *Sources of the 1889 North Dakota Constitution,* 65 N.D. L. Rev. 331 (1989)). "...[A]nalysis of the state constitution will not always parallel analysis of the federal constitution." *Wrigley v. Romanick,* 2023 ND 50, ¶ 55, 988 N.W.2d 231 (Fair McEvers, J., concurring specially).

[¶47] The Plaintiffs bring both facial and as-applied constitutional challenges to N.D.C.C. chapter 4.1-03. The North Dakota Supreme Court has discussed the distinctions between an as-applied challenge and a facial challenge as follows:

> A claim that a statute on its face violates the constitution is a claim that the Legislative Assembly exceeded a constitutional limitation in enacting it, and the practical result of a judgment declaring a statute unconstitutional is to treat it 'as if it never were enacted.' ... An 'as-applied' challenge, on the other hand, is a claim that the constitution was violated by the application of a statute in a particular case. ... As a general rule a court will inquire into the constitutionality of a statute only

> to the extent required by the case before it and will not anticipate a question of constitutional law in advance of the necessity of deciding it.

SCS Carbon, 2024 ND 109, ¶¶ 7-8 (citations and quotations omitted).

E. North Dakota Beef Commission

[¶48] This action involves a challenge to the nomination and appointment process for membership on the North Dakota Beef Commission. The Commission has the following main functions:

> a. To provide and participate in programs to increase the consumption of domestic beef through such means as advertising, research, consumer information, industry information, sales promotion, and education, but at no time may false or unwarranted claims be made on behalf of the beef industry.
>
> b. To support research and educational activities of the national livestock and meat board and its beef industry council.
>
> c. To initiate, encourage, and sponsor research designed to solve problems in the beef industry.
>
> d. To enhance the sale and production of North Dakota beef cattle.

N.D.A.C. § 15-01-01-01(1).

[¶49] The Commission is governed by N.D.C.C. ch. 4.1-03. The Act imposes assessments on cattle sales known as "checkoffs." Any person who sells cattle in North Dakota, or from North Dakota, "must pay an assessment equal to the amount set forth in federal law." N.D.C.C. § 4.1-03-11(1)(a). The amount set forth in federal law, or the "federal checkoff," is $1.00 per head of cattle sold. 7 C.F.R. § 1260.310(a); *see also Ranchers Cattlemen Action Legal Fund United Stockgrowers of America v. Vilsack*, 6 F.4th 983, 986-987 (9th Cir. 2021). A Qualified State Beef Council, such as the North Dakota Beef Commission, "typically collects the checkoff, retaining 50 cents to fund state marketing efforts, and forwarding the remainder to the federal program." *Ranchers Cattlemen Action Legal Fund United Stockgrowers of America*, 6 F.4th at 986 (citations

omitted). The Act also imposes a separate state checkoff. "[A]ny person who sells cattle in this state or from this state must pay an assessment equal to one dollar for each animal sold." N.D.C.C. § 4.1-03-11(1)(b). In all, the Commission collects $2.00 for each head of cattle sold in the state. It retains $1.50 and has the authority and discretion to spend those funds.

[¶50] Producers may seek a refund of the state assessment. N.D.C.C. § 4.1-03-17(1)(b). The federal assessment may be refunded only if the Attorney General certifies that federal law no longer bars refunds. N.D.C.C. § 4.1-03-17(1)(a).

[¶51] One of the Commission's duties is to determine how these checkoff funds are expended. N.D.C.C. § 4.1-03-10(3). "The uses may include the funding of research, education programs, and market development efforts, as well as participation in programs under the auspices of state, regional, national, and international organizations." *Id.* In addition to these duties, N.D.C.C. § 4.1-03-09 provides the Commission with the following powers:

1. Expend moneys collected pursuant to this chapter for its administration;
2. Employ, bond, and compensate necessary personnel;
3. Accept gifts, grants, and donations of money, property, and services to carry out this chapter;
4. Contract with any person for any purpose related to this chapter;
5. Borrow money, provided the total of all the commission's debt may not exceed its estimate of the current year's revenues;
6. Sue and be sued; and
7. Do all things necessary and proper to enforce and administer this chapter.

N.D.C.C. § 4.1-03-09.

[¶52] Section 4.1-03-02(1), N.D.C.C., provides the Commission consists of nine members. These nine members consist of three beef producers, one cattle feeder, one dairy producer, one

representative of a public livestock market, and three at-large representatives. N.D.C.C. § 4.1-03-02(1). All members of the Commission are appointed by the Governor. Section 4.1-03-02(2), N.D.C.C., provides that the Governor shall appoint:

a. Each beef producer from a list of at least two names submitted by the North Dakota stockmen's association;

b. The cattle feeder from a list of at least two names submitted by the North Dakota stockmen's association feeder council;

c. The dairy producer from a list of at least two names submitted by the milk producers association of North Dakota;

d. The representative of a public livestock market from a list of at least two names submitted by the North Dakota livestock marketing association; and

e. The three at-large representatives.

N.D.C.C. § 4.1-03-02(2). The Governor is required to appoint from the list of names received from the named entities, provided the proposed individuals meet the qualifications to be a Commission member, as chapter 4.1-03, N.D.C.C., provides no mechanism for the Governor to veto or reject a list of names for nomination.

[¶53] "Beef producer," "Cattle feeder," "Dairy producer," and "Livestock auction market" are defined as follows:

1. Beef producer means any person that has an ownership interest in cattle.

...

3. Cattle feeder means a person in the business of feeding cattle for the purpose of adding weight to the cattle prior to slaughter.

...

5. Dairy producer means any person in the business of producing and selling milk from cows.

6. Livestock auction market means a public market or private buying station in which livestock is offered for sale or sold.

...

N.D.C.C. § 4.1-03-01.

[¶54] Each member of the Commission needs to be a U.S. citizen and a resident of North Dakota. N.D.C.C. § 4.1-03-02(3)(a)(1). Each member must also be "actively engaged in that phase of the cattle industry the member represents; and ... [h]ave been actively engaged in that phase of the cattle industry for a period of five years." N.D.C.C. § 4.1-03-02(3)(a)(2)-(3). "Actively engaged" means the individual: "(1) Has an ownership interest in an operation that is of sufficient scope and significance as to constitute a distinct activity; and (2) Has and regularly exercises direct control of the operation." N.D.C.C. § 4.1-03-02(3)(c). In addition, "[e]ach member of the commission, except the representative of a public livestock market, must be a participating producer." N.D.C.C. § 4.1-03-02(3)(b). "'Participating producer' means a producer that has not obtained a refund of any assessment paid on the sale of cattle under this chapter for the preceding three years." N.D.C.C. § 4.1-03-01(8). Thus, producers who opt to receive a refund of the assessed checkoff within the preceding three years are ineligible for membership on the Commission.

F. Special and General Laws

1. Special Laws

[¶55] The Plaintiffs argue the nomination and appointment provisions in N.D.C.C. ch. 4.1-03 constitute a special law and, as a result, violate the North Dakota Constitution, because they expressly identify and empower the North Dakota Stockmen's Association and other groups over all other cattlemen and cattlemen organizations. (R:119:19:54). They reason the law is an impermissible special law as it gives the NDSA and other groups the sole authority to nominate six of the nine members of the Commission, from which the Governor must appoint. (R:119:20:57). They add that, unlike other statutory classifications, the law prohibits other

associations, or unaffiliated cattlemen, from ever becoming eligible to submit nominations to the Governor, even though there are other parties who are similarly situated to the NDSA and other groups. *Id.*

[¶56] The Plaintiffs further argue that, even if the law "was not a *per se* unconstitutional special act, the Act would still not pass constitutional muster because its classifications are unreasonable." (R:119:21:58). They reason the law's classifications are arbitrary because, "[t]he only cognizable reason for granting sole power to the private, Legislatively Favored Private Associations and their members is political favoritism." (R:119:21:59). They assert these organizations and their members "are no more qualified than other private organizations and unaffiliated cattle[men], as there are no material differences between them." (R:119:22:62).

[¶57] They reason NDSA members are no more qualified than unaffiliated cattlemen because anyone can become an NDSA member "by submitting their name and contact information, and they can retain their membership by paying an annual fee." (R:119:23:63). The Plaintiffs argue the law draws an arbitrary line and favors NDSA and other organizations over similarly situated, unaffiliated groups such as I-BAND and RRI. *Id.* Thus, the Plaintiffs conclude there is no rational basis for treating the NDSA and other groups differently from unaffiliated cattlemen and their associations. (R:119:25:69).

[¶58] The Defendants argue the Act is not a special law because it applies uniformly to all cattlemen in North Dakota. (R:149:3:7). They reason that, even if the law does create a classification, "the class is a socio-economic classification, which the Legislature has broad discretion to make." *Id.* The Defendants contend the classification of designating specific industry groups for nominating individuals for the Governor's consideration is reasonable "because it bears a direct relationship to the Act's purpose of beef promotion and administration of checkoff funds

for research, education, and market development." (R:149:3:8). They reason the Legislature's classification is not arbitrary because it determined "that entities with established industry presence and knowledge of particular production phases are best positioned to identify qualified candidates." (R:149:3-4:9).

