

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

TURTLE MOUNTAIN BAND OF CHIPPEWA
INDIANS, et al.,

Plaintiffs,

v.

ALVIN JAEGER, in his official capacity as Secretary
of State of the State of North Dakota,

Defendant.

Civil No. 3:22-cv-00022-PDW-ARS

**PLAINTIFFS' MOTION TO ENFORCE SUBPOENAS SERVED ON MEMBERS OF
THE NORTH DAKOTA LEGISLATIVE ASSEMBLY AND LEGISLATIVE COUNCIL
STAFF**

Plaintiffs respectfully move to enforce the subpoenas duces tecum served on North Dakota State Senators Ray Holmberg, Nicole Poolman, and Richard Wardner, State House Representatives William Devlin, Terry Jones, and Michael Nathe, and Clare Ness (collectively “Respondents”) for documents and communications relevant to this matter.¹ Respondents erroneously assert that the legislative privilege provides an absolute bar against any obligation to respond to discovery in this matter, including with respect to documents and communications they admit were shared with non-legislators and non-legislative staff. But the legislative privilege is at best a qualified privilege, which federal courts routinely pierce in redistricting litigation, and which does not extend to documents and communications shared with third parties. Further, at least one of the Respondents has waived his legislative privilege with respect to the 2021 Redistricting Plan by voluntarily appearing and testifying about the Plan in a separate matter. Finally, the

¹ The subpoenas are compiled and attached as Exhibit 8, hereto.

Respondents' claim that they withhold responsive documents or communications on the grounds that identifying non-privileged documents and communications imposes an undue burden on a non-party fails in light of the number of communications at issue—at most 1,407 total across seven Respondents, and likely far fewer—and would render Rule 45 a nullity.

Respondents played integral roles in enacting the 2021 Redistricting Plan, including the challenged subdistrict. Representative Devlin and Senator Holmberg served as Chair and Vice Chair of the Redistricting Committee, respectively, with Senators Poolman and Representative Nathe serving as Committee members. Senator Wardner is the Chair of the Tribal State Relations Committee, on which Representative Jones also served, and both heard testimony in that Committee from Tribal Leaders and Tribal Members on the redistricting process. Representative Jones also testified before the Redistricting Committee and has funded a separate lawsuit challenging the subdistrict at issue here. Finally, Ms. Ness served as Senior Counsel at the North Dakota Legislative Council during the 2021 Redistricting Process. Defendant identified all of these individuals as having information relevant to this matter in their initial disclosures, *see* Ex. 1 at 3 ¶ 11, 8 ¶ 43, 9 ¶ 53 (Defendant's Rule 26(a)(1) Disclosures), and indeed Respondents' responses to the subpoenas demonstrate they have non-privileged documents and communications relevant to this case. Respondents are not entitled to withhold this information simply because they are non-party legislators. The court should grant Plaintiffs' motion to enforce.

BACKGROUND

I. Respondents' Refusal to Comply with Rule 45 Subpoenas

Between September 30 and October 11, 2022, Plaintiffs served subpoenas for production of documents on North Dakota State Senators Ray Holmberg, Nicole Poolman, and Richard Wardner, State House Representatives William Devlin, Terry Jones, and Michael Nathe, and

former legislative counsel Clare Ness. Collectively through counsel, Respondents provided their objections to the subpoenas on October 14, 2022. *See* Ex. 2 (Initial Objections). Respondents objected (1) that the subpoenas imposed an undue burden to the extent they sought information about the redistricting process that was available on the Redistricting Website, (2) that the October 31 deadline to respond was unduly burdensome because it did not provide sufficient time to identify which responsive documents and communications in the Respondents' possession were non-privileged and not already publicly available, and (3) that the subpoenas requested documents that were subject to the legislative, deliberative process, and attorney-client privileges. *See* Ex. 2 at 2-5.

On November 9, 2022 Plaintiffs' counsel met and conferred with Respondents' counsel, confirmed that Plaintiffs were not seeking publicly available material from the Redistricting Website, and asked Respondents to provide a reasonable timeline for reviewing the responsive documents and communications, identifying and producing non-privileged documents and communications, and providing a privilege log for any items withheld. After conferring with his clients, Respondents' counsel indicated that two weeks would be a sufficient time to collect the documents and provide a privilege log. Ex. 3 (Nov. 9 Email from S. Porsborg).

