

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

CHARLES WALEN, an individual, et al.,

Plaintiffs,

v.

DOUG BURGUM, in his official capacity as
Governor of the State of North Dakota, et al.,

Defendants,

and

MANDAN, HIDATSA AND ARIKARA NATION, et
al.,

Intervenor-
Defendants.

Civil No. 1:22-cv-00031

**INTERVENOR-DEFENDANTS' NOTICE OF SUPPLEMENTAL EVIDENCE IN
OPPOSITION TO LEGISLATIVE ASSEMBLY'S AND REP. JONES'S MOTION TO
QUASH DEPOSITION SUBPOENA**

Intervenor-Defendants respectfully submit this notice of supplemental evidence in opposition to the motion to quash the deposition subpoena of Rep. Jones, filed by the Legislative Assembly and Rep. Jones. On December 7, 2022, Plaintiffs Charles Walen and Paul Henderson sat for depositions in this matter. In deposition testimony, Plaintiffs revealed that Rep. Jones voluntarily spoke with them about the redistricting process, and specifically discussed the constitutionality of the subdistricts and their lawsuit. Ex. 1 at 25:12-27:23 (Henderson Deposition Tr.); Ex. 2 at 19:2-14, 21:10-22:14 (Walen Deposition Tr.). During his testimony, Mr. Walen revealed that he speaks with Rep. Jones “almost four or five times a week,” and has discussed the subdistrict boundaries and his lawsuit. *Id.* at 30:17-20. Mr. Walen likewise testified that Rep. Jones

has contributed funds to attorney fees for the *Walen* lawsuit. *Id.* at 21:10-15. And, in response to questioning about how he became a plaintiff in *Walen*, Mr. Henderson revealed that Rep. Jones had contacted him after the Legislature adopted the 2021 Redistricting Plan to discuss the constitutionality of the subdistricts at issue here. Ex. 1 at 25:12-27:23.

Representative Jones' communications with third parties about the redistricting process are not covered by legislative privilege. *See, e.g., Perez v. Perry*, No. SA-11-CV-360-OLG-JES, 2014 WL 106927, at *2 (W.D. Tex. Jan. 8, 2014) (“To the extent, however, that any legislator, legislative aide, or staff member had conversations or communications with any outsider (e.g. party representatives, non-legislators, or non-legislative staff), any privilege is waived as to the contents of those specific communications.”). This is particularly so to the extent Representative Jones is communicating with third parties about potential or ongoing litigation challenging Legislative action.

CONCLUSION

In light of this evidence, and for the reasons already stated in Intervenor-Defendants' Opposition, Movants' motion to quash should be denied.

December 22, 2022

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CERTIFICATE OF SERVICE

I certify that the foregoing was served on all counsel of record via the Court's CM/ECF system.

/s/ Mark P. Gaber
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Counsel for Plaintiffs

EXHIBIT 1

Henderson Depo. Tr.



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Transcript of Paul Henderson

Date: December 7, 2022

Case: Walen, et al. -v- Burgum, et al.

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Transcript of Paul Henderson
December 7, 2022

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF NORTH DAKOTA 3 EASTERN DIVISION 4 ----- x 5 CHARLES WALEN, an individual; : 6 and PAUL HENDERSON, an : 7 individual, : 8 Plaintiffs, : 9 v. : Case No. 10 DOUG BURGUM, in his official : 1:22-CV-00031-CRH 11 capacity as Governor of the : 12 State of North Dakota; and : 13 ALVIN JAEGER, in his official : 14 capacity as Secretary of : 15 State of North Dakota, : 16 Defendants, : 17 ----- x 18 (Caption continued on next page) 19 Deposition of PAUL HENDERSON 20 Conducted Virtually 21 Wednesday, December 7, 2022 22 9:15 a.m. EST 23 Job No.: 473885 24 Pages 1 - 47 25 Reported by: Debra A. Whitehead</p>	<p>1 APPEARANCES 2 ON BEHALF OF PLAINTIFFS: 3 PAUL R. SANDERSON, ESQUIRE 4 RYAN J. JOYCE, ESQUIRE 5 EVENSON SANDERSON 6 1100 College Drive, Suite 5 7 Bismarck, North Dakota 58501 8 (701) 751-1243 9 10 ON BEHALF OF DEFENDANTS: 11 DAVID R. PHILLIPS, ESQUIRE 12 BAKKE GRINOLDS WIEDERHOLT 13 300 West Century Avenue 14 Bismarck, North Dakota 58503 15 P.O. Box 4247 16 Bismarck, North Dakota 58502-4247 17 (701) 751-8188 18 19 20 21 22 23 24 25</p>
<p>1 (Caption continued from previous page) 2 ----- x 3 and : 4 MANDAN, HIDATSA AND ARIKARA : 5 NATION, CESAR ALVAREZ, and : 6 LISA DEVILLE, : 7 Intervenor-Defendants. : 8 ----- X 9 Deposition of PAUL HENDERSON, conducted 10 virtually. 11 12 Pursuant to notice, before Debra Ann Whitehead, 13 E-Notary Public in and for the State of Maryland. 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 APPEARANCES CONTINUED 2 ON BEHALF OF INTERVENOR-DEFENDANTS: 3 MARK P. GABER, ESQUIRE 4 MOLLY E. DANAHY, ESQUIRE 5 NICOLE HANSEN, ESQUIRE 6 CAMPAIGN LEGAL CENTER 7 1101 14th Street, NW, Suite 400 8 Washington, DC 20005 9 (202) 716-2200 10 - and - 11 ALLISON NESWOOD, ESQUIRE 12 MICHAEL S. CARTER, ESQUIRE 13 NATIVE AMERICAN RIGHTS FUND 14 1506 Broadway 15 Boulder, Colorado 80301 16 (303) 447-8760 17 - and - 18 SAMANTHA B. KELTY, ESQUIRE 19 NATIVE AMERICAN RIGHTS FUND 20 1514 P Street, NW, Suite D 21 Washington, DC 20005 22 (202) 785-4166 23 24 25</p>

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<p>5</p> <p>1 APPEARANCES CONTINUED</p> <p>2 ALSO PRESENT:</p> <p>3 LAURIE STIRLING, Paralegal, NARF</p> <p>4 CHUCK WALEN</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>7</p> <p>1 PROCEEDINGS</p> <p>2 PAUL HENDERSON,</p> <p>3 having been duly sworn, testified as follows:</p> <p>4 EXAMINATION BY COUNSEL FOR</p> <p>5 INTERVENOR-DEFENDANTS</p> <p>6 BY MR. GABER:</p> <p>7 Q Good morning, Mr. Henderson. My name is</p> <p>8 Mark Gaber. I am one of the attorneys for the</p> <p>9 defendant-intervenors in this case.</p> <p>10 And could you just please state your</p> <p>11 name, for the record.</p> <p>12 A Yes. It's Paul Henderson.</p> <p>13 Q And have you been deposed before?</p> <p>14 A I have not.</p> <p>15 Q So I'll go over a couple of the ground</p> <p>16 rules, in that case.</p> <p>17 The deposition is a little bit different</p> <p>18 than a normal conversation because we have a court</p> <p>19 reporter here. She is transcribing everything</p> <p>20 that we say. So it's important that we both talk</p> <p>21 slowly so that she can get the words down, but</p> <p>22 also that we not interrupt each other. And that</p> <p>23 can sometimes be hard, because in a normal</p> <p>24 conversation you would anticipate what someone is</p> <p>25 saying, and maybe interject?</p>
<p>6</p> <p>1 CONTENTS</p> <p>2 EXAMINATION OF PAUL HENDERSON PAGE</p> <p>3 By Mr. Gaber 7</p> <p>4 By Mr. Phillips 34</p> <p>5</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 (none)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>8</p> <p>1 In this case I just ask, I will do my</p> <p>2 best not to interrupt you. I will probably</p> <p>3 violate that rule more than you will. But we both</p> <p>4 should try to be cognizant of the fact that she is</p> <p>5 here and taking our words down, and that that's</p> <p>6 not an easy task if we talk over each other.</p> <p>7 Is that okay with you?</p> <p>8 A Yeah, very good.</p> <p>9 Q Another is that it's important to give</p> <p>10 verbal responses. Nodding of the head or uh-huh</p> <p>11 is hard for the court reporter to take down and</p> <p>12 get a clear transcript. So please do give verbal</p> <p>13 answers.</p> <p>14 And those are, you know, I think for our</p> <p>15 court reporter, those are the two most important</p> <p>16 things. I'd also say that if at any point you</p> <p>17 need a break, please let me know. I would just</p> <p>18 ask that if there is a question pending, that you</p> <p>19 give the answer to that question and then, you</p> <p>20 know, we can go ahead and take that break, if</p> <p>21 necessary.</p> <p>22 I don't anticipate that we're going to be</p> <p>23 taking a whole lot of your time this morning. And</p> <p>24 so hopefully the break issue won't be as much of</p> <p>25 one as it can be when these things go on for seven</p>