[¶59] The Defendants assert the law applies equally to all beef industry participants and entities similarly situated because there is no requirement that the NDSA nominate NDSA members. (R:149:4-5:12). They reason the law does not prohibit non-NDSA members from seeking membership on the Commission because there is nothing in the Act requiring prospective members to be NDSA members and that any interested person can approach the NDSA and ask to be nominated. *Id.* Thus, the Defendants assert that, just because the Legislature named specific organizations in the law, it is not transformed into a special law. (R:149:5:13).

[¶60] The Defendants further reason that, even if the law is a special law, it creates a reasonable classification as many other state boards and commissions in the state are appointed in the same manner as the Commission. (R:149:9:20). They also reason the classification is reasonable because, at the time the law went into effect, RRI and I-BAND did not exist and the NDSA "was the primary organization representing cattlemen in the State." (R:149:10:23). As a result, the Defendants conclude

> it was reasonable for the Legislature to determine when drafting the Act that the Stockmen's Association was the primary organization representing the rights of cattlemen in the State, and it was reasonable to designate the Stockmen's Association with the task of nominating to the beef producer positions on the Commission.

Id.

[¶61] The Plaintiffs argue the Defendants waived any argument on the special law and general law claims because their opening brief did not develop one. (R:144:2-4:6-9). A party waives an

issue by not providing supporting argument. *Kautzman v. Kautzman*, 2003 ND 140, ¶ 15, 668 N.W.2d 59.

[¶62] The Court declines to decide these claims on waiver. The Plaintiffs moved for summary judgment on the same claims. To decide the Plaintiffs' motion, the Court must decide whether the Act is a special law and whether it operates uniformly. The Defendants briefed both questions in response to that motion. (R:149:2-11:5-24; R:149:18-24:41-51). The Plaintiffs answered those arguments in their reply. (R:180:2-11:3-25). Both sides argued the issues at the hearing. No party was unfairly surprised. The Court decides these claims on their merits.

[¶63] Article IV, § 13, N.D. Const. provides, in part, that "[e]xcept as otherwise provided in this constitution, no local or special laws may be enacted, nor may the legislative assembly indirectly enact special or local laws by the partial repeal of a general law but laws repealing local or special laws may be enacted." "[T]he proscription against special laws was 'adopted for a very simple and understandable purpose—to put an end to the flood of privileged legislation for particular localities and for private purposes which was common in the latter part of the nineteenth century." *Teigen v. State*, 2008 ND 88, ¶ 11, 749 N.W.2d 505 (citations and quotations omitted). "A statute relating to persons or things as a class is a general law, one relating to particular persons or things of a class is a special law." *Larimore Public School District No. 44 v. Aamodt*, 2018 ND 71, ¶ 52, 908 N.W.2d 442 (citation omitted). "A special law only applies to particular persons or things of a class, while a general law applies to all persons and things of a class." *Id.* (citation omitted). "If a statute operates to treat all persons or members of a class within the scope of the statute equally, the statute is general and not special." *Id.* (citation omitted). "A general law operates alike on all persons and property similarly situated." *Id.* (citation omitted). "A statute is not special, but general, if [i]t operates equally upon all persons and things within the scope of the statute. It

operates alike on all persons and property similarly situated.... In other words, it operates alike in all cases where the facts are substantially the same." *MCI Telecommunications Corp.*, 523 N.W.2d at 552 (citations and quotations omitted).

[¶64] The Supreme Court has analyzed special law challenges under both a "reasonableness" and a rational basis test. *Id.* at 553-554. However, in North Dakota's "long history of special laws jurisprudence[,]" the standard of review for a statutory classification challenged under the special laws provision of the constitution is reasonableness, rather than the traditional, three-tiered, equal protection analysis. *Best Products Co., Inc. v. Spaeth*, 461 N.W.2d 91, 99 (N.D. 1990) (citations omitted). The Supreme Court has discussed the reasonableness test as follows:

> Reasonable classification does not violate the special laws provision of the North Dakota Constitution. When we examine a statute to decide if a classification used is impermissibly particular, that is, special, rather than general, we examine the reasonableness of the classification. In other words, the test of the constitutionality of a statutory classification under the special laws provision of the North Dakota Constitution is the reasonableness of the classification. A statutory classification challenged under the special laws provision of our constitution is ... to be upheld if it is natural, not arbitrary, and standing upon some reason having regard to the character of the legislation of which it is a feature.

MCI Telecommunications Corp., 523 N.W.2d at 553 (citations and quotations omitted). "A classification is reasonable if [i]t bears alike upon all persons and things upon which it operates and it contains no provision that will exclude or impede this uniform operation upon all citizens, subjects and places within the state provided they are brought within the relations and circumstances specified in the statute." *Best Products Co., Inc.*, 461 N.W.2d at 99 (citation and quotations omitted).

[¶65] "The common inquiry in our special law cases is whether statutory classifications are written in general terms, rather than applying to particular persons or things, and if written in general terms, whether the classification 'close[s] the door against accessions to the class.'"

Teigen, 2008 ND 88, ¶ 18 (citations omitted). The "analysis of a special law challenge necessarily involves the interpretation of the challenged statute." *Id.* (citations omitted). The North Dakota Supreme Court has discussed statutory interpretation as follows:

> The primary purpose of statutory interpretation is to determine legislative intent. Words in a statute are given their plain, ordinary, and commonly understood meaning, unless defined by statute or unless a contrary intention plainly appears. Statutes are construed as a whole and are harmonized to give meaning to related provisions. If the language of a statute is clear and unambiguous 'the letter of [the statute] is not to be disregarded under the pretext of pursuing its spirit.' If the language of a statute is ambiguous, however, a court may resort to extrinsic aids, including legislative history, to interpret the statute. It is well established that we construe statutes to avoid constitutional infirmities.

Id. at ¶ 19 (citations omitted).

[¶66] Chapter 4.1-03, N.D.C.C., is unambiguous and thus does not require consulting legislative history to determine legislative intent. Section 4.1-03-02, N.D.C.C., outlines how membership on the Commission is determined and what the qualifications for each member are. In addition, N.D.C.C. § 4.1-03-01 provides the applicable definitions related to the different membership positions on the Commission. Thus, chapter 4.1-03, N.D.C.C., is clear and unambiguous and the Court does not need to resort to legislative history or to administrative interpretation to construe the plain language of the statute.

[¶67] In *Bouchard v. Johnson*, relied on by the Plaintiffs, the North Dakota Supreme Court considered whether N.D.C.C. Ch. 53-09, the Skiing Responsibility Act, violated the special laws prohibition in the North Dakota Constitution pursuant to a certified question from the United States District Court for the District of North Dakota. *Bouchard v. Johnson*, 555 N.W.2d 81, 88 (N.D. 1996). "The legislative goal of N.D.C.C. Ch. 53-09 is to limit the liability for ski facility operators from some of the inherent risks associated with skiing." *Id.*; *see also* N.D.C.C. § 53-09-01. A "Ski area operator" was defined as "any person, partnership, corporation, limited liability company, or

other commercial entity and their agents, officers, managers, employees, or representatives, who has operational responsibility for any ski area or aerial passenger tramway." N.D.C.C. § 53-09-02(4). The Supreme Court determined N.D.C.C. Ch. 53-09 "operates alike to all similarly situated persons." *Bouchard*, 555 N.W.2d at 88. The Court reasoned as follows:

> The statute applies to all persons operating a skiing facility within the state. This is a permissible class and does not create a special law. If the statute applied only to Frost Fire Ski Resort, then it would be treating a member of a class differently and would be an unconstitutional special law. This is not the case here, and thus Ch. 53–09 does not violate the special laws provision of the North Dakota Constitution.

Id.

[¶68] In *Teigen v. State*, the plaintiffs challenged the following trade association clause language, pertaining to the North Dakota Wheat Commission, alleging it was "unconstitutional as a special law, as a law granting special privileges and immunities, and as a law making a gift:"

> The [wheat] commission shall expend an amount at least equal to that raised by two mills of the levy provided for in this section to contract for activities related to domestic wheat policy issues, wheat production, promotion, and sales. *The contracts may be with no more than two trade associations that are incorporated in this state and which have as their primary purpose the representation of wheat producers.* The contracts must require that any trade association receiving money under this section pay from that money all dues required as a condition of the trade association's membership in any national trade association. The contracts also must prohibit any trade association receiving money under this section from eliminating any dues required as a condition of membership in that trade association or from reducing such dues below the amount required for membership as of January 1, 2005.

Teigen, 2008 ND 88, ¶ 2 (emphasis in the original).

[¶69] The plaintiffs claimed, in part, "the effect of the trade association clause is to create a special law." *Id.* at ¶ 9. They reasoned that, "although the trade association clause is written in neutral language," it is a special law because of the Wheat Commission's administrative construction of it. *Id.* "They assert the Wheat Commission's administrative construction of the trade association clause establishes it is a special law, because that construction authorizes

contracts with only the Grain Growers Association and the Durum Growers Association." *Id.* The plaintiffs also argued the legislative history for the trade association clause "establishes the wheat checkoff was intended to go to only those two entities." *Id.* at ¶ 9.