On December 1, 2022, Respondents provided a supplemental objection to the subpoenas, labeled "Privilege Log." *See* Ex. 4 (Supplemental Objection). The Supplemental Objection includes a boilerplate assertion of attorney-client and deliberative process privilege but does not identify any category of documents or communications, nor any specific documents or communications, that are protected by attorney-client or deliberative process privilege. *See* Ex. 4 at 1. Instead, the privilege analysis rests entirely on the assertion that the subpoenaed documents and communications are protected by legislative privilege. Ex. 4 at 1-2. The Supplemental

Objection further asserts that because any non-privileged documents are public, a privilege log is not required by Rule 45. Ex. 4 at 2.

Next, the Supplemental Objection describes a series of keyword searches undertaken by Respondents to identify potentially responsive communications in their emails, Teams messaging software, and text messages, and provides the number of total keyword hits for each Respondent, as well as the number of communications containing those keywords for each of three categories: (1) communications between Respondents and other legislators; (2) communications between Respondents and legislative council staff; and (3) communications between Respondents and individuals who are not legislators nor part of the legislative council staff. Ex. 4 at 4. While the Supplemental Objection does not provide the total number potentially responsive documents or communications, a hand calculation shows that for all seven Respondents, there are approximately 51,679 total keyword hits across at most 1,407 communications, with at most 543 communications between Respondents and other legislators, 438 communications between Respondents and legislative council staff, and 426 communications between Respondents and non-legislators and non-legislative council staff. Ex. 4 at 4-14.² The Supplemental Objection does not identify dates, the specific recipients, the subject matter, or the specific privilege asserted for the relevant documents and communications—information which is necessary for Plaintiffs to evaluate Respondents’ claim of privilege. Ex. 4 at 4-14.

² Because the Supplemental Objection lists total communications per keyword hit, rather than providing the actual number of total communications identified, the calculation of 1,407 communications does not account for communications that contained more than one keyword. For example, a communication that stated “the 2021 Redistricting Plan subdivides Senate District 9 into House Subdistrict 9A and 9B” would be counted three times, since it contains three keywords. It likewise does not account for communications between two or more Respondents. For example, if Rep. Devlin sent an email with responsive keywords to Rep. Holmberg, this communication would be counted twice in the total. As such, it is likely that there are significantly fewer than 1,407 total documents or communications that have been identified as potentially responsive.

The Supplemental Objection further notes that with respect to Ms. Ness, the search of her emails was ongoing and the results would be produced once the search was complete. Ex. 4 at 3. It went on to note that Respondents had been provided instructions by counsel to search their phones and text messages, that search results had not yet been produced by Representative Jones, but that the results would be provided to Plaintiffs once received. *See* Ex. 4 at 3. Counsel for Respondents has represented that these limited search results will be provided early in the week of December 26, 2022.

On December 6, Plaintiffs’ counsel met and conferred again with Respondents’ counsel, and noted that the purported privilege log was inadequate, and that Respondents appeared to be asserting privilege over documents and communications they admitted were shared with non-legislators and non-legislative staff. Respondents’ counsel stated that pursuant to caselaw cited in Representative Devlin’s motion to quash the deposition subpoena served upon him, Respondents were asserting an absolute legislative privilege against responding to discovery and would neither supplement the purported privilege log nor produce any responsive documents or communications.

II. Representative Jones’ Waiver of Privilege Regarding Communications Related to the 2021 Redistricting Process.

During the legislative debate on the North Dakota legislative redistricting plan, Rep. Jones—who was directly affected by the creation of subdistricts within legislative district 4—testified in opposition to the creation of subdistricts, saying “[i]f we leave subdistricts in this bill as is proposed, we will be guilty of racial gerrymandering, according to [a redistricting attorney] that I was talking to. . . . I was told today by this attorney, that is racial gerrymandering.”³ Although he revealed the content of the legal advice he was provided, he did not identify the attorney.