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<p style="text-align: right;">9</p> <p>1 hours. So just let me know if you need that, 2 though.</p> <p>3 A Very good.</p> <p>4 Q I will assume that you understand my 5 question unless you say otherwise. So if you 6 don't understand please say so, and I'll do my 7 best to clarify.</p> <p>8 Does that work for you?</p> <p>9 A Yes.</p> <p>10 Q And you have counsel here. There's 11 counsel for the state here. If folks don't like 12 the way I have asked my question, they may object 13 after I ask it. Unless you're instructed by your 14 counsel not to answer for attorney-client 15 privilege reasons, which I don't anticipate 16 needing to get into that issue, you should just 17 wait for the objection and then go ahead and 18 answer my question.</p> <p>19 Does that make sense?</p> <p>20 A Yes.</p> <p>21 Q Is there any reason that you can't answer 22 my questions fully and truthfully today?</p> <p>23 A No.</p> <p>24 Q Now, obviously we're doing this 25 deposition remotely. And so I'm going to ask you</p>	<p style="text-align: right;">11</p> <p>1 A I guess not. I don't know how to -- I'm 2 not a tech guy, so I don't know that.</p> <p>3 Q I just want to make sure there's not, 4 like, e-mail or some sort of messaging software or 5 anything.</p> <p>6 But it sounds like if it were there, you 7 wouldn't even know what to do with it.</p> <p>8 Am I right?</p> <p>9 A That's correct.</p> <p>10 Q What, if anything, did you do to prepare 11 for this deposition?</p> <p>12 A Not really anything. I knew that it was 13 coming, and I'm confident in my ability to answer 14 any questions. I didn't --</p> <p>15 Q Did you have any meetings with your 16 counsel, for example?</p> <p>17 A I did, yeah. Just because I've never 18 done this before.</p> <p>19 Q And when did that meeting occur?</p> <p>20 A We met yesterday for a small period of 21 time.</p> <p>22 Q And that was in person or over the phone?</p> <p>23 A It was in person.</p> <p>24 Q Who was present for that meeting?</p> <p>25 A Ryan.</p>
<p style="text-align: right;">10</p> <p>1 a couple of questions that I wouldn't if I were in 2 the room with you.</p> <p>3 I gather you are at your counsel's law 4 office.</p> <p>5 Is that right?</p> <p>6 A That's correct.</p> <p>7 Q And who is in the room with you?</p> <p>8 A It's Paul Sanderson and Ryan Joyce.</p> <p>9 Q Anyone else in the room?</p> <p>10 A No.</p> <p>11 Q And Mr. Sanderson and Mr. Joyce, are they 12 seated to the side of you or across from you?</p> <p>13 A Ryan is seated across from me, and Paul 14 is seated to my right.</p> <p>15 Q And do you have any notes in front of 16 you?</p> <p>17 A I will be taking notes, yes.</p> <p>18 Q But do you have any notes in front of you 19 now?</p> <p>20 A No, I do not.</p> <p>21 Q And on the computer screen, are there any 22 windows open, other than this Zoom screen?</p> <p>23 A I don't know.</p> <p>24 Q None that you're looking at on the 25 screen?</p>	<p style="text-align: right;">12</p> <p>1 Q Anyone else?</p> <p>2 A No.</p> <p>3 Q Did you review any documents to assist 4 you in getting ready for today?</p> <p>5 A I did not.</p> <p>6 Q Did you talk to Mr. Walen at all in 7 preparing for today?</p> <p>8 A I did not.</p> <p>9 Q What was your -- what do you do for work?</p> <p>10 A I own and operate a farm here in North 11 Dakota.</p> <p>12 Q And where in North Dakota is that?</p> <p>13 A It's in a small village of Calvin, on the 14 edge of the small village of Calvin.</p> <p>15 Q And that's --</p> <p>16 A In North Dakota.</p> <p>17 Q Is that in Cavalier County?</p> <p>18 A It is.</p> <p>19 Q And how long have you had that farm?</p> <p>20 A My entire life.</p> <p>21 Q Was that passed down from family, or did 22 you start that?</p> <p>23 A Not relevant. But, yeah, it was passed 24 down.</p> <p>25 Q Do you have any -- what sort of roles in</p>

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13

1 the community do you play? Are you involved in
 2 local government at all?
 3 **A Yeah. I mean, I'm on my township board.**
 4 **I'm on the county zoning board. I'm a volunteer**
 5 **fire department volunteer. I've been an EMT**
 6 **for -- in the past. And I've also been involved**
 7 **in local politics as a -- participated in all the**
 8 **Republican side of the meetings. And I was the**
 9 **chairman in District 10 for about nine years.**
 10 Q Are the town board and the -- well, the
 11 town board position, is that an elected position?
 12 **A The township board is elected, yes. The**
 13 **zoning board is an appointed position.**
 14 Q How long have you been on the town board?
 15 **A Twenty-five years probably.**
 16 Q And how frequently are those elections?
 17 **A They're every year. But there's --**
 18 Q Are they partisan or --
 19 **A They're staggered.**
 20 **No, they're not partisan. They're**
 21 **nonpartisan.**
 22 Q And what is the -- I know you said
 23 Calvin, but that's the city that is nearby. Is
 24 the township different?
 25 **A Yeah, the township would be Glen Isle**

14

1 **Township, but the down is, kind of for reference**
 2 **point, we only live a couple blocks away from that**
 3 **town, so that's kind of what we say we're from.**
 4 Q Right. And who appointed you to the city
 5 zoning -- or I'm sorry, to the county zoning
 6 board?
 7 **A One of the commissioners.**
 8 Q Now, you said you were the chair of the
 9 District 10 Republican party.
 10 Is that right?
 11 **A That's correct.**
 12 Q And that was obviously prior to
 13 redistricting.
 14 Do you hold a position within your
 15 current district for the Republican party?
 16 **A I do not. I do not.**
 17 Q Did you run for a position for the -- for
 18 your current district party?
 19 **A No. There was no reorganization after**
 20 **the redistricting, so that was not available.**
 21 Q Now, I know there was some controversy, a
 22 meeting of the Republican party related to
 23 redistricting and the positions.
 24 Is this along the lines of that issue
 25 that happened?

15

1 **A Yeah. I mean, that -- there was some**
 2 **controversy because we weren't allowed to reorg.**
 3 Q Do you know why that was the case?
 4 **A Yeah. The leadership of the Republican**
 5 **party in the state interpreted a law that was**
 6 **passed in November saying that you -- if you had**
 7 **more than 25 percent population change in your**
 8 **district, because of redistricting, you were --**
 9 **mandatorily you had to -- you had to reorganize at**
 10 **that point.**
 11 **But there was really nothing -- this was**
 12 **a new law. And historically if you changed the**
 13 **boundaries, you were allowed to reorganize. So**
 14 **there was some controversy there.**
 15 Q There was a meeting where folks walked
 16 out.
 17 Is that right?
 18 **A That was a different meeting. That was a**
 19 **state meeting that was in, I want to say December**
 20 **of last year. So that --**
 21 Q And was that also related to the
 22 boundaries of the district chairs and whatnot?
 23 **A Yes.**
 24 Q And what was your -- you were one of the
 25 participants that walked out.

16

1 Is that right?
 2 **A I was.**
 3 Q And what was your view on what was
 4 happening there?
 5 **A It was very unprofessional, and we were**
 6 **not allowed to get our views across to the body**
 7 **that were there. And so at some point we decided**
 8 **that we would, as a block we would remove**
 9 **ourselves.**
 10 Q And you were attending as a proxy for
 11 District 9.
 12 Is that right?
 13 **A I was, yeah.**
 14 Q Whose proxy did you have?
 15 **A Tim Litvin's.**
 16 Q And is he the current chair for the
 17 Republicans for District 9?
 18 **A He's not.**
 19 Q Who is that?
 20 **A That's a good question. I'm kind of**
 21 **terrible with names, so ...**
 22 **It may come to me; it may not.**
 23 Q Okay. When will be the sort of election
 24 for those positions?
 25 **A They will come due in the new year, from**

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17

1 January to April, I believe, is the time slot for
2 reorganizations in North Dakota.
 3 Q And do you intend to run for a position
 4 when that happens?
5 A I haven't decided yet, but it's possible.
 6 Q Other than that position as the chair of
 7 the District 10 for the Republicans, have you held
 8 any other positions within the state Republican
 9 party?
10 A Yeah. I was on the executive board as a
11 regional chairman for a couple of terms, which
12 gave me the ability to be on the executive
13 committee.
 14 Q And when was that?
15 A Again, I think it was probably a
16 four-year stint. But it was probably five years
17 ago.
 18 Q What about on the national Republican
 19 party?
20 A I was available to the national
21 Republican party for a couple of conventions. I
22 served as the resolution committeeman in 2012 in
23 Tampa.
 24 Q What does the resolution committeeman do?
25 A He takes the resolutions that are in the

18

1 national Republican party and reviews them and
2 brings forth any relevant new resolutions that
3 might be relevant to the party in the new election
4 cycle.
 5 Q Did you work on the party platform as
 6 part of --
7 A That's what it is, yes.
 8 Q Aside from your official roles in the
 9 state and national Republican party, are you a
 10 part of any other political organizations?
11 A No.
 12 Q Have you worked on any political
 13 campaigns?
14 A Certainly.
 15 Q And how many, would you say?
16 A Twenty-five.
 17 Q So whenever there's an election, are you
 18 pretty actively involved --
19 A Yeah.
 20 Q -- and working on --
21 A Yes.
 22 Q And has that been exclusively for
 23 Republican candidates?
24 A It has.
 25 Q Never worked for a Democratic candidate?

19

1 A No.
 2 Q What about an independent candidate?
3 A No, I haven't.
 4 Q Now, I understand that your wife is Donna
 5 Henderson.
 6 Is that right?
7 A Correct.
 8 Q And she ran for and was elected as the
 9 new representative for House District 9B, as in
 10 boy.
 11 Is that right?
12 A That's correct.
 13 Q Had she run for office before this
 14 election?
15 A Not the State House.
 16 Q What other office had she run for?
17 A She ran for a position at the state party
18 a couple of years ago.
 19 Q Did she get elected to that position?
20 A She did not.
 21 Q And I should ask, aside from the elected
 22 position you have on the county -- or, sorry, the
 23 town board, have you held any other elected
 24 office?
25 A No.

