

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION

Elizabeth Jane Sinner, Whitney Oxendahl, Carol
Sawicki, Lois Altenburg, And North Dakota
Voters First,

Plaintiffs,

vs.

Al Jaeger, in his official capacity as
Secretary of State of North Dakota,

Defendant.

ANSWER

Case No. 3:20-cv-00076

Defendant Al Jaeger, in his official capacity as the North Dakota Secretary of State (“Secretary”), answers Plaintiffs’ allegations in the Complaint (Doc. 1) as follows:

1. Except as specifically admitted or qualified, the Secretary denies each and every allegation in the Complaint.

2. With respect to Paragraph 1 of the Complaint, the Secretary admits that North Dakota law requires that a person circulating a petition personally witness all signatures on the petition and remain in physical control of the petition at all times, that the circulator must swear that they have complied with these requirements before a Notary Public, and that petitions may not be signed electronically. The Secretary admits that Plaintiffs are seeking an injunction in this lawsuit, however, the Secretary denies the Plaintiffs are entitled to the relief requested. The Secretary denies the remaining allegations in Paragraph 1 of the Complaint.

3. The Secretary denies the allegations in Paragraph 2 of the Complaint.

4. With respect to Paragraph 3 of the Complaint, the Secretary admits Plaintiffs became eligible to begin gathering signatures for their petition to add a new section and amend the North Dakota Constitution (“Proposed Amendment”) on April 30, 2020. With respect to the remaining allegations in Paragraph 3 of the Complaint, the Secretary asserts the Proposed Amendment language speaks for itself.

5. With respect to Paragraph 4 of the Complaint, the Secretary denies that, “The COVID-

19 pandemic makes it dangerous to comply with the petition requirements.” The Secretary admits the remaining allegations in Paragraph 4 of the Complaint.

6. The Secretary is without sufficient knowledge or information to either admit or deny the allegations in Paragraph 5 of the Complaint.

7. The Secretary denies the allegations in Paragraphs 6, 7, and 8 of the Complaint.

8. With respect to Paragraphs 9, 10, 11, and 12 of the Complaint, the Secretary admits that Plaintiffs Elizabeth Jane Sinner, Whitney Oxendahl, Carol, Carol Sawicki, and Lois Altenburg are qualified electors and regular voters in North Dakota. The Secretary denies that North Dakota’s petition requirements are unconstitutionally burdensome to any of the Plaintiffs. The Secretary is without sufficient knowledge or information to either admit or deny the remaining allegations in Paragraphs 9, 10, 11, and 12 of the Complaint.

9. With respect to Paragraph 13 of the Complaint, the Secretary is without sufficient knowledge or information to either admit or deny that Plaintiff North Dakota Voters First (“NDVF”) will engage in signature collection in Fargo among other locations. The Secretary admits the remaining allegations in Paragraph 13 of the Complaint.

10. The Secretary admits the allegations in Paragraph 14 of the Complaint.

11. With respect to Paragraph 15 of the Complaint, the Secretary admits Plaintiffs brought this action under 42 U.S.C. §§ 1983 and 1988. The Secretary denies any deprivation, under color of state law, of rights secured by the U.S. Constitution, and denies Plaintiffs are entitled to any of the relief sought.

12. The Secretary admits the allegations in Paragraphs 16 and 17 of the Complaint.

13. The Secretary is without sufficient knowledge or information to either admit or deny the allegations in Paragraph 18 of the Complaint.

14. The Secretary denies the allegations in Paragraph 19 of the Complaint.

15. With respect to Paragraph 20 of the Complaint, the Secretary asserts the Proposed Amendment to North Dakota’s Constitution speaks for itself. The Secretary is without sufficient knowledge or information to either admit or deny the design or intent of the Proposed Amendment.

16. With respect to Paragraph 21 of the Complaint, the Secretary admits Plaintiff NDVF is a non-profit corporation registered in North Dakota. The Secretary asserts NDVF's registration was approved by the Office of the Secretary of State on March 5, 2020. The Secretary is without sufficient knowledge or information to either admit or deny the remaining allegations in Paragraph 21 of the Complaint.

17. The Secretary admits the allegations in Paragraphs 22, 23, 24, and 25 of the Complaint.

18. With respect to Paragraph 26 of the Complaint, the Secretary asserts the Governor's executive orders speak for themselves. The Secretary is without sufficient knowledge or information to either admit or deny the remaining allegations in Paragraph 26 of the Complaint.