³ Nov. 9 House Floor Session, 67th Leg., 1st Spec. Sess. 1:44:49 (N.D. Nov. 9, 2021), <https://video.legis.nd.gov/en/PowerBrowser/PowerBrowserV2/20211109/-1/22663>.

On May 5, 2022, the three-judge panel in *Walen* held a hearing on *Walen* Plaintiffs' motion for a preliminary injunction. *Walen* Plaintiffs' first witness was Rep. Jones, who voluntarily appeared and testified on behalf of *Walen* Plaintiffs. *See* Ex. 5 (May 5, 2022 PI Hrg. Tr. Excerpt). On direct examination, Rep. Jones testified that "[t]here was information coming to me from members on the Redistricting Committee that they were considering subdistricts in Districts 4 and District 9" and that eventually "the members on the committee were telling me that it was getting very serious." *Id.* at 9:19-24. He testified in Court that he had testified to the Redistricting Committee in opposition because "the information I was getting as I was studying was that what was happening was not appropriate, was unconstitutional." *Id.* at 10:7-10. When asked on direct whether "[i]n addition to attending meetings, did you discuss with members of the Redistricting Committee your concerns about the redistricting process and subdistricts in Districts 4 and 9," Rep. Jones testified, "[y]es, I did." *Id.* at 10:15-19. Testifying about these private conversations, Rep. Jones stated that "[s]omehow in my discussions with them and in the stuff that I was watching them discuss they missed the point that you had to meet all three of [the *Gingles* preconditions], and so I was desperately trying to explain to them that there's more than just one criteria that had to have been met." *Id.* at 11:14-19.

Rep. Jones was asked on direct examination whether race predominated in the drawing of subdistricts, and the Court overruled Defendant's objection that the question called for a legal conclusion. *Id.* at 12:2-16. "It does call for a legal conclusion in part. However, I think his understanding of what the process was as a member of the legislature is relevant, and I'll hear it for what it's worth." *Id.* at 12:9-12.

Plaintiffs' counsel also asked Rep. Jones to testify about conversations Rep. Jones had regarding the Legislative Council's work. Rep. Jones testified that he asked Redistricting

Committee members “whether voting data had been compiled” to analyze the requirements of the Voting Rights Act, and affirmed that his questions to members were about “whether Legislative Council had performed those analyses for the Redistricting Committee” and he was told they had not. *Id.* at 33:23-34:15. On recross, Rep. Jones testified that he also asked Legislative Council attorney Clair Ness specifically about this:

Q: Have you ever talked to Clair Ness about analyses that she may have run?
 A: Yes.
 Q: You have spoken with her?
 A: Yes.
 Q: When did you speak with her?
 A: I can’t say exactly the time but it was during this time when we were working on this stuff to find out what had been done.

 Q: You’d indicated earlier that someone told you that Legislative Council did not perform a data analysis; is that correct?
 A: Yes.
 Q: Who told you that?
 A: I was talking to [Rep.] Austen Scahuer and I was talking to the chairman of the committee.

Id. at 36:3-22.

Walen Plaintiffs also revealed in their depositions that Rep. Jones voluntarily spoke with them about the redistricting process, and specifically discussed the constitutionality of the subdistricts and their lawsuit. Ex. 6 at 25:12-27:23 (Henderson Deposition Tr.); Ex. 7 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, which challenges the subdistrict at issue here. *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. Likewise, 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. Ex. 6 at 25:12-27:23.

ARGUMENT

I. Respondents Must Produce Documents and Communications Shared with Third Parties.

At the outset, Respondents assert privileges against production of documents over which no reasonable claim of privilege exists. The Supplemental Objection identifies up to 426 communications between Respondents and individuals who are not legislators nor legislative council staff. Courts routinely require legislators to produce such communications because there is no reasonable claim that communications with third parties are covered by the 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.”); *Michigan State A. Philip Randolph Inst. v. Johnson*, No. 16-CV-11844, 2018 WL 1465767, at *7 (E.D. Mich. Jan. 4, 2018) (holding “communications between legislators or their staff and any third party are not protected by the legislative privilege.”); *Jackson Mun. Airport Auth. v. Bryant*, No. 3:16-CV-246-CWR-FKB, 2017 WL 6520967, at *7 (S.D. Miss. Dec. 19, 2017) (“The Court finds that to the extent otherwise-privileged documents or information have been shared with third parties, the privilege with regard to those specific documents or information has been waived.”); *Almonte v. City of Long Beach*, No. CV 04-4192(JS)(JO), 2005 WL 1796118, at *3 (E.D.N.Y. July 27, 2005) (“Legislative and executive officials are certainly free to consult with political operatives or any others as they please, and there is nothing inherently improper in doing so, but that does not render such consultation part of the legislative

process or the basis on which to invoke privilege.”). As such, this Court should compel Respondents to produce all responsive documents that fall into this category.