[¶70] The Supreme Court determined "[t]he plain language of the trade association clause does not contemplate a closed class and does not preclude other organizations from further accession into the class if they meet" certain qualifications. *Id.* at ¶ 20 (citation omitted). The Court reasoned "[t]he plain language of the trade association clause does not specially refer to the Grain Growers Association or to the Durum Growers Association; rather, the statute is phrased in general terms that the 'contracts may be with no more than two trade associations that are incorporated in this state and which have as their primary purpose the representation of wheat producers.'" *Id.* Based on this language, the Court found "[t]he trade association clause operates alike for all similarly situated entities that satisfy the statutory requirements for a contract." *Id.* It noted "[t]he trade association clause does not explicitly refer to a specific entity, and the statutory qualifications do not preclude further accession into the class if those qualification[s] are met." *Id.*

[¶71] The Supreme Court noted "[s]ome statements in the legislative history for the trade association clause and some statements in minutes from meetings of the Wheat Commission may suggest the clause requires the contracts to be awarded to the Grain Growers Association and to the Durum Growers Association." *Id.* at ¶ 21. However, the Court determined these "broad statements are contrary to the plain language of the statute." *Id.* The Court concluded "the language of the trade association clause is clear and unambiguous, and we need not resort to legislative history or to administrative interpretation to construe the plain language of that statute." *Id.*

[¶72] The Supreme Court concluded that "the trade association clause is a general law that operates alike on all entities similarly situated." *Id.* at ¶ 23. It further concluded "the general

classification for trade associations incorporated in North Dakota and which have as their primary purpose the representation of wheat producers is reasonable in view of the contractual services sought by the Wheat Commission." *Id.* The Court viewed the required qualifications for procurement of a contract did "not impose arbitrary conditions on entities seeking contracts related to domestic wheat policy issues, wheat production, promotion, and sales." *Id.* Thus, it held the trade association clause did not violate N.D. Const. art. IV, § 13. *Id.*

[¶73] In *Edmonds v. Herbrandson*, the Supreme Court determined that "a statute regulating procedures for relocating county seats violated the prohibition on special laws, because it arbitrarily classified counties by putting into one class all counties having a courthouse and jail worth more than $35,000 when the statute was enacted and forever putting other counties into another class." *Teigen*, 2008 ND 88, ¶ 15; *Edmonds v. Herbrandson*, 2 N.D. 270, 50 N.W. 970 (1891). The "statute restricted the relocation of county seats, but only in counties whose courthouses predated the act[.]" *T.D. by and through Dolney v. Wrigley*, 2026 ND 162, ¶ 132 (Tufte, J., concurring specially). "[T]he statute prevented the relocation of some county seats based on time." *Best Products Co., Inc.*, 461 N.W.2d at 99.

[¶74] The class closed the date the statute was enacted since "the statute forever classified counties based on value of the courthouse and jail on that date[.]" *Teigen*, 2008 ND 88, ¶ 15. The Supreme Court reasoned that

> if the legislature [had] not closed the door against accessions to the class of counties having a court-house and jail exceeding $35,000 in value, the classification would have been proper[, b]ut an arbitrary time [was] fixed, after which no county coming within the same conditions which characterize the class can gain admittance to such class.

Id. The Supreme Court noted "the purpose of the statute was to prevent the easy relocation of county seats when the county had erected expensive buildings." *Best Products Co., Inc.*, 461

N.W.2d at 99. However, despite having this purpose, the statute "had the effect of dividing the state into counties which had built expensive courthouses and jails before the enactment, and those building after, and prevented the relocation only where the buildings predated the statute." *Id.* "The reason for the classification, time, bore no relationship to the statutory purpose, preventing waste. The classification was not 'natural,' but was 'artificial,' and did not 'stand upon some reason, having regard to the character of the legislation.'" *Id.* (citation omitted). The Supreme Court explained as follows:

> There is no natural reason for a classification of counties in which the same conditions exist, based solely and arbitrarily upon the period of time before or after which such conditions existed for the first time. Such a doctrine would lead inevitably to unlimited special legislation under the mere guise of classification. It would nullify the constitution so far as it prohibited special legislation.

Edmonds, 50 N.W. at 972.

[¶75] As stated by the North Dakota Supreme Court, the purpose of the proscription against special laws in the North Dakota Constitution was "to put an end to the flood of privileged legislation for particular localities and for private purposes which was common in the latter part of the nineteenth century." *Teigen*, 2008 ND 88, ¶ 11. Cooley highlighted this premise in his treatise, which "the era treated as authoritative[.]" *T.D. by and through Dolney*, 2026 ND 162, ¶ 128 (Tufte, J., concurring specially). Cooley addressed the North Dakota Constitutional Convention in 1889. The delegates voted to take an informal recess so they could meet Cooley and voted "that the rules be suspended" so he could address the Convention. *Journal of the Constitutional Convention for North Dakota* 52 (1889). In his treatise, Cooley addresses "unequal and partial legislation." Cooley, *Constitutional Limitations* at 481.

[¶76] Cooley stated the law can make classifications or discriminations provided they are general in their application to the class or locality they apply to. *Id.* at 482-483. He noted that legislatures

can prescribe or authorize different laws related to the police to address diverse issues that may be present throughout the state. *Id.* at 482. He also noted the legislature may enact laws related to the use of eminent domain in different cases and through different agencies and may prescribe specific regulations related to taxation in distinct municipalities. *Id.* He provided these are examples of discriminations that are permissible, provided the state constitution does not already prohibit them. *Id.* He opined that the law constantly makes classifications or discriminations and the mere fact that laws are of local or special operation "is not supposed to render them obnoxious in principle." *Id.*

[¶77] However, Cooley believed a statute would be unconstitutional if it proscribed a class or party for "opinion's sake" or selected particular individuals from a class or locality, and subjected "them to peculiar rules, or impose[d] upon them special obligations or burdens from which others in the same locality or class are exempt." *Id.* at 483-484. He reasoned that a statute applying to one class of citizens that is arbitrary in character and restricts certain rights, privileges, or legal capacities can be invalid, despite its generality, if it fails to make distinctions based upon some reason the legislature can defend. *Id.* at 486. Cooley reasoned as follows:

> Equality of rights, privileges, and capacities unquestionably should be the aim of the law; and if special privileges are granted, or special burdens or restrictions imposed in any case, it must be presumed that the legislature designed to depart as little as possible from this fundamental maxim of government. The State, it is to be presumed, has no favors to bestow, and designs to inflict no arbitrary deprivation of rights. Special privileges are always obnoxious, and discriminations against persons or classes are still more so; and, as a rule of construction, it is to be presumed they were probably not contemplated or designed.

Id. at 486-87.

[¶78] While section 4.1-03-02, N.D.C.C., applies uniformly to all cattlemen in the state, in that all cattlemen who meet the membership requirements in N.D.C.C. § 4.1-03-02(3) are eligible to serve on the Commission, and the statute does not require cattlemen to be active members in any

private organization, it grants the exclusive privilege of nominating individuals to six of the nine positions on the Commission to four specific private entities. Section 4.1-03-02(2)(a), N.D.C.C., requires the Governor to appoint each of the three beef producer positions on the Commission from a list of at least two individuals provided by the NDSA. The statute does not direct the Governor to merely consider nominations from these groups, or consult them regarding vacancies on the Commission. It forces the Governor to fill the Commission from the exclusive list provided by the NDSA. There is no mechanism for the Governor to reject the list. If there were a beef producer opening on the Commission, the NDSA could submit a list of two names for the Governor to consider and the Governor would be limited to those two individuals in making his appointment.

[¶79] While membership of NDSA is not required to be nominated to a beef producer position, no cattleman can obtain a beef producer position without first being selected by the NDSA for presentment to the Governor. The same is true for the cattle feeder position, the dairy producer position, and the representative of a public livestock market position. Individuals cannot obtain these positions on the Commission without first being selected by the NDSA's feeder council, the Milk Producers Association of North Dakota, and the North Dakota Livestock Marketing Association, respectively. The law requires that individuals first be selected by these chosen organizations before they can be considered by the Governor. Thus, these organizations can effectively determine Commission membership for six of the nine positions.

[¶80] Unlike the laws in *Bouchard* and *Teigen*, section 4.1-03-02(2), N.D.C.C., singles out specific organizations in the cattle industry. No other industry group, other than those explicitly named in N.D.C.C. § 4.1-03-02(2), has the ability to nominate individuals to serve on the Commission for six of the nine positions. All cattlemen are permitted to seek membership on the Commission, provided they meet the requirements outlined in N.D.C.C. § 4.1-03-02(3), but not all

cattlemen or organizations in the cattle industry are permitted to submit individuals to the Governor for consideration for appointment. Cattlemen must belong to one of the named organizations to make nominations to the Governor for six of the nine positions. Thus, section 4.1-03-02(2), N.D.C.C., treats cattlemen differently as it gives cattlemen belonging to certain groups the exclusive ability to determine membership on the Commission for six of the nine positions.