19. With respect to Paragraph 27 of the Complaint, the Secretary admits redistricting in North Dakota will occur in 2021, following the census. The Secretary is without sufficient knowledge or information to either admit or deny the remaining allegations in Paragraph 27 of the Complaint.

20. With respect to Paragraphs 28, 29, 30, and 31 of the Complaint, the Secretary admits the allegations and asserts that the referenced statutes and constitutional provisions speak for themselves.

21. With respect to Paragraphs 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, and 58 of the Complaint, the Secretary asserts that the declarations and actions of state, federal, and international officials, and the other referenced individuals and entities, who are not parties to this case, speak for themselves. The Secretary is without sufficient knowledge or information to either admit or deny the remaining allegations in said paragraphs of the Complaint.

22. The Secretary denies the allegations in Paragraph 59 of the Complaint.

23. The Secretary is without sufficient knowledge or information to either admit or deny the allegations in Paragraphs 60, 61, 62, 63, 64, and 65 of the Complaint.

24. The Secretary denies the allegations in Paragraphs 66, 67, 68, 69, 70, 71, and 72 of the Complaint.

25. The Secretary is without sufficient knowledge or information to either admit or deny the allegations in Paragraphs 73 and 74 of the Complaint.

26. With respect to Paragraph 75 of the Complaint, the Secretary asserts that the statements of President Trump speak for themselves. The Secretary admits certain social distance guidelines were not extended past April 30, 2020.

27. The Secretary denies the allegations in Paragraph 76 of the Complaint.

28. With respect to Paragraphs 77 and 78 of the Complaint, the Secretary asserts that the Governor's executive orders speak for themselves.

29. The Secretary is without sufficient knowledge or information to either admit or deny the allegations in Paragraphs 79, 80, 81, 82, 83, 84, and 85 of the Complaint.

30. With respect to Paragraph 86 of the Complaint, the Secretary asserts that the website of the North Dakota Information Technology Department speaks for itself.

31. The Secretary is without sufficient knowledge or information to either admit or deny the allegations in Paragraph 87 of the Complaint. The Secretary denies that electronic signatures produced by DocuSign meet the constitutional or statutory requirements for ballot initiative petitions in North Dakota.

32. With respect to Paragraphs 88 and 89 of the Complaint, the Secretary asserts that the referenced statutes speak for themselves.

33. The Secretary is without sufficient knowledge or information to either admit or deny the allegations in Paragraph 90 of the Complaint.

34. The Secretary denies the allegations in Paragraph 91 of the Complaint.

**COUNT I – UNDUE BURDENT ON BALLOT ACCESS AND RIGHTS TO FREEDOM OF
SPEECH AND ASSOCIATION UNDER THE FIRST AND FOURTEENTH
AMENDMENTS TO THE U.S. CONSTITUTION**

35. With respect to Paragraph 92 of the Complaint, the Secretary repeats and reasserts the forgoing Paragraphs 1 through 34 above.

36. With respect to Paragraph 93 of the Complaint, the Secretary denies that Plaintiffs' First or Fourteenth Amendment rights are implicated under the facts alleged. The Secretary further denies that any of Plaintiffs' rights have been violated.

37. The Secretary denies the allegations in Paragraph 94, 95, 96, 97, 98, 99, and 100 of the Complaint.

AFFIRMATIVE DEFENSES AND OTHER DEFENSES

1. The Secretary affirmatively alleges the Complaint fails to state a claim upon which relief can be granted.

2. The Secretary affirmatively alleges the Plaintiffs lack standing.

3. The Secretary affirmatively alleges the Complaint fails to allege any violation of Plaintiffs' federal rights.

4. The Secretary affirmatively alleges the Plaintiffs cannot show that they have suffered any constitutional violation.

5. The Secretary affirmatively alleges the Plaintiffs' claims are barred or limited by Plaintiffs' own conduct.

6. The Secretary affirmatively alleges the damages suffered or incurred by Plaintiffs, if any, were not in the nature or to the extent alleged.

7. The Secretary affirmatively alleges the Plaintiffs' claims for injunctive relief should be dismissed because Plaintiff cannot show that they will suffer any harm in the future.

8. The Secretary asserts that he is immune from suit under the Eleventh Amendment to the United States Constitution.

WHEREFORE, the Secretary respectfully requests that Plaintiffs' Complaint be, in all things, dismissed and that the Secretary be awarded costs, disbursements, and any other relief the Court deems just and equitable.

Dated this 28th day of May, 2020.

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