Nonetheless, during the meet and confer counsel for Respondents erroneously claimed that the legislative privilege shields them from producing *any* discovery in this matter, including communications with third parties. Plaintiffs are not aware of any case that holds such, and none of the cases relied on by Respondent Devlin in moving to quash the deposition subpoena involved an invocation of privilege over the production of communications with third parties. *See, e.g., In re Hubbard*, 803 F.3d 1298, 1308, 1312 (11th Cir. 2015) (overturning district court ruling that legislators failed to properly assert legislative privilege, finding that plaintiffs had no interest in obtaining the subpoenaed material because they failed to state a claim, and remanding with a suggestion that the district court *sua sponte* revisit its denial of the defendants’ motion to dismiss). The Court should reject Respondents’ expansive assertion of legislative privilege and order Respondents to produce responsive communications that involved non-legislative parties. *See supra* (collecting cases holding that such communications are not privileged).

II. Representative Jones Has Waived Privilege with Respect to the 2021 Redistricting Plan.

Representative Jones has waived any legislative privilege with respect to his documents and communications related to the 2021 redistricting. Waiver of legislative privilege “need not be ‘explicit and unequivocal,’ and may occur either in the course of litigation when a party testifies as to otherwise privileged matters, or when purportedly privileged communications are shared with outsiders.” *Favors v. Cuomo*, 285 F.R.D. 187, 211-12 (E.D.N.Y. 2012) (quoting *Almonte v. City of Long Beach*, No. CV 04-4192 (JS) (JO), 2005 WL 1796118, at *3-4 (E.D.N.Y. July 27, 2005)). This is a settled proposition. *See, e.g., Alexander v. Holden*, 66 F.3d 62, 68 n.4 (4th Cir. 1995) (holding that legislative privilege was “clearly waived” where legislators

“testified extensively as to their motives in depositions with their attorney present, without objection”); *Trombetta v. Bd. of Educ., Proviso Township High Sch. Dist. 209*, No. 02 C 5895, 2004 WL 868265, at *5 (N.D. Ill. April 22, 2004) (explaining that legislative privilege “is waivable and is waived if the purported legislator testifies, at a deposition or otherwise, on supposedly privileged matters”); *Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections*, No. 11 C 5065, 2011 WL 4837508, at *10 (N.D. Ill. Oct. 12, 2011) (“As with any privilege, the legislative privilege can be waived when the parties holding the privilege share their communications with an outsider.”); *see also Virgin Islands v. Lee*, 775 F.2d 514, 520 n.7 (3rd Cir. 1985); *Marylanders for Fair Representation v. Schaefer*, 144 F.R.D. 292, 298 (D. Md. 1992). The reason for this rule is straightforward: the legislative privilege may not be used as both shield and sword whereby a legislator “strategically waive[s] it to the prejudice of other parties.” *Favors*, 285 F.R.D. at 212.

Rep. Jones waived any legislative privilege when he voluntarily inserted himself into litigation challenging the Plan. Specifically, Rep. Jones testified in *Walen* in support of Plaintiffs’ preliminary injunction motion about his motivations, his private conversations with other legislators, legislative staff, and outside advisors and attorneys, and his understanding of what analyses the Redistricting Committee or Legislative Council did or did not conduct. “[B]y voluntarily testifying, the legislator waives any legislative privilege on the subjects that will be addressed in the testimony.” *Florida v. United States*, 886 F. Supp. 2d 1301, 1302 (N.D. Fla. 2012). Rep. Jones likewise waived privilege over matters related to drawing of subdistricts when he voluntarily contacted potential plaintiffs and discussed the constitutionality of subdistricts in Legislative Districts 4 and 9, the latter of which is at issue here. *See* Ex. 6 at 25:12-27:23; Ex. 7 at 19:2-14, 21:10-22:14, 29:11-30:20. Rep. Jones may not strategically waive the privilege by

revealing only that information he deems beneficial to his cause and then refuse to produce documents and communications and preclude the parties from probing his public, non-legislative statements on those matters.

