

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

THE CHRISTIAN MINISTERIAL ALLIANCE, PATRICIA BREWER, CAROLYN BRIGGS, LYNETTE BROWN, MABLE BYNUM, and VELMA SMITH, on behalf of themselves and all other similarly situated persons,

Plaintiffs,

v.

JOHN THURSTON, in his official capacity as the Secretary of State of Arkansas,

Defendant.

CIVIL ACTION

Case No. 4:23-cv-471-DPM-DRS-JM

**PLAINTIFFS' SUPPLEMENT TO
JOINT REPORT ON DISCOVERY
DISPUTE**

THREE-JUDGE PANEL

Regarding the Joint Report on Discovery Dispute (ECF No. 46), Plaintiffs respectfully request that the Court take notice that, on July 2, 2024, the United States Supreme Court vacated the judgment, and remanded the case, *Turtle Mountain Band, et al. v. N. Dakota Legislative Assembly, et al.*, 70 F.4th 460 (8th Cir. 2023) (“*North Dakota*”), to the United States Court of Appeals for the Eighth Circuit with instructions to dismiss the case as moot. *Turtle Mountain Band v. ND Legislative Assembly*, No. 23-847, 2024 WL 3259672, at *1 (U.S. July 2, 2024). In the Joint Report, Senator Jane English, former Senator Jason Rapert, and former Representative Nelda Speaks principally rely on *North Dakota* for their position that legislative privilege shields them from sitting for a deposition altogether and for producing certain documents. *See generally* ECF No. 46 at 1-6. For whatever effect *North Dakota* would have had on this Court’s interpretation of Eighth Circuit caselaw concerning legislative privilege, vacatur “strips the decision below of its binding effect.” *Deakins v. Monaghan*, 484 U.S. 193, 200 (1988). And the Supreme Court’s “decision vacating the judgment of the Court of Appeals deprives that court’s opinion of precedential effect” *O’Connor v Donaldson*, 422 U.S. 563, 577 n.12 (1975).

Plaintiffs also request that this Court take notice of recent developments in this case. On

July 2 and 3, 2024, Plaintiffs took the depositions of Lori Bowen and Michelle Davenport, respectively current and former employees of the Arkansas Bureau of Legislative Research (“BLR”). As employees of BLR, they were responsible for creating congressional maps for members of the Arkansas General Assembly. Both Davenport and Bowen worked with former Representative Speaks on developing the congressional map being challenged in this litigation. But when each were asked questions about factors (e.g., preserving political boundaries, compactness, communities of interest) considered in the development of the congressional map at issue in this case, Davenport and Bowen’s counsel instructed them not to answer on the ground of legislative privilege. The invocation of legislative privilege by BLR employees’ counsel further crystallizes the significance of the legislative privilege dispute currently under consideration by this Court in a case like this, when legislative intent is directly at issue.

Dated: July 10, 2024

By: /s/ Leah Aden
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