

SUPREME COURT OF NORTH DAKOTA

University of North Dakota v. Whelan

2026 ND 19 · No. No. 20250286 · Decided February 5, 2026

SUMMARY

The North Dakota Supreme Court granted the University of North Dakota’s petition for a supervisory writ and directed the district court to dismiss a class action brought by flight instructors. The court held that the plaintiff’s claims under the Fair Labor Standards Act, North Dakota wage laws, and unjust enrichment were statutory or otherwise noncontractual and therefore were not authorized under N.D.C.C. chapter 32-12. Because the plaintiff had not complied with the notice requirements of N.D.C.C. chapter 32-12.2, the district court lacked subject matter jurisdiction.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Jon J. Jensen, Justice; Lisa Fair McEvers, Chief Justice; Daniel J. Crothers, Justice; Jerod E. Tufte, Justice; Douglas A. Bahr, Justice
JURISDICTION	Supreme Court of North Dakota
DECIDED	February 5, 2026
DOCKET	No. 20250286
DISPOSITION	writ_granted
PROCEDURAL POSTURE	University of North Dakota petitioned the North Dakota Supreme Court for a supervisory writ directing the district court to dismiss a putative class action for lack of subject matter jurisdiction.
STANDARD OF REVIEW	Statutory interpretation and application are reviewed de novo. Whether to exercise supervisory jurisdiction is discretionary and determined case by case; supervisory writs are issued rarely and cautiously in extraordinary cases when necessary to rectify error or prevent injustice and no adequate alternative remedy exists.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	University of North Dakota v. Barbara Whelan, Judge of the District Court, Andrew Sangster, on behalf of himself and all others similarly situated

TOPICS

writ of certiorari

subject matter jurisdiction

statutory interpretation

class actions

civil procedure

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Supreme Court should exercise supervisory jurisdiction to review the district court's partial denial of UND's motion to dismiss for lack of subject matter jurisdiction.
2. Whether Sangster's FLSA and North Dakota wage-law claims arise upon a contract and therefore fall under N.D.C.C. ch. 32-12 rather than the notice requirements of N.D.C.C. ch. 32-12.2.
3. Whether Sangster's unjust enrichment claim is contractual in nature and authorized under N.D.C.C. ch. 32-12.

HOLDINGS

1. The Supreme Court may and should exercise supervisory jurisdiction because the district court's jurisdiction over the claims presents an important issue and supervisory relief is necessary to prevent costly litigation in a case the district court lacks jurisdiction to entertain.
2. Claims seeking relief for violations of statutory wage rights do not arise upon a contract merely because an employment contract exists or because relevant statutes are incorporated into the contractual relationship.
3. An unjust enrichment claim may be grounded in contract or tort; whether it sounds in contract depends on the factual basis pleaded. Sangster's unjust enrichment claim sounded in tort, not contract, because it was based on alleged intentional and wrongful exploitation and therefore was not authorized by N.D.C.C. ch. 32-12.
4. Absent timely notice under N.D.C.C. § 32-12.2-04(1), the court lacks subject matter jurisdiction over claims subject to that statutory notice requirement.

KEY QUOTATIONS

“This general principle does not operate to transform an action based on statutory rights into a contract claim.” (¶ 14)

“Whether a claim for unjust enrichment sounds in tort or contract depends upon the factual basis underlying the claim.” (¶ 21)

“Sangster’s FLSA claim, state wage law claim, and claim for unjust enrichment are not authorized by N.D.C.C. ch. 32-12 because they do not arise upon a contract.” (¶ 23)

FACTUAL BACKGROUND

Andrew Sangster alleged that UND failed to pay flight instructors for work beyond time spent with students, including scheduling, preflight and postflight procedures, recordkeeping, airport waiting, and answering student

questions. He alleged UND implemented policies preventing instructors from logging that additional time and sought damages, liquidated and punitive damages, attorney's fees, and costs. His complaint asserted FLSA and North Dakota wage-law claims, unjust enrichment, and conversion, but did not identify a specific contractual term that UND breached.