[¶81] Similar to the law in *Edmonds*, section 4.1-03-02(2), N.D.C.C., created a closed class, and closed the door to any possible accession into the class, when the statute was enacted. Under section 4.1-03-02(2), N.D.C.C., it is impossible for any cattleman not belonging to one of the specifically named groups, or any other group besides the ones named, to nominate individuals to the Governor for consideration to fill any of the industry specific positions. By specifically naming private entities, rather than listing criteria for entities to meet to be eligible to submit nominations, N.D.C.C. § 4.1-03-02(2) creates a closed class that prohibits accession into it. Since N.D.C.C. § 4.1-03-02(2) lists no conditions or criteria for being able to make nominations, other than being a certain organization, there are no conditions or requirements any other organization could meet to become eligible to make nominations. The Legislature closed the door against accession into the class when it enacted the statute.

[¶82] Thus, on its face, section 4.1-03-02(2), N.D.C.C., creates a special law by naming specific members of a class.

[¶83] It is reasonable for the Legislature to determine that entities with industry presence and knowledge of different production phases would be in the best position to identify qualified candidates to submit to the Governor for consideration for appointment. As outlined above, the Commission is tasked with carrying out the Beef Promotion Act and to promote and develop the beef industry in North Dakota by providing programs to increase consumption of domestic beef,

supporting research and educational activities, and to enhance the sale and production of North Dakota beef cattle. Thus, it is reasonable for the Legislature to rely on industry groups to provide input to the Governor regarding Commission membership.

[¶84] However, it is unreasonable for the Legislature to name the entities instead of setting criteria for eligible entities to meet. Section 4.1-03-02(2), N.D.C.C., does not say what type of groups may submit names to the Governor or what qualifications a group must meet. It singles out certain organizations and grants them the exclusive privilege of providing names to the Governor. Had the statute set criteria, the classification might have been proper, even if only the NDSA could meet them today. A class defined by criteria stays open. Other groups, like RRI, could later qualify and join it. The same might be true if the statute named these entities among several groups that could submit names. Instead, the statute excludes every other group and individual by naming specific organizations. That is arbitrary and unreasonable.

[¶85] Randall Schmitt, the NDSA's designated representative, testified at a deposition that anyone can become a member of the NDSA by paying membership dues and having an interest in the beef industry. (R:94:31:12-14). The Defendants' counsel conceded the same at the hearing. Even if there were specific or unique qualifications that only these organizations have, N.D.C.C. § 4.1-03-02(2) does not list these requirements or qualifications; it just names the organizations. The classification is based solely and arbitrarily on being a specific organization. Thus, the classification in section 4.1-03-02(2), N.D.C.C., bears no relationship to the Commission's purpose of promoting the cattle industry in North Dakota.

[¶86] The Defendants offer three reasons for the classification: the named groups have industry knowledge, using them makes the nomination process efficient, and the NDSA was the leading cattle group when the Legislature acted. (R:149:10:23; R:149:11-12:27). The Court accepts each

reason as legitimate. Each is a reason to involve industry groups in the nomination process. None is a reason to fix the class by name. A class defined by criteria, and open to any group that meets them, would serve each reason as well. The statute in *Edmonds* also had a legitimate purpose: "to prevent the easy relocation of county seats when the county had erected expensive buildings." *Best Products Co., Inc.*, 461 N.W.2d at 99. The statute still failed, because the class closed on the day of enactment, and that line "bore no relationship to the statutory purpose." *Id.* The same is true here.

[¶87] This test differs from rational basis review under Article I, Section 21. "The standard of review for a statutory classification challenged under the special laws provision of our constitution is reasonableness." *Id.* The Supreme Court has not evaluated a special law "using the three-tiered, traditional equal protection analysis." *Id.* The special law inquiry asks whether a statute is written in general terms and whether the class stays open to others who come within it. *Teigen*, 2008 ND 88, ¶ 18. A closed class fails that inquiry even when a legitimate purpose supports it. A conceivable reason for the Legislature's choice does not cure a class the Legislature closed by name. The Court addresses the privileges and immunities claim separately below.

[¶88] The history of the special law prohibition supports this conclusion. The 1889 Constitution barred special laws "[g]ranting to any corporation, association or individual ... any special or exclusive privilege, immunity or franchise whatever." N.D. Const. of 1889, art. II, § 69(20). That prohibition is now part of Article IV, Section 13. *T.D. by and through Dolney*, 2026 ND 162, ¶ 129 (Tufte, J., concurring specially). Under the framers' design, "government was not to deal out advantage by name or by artificial class." *Id.* Section 4.1-03-02(2), N.D.C.C., deals out an advantage by name. It grants four named associations the exclusive power to choose who may be considered for six seats on a public commission.

[¶89] The Defendants argue the classification is reasonable because the NDSA was the main group representing cattlemen in 1973, and neither RRI nor I-BAND existed then. (R:149:10:23; R:169:6-7:16). This argument confirms the problem. The Act fixed the class by the facts as they stood on the day of enactment. It closed the class to every group that later came to stand in the same position. That is the kind of class *Edmonds* rejected. *Edmonds*, 50 N.W. at 972. When I-BAND unsuccessfully sought the same nominating power in 2007, it had to ask the Legislature to amend the Act. (R:149:10:24). No act of the Legislature is necessary to join an open class.

[¶90] The Defendants also argue the Plaintiffs should take their complaints to the Legislature, which rejected bills to change the nomination process in 2007, 2023, and 2025. (R:98:14:33-34; R:185:2:5). The Legislature decides whether a law is wise. *Manikowske v. North Dakota Workmen's Compensation Bureau*, 338 N.W.2d 823, 825 (N.D. 1983). The courts decide whether a law is constitutional. *Access Indep. Health Servs.*, 2025 ND 26, ¶ 40. The Legislature's refusal to change the Act shows it prefers the current process. It does not show the process is constitutional. "The legislature cannot finally settle the boundaries to be drawn." *Edmonds*, 50 N.W. at 971. A court looks "not to its form or phraseology merely, but to its substance and necessary operation." *Id.* at 973 (quotation omitted).

[¶91] The Defendants rely on *Rosoff v. Haussamen*, 59 N.D. 154, 228 N.W. 830 (1930). (R:98:10:25; R:169:6:14; R:185:2:3-4). In *Rosoff*, a statute required the Governor to appoint members of the state board of pharmacy on the recommendation of the North Dakota Pharmaceutical Association. 228 N.W. at 831. The Governor ignored the association's recommendation and appointed someone else. *Id.* The Supreme Court stated, "There is only one question involved, and that is: Had the Governor power to appoint Mr. Rosoff to the position?" *Id.* No party claimed the statute was a special law. The Court held that "[i]n the absence of

constitutional restrictions, the Legislature has absolute power to prescribe the qualifications for office and the manner of appointment." *Id.* at 830 (syllabus). Article IV, Section 13 is such a restriction. *Rosoff* did not decide the question now before this Court.

[¶92] The Defendants also argue the pharmacy statute in *Rosoff* existed when the Constitution was adopted. (R:185:2:4). The statute they cite was enacted on March 20, 1890, after the Constitution took effect. (R:186:2, 7). A similar territorial law did exist. In 1887, the territorial legislature required the governor to appoint the members of two district boards of pharmacy from pharmacists selected by two named pharmaceutical associations. Laws of Dakota Territory § 220 (1887). The Court may consider laws in effect when the people adopted the Constitution. *MKB Mgmt. Corp.*, 2014 ND 197, ¶ 25. But the Constitution continued territorial laws only if they were "not repugnant to this Constitution." N.D. Const. of 1889, Schedule, § 2. Continuing a territorial law did not decide whether it was valid. Nor were the early Legislature's choices beyond review. *Edmonds* struck down a law passed in the same session as the 1890 pharmacy act. 50 N.W. at 970. No court decided whether either pharmacy statute was a special law, and *Rosoff* did not. A law that goes unchallenged is not proven constitutional. The label statute in *Pressmen* had stood since 1919 when the Supreme Court held it invalid. 115 N.W.2d at 19. The Legislature replaced the pharmacy nomination method in 2009. (R:188).

[¶93] The Defendants argue the Plaintiffs confuse the power to nominate with the power to appoint, because the Governor makes the final choice. (R:149:6-8:14-18). They rely on cases holding that a governor's final choice avoids an unlawful delegation of the appointment power. (R:98:11-12:26-28) (citing *Rosenthal v. State Bd. of Chiropractic Exam'rs*, 413 A.2d 882, 884 (Del. 1980); *Kentucky Ass'n of Realtors, Inc. v. Musselman*, 817 S.W.2d 213 (Ky. 1991)). Those cases address delegation. The Plaintiffs did not bring a delegation claim. The special law question

asks who may enter the class, not who makes the final choice. The Governor's final choice does not open the class of nominating groups. For the six phase-specific seats, the Governor must choose from the named groups' lists. As the Defendants describe *Musselman*, the Kentucky statute let the governor reject unsuitable nominees and request a new list. (R:169:7:18). The Act here has no such provision.

