

United States Court of Appeals
for the Eighth Circuit

**Turtle Mountain Band of Chippewa Indians,
Spirit Lake Tribe, Wesley Davis, Zachery S.
King, and Collette Brown,**

Plaintiff-Appellees,

v.

**Michael Howe, in his official capacity as
Secretary of State of North Dakota,**

Defendant-Appellant.

APPEAL FROM DECISION OF THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF NORTH DAKOTA
(No. 3:22-cv-00022)

**SECRETARY HOWE’S RESPONSE TO NORTH DAKOTA
LEGISLATIVE ASSEMBLY’S MOTION TO INTERVENE ON APPEAL**

Defendant-Appellant Michael Howe, in his official capacity as Secretary of State of North Dakota (the “Secretary”), submits this response to the *North Dakota Legislative Assembly’s Motion to Intervene on Appeal*.

The North Dakota Legislative Assembly (“Legislative Assembly”) seeks to

intervene in this appeal to defend its enacted legislation against the district court's finding of a violation of Section 2 of the Voting Rights Act. *Id.* The Secretary does not oppose the Legislative Assembly's intervention in this appeal, as the Legislative Assembly and the Secretary have different roles under the North Dakota constitution, and different interests in this litigation.

The Secretary is a constitutional officer of North Dakota under the executive branch of state government (N.D. Const. art. V, § 2), who serves as the supervisor of State elections (N.D.C.C. § 16.1-01-01), but who has no role in establishing State legislative districts. He was sued in this action in his official capacity pursuant to 42 U.S.C. § 1983 and Section 2 of the Voting Rights Act. The Legislative Assembly is composed of the senate and house of representatives in the legislative branch of state government, with the constitutional responsibility to establish legislative districts for the State of North Dakota (N.D. Const. art. IV, § 2).

It is evident from the Legislative Assembly's motion that it views its interests in this litigation as having diverged from the Secretary's, and that it intends to pursue a legal strategy on appeal that the Secretary may not pursue, or that the Secretary may pursue with a different focus. The Secretary does not oppose the Legislative Assembly's motion to intervene in accordance with *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267 (2022), which will enable the Legislative Assembly to protect its own legal interests and pursue its own legal theories and

arguments in support of the redistricting plan that it enacted in 2021.¹

Dated this 20th day of December, 2023.

State of North Dakota
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¹ For clarity, the Secretary disputes any suggestion that because his expedited motions for a stay focused on *Purcell* issues and the likelihood of prevailing on the argument the district court erred as a matter of law in finding a private right of action, that he forfeited the ability to challenge other aspects of the district court's judgment. The Secretary reserves all rights to challenge the district court's judgment that the State's redistricting plan violates the Voting Rights Act.

CERTIFICATE OF COMPLIANCE

1. This response meets the type-volume limitation of Fed. R. App. P. 27(d)(2)(A). This response contains 465 words, excluding the parts of the response exempted by Fed. R. App. P. 27(d)(2).
2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) and has been prepared in a proportionally spaced typeface using Microsoft Word in Time New Roman 14 point.
3. This document has been scanned for viruses and the brief is virus-free.

/s/ David R. Phillips

David R. Phillips

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2023, I electronically submitted the foregoing to the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system and that ECF will send a Notice of Electronic Filing (NEF) to all participants who are registered CM/ECF users.

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David R. Phillips