20

1 Q Just the -- I guess the District 10 for
 2 the Republican party.
 3 That's elected. Right?
4 A That is elected, correct. And so is the
5 regional chairmanship. That's an election as
6 well.
 7 Q But you have never run for the state
 8 legislature?
9 A No. I was -- I did in -- I ran in our
10 endorsing convention in 2018, but I was
11 unsuccessful.
 12 Q And can you just explain for me the
 13 endorsing convention versus -- I know you all have
 14 primary elections as well.
 15 What is the role of the endorsing
 16 convention?
17 A The endorsing convention is a political
18 party function. And so all the constituents that
19 want to declare that they're Republicans go to an
20 endorsing convention in the district and vote on
21 who they want to run as a candidate.
 22 Q And if you don't get the endorsement, can
 23 you still run, you know, with the state, on the
 24 primary?
25 A Certainly.

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21

1 Q It's just a matter of who, you know, gets
 2 the official endorsement of the local party.
 3 Is that the idea?
 4 **A Yes.**
 5 Q In the most recent election for your
 6 wife, did she have the endorsement at the
 7 convention for District 9B?
 8 **A She did.**
 9 Q And was that over an incumbent state
 10 representative?
 11 **A Correct.**
 12 Q What was that person's name?
 13 **A Charles Damschen.**
 14 Q And had he been the incumbent for what
 15 was formerly District 10?
 16 **A Correct.**
 17 Q Do you know how long he was in that
 18 position?
 19 **A I want to say 12 years.**
 20 Q Okay.
 21 **A I think he served 12 years.**
 22 Q What motivated your wife to run this
 23 time?
 24 **A Well, we had talked about running, you**
 25 **know. It's kind of a personal choice. And our**

22

1 **time of life was ready for a -- to take a run at**
 2 **the State -- a State House position.**
 3 Q Did she have any issue with the incumbent
 4 that was part of the motivation?
 5 **A Well, I don't think that was -- that**
 6 **wasn't -- any time you run against an incumbent,**
 7 **there's that. But that wasn't the primary reason,**
 8 **I believe.**
 9 Q Did the redistricting play a role in her
 10 decision?
 11 **A Well, only reason that that would play a**
 12 **role is that, again with Donna and I, just our**
 13 **personal conversations, when they dissolved**
 14 **District 10 and moved us into District 9, she had**
 15 **worked in the Town of Rolla for 14 years, and so**
 16 **she was better positioned, I think, to run against**
 17 **an incumbent, you know, district-wide than I would**
 18 **have been.**
 19 Q So you guys were sort of deciding as
 20 between the two of you who should run.
 21 Is that correct?
 22 **A Yeah. I think so. I think we would have**
 23 **ran. If all things would have stayed the same,**
 24 **you know, one of us would have ran in District 10.**
 25 Q And given her work in Rolla, you guys

23

1 decided that she probably would have a better
 2 chance with the name recognition.
 3 Is that the idea?
 4 **A Correct. And she's better looking as**
 5 **well.**
 6 Q And from my experience in Wisconsin, the
 7 State House races are more on the radio than they
 8 are on the televisions.
 9 **A True. True.**
 10 Q I see on her website she says that, you
 11 know, with the recent redistricting process, our
 12 district border has changed, and now I'm very
 13 excited about the new District 9B. And she
 14 mentions having worked in Rolla.
 15 Did you share her sort of view and
 16 excitement about the new boundaries for 9B?
 17 **A We did.**
 18 Q What in particular did you like about
 19 them?
 20 **A I think the opportunity was that by**
 21 **moving a great portion of District 10, and**
 22 **combining it with Rollette and Towner Counties,**
 23 **that it gave -- it gave a Republican a chance to**
 24 **win.**
 25 Q And that in your view was an improvement?

24

1 **A It was the reality. I don't know if it**
 2 **was an improvement, but it was a reality of what**
 3 **we saw as far as the --**
 4 Q And -- I'm sorry. Continue.
 5 **A I mean, that's -- we looked at the**
 6 **numbers, and we felt that it was a good**
 7 **possibility that we could pull it off and she**
 8 **could win.**
 9 Q Your former district, District 10, that
 10 was a district that also favored Republicans.
 11 Is that right?
 12 **A Correct. Correct.**
 13 Q And your view is that 9B does as well?
 14 **A It's a lot closer to 50/50, but it is --**
 15 **there is a slight advantage I think to the**
 16 **Republicans. It just depends on who comes out to**
 17 **vote. I mean, I can't -- I can't sit here and**
 18 **tell you what the vote percentages are, because**
 19 **we've only had one election cycle.**
 20 Q Donna won by a large margin. Right?
 21 **A She ran -- I mean, she won handily, yes.**
 22 Q I think she -- 56.5 percent against an
 23 incumbent. Right?
 24 **A Correct.**
 25 Q The incumbent, Marvin Nelson, he had run

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25

1 for governor before. Right?
 2 **A He did.**
 3 Q What was your impression in Cavalier
 4 County of folks' thoughts on him?
 5 **A I don't really know that. I mean, I --**
 6 **it's not something I had conversations with people**
 7 **about more then.**
 8 Q I gather from the vote totals, they liked
 9 your wife better?
 10 **A Yeah. Yeah. Well, we worked hard, too,**
 11 **so there's that.**
 12 Q So how did you become a plaintiff in this
 13 case?
 14 **A Well, I became aware that the split was**
 15 **going to happen. And I think I had a conversation**
 16 **with Terry Jones on the phone one day, and we**
 17 **talked about it. And, you know, this was**
 18 **something that was brand-new, and that raised red**
 19 **flags for me right away. And I just latched onto**
 20 **the constitutional argument that's -- that I will**
 21 **stick with, that in District 9, during our**
 22 **election I got to vote for one representative, and**
 23 **the rest of the 47 -- or 45 districts in the state**
 24 **got to vote for two representatives. So I felt**
 25 **like that was probably not equal application of**

26

1 **constitutional law.**
 2 Q So I just want to -- to clarify for the
 3 record. When you say "the split," you mean
 4 District 9 being split into two subdistricts?
 5 **A Correct.**
 6 Q And you said you had a conversation with
 7 Terry Jones. Mr. Jones was an incumbent state
 8 representative from District 4.
 9 Is that correct?
 10 **A That's correct.**
 11 Q And did he reach out to you?
 12 **A He did.**
 13 Q How do you know Representative Jones?
 14 **A I don't really know him.**
 15 **I mean, I know of him because he was in**
 16 **the House. But I didn't -- I don't have a**
 17 **personal relationship with Terry.**
 18 Q What was the -- did he call you, did he
 19 e-mail you? How did he reach out?
 20 **A I believe he called me.**
 21 Q And what did you talk about?
 22 **A Just the -- just the split of the**
 23 **district and how that -- how that was going to**
 24 **affect us going forward.**
 25 Q When was that conversation?

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1 **A Oh, I would say November, December of**
 2 **last year, somewhere in that area.**
 3 Q And did he ask you if you would be
 4 willing to be a plaintiff?
 5 **A No.**
 6 Q What did he say?
 7 **A We just generally talked about the split**
 8 **and how both him and I picked up on the fact that**
 9 **it was probably unconstitutional. And that was**
 10 **pretty general. Pretty general conversation.**
 11 Q Do you know how he got your name or why
 12 he reached out to you?
 13 **A I don't.**
 14 Q He didn't tell you who had said that he
 15 should call you?
 16 **A He did not. But you've got to realize**
 17 **that it's a small state, and I've been in the --**
 18 **politics for 25 years. So it's not like I'm**
 19 **unknown.**
 20 Q And you were the -- at the time you were
 21 the Republican chair for what was District 10,
 22 which covered this part of this territory. Right?
 23 **A Correct.**
 24 Q And just I think we -- I think this was
 25 implied, but you live in the Subdistrict 9B.

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1 Is that right?
 2 **A That's correct.**
 3 Q And I think you explained it a little
 4 bit, but make sure I'm right.
 5 Your concern is that you're unable to
 6 vote for two state representatives at large; but,
 7 rather, you vote for one that's dedicated to your
 8 subdistrict.
 9 Is that your concern?
 10 **A That's correct.**
 11 Q And in terms of, you know, you mentioned
 12 that you thought it was unconstitutional. I
 13 gather that your complaint is that it's unequal
 14 for you to get one when other voters in the state
 15 get two representatives that they vote for.
 16 Is that correct?
 17 **A Yeah. I'm not a lawyer, but I know**
 18 **enough to know that that's my experience.**
 19 Q And when you say you thought it was
 20 unconstitutional, is that the unequal treatment
 21 that you were concerned about?
 22 **A Correct.**
 23 Q Do you have any other objections or
 24 complaints about the redistricting plan?
 25 **A I guess I don't. I just -- that's what**

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1 **I'm basing my participation in, is that it's**
 2 **unconstitutional, in my view.**
 3 Q And would you like to see the map
 4 changed?
 5 A **I would like to have the opportunity to**
 6 **vote for two representatives, yeah.**
 7 Q If that change made it harder for
 8 Republicans to win the district, would you like to
 9 see that?
 10 A **It wouldn't matter.**
 11 Q And aside from the fact that you cast
 12 your ballot for just one rather than two
 13 representatives, is there any other way in which
 14 you were affected by the way the map lines are
 15 drawn?
 16 A **No. I guess that would be the height of**
 17 **my complaint.**
 18 Q Did you cast a ballot in the 2022
 19 election? I assume your wife would have made you.
 20 A **Yes, that is a correct statement.**
 21 Q Do you regularly vote?
 22 A **I do.**
 23 Q Is there an election you've missed?
 24 A **Not since I was 18. That's a long time**
 25 **ago.**

30

1 Q Do you recall that you were -- the
 2 parties in the case were sent some document
 3 requests?
 4 A **I don't understand that question. Go**
 5 **ahead.**
 6 Q Sorry, that's the way we talk to each
 7 other.
 8 Did you look at any sort of document that
 9 had been sent by me or my colleagues or for the
 10 state for requests for production of the documents
 11 that you might have?
 12 A **Yes. Yes, I perused those. Yes.**
 13 Q What did you do, what was your process
 14 for determining whether you had material that
 15 would respond to those requests?
 16 A **Just my memory.**
 17 Q Did you look through any e-mail or look
 18 through your phone at all to see whether you had
 19 text messages or other materials that might
 20 respond?
 21 A **I didn't. I just -- I don't text much**
 22 **and I don't e-mail much, so I didn't do any of**
 23 **those things.**
 24 Q So you just thought about it, and that
 25 was basically the extent of it?