[¶94] The Defendants also argue the Governor may appoint any qualified person if an association fails to submit names within sixty days. (R:98:12-13:29; R:169:4:8). They rely on section 54-07-01.2(4), N.D.C.C. That subsection does not apply here. Read in context, it governs the resignation process for the boards and commissions listed in subsection 1 of that section. N.D.C.C. § 54-07-01.2(1), (4). The Beef Commission is not on that list. Even if the subsection applied, it would let the Governor act only when an association fails to act. It would not let any other group submit names.

[¶95] The Defendants warn that a ruling against the Act could affect more than twenty other boards and commissions. (R:98:19-20:48-49). The Court decides only the statute before it. Those other statutes differ in their text and purpose, and some may set criteria rather than name groups. The Court expresses no view on them. A defect is not cured because it appears in more than one statute. "[T]he fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution." *INS v. Chadha*, 462 U.S. 919, 944 (1983).

[¶96] The Plaintiffs also rely on decisions from other states. (R:119:23-25:64-67). The Court need not rely on them. The North Dakota Supreme Court's decisions in *Edmonds* and *Teigen* answer the question.

[¶97] Section 4.1-03-02(2)(a)-(d), N.D.C.C., is a special law that violates Article IV, Section 13

of the North Dakota Constitution. The Plaintiffs have shown this violation beyond a reasonable doubt. *MCI Telecommunications Corp.*, 523 N.W.2d at 552. The Court grants the Plaintiffs' motion for summary judgment on the special law claim and denies the Defendants' motion on that claim. The Court addresses the remedy below.

2. General Laws

[¶98] In the alternative, the Plaintiffs argue that, even if the Act is a general law, rather than a special law, it is not applied uniformly and thus violates Article I, § 22, of the North Dakota Constitution. (R:119:26:70). They reason that, while the Act does not require the enumerated organizations to nominate their own members to Commission vacancies, in practice, most of the groups "have exclusively done so." *Id.* Similarly, the Plaintiffs reason that, while the Act does not require the Governor to appoint members of the enumerated associations to the at-large positions, "the Governor has always done so." *Id.* Thus, the Plaintiffs conclude the Act, "in its operation, precludes unaffiliated cattlemen from being considered for the six phase-specific positions and from serving on the Commission entirely." *Id.*

[¶99] The Plaintiffs assert that, as currently administered, the Act results in the specifically enumerated groups nominating their own members. (R:119:26-27:72). They point to the fact that the NDSA, Feeder, and LMA have never nominated a single unaffiliated cattleman. *Id.* Since the Governor is restricted to the nominations from these groups, the Plaintiffs argue the application of the law "has made it impossible for unaffiliated cattlemen to serve on the Commission in any of the six phase-specific positions." *Id.* Thus, they conclude the law is "an unconstitutional and arbitrary general law, as there are no material differences between Private Associations and their members and their unaffiliated counterparts." *Id.*

[¶100] The Defendants argue the Act creates two different classes: organizations who nominate

individuals to the Commission and individuals who are eligible to serve on the Commission. (R:149:18:41). They reason the Act operates uniformly within each class because the "Act does not create a classification based on individual Stockmen's Association membership." *Id.* They assert "[a]ll organizations meeting the functional description can nominate; all individuals meeting eligibility requirements can be appointed." *Id.*

[¶101] Article I, § 22, of the North Dakota Constitution provides that "[a]ll laws of a general nature shall have a uniform operation." The North Dakota Supreme Court has long viewed Article I, §§ 21 and 22 together as the State's guarantee of equal protection. *Bismarck Public School Dist. No. 1 v. State By and Through North Dakota Legislative Assembly*, 511 N.W.2d 247, 255 (N.D. 1994). Sections 21 and 22 do "not prohibit legislative classifications or mandate identical treatment of different categories of persons." *Id.* at 256. They do, however, "subject legislative classifications to different standards of scrutiny, depending upon the right that may be infringed by the challenged classification." *Id.*

[¶102] The text of Section 22 limits its reach. It applies to "[a]ll laws of a general nature." N.D. Const. art. I, § 22. The phrase "general nature" marks the line between general laws and the special laws the constitution regulates elsewhere. *T.D. by and through Dolney*, 2026 ND 162, ¶ 122 (Tufte, J., concurring specially). The Plaintiffs bring their uniform operation claim in the alternative, if the Act is a general law. (R:119:26:70). The Court has held the nomination provisions in section 4.1-03-02(2)(a)-(d), N.D.C.C., are a special law. Because those provisions are a special law, the Plaintiffs' alternative claim does not arise as to them. The Court does not reach the uniform operation claim as it relates to the six phase-specific seats. For the same reason, the Court need not decide the Defendants' argument that the Act creates one class of nominating organizations and another of eligible individuals. (R:149:18:41). The at-large provision involves only eligible

individuals, and the Court addresses it below. A court "will not anticipate a question of constitutional law in advance of the necessity of deciding it." *SCS Carbon*, 2024 ND 109, ¶ 8 (quotation omitted).

[¶103] The provision for the three at-large seats is a general law. Section 4.1-03-02(2)(e), N.D.C.C., lets the Governor appoint any qualified person. The Court addresses the Plaintiffs' claims about the at-large seats under both Section 21 and Section 22 below.

G. Privileges and Immunities Clause

[¶104] The Plaintiffs also allege the law violates Article I, Section 21 of the North Dakota Constitution because it grants special privileges to certain groups that are not available to similarly situated beef industry groups or beef producers. (R:119:29:78). Since the law specifically names these groups, the Plaintiffs reason it grants these groups the express privilege of providing the Governor with a list of nominees, which the Governor must follow. *Id.* They argue this classification is arbitrary because these groups are not "a fair and accurate representative of trade in North Dakota[.]" (R:119:31:82). They reason these groups lack any unique or special qualifications justifying this classification. (R:119:32:83).

[¶105] The Plaintiffs also argue there is no reason or rational basis for restricting Commission appointees to "Participating Producers." (R:119:34:88). They reason it is arbitrary to bar individuals who utilize the refund process from serving on the Commission because this is a legal process and requesting a refund does not impact an individual's ability to serve on the Commission. (R:119:34:89). The Plaintiffs also assert the "Participating Producer" requirement is arbitrary because it discriminates against individuals based on their socioeconomic status as poorer cattlemen are most likely to have an active need for the refund money. (R:119:34:90).

[¶106] The Defendants argue the law's nomination process is rationally related to legitimate government interests because the "Legislature could reasonably determine that organizations with the primary purpose of representing beef producers are best positioned to nominate qualified candidates for Commission seats." (R:149:11-12:27). They reason "[t]his classification serves multiple legitimate interests: ensuring Commission members have industry knowledge and connections, facilitating an efficient nomination process, ensuring representation of different industry segments, and promoting beef industry development." *Id.* They also assert this classification is reasonable because the Commission, and the beef industry, "operates differently than many of the other State commodity groups." (R:149:12:29).

[¶107] The Defendants also argue there is a legitimate reason for the "participating producer" requirement in the law. (R:149:15:35). They reason this language is rationally related to a legitimate government interest because "[t]he requirement ensures that Commission members administering checkoff funds are themselves contributors to the program." *Id.* They assert "[a] person who has sought a refund has demonstrated lack of support for the program." *Id.*

[¶108] Article I, Section 21 of the North Dakota Constitution provides: "No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens." N.D. Const. art. I, § 21. "Article I, § 21, N.D. Const., has long been viewed as our state constitutional guarantee of equal protection under the law." *Condon v. St. Alexius Medical Center*, 2019 ND 113, ¶ 9, 926 N.W.2d 136 (citation and quotations omitted).

[¶109] Not all legislative classifications are unlawful under § 21. *Id.* Courts review the lawfulness of legislative classifications under three separate standards of review. *Id.* The Supreme Court has discussed these standards of review as follows:

> The standard of review of a question under equal-protection analysis is dependent on the type of classification. When a classification involves a fundamental interest or is inherently suspect, we will analyze these classifications under strict scrutiny. When there is an important substantive right involved in the classification, an intermediate standard of review is applied. Lastly, if there is no fundamental or important substantive interest involved, we will consider the classification under a rational basis standard, where the legislation will be sustained unless it is patently arbitrary and bears no rational relationship to a legitimate government interest. This level of scrutiny is generally applied when statutory classifications [] involve economic or social matters and do not deprive a class of plaintiffs from access to the courts.

Id. at ¶ 10 (citations and quotations omitted).

[¶110] There is no dispute the rational basis standard of review applies to the Plaintiffs' privileges and immunities claim. "Under the rational basis test, a governmental classification will be sustained unless it is arbitrary and bears no rational relationship to a legitimate governmental interest." *Ferguson v. City of Fargo*, 2016 ND 194, ¶ 10, 886 N.W.2d 557 (citation and quotations omitted). "This test has been described as a relatively relaxed standard reflecting the Court's awareness that the drawing of lines that create distinctions is peculiarly a legislative task and an unavoidable one." *Id.* (citations and quotations omitted). "Perfection in making the necessary classifications is neither possible nor necessary." *Id.* (citations and quotations omitted).