III. Respondents’ Boilerplate Assertion of the Attorney-Client and Deliberative Process Privileges Is Insufficient.

Respondents also seek to withhold responsive documents and communications on the basis of attorney client privilege. *See* Ex. 2 at 5; Ex. 4 at 1. However, Respondents have not identified with any specificity the documents and communications to which they claim this privilege applies. As courts have observed in other litigation involving state legislators, it is “highly unlikely . . . that all of the disputed requests involve documents that fall under the attorney-client and work product protection.” *Doe v. Nebraska*, 788 F. Supp. 2d 975, 986 (D. Neb. 2011). As such, “[a]sserting a blanket privilege for these documents simply is not sufficient.” *Id.* To the extent Respondents allege that any document or communication is withheld on the basis of attorney-client or deliberative process privilege, they must produce a privilege log that identifies those documents with specificity and provides sufficient information—including dates, recipients, and an explanation of the privilege asserted and the basis therefor privilege—to allow Plaintiffs and this court to evaluate the claim.

IV. Production of the Responsive Documents Is Not Unduly Burdensome.

Respondents argue that production of responsive documents is unduly burdensome because the subpoenas request information that is available online and because Plaintiffs do not provide sufficient time for a response. *See* Ex. 2 at 2-4; Ex. 4 at 1-2. However, Plaintiffs made clear in the initial meet and confer that they were not seeking information that is already publicly available online, and Respondents represented that two weeks would be sufficient time to review the materials and produce a privilege log. *See* Ex. 3 (Nov. 9 Email from S. Porsborg). Further,

Plaintiffs provided Respondents *more* than the requested two weeks to complete their review of the responsive materials and produce a privilege log. *See* Ex. 4 (Supplemental Objection produced December 1). Respondents newly broadened assertion that conducting a privilege review in response to a subpoena is unduly burdensome because they are non-parties would nullify Rule 45. And it is particularly unreasonable here where Respondents have already reviewed and categorized the majority of the potentially responsive documents and communications,⁴ such that the additional burden of producing them is minimal. The Court should order Respondents to produce a privilege log containing sufficient detail to allow Plaintiffs to evaluate the claimed privilege with respect to any specific communications ultimately withheld.

V. Respondents Clare Ness and Terry Jones Must Complete their Searches and Produce Responsive Documents.

In the Supplemental Objection, Respondents indicated that Ms. Ness had yet to complete her search for responsive emails, and that Representative Jones had yet to complete a search of his text messages, but that these results would be forthcoming. Counsel for Respondents has represented that these additional limited search results will be provided early the week of December 26, 2022. Plaintiffs respectfully request the Court order that Ms. Ness produce any non-privileged responsive documents and communications identified in her search, including documents or communications shared with third parties, and produce a privilege log with respect to any documents withheld; and that Representative Jones produce all responsive documents and communications identified in his search as he has waived privilege over the same.

⁴ This is particularly so given that so far the seven Respondents have identified at most 1,407 total potentially responsive documents. The small number of potentially responsive documents identified by the seven Respondents so far demonstrates that the subpoenas were narrowly targeted and not unduly burdensome.

CONCLUSION

For the foregoing reasons, this Court should order Respondents to comply with the subpoenas and produce all responsive non-privileged documents and communications, as well as responsive documents and communications over which privilege has been waived, and produce a privilege log containing individualized descriptions of each responsive document Respondents are withholding on the basis of privilege.