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1 A **Yeah.**
 2 Q During the course of the campaign with
 3 your wife, did you guys text message each other?
 4 A **I don't think so. We just talked.**
 5 Q What kind of phone do you have?
 6 A **Well, I had a Google phone, but I lost**
 7 **it. And I have an Apple phone now.**
 8 Q Is that an iPhone?
 9 A **Yeah. Don't ask me what flavor it is,**
 10 **though, because I couldn't tell you.**
 11 Q Well, they're very expensive. I just had
 12 to get a new one. Not great.
 13 In your role as the Republican party
 14 chair for when it was for District 10, how did
 15 people, how did your sort of constituents or
 16 colleagues or party folks, how did they reach out
 17 to you? How do you all communicate?
 18 A **Normally it was on -- by phone.**
 19 Q Do you sometimes share text messages or
 20 back and forth over written communication with
 21 those folks?
 22 A **No.**
 23 Q Never?
 24 A **I don't believe so.**
 25 Q Who is paying for your attorneys in this

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1 matter?
 2 A **That would be me and a few others.**
 3 Q Is that like an hourly rate, or is that
 4 sort of a lump sum, capped amount? What is the
 5 arrangement there?
 6 A **I believe it's an hourly rate.**
 7 Q And who are -- you said you and some
 8 others. Who are the other people?
 9 A **I don't actually have that in front of**
 10 **me. I mean, I know that Chuck is -- Chuck Walen**
 11 **has signed on to this complaint. I haven't really**
 12 **asked him how much money that he's put into the**
 13 **kitty.**
 14 Q Any other people that you can identify?
 15 A **I'm sorry to say I don't -- I don't know**
 16 **that.**
 17 Q Do you know whether there are other
 18 people and you just don't know who, you can't
 19 think of who they are? Is that the case?
 20 A **Yeah. I think there's -- there's some**
 21 **other donors, but I don't have their names in**
 22 **front of me.**
 23 Q And what do you know about them? Are
 24 they individuals or are they any sort of entities
 25 or organizations?

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1 **A I think they're all people.**
 2 Q Is the Republican party contributing any
 3 funds to pay for the case?
 4 **A No. No, they're not.**
 5 Q Have you discussed this lawsuit with any
 6 legislators?
 7 **A Besides Terry, I don't believe I have.**
 8 Q I suppose -- when is your wife sworn in?
 9 Is that January?
 10 **A They actually got sworn in yesterday.**
 11 Q Oh.
 12 **A And, so, but this is all preliminary**
 13 **stuff. The actual session starts in January.**
 14 MR. GABER: I am going to have us take a
 15 short break, if you don't mind. I don't think I
 16 have a ton more questions for you, but I want to
 17 think a little bit and talk to some folks. So
 18 maybe just a ten-minute break. Ten- or 15-minute
 19 break sound good?
 20 MR. SANDERSON: Yeah, that's fine.
 21 MR. GABER: Thank you.
 22 (A recess was taken.)
 23 MR. GABER: I do not have any further
 24 questions for you.
 25 I am going to pass the witness to

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1 Mr. Phillips.
 2 MR. PHILLIPS: Thank you.
 3 EXAMINATION BY COUNSEL FOR DEFENDANTS
 4 BY MR. PHILLIPS:
 5 Q Still good morning, Mr. Henderson. I'm
 6 doing the questioning second today, so I will do
 7 my best not to repeat any of the questions you've
 8 already been asked. But if I do ask something
 9 you've already answered, please just bear with me.
 10 I am David Phillips. I'm not sure if we
 11 have met before specifically, but I represent the
 12 Governor in this case and the Secretary of State.
 13 And I will be doing the followup questions today.
 14 **A Hello.**
 15 Q I wanted to do just a few followups to
 16 clean up some of the matters that I heard you
 17 testify to earlier and to add a little bit more
 18 detail.
 19 I want to start with your background.
 20 Where did you go to high school?
 21 **A I went to a now defunct high school**
 22 **called Border Central.**
 23 Q Border Central. Where is that located?
 24 **A In Calvin. Or it was.**
 25 Q What year did you graduate?

35

1 **A 1980.**
 2 Q After high school did you attend any
 3 college?
 4 **A Yeah. I took two years of-- at NDSU,**
 5 **and then I did one semester at NDSCS in Wahpeton.**
 6 Q What did you study at NDSU?
 7 **A Agronomy.**
 8 Q And did that result in a degree?
 9 **A It did not.**
 10 Q What about in Wahpeton? You took one
 11 semester. Did you have any degree at the
 12 conclusion of that?
 13 **A I did not.**
 14 Q What did you study in Wahpeton?
 15 **A Well, my wife was going there for dental**
 16 **hygiene, so I studied her quite a bit. Actually,**
 17 **it was an agronomy, it was an agronomy semester as**
 18 **well.**
 19 Q Have you had any other education since
 20 high school in terms of technical training or any
 21 other formal education?
 22 **A I just, I went through the EMT basic**
 23 **course. You know, that's probably 20 years ago.**
 24 **I was an EMT for seven years.**
 25 Q Where did you do the EMT course?

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1 **A In Rolla.**
 2 Q What do you do currently for a living?
 3 **A I'm in agriculture.**
 4 Q And are you employed or self-employed?
 5 **A As the owner and operator of a farm.**
 6 Q What's the name of the operation?
 7 **A There is no technical name. It's all**
 8 **under my name.**
 9 Q How long have you been doing that?
 10 **A Since I was 18.**
 11 Q And you just farm the property around
 12 your residence in Calvin?
 13 **A Yeah. I mean, there's -- it's spread out**
 14 **a little bit. But, yeah, it's around.**
 15 Q I'm at a point where I'm likely to jump
 16 around between topics just because I've crossed
 17 things off my list that Mr. Gaber already covered
 18 with you. So please bear with me on that.
 19 What do you consider to be your race or
 20 ethnicity?
 21 **A White, I guess.**
 22 Q Do you consider yourself to be Native
 23 American?
 24 **A No.**
 25 Q And what's the race or ethnicity of your

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1 wife?
 2 **A I believe she would be white as well.**
 3 Q Is she Native American?
 4 **A She is not.**
 5 Q I believe you had said in your testimony
 6 earlier that you voted in all of the elections
 7 since you were 18.
 8 Am I remembering that correctly?
 9 **A That's correct.**
 10 Q Would that include all state-wide
 11 elections in North Dakota?
 12 **A As to the best of my recollection, yes.**
 13 Q And all state legislative elections?
 14 **A Correct.**
 15 Q What's your current address?
 16 **A 7980 99th Street, Northeast, Calvin with**
 17 **a C, C-A-L-V-I-N, North Dakota, 58323.**
 18 Q And do you live there all year round?
 19 **A I do.**
 20 Q Do you own any other homes at all?
 21 **A I don't.**
 22 Q Some people spend part of the year down
 23 south. Are you that type of person, or do you
 24 live --
 25 **A Haven't got there yet. We will be**

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1 renting a place here in Bismarck for the duration
2 of the session.
 3 Q Have you already found a place to rent?
 4 **A We have.**
 5 Q And have you signed a lease?
 6 **A No.**
 7 Q So I take it you have not yet moved to
 8 Bismarck?
 9 **A We have not.**
 10 Q Your current address, is that in what's
 11 currently districted as Subdistrict 9B?
 12 **A That's correct.**
 13 Q Have you ever lived in the area that's
 14 subdistricted as Subdistrict 9A?
 15 **A No.**
 16 Q Has your wife lived with you the entire
 17 time you've been married?
 18 **A She has.**
 19 Q How long have you been married?
 20 **A Changes every year. I think it's 39, but**
21 don't quote me on that, because I could get in
22 trouble.
 23 Q That's fair.
 24 And has she lived there continuously that
 25 whole 39 years?