[¶111] The Supreme Court has further discussed the rational basis standard as follows:

> For purposes of rational basis review, equal protection does not demand that a legislature or governing decisionmaker actually articulate at any time the purpose or rationale supporting its classification; however, there must be an identifiable purpose that may conceivably or reasonably have been that of the government decisionmaker. Thus, if a reviewing court can conceive of a reason justifying the choice made by the legislature or government decisionmaker in service of a legitimate end, the statute [or ordinance] does not violate the equal protection clause.

Id. (citations omitted).

[¶112] The Plaintiffs bear a heavy burden. "The presumption of constitutionality is so strong that a statute will not be declared unconstitutional unless its invalidity is, in the court's judgment, beyond a reasonable doubt. The party challenging the constitutionality of a statute has the burden of proving its constitutional infirmity." *T.D. by and through Dolney*, 2026 ND 162, ¶ 30 (quotation omitted). The Legislature need not state its reason for a classification. *Id.* at ¶ 102. If the Court can conceive of a reason for the Legislature's choice in service of a legitimate end, the statute stands. *Id.* "[T]he wisdom, necessity and expediency of legislation are issues for legislative, not judicial, determination." *Id.* at ¶ 113 (quotation omitted). A classification does not violate Section 21 "merely because, in practice, [it] may result in some inequality." *Eagle v. N.D. Workers Comp. Bureau*, 1998 ND 154, ¶ 14, 583 N.W.2d 97. The State need not produce evidence to support its classification. The burden stays with the Plaintiffs.

[¶113] The text of Section 21 speaks of grants. It contains two commands. *T.D. by and through Dolney*, 2026 ND 162, ¶ 122 (Tufte, J., concurring specially). The first is a revocability rule. A special privilege, if granted at all, must remain subject to change by the Legislature. *Id.* The second is a same-terms rule. It asks "what did the favored recipient get, and could others obtain it on the same terms?" *Id.*

[¶114] The Supreme Court's own decisions describe the same rule. Section 21 "prohibits the Legislature from granting to any citizen or class of citizens advantages, or exemptions from the common burdens, which, upon the same terms, that is, under like circumstances and conditions, are not granted to all citizens." *State ex rel. Atkins v. Lawler*, 53 N.D. 278, 205 N.W. 880, 884 (1925) (discussing original Section 20, now Article I, Section 21). "The object of the constitutional provision is to prevent the Legislature from enlarging the rights of some in discrimination against

others." *Id.* "But the provision does not inhibit the Legislature from making reasonable classification of persons and things for the various purposes of legislation; so long as all are treated alike, under like circumstances, the provision is not violated." *Id.*

[¶115] Neither party briefed Section 21 under its text. Both parties argued the tiered framework the North Dakota Supreme Court applies to Section 21. (R:98:7-9:18-21; R:119:28-29:76-77). The majority in *T.D. by and through Dolney* applied that framework, and this Court must follow it. 2026 ND 162, ¶¶ 77, 87.[1] A court should resolve a case under the established framework when the parties have not briefed another. *Id.* at ¶ 119 (Tufte, J., concurring specially). The Court therefore applies that framework to each claim under Section 21.

[¶116] The Plaintiffs rely on *International Printing Pressmen & Assistants Union of North America v. Meier*, 115 N.W.2d 18 (N.D. 1962) ("*Pressmen*"). (R:119:29:77; R:180:2:3; R:184:11:26). The Defendants do not address it. The Plaintiffs describe *Pressmen* as a special law case. (R:184:11:26). The Supreme Court decided it under original Section 20, which is now Article I, Section 21. 115 N.W.2d at 19.

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[1] Article I, Section 21 does not mention equal protection. It forbids granting a citizen or class of citizens privileges "which upon the same terms shall not be granted to all citizens." N.D. Const. art. I, § 21. For decades, the Supreme Court applied the provision according to its terms. *See Lawler*, 205 N.W. at 884; *Int'l Printing Pressmen & Assistants Union of N. Am. v. Meier*, 115 N.W.2d 18, 20-21 (N.D. 1962). The federal Equal Protection Clause, by contrast, forbids a state to "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. In 1974, the Supreme Court recognized it was "obliged to use different standards in considering federal constitutionality and state constitutionality." *Johnson v. Hassett*, 217 N.W.2d 771, 777 (N.D. 1974). Weeks later, the Court treated the state and federal provisions as similar "[f]or the purposes of this case" and found "no compelling reason" to give the state provisions a different meaning. *Snyder's Drug Stores, Inc. v. N.D. State Bd. of Pharmacy*, 219 N.W.2d 140, 146, 150 (N.D. 1974) (discussing original Sections 11 and 20, now Article I, Sections 22 and 21). Over the next several years, the Court adopted the tiers of federal equal protection review as the standard for Section 21. *See Arneson v. Olson*, 270 N.W.2d 125, 132-33 (N.D. 1978); *Herman v. Magnuson*, 277 N.W.2d 445, 450-51 (N.D. 1979); *State v. Knoefler*, 279 N.W.2d 658, 661-62 (N.D. 1979); *Benson v. N.D. Workmen's Comp. Bureau*, 283 N.W.2d 96, 99 (N.D. 1979), *overruled on other grounds by Haney v. N.D. Workers Comp. Bureau*, 518 N.W.2d 195, 199 (N.D. 1994). By 1983, the Court described "the three standards of review relevant to the Federal Constitution and to our State Constitution" together. *Nygaard v. Roblnson*, 341 N.W.2d 349, 358 (N.D. 1983); *see also Gange v. Clerk of Burleigh Cnty. Dist. Ct.*, 429 N.W.2d 429, 433 (N.D. 1988). Justice Tufte has since observed that this framework "was assembled between 1974 and 1988 from borrowed federal materials, without examining the text of the state constitution or the history that produced it." *T.D. by and through Dolney*, 2026 ND 162, ¶ 120 (Tufte, J., concurring specially). The parties did not brief an alternative framework, and the Supreme Court's majority decisions bind this Court. The Court therefore applies the established framework.

[¶117] In *Pressmen*, a statute required certain state printing to bear "the label of the branch of the International Typographical Union of the city in which the printing is done." *Id.* A printer that lacked the right to use that label, and the union whose label it used, challenged the statute. *Id.* The Supreme Court held the statute invalid. The statute "grants special privileges to printers having the right to use the label of the International Typographical Union and it discriminates against all printers who may have the right to use other labels, or who may have no union label at all." *Id.* at 20-21. All five justices joined the opinion. *Id.* at 21.

[¶118] The Supreme Court rejected the argument that the statute was valid because any printer could obtain the right to use the label. If the statute were upheld "on the ground that any printer may qualify merely by meeting certain conditions required to obtain the right to use that label, it would be just as reasonable to suggest a law which would limit the awarding [of] such contracts to persons belonging to some particular political party, because presumably any man could join that party by meeting certain conditions." *Id.* at 20. "Clearly, such a law would be discriminatory and unconstitutional." *Id.*

[¶119] *Pressmen* controls this claim. Section 4.1-03-02(2)(a)-(d), N.D.C.C., does what the statute in *Pressmen* did. It names private organizations and grants them a privilege no other organization can obtain: the exclusive power to decide whose names reach the Governor for six of the nine seats on a commission that spends public money. No other cattle group can obtain that power on any terms. Section 21 forbids advantages that "upon the same terms ... are not granted to all citizens." *Lawler*, 205 N.W. at 884. The Defendants answer that anyone may join the NDSA. (R:149:4-5:12). Their counsel conceded the point at the hearing. *Pressmen* rejected that answer. A privilege is not open to all because anyone may join the one organization that holds it.

[¶120] The Court applies *Pressmen* within the framework the Supreme Court now uses. *Pressmen*

predates the three-tiered framework and did not apply a rational basis test. But the Supreme Court has never overruled or limited it. When the Supreme Court later upheld a statute against a Section 21 challenge in *Teigen*, the statute described trade associations by criteria and did not name one. 2008 ND 88, ¶¶ 20, 27. The Defendants cite no case in which the Supreme Court upheld, under Section 21, a statute that grants a privilege to a private organization by name. *Rosoff* did not decide a Section 21 question. Under rational basis review, a classification fails if it is patently arbitrary and bears no rational relationship to a legitimate government interest. *Condon*, 2019 ND 113, ¶ 10. *Pressmen* establishes that granting a privilege to one named private organization, to the exclusion of all others in the same position, is arbitrary discrimination under Section 21. This Court must follow that decision.

[¶121] The Defendants' reasons do not change the result. They argue the named groups have industry knowledge, make the nomination process efficient, and represented cattlemen in 1973. (R:149:10-12:23-27). The Court accepts those interests as legitimate. The State offered a similar reason in *Pressmen*: that a union label guarantees superior work. The Supreme Court found the argument "irrelevant" because the challenger had a union label. It "merely [did] not have the right to use the particular label which is required by our law." 115 N.W.2d at 20. The same is true here. Other cattle groups have industry knowledge and represent cattlemen. They lack only the name the statute requires. A class defined by criteria, and open to all groups that meet them, would serve each of the Defendants' interests.