PROCEDURAL HISTORY

Andrew Sangster filed a class action against the University of North Dakota asserting FLSA violations, North Dakota wage-law violations, unjust enrichment, and conversion based on alleged failure to pay flight instructors for all time worked. UND moved to dismiss, arguing Sangster failed to provide the notice required by N.D.C.C. ch. 32-12.2. The district court denied the motion in part, concluding the FLSA, state wage, and unjust enrichment claims were contractual in nature, while dismissing the conversion claim. The Supreme Court granted supervisory relief and directed dismissal of the entire case for lack of jurisdiction.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The district court is directed to dismiss the case for lack of subject matter jurisdiction.

CASES CITED

- State v. Lee, 2025 ND 148, ¶ 6, 25 N.W.3d 763
- Sauvageau v. Bailey, 2022 ND 86, ¶ 7, 973 N.W.2d 207
- Dimond v. State Bd. of Higher Educ., 1999 ND 228, ¶ 19, 603 N.W.2d 66
- State v. Haskell, 2001 ND 14, ¶ 4, 621 N.W.2d 358
- Bulman v. Hulstrand Const. Co., 521 N.W.2d 632, 637 (N.D. 1994)
- Voigt v. State, 2008 ND 236, ¶ 4, 759 N.W.2d 530
- Messiha v. State, 1998 ND 149, ¶ 17, 583 N.W.2d 385
- Cooke v. Univ. of N.D., 1999 ND 238, ¶ 7, 603 N.W.2d 504
- Ghorbanni v. N.D. Council on Arts, 2002 ND 22, ¶¶ 8, 11-13, 639 N.W.2d 507
- Cache Private Capital Diversified Fund LLC v. Braddock, 2025 ND 168, ¶ 20, 26 N.W.3d 688
- RMM Props., L.L.L.P. v. City of Minot, 2024 ND 213, ¶¶ 8-9, 14 N.W.3d 31
- State ex rel. Cleveringa v. Klein, 249 N.W. 118, 121 (N.D. 1933)
- Lillethun v. Tri-County Elec. Coop., 152 N.W.2d 147, 150 (N.D. 1967)
- Kaisershot v. Gamble-Skogmo, Inc., 96 N.W.2d 666, 669 (N.D. 1959)
- Phillips v. Butterball Farms Co., 531 N.W.2d 144, 147 (Mich. 1995)
- King v. State, 614 N.W.2d 341, 347 (Neb. 2000)
- Allen v. Fauver, 768 A.2d 1055, 1057-59 (N.J. 2001)
- Nuñez v. Indiana Dep't of Child Servs., 817 F.3d 1042, 1045 (7th Cir. 2016)

- Cockrell v. Bd. of Regents of New Mexico State Univ., 45 P.3d 876, 885 (N.M. 2002)
- Commonwealth v. Luzik, 524 S.E.2d 871, 877 (Va. 2000)
- Three Aces Props. LLC v. United Rentals (North America), Inc., 2020 ND 258, ¶ 10, 952 N.W.2d 64
- Ritter, Laber & Assocs., Inc. v. Koch Oil, Inc., 2004 ND 117, ¶ 26, 680 N.W.2d 634
- Robinson v. Colo. State Lottery Div., 179 P.3d 998, 1007-08 (Colo. 2008)
- Department of Human Services ex rel. Palmer v. Unisys Corp., 637 N.W.2d 142, 154 (Iowa 2001)
- Hydro Conduit Corp. v. Kemble, 793 P.2d 855, 860 (N.M. 1990)
- Little v. Burleigh Cnty., 82 N.W.2d 603, 607 (N.D. 1957)
- Stark Cnty. v. State, 160 N.W.2d 101, 105 (N.D. 1968)
- Ford Motor Co. v. State, 231 N.W. 883, 885 (N.D. 1930)

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