39

1 A Yeah.
2 I mean, we may have taken some vacations
3 and that type of thing, but our residency has
4 always been Calvin.
 5 Q In this lawsuit, is it correct to say
 6 that you're seeking to eliminate the subdistrict
 7 seat in District 9?
 8 **A That would be the end result, yes.**
 9 Q Are you concerned in terms of what that
 10 would mean for your wife's current seat in the
 11 legislature?
 12 **A I mean, obviously it's a concern, but I**
13 don't -- it doesn't raise itself to the level of
14 overcoming my principles for the
15 unconstitutionality of the process here.
 16 Q Do you know what the effect would be if
 17 the subdistricts were eliminated on your wife's
 18 seat?
 19 **A I don't. I mean, it's never been done**
20 before. We don't know what's the court going to
21 rule. I mean, that's, we don't know. If -- we
22 could talk about what-ifs, I guess. But, I mean,
23 I don't know.
 24 **I don't know. I just -- I mean, it's**
 25 **possible that they would require a new election in**

40

1 2024 over the whole district. And if that
2 happens, I guess we will work hard for
3 re-election.
 4 Q Mr. Gaber had asked you earlier about
 5 your written discovery responses.
 6 Do you remember those questions?
 7 **A Yeah. I mean, I looked at them.**
 8 Q And did you sign those written discovery
 9 responses?
 10 **A Yes. Yes.**
 11 Q Did you look for documents to produce in
 12 response to those discovery requests that were
 13 made in this case?
 14 **A No. I didn't really look a lot because I**
15 don't text and I don't e-mail a lot. I don't do
16 that. Most of my communication is in person or
17 over the phone.
 18 Q Did you look for any physical paper
 19 documents?
 20 **A I don't have those, so I didn't look. I**
21 mean, I just -- I know I didn't write any letters
22 or correspond with anybody in that vein, so ...
 23 Q Have you looked at the legislative record
 24 in this case on the legislative assembly website?
 25 **A I --**

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1 Q I'm sorry, I cut you off. Go ahead.
 2 A **I have not.**
 3 Q You haven't looked at any of the
 4 documents or other materials on the legislative
 5 website relating to redistricting?
 6 A **I have not.**
 7 Q Did you look at those in preparing the
 8 answers to the written discovery?
 9 A **No.**
 10 Q Earlier I believe you had testified about
 11 a conversation that you had with Terry Jones.
 12 Do you recall that?
 13 A **Vaguely. I mean, it was a year ago, so I**
 14 **don't -- I can't get specific what we exactly**
 15 **talked about. Generally, though, we talked about**
 16 **this, the unconstitutionality of the split.**
 17 Q You had mentioned the discussion of the
 18 split.
 19 Do you have any recollection of any
 20 specific statement that you made during that call?
 21 A **I don't.**
 22 Q And do you have any recollection of any
 23 specific statement that Mr. Jones made during that
 24 call?
 25 A **Specifically, no.**

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1 Q Do you remember any details at all from
 2 that call, other than it involved the split of the
 3 districts?
 4 A **No.**
 5 Q Have you ever had any conversation with
 6 any other North Dakota legislator about the 2021
 7 redistricting?
 8 A **No. Not to my recollection.**
 9 Q Have you ever had a conversation with
 10 anyone employed with the North Dakota Legislative
 11 Council about the 2021 redistricting?
 12 A **No.**
 13 Q And that would include Claire Ness. If
 14 you had a conversation with her?
 15 A **I don't know who that is.**
 16 Q What about Emily Thompson?
 17 A **No.**
 18 Q And also Samantha Kramer; have you had a
 19 conversation with her?
 20 A **Not that I'm aware of, no.**
 21 Q Other than the conversation with Terry
 22 Jones, have you had any conversation with any
 23 other employee or agent of the State of North
 24 Dakota about the 2021 redistricting?
 25 A **No.**

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1 Q Did you, personally, attend or provide
 2 any testimony at the redistricting hearings at the
 3 legislature?
 4 A **I did not.**
 5 Q Did you, personally, attend the House or
 6 Senate floor debate on the redistricting?
 7 A **I did not.**
 8 Q Have you ever reviewed the videos of any
 9 of those hearings or debates of the redistricting
 10 that took place in 2021?
 11 A **No.**
 12 Q Have you ever reviewed transcripts of
 13 those proceedings?
 14 A **I have not.**
 15 Q Have you reviewed any documentation at
 16 all during the course of this litigation?
 17 A **Just the -- I signed the complaint and**
 18 **I've read that. And of course we had meetings**
 19 **with counsel.**
 20 Q I don't want you to tell me about
 21 anything that you talked about with your counsel.
 22 But anything else that you've reviewed? Documents
 23 you've reviewed or materials you've reviewed?
 24 A **No.**
 25 Q Have you retained an expert to testify at

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1 trial in this case regarding the Voting Rights
 2 Act?
 3 A **I would have to defer to counsel on that.**
 4 **I don't know.**
 5 MR. PHILLIPS: Can we take just a
 6 few-minute break. I want to review a few things.
 7 I may be done, but I just want to check my notes.
 8 Let's go off the record briefly.
 9 (A recess was taken.)
 10 MR. PHILLIPS: I don't have any further
 11 questions, Mr. Henderson.
 12 THE WITNESS: Okay.
 13 MR. PHILLIPS: Thank you.
 14 MR. SANDERSON: Any further questions,
 15 Mark?
 16 MR. GABER: No, nothing from me.
 17 Thank you for your time, sir.
 18 MR. SANDERSON: All right. I have no
 19 questions.
 20 Mr. Henderson, you have the right to read
 21 and sign your deposition, or you can waive that
 22 right. It's your choice. What would you like to
 23 do?
 24 THE WITNESS: I will waive today.
 25 COURT REPORTER: Mr. Phillips, do you

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1 need a copy of the transcript?
 2 MR. PHILLIPS: Yes.
 3 COURT REPORTER: Mr. Sanderson, do you
 4 need a copy of the transcript?
 5 MR. SANDERSON: Yeah. Electronic
 6 condensed, please.
 7 MR. PHILLIPS: I'll second that,
 8 electronic condensed is fine.
 9 (Off the record at 10:36 a.m. EST.)
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1 ACKNOWLEDGMENT OF DEPONENT
 2 I, PAUL HENDERSON, do hereby acknowledge
 3 that I have read and examined the foregoing
 4 testimony, and the same is a true, correct and
 5 complete transcription of the testimony given by
 6 me, and any corrections appear on the attached
 7 Errata sheet signed by me.
 8
 9 _____
 10 (DATE) (SIGNATURE)
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47

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC
 2 I, Debra A. Whitehead, the officer before whom the
 3 foregoing proceedings were taken, do hereby certify
 4 that the foregoing transcript is a true and correct
 5 record of the proceedings; that said proceedings
 6 were taken by me stenographically and thereafter
 7 reduced to typewriting under my supervision; that
 8 reading and signing was not requested; and that I am
 9 neither counsel for, related to, nor employed by any
 10 of the parties to this case and have no interest,
 11 financial or otherwise, in its outcome.
 12 IN WITNESS WHEREOF, I have hereunto set my hand and
 13 affixed my notarial seal this 16th day of December,
 14 2022.
 15
 16 My commission expires:
 17 April 30, 2023
 18
 19 
 20 _____
 21 E-NOTARY PUBLIC IN AND FOR THE
 22 STATE OF MARYLAND
 23
 24
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A			
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EXHIBIT 2

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Transcript of Charles Leander Walen
December 7, 2022

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF NORTH DAKOTA 3 EASTERN DIVISION 4 ----- x 5 CHARLES WALEN, an individual; : 6 and PAUL HENDERSON, an : 7 individual, : 8 Plaintiffs, : 9 v. : Case No. 10 DOUG BURGUM, in his official : 1:22-CV-00031-CRH 11 capacity as Governor of the : 12 State of North Dakota; and : 13 ALVIN JAEGER, in his official : 14 capacity as Secretary of : 15 State of North Dakota, : 16 Defendants, : 17 ----- x 18 (Caption continued on next page) 19 Deposition of CHARLES LEANDER WALEN 20 Conducted Virtually 21 Wednesday, December 7, 2022 22 2:02 p.m. EST 23 Job No.: 473885 24 Pages 1 - 37 25 Reported by: Debra A. Whitehead</p>	<p>1 APPEARANCES 2 ON BEHALF OF PLAINTIFFS: 3 PAUL R. SANDERSON, ESQUIRE 4 RYAN J. JOYCE, ESQUIRE 5 EVENSON SANDERSON 6 1100 College Drive, Suite 5 7 Bismarck, North Dakota 58501 8 (701) 751-1243 9 10 ON BEHALF OF DEFENDANTS: 11 DAVID R. PHILLIPS, ESQUIRE 12 BAKKE GRINOLDS WIEDERHOLT 13 300 West Century Avenue 14 Bismarck, North Dakota 58503 15 P.O. Box 4247 16 Bismarck, North Dakota 58502-4247 17 (701) 751-8188 18 19 20 21 22 23 24 25</p>
<p>1 (Caption continued from previous page) 2 ----- x 3 and : 4 MANDAN, HIDATSA AND ARIKARA : 5 NATION, CESAR ALVAREZ, and : 6 LISA DEVILLE, : 7 Intervenor-Defendants. : 8 ----- X 9 Deposition of CHARLES LEANDER WALEN, conducted 10 virtually. 11 12 Pursuant to notice, before Debra Ann Whitehead, 13 E-Notary Public in and for the State of Maryland. 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 APPEARANCES CONTINUED 2 ON BEHALF OF INTERVENOR-DEFENDANTS: 3 MARK P. GABER, ESQUIRE 4 MOLLY E. DANAHY, ESQUIRE 5 NICOLE HANSEN, ESQUIRE 6 CAMPAIGN LEGAL CENTER 7 1101 14th Street, NW, Suite 400 8 Washington, DC 20005 9 (202) 716-2200 10 - and - 11 ALLISON NESWOOD, ESQUIRE 12 MICHAEL S. CARTER, ESQUIRE 13 NATIVE AMERICAN RIGHTS FUND 14 1506 Broadway 15 Boulder, Colorado 80301 16 (303) 447-8760 17 - and - 18 SAMANTHA B. KELTY, ESQUIRE 19 NATIVE AMERICAN RIGHTS FUND 20 1514 P Street, NW, Suite D 21 Washington, DC 20005 22 (202) 785-4166 23 24 25</p>