[¶122] The Defendants' other arguments fail for the same reasons. First, they argue the power to nominate is a duty, not a privilege. (R:149:4:11; R:169:3:6). The label does not control. The Court looks at what the statute grants. A privilege is "a particular and peculiar benefit or advantage enjoyed by a person, company or class beyond the common advantage of other citizens." *T.D. by*

and through Dolney, 2026 ND 162, ¶ 84 (quotation omitted). The named groups, and no one else, decide whose names reach the Governor for six seats on a commission that spends public money. That is a privilege under Section 21. Second, they stress the Governor makes the final choice. (R:149:6-8:14-18). In *Pressmen*, the State also made the final choice when it awarded the contract. The defect was the condition that limited who could compete.

[¶123] The Defendants also rely on *Friedman v. Rogers*, 440 U.S. 1 (1979). (R:98:10-11:26; R:169:5:13). *Friedman* does not control this claim. The United States Supreme Court decided only claims under the United States Constitution. It did not consider Article I, Section 21 or any provision like it. The two provisions use different words. The Fourteenth Amendment forbids a state to "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. Section 21 forbids granting privileges "which upon the same terms shall not be granted to all citizens." N.D. Const. art. I, § 21. The North Dakota Supreme Court has recognized it is "obliged to use different standards in considering federal constitutionality and state constitutionality." *Johnson v. Hassett*, 217 N.W.2d 771, 777 (N.D. 1974). A decision under the Fourteenth Amendment does not decide what Section 21 means. *Friedman* also does not fit the facts. The Texas statute required membership in "a state optometric association which is recognized by and affiliated with the American Optometric Association." 440 U.S. at 3 n.2. That is a criterion, not a name. *Pressmen*, not *Friedman*, governs a North Dakota statute that grants a privilege to a private organization by name.

[¶124] The Plaintiffs have shown beyond a reasonable doubt that section 4.1-03-02(2)(a)-(d), N.D.C.C., violates Article I, Section 21 of the North Dakota Constitution. *See Pressmen*, 115 N.W.2d at 20-21. The Court grants the Plaintiffs' motion for summary judgment on the facial privileges and immunities claim and denies the Defendants' motion on that claim. The relief on

this claim is the same as the relief on the special law claim.

[¶125] The "Participating Producer" requirement for Commission membership is rationally related to a legitimate government interest. "'Participating producer' means a producer that has not obtained a refund of any assessment paid on the sale of cattle under this chapter for the preceding three years." N.D.C.C. § 4.1-03-01(8). Producers who opted to receive a refund of the assessed checkoff within the preceding three years are ineligible for membership on the Commission.

[¶126] The Commission is tasked with promoting the beef industry in North Dakota through providing and participating in programs to increase the consumption of domestic beef, to support research and educational opportunities related to the beef industry, enhance the sale of and production of North Dakota beef, and to initiate, sponsor, and encourage research designed to solve problems in the beef industry. To accomplish this, the Commission is empowered to expend checkoff funds it collects under Chapter 4.1-03.

[¶127] The Legislature has a legitimate interest in ensuring the Commission spends the checkoff funds collected under Chapter 4.1-03 to effectuate its duties. Requiring Commission members to contribute to the funds they are administering is rationally related to this interest. It is reasonable for the Legislature to determine that individuals contributing to the funds the Commission is tasked with administering and collecting may be better stewards of checkoff funds. Thus, the "Participating Producer" requirement is rationally related to a legitimate government interest and does not violate Article I, Section 21 of the North Dakota Constitution.

[¶128] The text of Section 21 points the same way. The Act grants eligibility to serve to every producer who has not taken a refund in the last three years. Any producer may obtain that eligibility on the same terms by leaving the assessment in the program for three years. The class is open. A

producer who takes a refund today may qualify again later. Eligibility does not depend on membership in any group the Legislature chose by name. "[S]o long as all are treated alike, under like circumstances, the provision is not violated." *Lawler*, 205 N.W. at 884.

[¶129] The Plaintiffs' other arguments do not change the result. First, they argue producers who take a state refund still contribute through the federal checkoff, and half of that money goes to the Commission. (R:180:8:17). A producer who takes back the state assessment has chosen not to fund the part of the program the State controls. It is rational for the Legislature to want members who decide how to spend the money raised under the Act to have left their own state assessment in the program.

[¶130] Second, the Plaintiffs argue the Act imposes an unconstitutional condition because it forces producers to choose between a refund and eligibility to serve. (R:180:9:21). As the Plaintiffs describe it, the doctrine applies when the government requires someone to give up a constitutional right in exchange for a government benefit. *Id.* No one has a constitutional right to a refund or to a seat on the Commission. The refund is a benefit the Legislature created, and the Legislature may attach conditions to it.

[¶131] Third, the Plaintiffs argue the requirement falls hardest on poorer cattlemen who need the refund. (R:119:34:90). The Act does not classify by wealth. Every producer may take a refund, and every producer may serve, on the same terms. Finally, the Legislature chose a three-year period. Other commodity councils use periods from one to three years. (R:98:15:37). Where to draw that line is a legislative choice. *Ferguson*, 2016 ND 194, ¶ 10.

[¶132] At the hearing, the Plaintiffs raised two new arguments. They argued the requirement is viewpoint discrimination that calls for strict scrutiny, and that the Act exempts some participants. Neither argument appears in their briefs, and neither changes the result. Taking a refund is a

financial choice, not speech. The requirement turns on that choice, not on any view a producer holds. The Act exempts the representative of a public livestock market from the requirement. N.D.C.C. § 4.1-03-02(3)(b). It also exempts from the assessment a person who earns only a commission on a sale or who resells cattle within ten days to facilitate a transfer. N.D.C.C. § 4.1-03-11(2). Those persons are intermediaries, not producers who fund the program. The Legislature may rationally treat them differently.

[¶133] The Court grants the Defendants' motion for summary judgment on the participating producer claim and denies the Plaintiffs' motion on that claim.

H. At-Large Seats and As-Applied Claims

[¶134] The Plaintiffs' as-applied privileges and immunities claim challenges the nomination and appointment process as applied. (R:2:20-22:128-140). It has two parts. The first part challenges the six phase-specific seats. The Court has already held the nomination provisions for those seats violate Article IV, Section 13 and Article I, Section 21 on their face. That holding gives the Plaintiffs all the relief they could obtain on the first part of the as-applied claim. The Court does not reach it.

[¶135] The second part of the as-applied claim challenges the three at-large seats under Section 21. The uniform operation claim challenges the same seats under Section 22. The Plaintiffs argue that, since 2009, every at-large appointee except one has belonged to the NDSA or an auxiliary organization. (R:119:35-37:93-96; R:180:9-10:23-25). The parties stipulated to that fact. (R:88:7:37-38). The Defendants respond that the Governor appoints qualified people from those who apply, and most applicants belong to the NDSA. (R:169:7-8:20-21).

[¶136] Section 4.1-03-02(2)(e), N.D.C.C., grants nothing to any class. It lets the Governor appoint any person who meets the qualifications in subsection 3. Every qualified cattleman may seek an

at-large seat on the same terms. Maher did so three times. (R:88:6-7:36). Other unaffiliated cattlemen have also sought those seats, and I-BAND has nominated candidates for them. (R:88:6-7:36; R:149:5:12; R:150:1:2; R:151:1:4). The Governor appointed an unaffiliated producer, Val Wagner, in 2023. (R:88:6-7:36-38; R:151:1:5). The Plaintiffs' evidence shows how Governors have used their discretion. It does not show the Act grants a privilege to anyone.

[¶137] A general law must operate alike on everyone it reaches. "[S]o far as it is operative, its burdens and its benefits must bear alike upon all persons and things upon which it does operate, and the statute must contain no provision that would exclude or impede this uniform operation." *Vermont Loan & Trust Co. v. Whithed*, 2 N.D. 82, 49 N.W. 318, 320 (1891); *see also Ferch v. Housing Auth. of Cass Cnty.*, 79 N.D. 764, 59 N.W.2d 849, 864 (1953). Section 22 directs attention to how a general law operates in practice, not only to its form. *T.D. by and through Dolney*, 2026 ND 162, ¶ 122 (Tufte, J., concurring specially). The at-large provision operates the same way on every applicant. Each applicant must meet the same qualifications and applies to the same official. The Governor then chooses. The Plaintiffs do not claim the Governor applies a membership test, and the 2023 appointment of an unaffiliated producer shows the Governor does not. A pattern of discretionary appointments is not the operation of the law. If it were, any appointment statute would violate Section 22 whenever most appointees came from one group.

[¶138] The result is the same under rational basis review. The at-large provision draws no classification. Even if a Governor favored applicants who are active in industry groups, a Governor may rationally value that experience. The Plaintiffs do not claim the at-large provision involves a suspect class or a fundamental right. The Court will not direct the Governor's choice among qualified applicants. That choice belongs to the executive branch.