December 22, 2022

/s/ Michael S. Carter

Michael S. Carter
OK Bar No. 31961
Matthew Campbell
NM Bar No. 138207, CO Bar No. 40808
mcampbell@narf.org
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, CO 80301
Telephone: (303) 447-8760

Samantha Blencke Kelty
AZ Bar No. 024110, TX Bar No. 24085074
kelty@narf.org
NATIVE AMERICAN RIGHTS FUND
1514 P Street NW, Ste. D
Washington, DC 20005
Telephone: (202) 785-4166

Respectfully submitted,

/s/ Mark P. Gaber

DC Bar No. 988077
mgaber@campaignlegal.org
Molly E. Danahy
DC Bar No. 1643411
mdanahy@campaignlegal.org
Nicole Hansen
NY Bar No. 5992326
nhansen@campaignlegal.org
CAMPAIGN LEGAL CENTER
1101 14th St. NW, Ste. 400
Washington, DC 20005
Telephone: (202) 736-2200
Fax: (202) 736-2222

Bryan Sells (admitted *pro hac vice*)
GA Bar No. 635562
bryan@bryansellsaw.com
THE LAW OFFICE OF BRYAN L. SELLS,
LLC
PO Box 5493
Atlanta, GA 31107-0493
Telephone: (404) 480-4212

Attorneys for Plaintiffs

/s/ Timothy Q. Purdon

Timothy Q. Purdon
ND Bar No. 05392
TPurdon@RobinsKaplan.com
ROBINS KAPLAN LLP

1207 West Divide Avenue, Ste. 200
Bismarck, ND 58501
Telephone: (701) 255-3000
Fax: (612) 339-4181

Attorney for Plaintiff Spirit Lake Nation

CERTIFICATE OF SERVICE

I certify that on December 22, 2022, a copy of the foregoing was served on all counsel of record via the Court's CM/ECF system.

/s/ Mark P. Gaber
Mark P. Gaber

EXHIBIT 1

Def.'s Rule 26(a)(1) Disclosures

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

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

Plaintiffs,

vs.

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

Defendant.

Case No. 3:22-cv-00022

**DEFENDANT ALVIN JAEGER'S
INITIAL RULE 26(A)(1) DISCLOSURES**

Defendant Alvin Jaeger, in his official capacity as Secretary of State of North Dakota (hereinafter "Defendant") for his disclosure pursuant to Rule 26(a)(1) hereby provide the following information and documents as described herein:

(A) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information:

1. Wesley Davis

- Wesley Davis is a named plaintiff in this lawsuit and has information regarding the allegations contained in the Plaintiffs' Complaint, regarding Defendant's defenses, and regarding other matters at issue in this subject lawsuit.

2. Zachery S. King

- Zachery S. King is a named plaintiff in this lawsuit and has information regarding the allegations contained in the Plaintiffs' Complaint, regarding Defendant's defenses, and regarding other matters at issue in this subject lawsuit.

3. Collette Brown

- Collette Brown is a named plaintiff in this lawsuit and has information regarding the allegations contained in the Plaintiffs' Complaint, regarding Defendant's defenses, and regarding other matters at issue in this subject lawsuit.

4. Alvin Jaeger

600 East Boulevard Avenue
Bismarck, ND 58505-0360

- Alvin Jaeger is a named defendant in this lawsuit and is the Secretary of the State of North Dakota. He has information regarding the impacts of redistricting on elections in North Dakota, regarding allegations contained in the Plaintiffs' Complaint, regarding Defendant's defenses, and regarding other matters at issue in this subject lawsuit.

5. Irwin James Narum (Jim) Silrum
600 East Boulevard Avenue
Bismarck, ND 58505-0360

- Irwin James Narum (Jim) Silrum is the Deputy Secretary of the State of North Dakota. He has information regarding the impacts of redistricting on elections in North Dakota, regarding allegations contained in the Plaintiffs' Complaint, regarding Defendant's defenses, and regarding other matters at issue in this subject lawsuit.

6. Brian Newby
600 East Boulevard Avenue
Bismarck, ND 58505-0360

- Brian Newby is the North Dakota State Election Director in the office of Secretary of State of North Dakota. He has information regarding the impacts of redistricting on elections in North Dakota, regarding allegations contained in the Plaintiffs' Complaint, regarding Defendant's defenses, and regarding other matters at issue in this subject lawsuit.