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<p>5</p> <p>1 APPEARANCES CONTINUED</p> <p>2 ALSO PRESENT:</p> <p>3 KRISTIN HOERTER, Paralegal, NARF</p> <p>4 LAURIE STIRLING, Paralegal, NARF</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>7</p> <p>1 PROCEEDINGS</p> <p>2 CHARLES LEANDER WALEN,</p> <p>3 having been duly sworn, testified as follows:</p> <p>4 EXAMINATION BY COUNSEL FOR</p> <p>5 INTERVENOR-DEFENDANTS</p> <p>6 BY MR. GABER:</p> <p>7 Q Mr. Walen, my name is Mark Gaber. I'm a</p> <p>8 lawyer for the intervenor-defendants in this case,</p> <p>9 and I will be asking you some questions.</p> <p>10 I'll start, can you state your name, for</p> <p>11 the record.</p> <p>12 A Charles Walen.</p> <p>13 Q And have you been deposed before?</p> <p>14 A Yes.</p> <p>15 Q How many times?</p> <p>16 A One time that I can remember, and it was</p> <p>17 for a work-related reason.</p> <p>18 Q About how long ago was that?</p> <p>19 A Fifteen-plus years ago.</p> <p>20 Q All right. So I'll spend just a couple</p> <p>21 of minutes here with some ground rules since it's</p> <p>22 been a while since you've done this. The main one</p> <p>23 is to be cognizant that we have a court reporter</p> <p>24 who is taking down all of our words. So that</p> <p>25 makes it important that we endeavor to talk slowly</p>
<p>6</p> <p>1 CONTENTS</p> <p>2 EXAMINATION OF CHARLES LEANDER WALEN PAGE</p> <p>3 By Mr. Gaber 7</p> <p>4 By Mr. Phillips 25</p> <p>5</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 (none)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>8</p> <p>1 and that we not talk over each other. That, you</p> <p>2 know, can be awkward sometimes because that's not</p> <p>3 how one has a normal conversation. But for her</p> <p>4 benefit please keep that in mind, and I'll also do</p> <p>5 my best not to talk over you when you're giving an</p> <p>6 answer.</p> <p>7 Does that make sense?</p> <p>8 A Yes, that does.</p> <p>9 Q And then another is that you have to give</p> <p>10 verbal responses to my questions. She can't take</p> <p>11 down, you know, head nods and the like. And since</p> <p>12 we're doing this remotely, that's even harder, I</p> <p>13 imagine, than it might be if we were in the same</p> <p>14 room with one another. So do try, though again at</p> <p>15 times it can be awkward to give a verbal response</p> <p>16 to each question. Okay?</p> <p>17 A Understand.</p> <p>18 Q I will assume that you understand my</p> <p>19 questions unless you say something. So, you know,</p> <p>20 if I ask you a question and you don't understand</p> <p>21 it or I do a poor job of asking it, please just</p> <p>22 let me know, and I will clarify so that we are</p> <p>23 both on the same page.</p> <p>24 Okay?</p> <p>25 A I will do so.</p>

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<p>9</p> <p>1 Q I don't anticipate us taking much of your 2 time today. But if we do need a break or if you 3 need a break, please let me know, and we can go 4 ahead and take one. The only thing that I ask is 5 if that's the case, that you answer any question 6 that is pending, and then we can go ahead and take 7 a break. 8 Does that sound good? 9 A That sounds good. And I am at work, so 10 just bear that in mind. 11 Q Okay. 12 A I'm in a private office. 13 Q All right. Well, I'll try not to keep 14 you too long from your job. 15 Someone, one of the other attorneys might 16 object to a question that I ask. If they do, you 17 know, let them state that objection, but then you 18 can go ahead and answer my question. 19 Does that make sense? 20 A Yes. 21 Q And is there any reason that you can't 22 answer my questions today truthfully and fully? 23 A No. 24 Q Now, you mentioned you're at your office. 25 Is there anyone else in the room there</p>	<p>11</p> <p>1 problem. 2 MR. GABER: Okay. That sounds good. 3 Q And, Mr. Walen, other than the Zoom 4 screen that's open, are there any other screens, 5 e-mail, anything like that, that are open on your 6 computer? 7 A My company e-mail is open because I 8 cannot -- I'm not supposed to close it. 9 Q That's fine with me. I just ask that you 10 not, like, e-mail someone to get answers to 11 questions during the deposition. But I don't want 12 to get you in trouble with your job. 13 What did you do to prepare for today's 14 deposition? 15 A I read through the interrogatories that I 16 had before, and then I watched the deposition this 17 morning. 18 Q Did you meet with your counsel before 19 today's deposition? 20 A By phone only. 21 Q And when was that? 22 A Yesterday and today. 23 Q Did you meet with your counsel after this 24 morning's deposition? 25 A For one question only.</p>
<p>10</p> <p>1 with you? 2 A No. 3 Q And did you bring any notes with you 4 today? 5 A Yes. 6 Q What's the nature of those notes? 7 A They were from the deposition this 8 morning with Paul. I just took some notes then so 9 that any questions that might be similar, I'll 10 have the answer. 11 Q Well, I would -- it's probably best if -- 12 I know you were present this morning. You know, I 13 don't know, maybe I'll direct this to your 14 counsel. Typically if someone has notes, you 15 know, we are entitled to see those. I don't know 16 if you would rather he not have those notes or if 17 you're fine producing them. 18 THE WITNESS: The only thing that's on 19 the notes are names and dates. 20 MR. GABER: So then it sounds like you 21 may be fine producing them. 22 I don't know, Paul, if you have a 23 preference. 24 MR. SANDERSON: I don't -- doesn't 25 matter. You can make a request. Shouldn't be a</p>	<p>12</p> <p>1 Q And I don't want to know what the 2 question and answer were. 3 Did you review any documents in 4 preparation for the deposition? 5 A Yes. 6 Q And when were those documents? 7 A I -- as because of this morning's 8 deposition I looked at my e-mail and my text 9 messages so that I could answer that question. 10 Q And can you just be a little bit more 11 specific. What in particular were you looking 12 for? 13 A To see if I had anything in those areas 14 that pertained to this case. 15 Q And what did you do to make that 16 determination? Did you run a search, or what was 17 your process? 18 A I did a -- just I did a search based on 19 lawsuit and I did a search based on redistricting. 20 Q And that was in your personal e-mail? 21 A Correct. 22 Q What's that e-mail address? 23 A ChuckWalen@Gmail.com. 24 Q And did you find documents? 25 A The only documents that are in there are</p>

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13	<p>1 between my attorney and myself.</p> <p>2 Q And what about with respect to your text</p> <p>3 messages?</p> <p>4 A There was only one outside of the</p> <p>5 attorney.</p> <p>6 Q And what was that text message?</p> <p>7 A Paraphrasing, it said, I understand that</p> <p>8 you're -- that we redistricted, there may be a</p> <p>9 lawsuit, I'm willing to help.</p> <p>10 Q Who was that communication with?</p> <p>11 A Jay Sandstrom.</p> <p>12 Q Jay Sandstrom?</p> <p>13 A Yes.</p> <p>14 Q And who is he?</p> <p>15 A He is a member of our district.</p> <p>16 Q Did you say a member of your district?</p> <p>17 A Yes. Or constituent of our district.</p> <p>18 Q You reached out to him?</p> <p>19 A No; he reached out to me.</p> <p>20 Q When you say a constituent of your</p> <p>21 district, is he like -- is he affiliated with the</p> <p>22 Republican party, or is he -- what's his role?</p> <p>23 A He is a member of the Republican party.</p> <p>24 Q Does he hold any official position with</p> <p>25 the party?</p>	15
14	<p>1 Q And what county is that in?</p> <p>2 A Mountrail.</p> <p>3 Q How long have you lived there?</p> <p>4 A Eleven years.</p> <p>5 Q Did you say seven or 11?</p> <p>6 A Eleven.</p> <p>7 Q Where did you live before that?</p> <p>8 A West Fargo, North Dakota.</p> <p>9 Q And do you have any other residences</p> <p>10 besides the House in New Town?</p> <p>11 A No.</p> <p>12 Q And you're registered to vote at that</p> <p>13 address?</p> <p>14 A We're not required to register in North</p> <p>15 Dakota.</p> <p>16 Q I'm sorry, I actually knew that. That is</p> <p>17 the address you use to vote?</p> <p>18 A Yes.</p> <p>19 Q And that -- am I right that that's in</p> <p>20 Legislative District 4 for the state Senate and in</p> <p>21 District 4A for the State House?</p> <p>22 Is that right?</p> <p>23 A Correct.</p> <p>24 Q What do you do for work?</p> <p>25 A I am an accountant.</p>	16
14	<p>1 A No.</p> <p>2 Q When was that text message? Or when was</p> <p>3 that text exchange?</p> <p>4 A I don't know the date. I'd have to look</p> <p>5 back at the records.</p> <p>6 Q Okay.</p> <p>7 A It was after the redistricting.</p> <p>8 Q And for both your texts and your e-mail,</p> <p>9 that was by searching for the word "lawsuit" and</p> <p>10 searching for the word "redistricting"?</p> <p>11 A Correct.</p> <p>12 Q Besides those two search terms, did you</p> <p>13 search for anything else?</p> <p>14 A No.</p> <p>15 Q What kind of cellphone do you use?</p> <p>16 A Smartphone, Samsung.</p> <p>17 Q Samsung? Okay.</p> <p>18 So other than looking through and</p> <p>19 searching through your e-mail and your text</p> <p>20 messages, did you review any other documents to</p> <p>21 prepare for today?</p> <p>22 A Other than the deposition, no. The</p> <p>23 interrogatories that were asked.</p> <p>24 Q And where do you live?</p> <p>25 A 422 Eagle Drive, New Town.</p>	16
14	<p>1 Q And where do you work?</p> <p>2 A At United Quality Cooperative.</p> <p>3 Q And what's the nature of that business?</p> <p>4 A Restate question.</p> <p>5 Q What's the nature of that business?</p> <p>6 A It is a truck stop, fuel, bulk fuel,</p> <p>7 grocery store, lumberyard, elevator. It's a Cenex</p> <p>8 place.</p> <p>9 Q And how long have you worked there?</p> <p>10 A Eleven years.</p> <p>11 Q What's your educational background?</p> <p>12 A High school graduate and come college.</p> <p>13 Q Do you hold any positions with any</p> <p>14 political parties?</p> <p>15 A Yes.</p> <p>16 Q And what are those?</p> <p>17 A I'm the District chair for District 4,</p> <p>18 I'm the Northwest regional chair for the state</p> <p>19 party, Republican party.</p> <p>20 Q How long have you been the District 4</p> <p>21 Republican chair?</p> <p>22 A Approximately ten years.</p> <p>23 Q And that's a position elected by the</p> <p>24 local party members?</p> <p>25 A Yes.</p>	16