[¶139] The parties dispute whether the Court should consider records from before 2009. The

Defendants offered State Archives records of earlier appointments. (R:98:18-19:46-47; R:100). The Plaintiffs argue the Court should not consider them because the Defendants did not produce them in discovery. (R:144:13-14:29-31). The Court did not rely on those records. Its ruling on the nomination provisions rests on the text of the Act. Its ruling on the at-large seats rests on the stipulated facts since 2009. The Court need not decide the Plaintiffs' objection.

[¶140] The Court grants the Defendants' motion for summary judgment on the as-applied privileges and immunities claim and the uniform operation claim as they relate to the at-large seats and denies the Plaintiffs' motion on those claims. The Court does not reach those claims as they relate to the six phase-specific seats, because the relief on the special law claim and the facial privileges and immunities claim makes them moot.

I. Remedy

[¶141] The Plaintiffs ask the Court to strike down the Act on each claim. (R:2:26-27, Prayer ¶¶ A-E). In the alternative, they ask the Court to enjoin the Governor from making appointments based on the named associations' nominations. (R:2:27, Prayer ¶ F). Neither party briefed severability.

[¶142] A judgment that part of a statute is invalid "is confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy." N.D.C.C. § 1-02-20. Because of this statute, a bill needs no severability clause. *Northwest Landowners Association v. State* ("*NWLA I*"), 2022 ND 150, ¶ 39, 978 N.W.2d 679. Whether the rest of a statute stands depends on what the Legislature intended. *Id.* at ¶¶ 37-38. "[I]f a legislative act be in part unconstitutional, the valid portion shall stand, unless the result be one not contemplated or desired by the Legislature." *N.D. Legislative Assembly v. Burgum*, 2018 ND 189, ¶ 66, 916 N.W.2d 83 (quotation omitted). The whole law falls only if its parts are "so connected and dependent upon each other that it cannot be presumed that the Legislature would have enacted the valid sections

without the unconstitutional sections." *Arneson v. Olson*, 270 N.W.2d 125, 137 (N.D. 1978). Courts "narrowly construe decisions declaring statutes unconstitutional, limiting their effect to provisions directly at issue." *Schoon v. N.D. Dep't of Transp.*, 2018 ND 210, ¶ 16, 917 N.W.2d 199.

[¶143] The defect is narrow. It lies in the words of subdivisions (a) through (d) of section 4.1-03-02(2), N.D.C.C., that require the Governor to appoint "from a list of at least two names submitted by" a named association. The assessment, the refund, the Commission's powers, the members' terms, and the qualifications in subsection 3 are not involved in the controversy.

[¶144] Those words can be removed cleanly. Without them, subsection 2 provides that the Governor shall appoint each beef producer, the cattle feeder, the dairy producer, the representative of a public livestock market, and the three at-large representatives. That text works on its own. The Commission keeps its nine seats and its mix of industry phases. Subsection 3 still requires each member to be actively engaged in the phase of the cattle industry the member represents. The Act already lets the Governor appoint the three at-large members directly.

[¶145] This result fits what the Legislature intended. The Legislature wanted a commission of producers from each phase of the industry, appointed by the Governor, to administer the checkoff. Striking the whole Act would end a checkoff program no party claims is unconstitutional. The Defendants point to the Legislature's refusal to change the nomination process. (R:98:14:34). That shows the Legislature preferred the lists. It does not show the Legislature would rather have no commission than one the Governor appoints directly. The rest of chapter 4.1-03, N.D.C.C., is a complete, working program.

[¶146] The Court will not rewrite the statute to save it. *Schoon*, 2018 ND 210, ¶ 16. The Court will not add criteria for nominating groups or add groups to the list. Those choices belong to the

Legislature. Nothing in this order prevents the Governor from accepting recommendations from any person or group, including the named associations.

[¶147] The Plaintiffs challenge the appointment process, not any member's seat, and no member of the Commission is a party. The judgment applies only to appointments made after its entry. It does not affect the terms of current members or the validity of the Commission's past acts. "[T]he practical result of a judgment declaring a statute unconstitutional is to treat it 'as if it never were enacted.'" *SCS Carbon*, 2024 ND 109, ¶ 7 (quotation omitted). But the Plaintiffs did not ask the Court to remove any member or undo any past act. The Court limits its judgment to the relief the Plaintiffs requested.

[¶148] The Plaintiffs asked for an injunction only as an alternative to striking down the Act. (R:2:27, Prayer ¶ F). A declaration that the list language is invalid resolves the controversy, and the Defendants are bound by the judgment. An injunction is unnecessary. The Court grants in part the Plaintiffs' request for a declaration, denies the alternative request for an injunction, and denies the request to strike the Act as a whole.

[¶149] The Plaintiffs also ask for attorney's fees, costs, interest, and disbursements "as permitted by law." (R:2:27, Prayer ¶ H). The Plaintiffs did not brief this request. Any claim for attorney's fees must be made by motion under N.D.R.Civ.P. 54(e)(2). Costs and disbursements are governed by N.D.R.Civ.P. 54(e)(1).

CONCLUSION

[¶150] The material facts are not in dispute, and the motions present questions of law. Maher and Heaton have standing. The Act bars Maher from consideration for the six phase-specific seats, and it makes Heaton ineligible to serve. The Plaintiffs' claims are timely. A claim against a statute accrues when the government applies the statute to the plaintiff, not when the plaintiff learns of

the statute. The government applied the Act to Maher and Heaton within three years before they sued.

[¶151] Section 4.1-03-02(2)(a)-(d), N.D.C.C., names four private associations and gives them alone the power to decide whose names reach the Governor for six of the nine seats on the Commission. No other group can join that class. A class closed by name is a special law that violates Article IV, Section 13. The same provisions grant the named associations a privilege no other group can obtain on the same terms. This violates Article I, Section 21. The Plaintiffs have shown each violation beyond a reasonable doubt.

[¶152] The Plaintiffs do not prevail on their other claims. The participating producer requirement is open to every producer on the same terms. It is rationally related to the Legislature's interest in having members who fund the program decide how to spend it. The at-large provision grants nothing to any class. The Governor's past appointments do not show the Act grants a privilege to anyone. The as-applied privileges and immunities claim and the uniform operation claim are moot as they relate to the six phase-specific seats.

[¶153] The defect lies only in the words that limit the Governor to the named associations' lists. The Court can sever those words. The rest of the Act remains in effect, and the Governor may appoint each member directly, subject to the qualifications in subsection 3. A declaration resolves the controversy, so an injunction is unnecessary. The judgment applies only to appointments made after its entry.

ORDER

[¶154] The *Plaintiffs' Motion for Summary Judgment* is GRANTED IN PART and DENIED IN PART. The *Defendants' Motion for Summary Judgment* is GRANTED IN PART and DENIED IN PART.

[¶155] The Court DECLARES that the following words in section 4.1-03-02(2), N.D.C.C., violate Article IV, Section 13 and Article I, Section 21 of the North Dakota Constitution and are invalid: in subdivision a, "from a list of at least two names submitted by the North Dakota stockmen's association"; in subdivision b, "from a list of at least two names submitted by the North Dakota stockmen's association feeder council"; in subdivision c, "from a list of at least two names submitted by the milk producers association of North Dakota"; and in subdivision d, "from a list of at least two names submitted by the North Dakota livestock marketing association."

[¶156] The rest of chapter 4.1-03, N.D.C.C., remains in effect, including the participating producer requirement in sections 4.1-03-01(8) and 4.1-03-02(3)(b), N.D.C.C. The Plaintiffs' request to strike the Act as a whole is DENIED.

[¶157] The Plaintiffs' alternative request for an injunction is DENIED. This order does not prevent the Governor from accepting recommendations from any person or organization.

[¶158] This judgment applies only to appointments made after its entry. It does not affect the terms of current members or the validity of the Commission's past acts.

[¶159] The Plaintiffs' participating producer claim is DISMISSED. The participating producer requirement does not violate Article I, Section 21 of the North Dakota Constitution. The Plaintiffs' requests to declare that requirement unconstitutional and to enjoin its enforcement are DENIED.

[¶160] The Plaintiffs' as-applied privileges and immunities claim and uniform operation claim are DISMISSED as they relate to the three at-large seats. Those claims are DISMISSED as moot as they relate to the six phase-specific seats, in light of the relief granted on the special law claim and the facial privileges and immunities claim.

[¶161] The Defendants' motion for summary judgment on standing and the statute of limitations is DENIED.

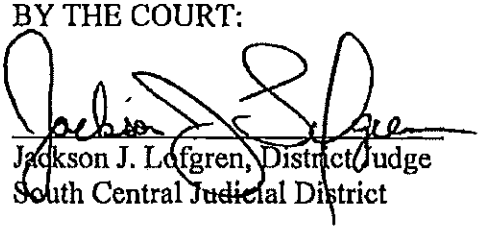
[¶162] Any claim for attorney's fees must be made by motion under N.D.R.Civ.P. 54(e)(2). Costs and disbursements are governed by N.D.R.Civ.P. 54(e)(1).

[¶163] The Clerk of Court shall enter judgment consistent with this order.

[¶164] IT IS SO ORDERED.

[¶165] Dated October 23, 2026.

BY THE COURT:



Jackson J. Lofgren, District Judge
South Central Judicial District