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17	<p>1 Q And how long have you been the Northwest 2 regional chair for the party? 3 A Four years. 4 Q Is that also elected? 5 A Yes. 6 Q Do you have any other positions with the 7 North Dakota Republican party? 8 A No. 9 Q What about the national Republican party; 10 do you have any involvement there? 11 A No, none. 12 Q And any other political organizations? 13 A No. 14 Q Have you worked on political campaigns? 15 A Yes; in my district. 16 Q And which types of campaigns? 17 A The legislative for Senator and for 18 Congress for North Dakota. 19 Q I'm going to circle back to your 20 conversation that you had with Mr. Sandstrom. 21 What did he say on that conversation? 22 A I don't -- he just asked if there's any 23 way he could help. 24 Q Did you speak with him by phone in 25 addition to the text exchange?</p>	19	<p>1 redistricting process, yes. 2 Q I guess did you generate the idea or did 3 someone come to you as a group or, you know -- 4 kind of just give me the sort of your explanation 5 of who talked to who and who was involved and how 6 that came about, please. 7 A Myself, Terry Jones, Donita Bye, and 8 Jordan Kannianen were the executive committee of 9 District 4. We discussed what options would be. 10 Q So I think it would be helpful for the 11 court reporter if you could spell those, the last 12 two names at least. I think Terry Jones, and then 13 I believe there were two other names of the 14 executive committee folks? 15 A Donita Bye is D-O-N-I-T-A, B-Y-E. Jordan 16 Kannianen is J-O-R-D-A-N, K-A-N-N-I-A-N-E-N. He's 17 also my son-in-law. 18 Q Well, it's good that you got his name 19 spelled right. 20 So the four of you -- was this while 21 redistricting was still ongoing in the 22 legislature, or was this after the bill had been 23 passed? 24 A It would be after the bill was passed. 25 Q And aside from Representative Jones and</p>
18	<p>1 A Other than his reaching out to me by his 2 text, I talked to him by phone. 3 Q And what did you discuss in that 4 conversation? 5 A I don't remember. That's over a year 6 ago. 7 Q Have you run for office other than the 8 party positions? 9 A Yes. 10 Q What offices? 11 A West Fargo School Board. I won. 12 Q Anything else? 13 A No. 14 Q How did you become involved in this 15 lawsuit? 16 A I did not like the fact that I lost a 17 representative to represent me, so talking with 18 people within my district, we decided that I 19 should be the one to represent the people of 20 District 4. 21 Q And did someone -- I know you had this 22 text exchange with Mr. Sandstrom. 23 He reached out to you. 24 Is that right? 25 A He reached out to me after seeing the</p>	20	<p>1 the other two folks you mentioned, was anyone else 2 involved in conversations about the potential to 3 file a lawsuit? 4 A No. 5 Q And Jordan, is it Kannianen? 6 A Kannianen. 7 Q Jordan K, is he a member of the state 8 legislature? 9 A He is the state Senator. 10 Q Okay. 11 A District 4. 12 Q When did you first get in touch with your 13 attorneys in this case? 14 A I will defer to them on that question. 15 Don't remember the date exactly. 16 Q So if you don't know exactly, sort of 17 roughly when would that have been? Was it during 18 the legislative process or afterwards, this year, 19 last year? 20 A It would be short -- very shortly after 21 the redistricting. 22 Q And did you reach out to them or did they 23 reach out to you? 24 MR. SANDERSON: Object to the form, to 25 the extent it calls for attorney-client</p>

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21	<p>1 communications.</p> <p>2 And, Charles, I'd instruct you not to</p> <p>3 discuss or testify to any communications you've</p> <p>4 had with counsel in this deposition.</p> <p>5 Q And just to be clear, I only mean -- I</p> <p>6 don't want you to tell me what was said or</p> <p>7 anything like that. I just mean, you know, who</p> <p>8 generated the -- who initiated the contact?</p> <p>9 A I don't remember.</p> <p>10 Q Who is paying for your legal counsel?</p> <p>11 A I'm not sure who is all paying. I know a</p> <p>12 few that are.</p> <p>13 Q Who can you identify?</p> <p>14 A Paul Henderson, Terry Jones, Jay</p> <p>15 Sandstrom. Those are the ones I remember.</p> <p>16 Q And is there an agreement among that</p> <p>17 group of people to split, it's like an equal</p> <p>18 share, or what's the arrangement?</p> <p>19 A I don't know what the arrangement is.</p> <p>20 Q Are you aware of -- whether or not you</p> <p>21 know the name, are you aware that if there are</p> <p>22 other people or groups who are contributing?</p> <p>23 A I don't know if there are or not.</p> <p>24 Q What members of the legislature have you</p> <p>25 discussed this litigation with?</p>	23	<p>1 looks like you said something after "someone needs</p> <p>2 to represent District 4."</p> <p>3 A No. That was the end.</p> <p>4 Q So your objection is that you have -- you</p> <p>5 get to vote for one state representative rather</p> <p>6 than two state representatives.</p> <p>7 Is that correct?</p> <p>8 A Correct. And now I'm not -- I'm not</p> <p>9 being represented by two, like I have been in the</p> <p>10 past. When the rest of the state gets two, I only</p> <p>11 get one.</p> <p>12 Q So that's your complaint, that you think</p> <p>13 you should be able to have two representatives,</p> <p>14 not just one?</p> <p>15 A Yes, that is the complaint.</p> <p>16 Q Is there anything else about the</p> <p>17 redistricting plan that you object to?</p> <p>18 A No.</p> <p>19 Q And the extent of the unequal treatment</p> <p>20 that you think the plan has is that you're</p> <p>21 represented by one person rather than two?</p> <p>22 A Correct.</p> <p>23 Q And that's the sole reason why you'd like</p> <p>24 to see the district changed to be one full</p> <p>25 district?</p>
22	<p>1 A Terry Jones, Jordan Kannianen</p> <p>2 and (inaudible.)</p> <p>3 Q We missed the third one.</p> <p>4 A Clayton Fegley, who is the 4B</p> <p>5 representative currently.</p> <p>6 Q And what have you -- I guess roughly when</p> <p>7 have you spoken with those three people?</p> <p>8 A I talk to them regularly, as I'm the</p> <p>9 District chair.</p> <p>10 Q And what form does that communication</p> <p>11 take? Do you ever text with those folks?</p> <p>12 A All -- it's always verbal. Terry lives</p> <p>13 one -- about three houses away from me, and</p> <p>14 Jordan, I see him very often.</p> <p>15 Q Makes sense. Family.</p> <p>16 A Right.</p> <p>17 Q Any other legislators that you have</p> <p>18 spoken with about this lawsuit?</p> <p>19 A No.</p> <p>20 Q Why did you decide to become a plaintiff?</p> <p>21 A Decide to become a what?</p> <p>22 Q Why did you decide to become a plaintiff?</p> <p>23 A Because I feel that someone needs to</p> <p>24 represent District 4.</p> <p>25 Q And you're cutting out a little bit. It</p>	24	<p>1 A Correct.</p> <p>2 Q Would you also like to see the district</p> <p>3 be represented by two Republicans in the State</p> <p>4 House?</p> <p>5 A I would like that personally, yes.</p> <p>6 Q Did you vote in the 2022 election?</p> <p>7 A Yes.</p> <p>8 Q And do you regularly vote in elections?</p> <p>9 A Yes; every election since I was 18.</p> <p>10 Q Where does -- so you said that -- I think</p> <p>11 you said Terry Jones has a house down the street</p> <p>12 from you.</p> <p>13 Is that right?</p> <p>14 A Yes.</p> <p>15 Q How frequently does he stay there?</p> <p>16 A All the time. He lives there.</p> <p>17 MR. GABER: I'm going to take a short</p> <p>18 break, if that's okay. Maybe ten minutes.</p> <p>19 THE WITNESS: Okay.</p> <p>20 (A recess was taken.)</p> <p>21 MR. GABER: Well, Mr. Walen, I don't have</p> <p>22 any further questions for you. Thank you for your</p> <p>23 time. Mr. Phillips, representing the Governor and</p> <p>24 the Secretary of State, I think will have some</p> <p>25 questions.</p>

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1 THE WITNESS: Okay.

2 EXAMINATION BY COUNSEL FOR DEFENDANTS

3 BY MR. PHILLIPS:

4 Q Thank you, Mr. Walen. I'm -- did we lose

5 him? Oh.

6 A **Yeah.**

7 Q Mr. Walen, I am David Phillips. I'm the

8 attorney representing the defendants in this case,

9 Governor Burgum and Secretary Jaeger. And I have

10 just a few followup questions for you and we'll

11 get you out of here.

12 Mr. Walen, what is your race or

13 ethnicity?

14 A **American, Caucasian.**

15 Q I think the very beginning of there cut

16 off. I'm sorry, could you just repeat your

17 answer?

18 A **I'm American, Caucasian.**

19 Q And white would be another way to

20 describe you?

21 A **Yes.**

22 Q Do you consider yourself to be Native

23 American?

24 A **I am an American native. I was born in**

25 **this country.**

26

1 Q Would it be fair to say you don't

2 consider yourself to be an American Indian?

3 A **Correct.**

4 Q I may jump around here a little bit, my

5 apologies in advance. I just wanted to clarify a

6 few things that you testified to earlier.

7 You had talked earlier about running and

8 winning a seat on the West Fargo School Board.

9 Is that correct?

10 A **Yes.**

11 Q I just want to follow up briefly.

12 What years were you on the school board?

13 A **Approximately -- well, it would be in the**

14 **1990s.**

15 Q For how many years?

16 A **Four years.**

17 Q And a few other clarifications.

18 If I recall correctly, did you say you

19 voted in every election since you were 18?

20 A **Yes.**

21 Q Were all of those elections in the State

22 of North Dakota?

23 A **Yes.**

24 Q And would that include all state

25 legislative elections?

27

1 A **Yes.**

2 Q And all other state-wide elections?

3 A **Yes.**

4 Q The home that you're in in New Town, do

5 you own or rent that home?

6 A **Own.**

7 Q And do you live there all year round, or

8 do you leave for part of the year?

9 A **I live here all year round.**

10 Q The home that you live in now, is that in

11 the subdistrict that's known as Subdistrict 4A?

12 A **Correct.**

13 Q Have you ever lived in the subdistrict

14 that's known as Subdistrict 4B?

15 A **No.**

16 Q In this case the defendants and the

17 intervenors have served what's known as written

18 discovery. Those are interrogatories and requests

19 for production of documents.

20 Do you remember participating in

21 answering those?

22 A **Yes.**

23 Q And did you sign at the bottom of those

24 answers?

25 A **Yes.**

28

1 Q Earlier today you talked about some

2 searching that you did today on your phone and

3 your e-mail.

4 Did you do any searching of electronic

5 records before today for purposes of responding to

6 discovery requests?

7 A **No.**

8 Q Have you reviewed the legislative record

9 about the 2021 redistricting that's found on the

10 website of our state legislature?

11 A **Only to the extent to know what the**

12 **boundaries were.**

13 Q In other words, looking at the boundary

14 maps?

15 A **Correct.**

16 Q Have you watched any of the videos in the

17 legislative record dealing with the 2021

18 redistricting?

19 A **No.**

20 Q Other than the maps, have you looked at

21 any other documents in the legislative record?

22 A **Yes. I try to look at them when they're**

23 **in session.**

24 Q Which documents would those have been?

25 A **Daily -- it would be the videos of the**

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1 sessions, and then I just watch bits and pieces.
2 Q Those videos, did you watch those live as
3 they were taking place during the redistricting
4 process?
5 A No.
6 Q Other than the videos, have you reviewed
7 any documentation, either before or after the
8 commencement of this lawsuit, generated at the
9 legislature relating to redistricting?
10 A No.
11 Q You had testified earlier about some
12 conversations that you had with North Dakota
13 legislators. And you had mentioned Terry Jones,
14 Clayton Fegley. My handwriting is horrible and
15 the spelling was difficult. Who were the other
16 names again?
17 A Jordan Kannianen.
18 Q And if I --
19 A (Inaudible.)
20 Q Say that one more time?
21 A Senator Jordan Kannianen.
22 Q And was there one more?
23 A No; it was just those three.
24 Q Correct me if I'm wrong. If I remember
25 your testimony, I believe you said that those

30

1 conversations all took place after the
2 redistricting was completed at the state in 2021.
3 Is that correct?
4 A I talk with them regularly as the
5 district chair.
6 Q Did you talk with them --
7 A Only related to this lawsuit, it would be
8 after.
9 Q Related to the lawsuit, after.
10 What conversations did you have with
11 Terry Jones during the redistricting process?
12 A Just discussed bound -- you know, asking
13 what our boundaries would be.
14 Q Did you have any discussions about the
15 issues you're raising in this lawsuit?
16 A Yes, we could have.
17 Q Do you know how many times you talked to
18 Terry Jones during the redistricting process?
19 A I talked to him almost four or five times
20 a week.
21 Q What about Clayton Fegley; how many times
22 did you talk to Clayton during the redistricting
23 process?
24 A Two, three times, maybe four at most.
25 Q And what did you talk about with Clayton?

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1 A How the process was going.
2 Q Do you remember anything that Clayton
3 told you about how the process was going?
4 A No.
5 Q Do you remember anything that you told to
6 Clayton during those conversations?
7 A Yes.
8 Q What did you tell Clayton, that you can
9 recall?
10 A That depending on how the redistricting
11 turned out, that we'd look at what legal action we
12 could take to keep it together, if they decided to
13 split it.
14 Q When you say "keep it together," do you
15 mean not subdistricted?
16 A Correct.
17 Q How many conversations during the
18 redistricting process did you have with Jordan,
19 and I won't attempt the last name.
20 A Regarding the lawsuit, not that many. He
21 is my son-in-law, so I communicate with him daily.
22 Q And during the redistricting process you
23 had multiple conversations with him?
24 A Yes.
25 Q And do you remember anything that he told

32

1 you in those conversations during the
2 redistricting process about the redistricting
3 process?
4 A No.
5 Q Do you remember anything that you told
6 him during the redistricting process about the
7 redistricting process?
8 A That if -- that if the district got
9 split, that we'd look at what legal actions we
10 could take to keep it together.
11 Q Did you have any conversations with any
12 of those three individuals during the
13 redistricting process about the Voting Rights Act?
14 A No.
15 Q Have you ever had a conversation with
16 anyone employed with the North Dakota Legislative
17 Council about the 2021 redistricting process?
18 A No.
19 Q Have you ever had a conversation with
20 anyone else who's employed by or is an agent of
21 the State of North Dakota about the 2021
22 redistricting process?
23 A No.
24 Q Did you, personally, attend or provide
25 any testimony at any of the committee hearings or

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1 debates on redistricting in 2021?
2 **A No.**
3 Q Have you hired an expert to testify at
4 trial about the Voting Rights Act in this case?
5 **A I have not.**
6 Q Were you aware of whether or not the
7 plaintiffs have done so, including you or your
8 co-plaintiffs?
9 **A You'll have to ask the attorneys.**
10 MR. PHILLIPS: Let's take a short break.
11 We'll go off the record for just a few minutes.
12 (A recess was taken.)
13 BY MR. PHILLIPS:
14 Q You testified earlier about going through
15 and searching your e-mails and texts today.
16 Since the commencement of this lawsuit,
17 have you deleted any texts that have been deleted
18 and wouldn't have shown up in your results?
19 **A No.**
20 Q Do you keep all of your text messages
21 without ever deleting them?
22 **A They're -- after a period of time they're**
23 **automatically deleted. I don't know what that**
24 **time frame is.**
25 Q From your Samsung phone?

34

1 **A Correct.**
2 Q And what about your e-mails; are they --
3 have they been deleted either automatically or by
4 you since the commencement of this lawsuit?
5 **A Not that I'm aware of.**
6 Q So we will likely be making a followup
7 request in this case. And so I would ask that you
8 preserve and don't make any deletions, to the
9 extent it's already happened don't do any further
10 deletions of any texts on your phone or any
11 e-mails so that we can make that request and that
12 they don't get inadvertently deleted.
13 And additionally, I would also ask, we'll
14 likely make a request for the notes that you
15 discussed earlier that you took in the last
16 deposition today, the first deposition today, I
17 should say. I'd request that you keep those and
18 hold on to them, too, because we'll likely be
19 making a request for a copy of those.
20 **A I will send those to the attorney, to our**
21 **attorneys.**
22 Q Perfect.
23 MR. PHILLIPS: Thank you. I have no
24 further questions.
25 Mr. Gaber?

35

1 MR. GABER: Nothing further from me.
2 Thank you, Mr. Walen, I appreciate it.
3 MR. SANDERSON: And, Chuck, you have the
4 right to read and sign your deposition or you can
5 waive that right. It's up to you. Paul waived
6 his earlier, if that's what you want to do.
7 THE WITNESS: I can waive it.
8 MR. SANDERSON: All right. Chuck, thank
9 you for your time.
10 COURT REPORTER: Mr. Phillips, same order
11 as earlier?
12 MR. PHILLIPS: Yes.
13 COURT REPORTER: Mr. Sanderson, same
14 order as earlier?
15 MR. SANDERSON: Same order, please.
16 COURT REPORTER: Thank you.
17 (Off the record at 2:57 p.m. EST.)
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1 ACKNOWLEDGMENT OF DEPONENT
2 I, CHARLES LEANDER WALEN, do hereby
3 acknowledge that I have read and examined the
4 foregoing testimony, and the same is a true,
5 correct and complete transcription of the
6 testimony given by me, and any corrections appear
7 on the attached Errata sheet signed by me.
8
9 _____
10 (DATE) (SIGNATURE)
11
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Transcript of Charles Leander Walen
December 7, 2022

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Debra A. Whitehead, the officer before whom the
3 foregoing proceedings were taken, do hereby certify
4 that the foregoing transcript is a true and correct
5 record of the proceedings; that said proceedings
6 were taken by me stenographically and thereafter
7 reduced to typewriting under my supervision; that
8 reading and signing was not requested; and that I am
9 neither counsel for, related to, nor employed by any
10 of the parties to this case and have no interest,
11 financial or otherwise, in its outcome.

12 IN WITNESS WHEREOF, I have hereunto set my hand and
13 affixed my notarial seal this 16th day of December,
14 2022.

15
16 My commission expires:
17 April 30, 2023

18
19 
20 Debra A. Whitehead

21 E-NOTARY PUBLIC IN AND FOR THE
22 STATE OF MARYLAND

23
24
25

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