7. Lee Ann Oliver
600 East Boulevard Avenue
Bismarck, ND 58505-0360

- Lee Ann Oliver is the Election Specialist in the office of Secretary of State of North Dakota. She has information regarding the impacts of redistricting on elections in North Dakota, regarding allegations contained in the Plaintiffs' Complaint, regarding Defendant's defenses, and regarding other matters at issue in this subject lawsuit.

8. Brian Nybakken
600 East Boulevard Avenue
Bismarck, ND 58505-0360

- Brian Nybakken is the Elections Administration System Manager in the office of Secretary of State of North Dakota. He has information regarding the impacts of redistricting on elections in North Dakota, regarding allegations contained in the Plaintiffs' Complaint, regarding Defendant's defenses, and regarding other matters at issue in this subject lawsuit.

9. Brent Sanford
600 East Boulevard Avenue
Bismarck, ND 58505-0360

- Brent Sanford is the Lieutenant Governor of the State of North Dakota. He has information regarding the allegations contained in the Plaintiffs' Complaint, regarding Defendant's defenses, and regarding other matters at issue in this subject lawsuit.

10. Reice Hasse

600 East Boulevard Avenue
Bismarck, ND 58505-0360

- Reice Hasse is the former Senior Policy Advisor to Governor Burgum. He has information regarding the allegations contained in the Plaintiffs' Complaint, regarding State outreach to tribal representatives during redistricting, Defendant's defenses, and regarding other matters at issue in this subject lawsuit.

11. Claire Ness

600 East Boulevard Avenue
Bismarck, ND 58505-0360
(701) 328-2210

- Claire Ness is currently the Deputy Attorney General of the State of North Dakota. At the time of the subject redistricting process, Claire Ness was Senior Counsel for the North Dakota Legislative Council. She has information regarding the legislative redistricting process, regarding State outreach to tribal representatives during redistricting, regarding allegations contained in the Plaintiffs' Complaint, regarding Defendant's defenses, and regarding other matters at issue in this subject lawsuit.

12. Emily Thompson

600 East Boulevard Avenue
Bismarck, ND 58505-0360
(701) 328-2916

- Emily Thompson is the Legal Division Director of the North Dakota Legislative Council. She has information regarding legislative records relating to the subject redistricting, regarding the legislative redistricting process, regarding State outreach to tribal representatives during redistricting, regarding allegations contained in the Plaintiffs' Complaint, regarding Defendant's defenses, and regarding other matters at issue in this subject lawsuit.

13. Samantha Kramer

600 East Boulevard Avenue
Bismarck, ND 58505-0360
(701) 328-2916

- Samantha Kramer is Senior Counsel and Assistant Code Revisor for the North Dakota Legislative Council. She has information regarding legislative records relating to the subject redistricting, regarding the legislative redistricting process, regarding State outreach to tribal representatives during redistricting, regarding allegations contained in the Plaintiffs' Complaint, regarding Defendant's defenses, and regarding other matters at issue in this subject lawsuit.

14. John Bjornson

600 East Boulevard Avenue
Bismarck, ND 58505-0360
(701) 328-2916

- John Bjornson is the Director of the North Dakota Legislative Council. He has information regarding legislative records relating to the subject redistricting, regarding the legislative redistricting process, regarding State outreach to tribal representatives during redistricting, regarding allegations contained in the Plaintiffs' Complaint, regarding Defendant's defenses, and regarding other matters at issue in this subject lawsuit.

15. Nathan Davis

600 East Boulevard Avenue
Bismarck, ND 58505-0360

- Nathan Davis is the Executive Director of the North Dakota Indian Affairs Commission. He has information regarding State outreach to tribal representatives during redistricting and has information regarding the testimony he provided during the redistricting process.

16. Marietta Kemmet

600 East Boulevard Avenue
Bismarck, ND 58505-0360

- Marietta Kemmet is an Executive Assistant to Nathan Davis, Executive Director of the North Dakota Indian Affairs Commission. She has information regarding State outreach to tribal representatives during redistricting.

17. Alysia LaCounte

General Counsel, Turtle Mountain Band of Chippewa Indians
4180 Hwy 281
Belcourt, ND 58316
(701) 477-2600

- Alysia LaCounte has information regarding the testimony she provided to the Interim Tribal and State Relations Committee.

18. Nicole Donaghy

Executive Director
North Dakota Native Vote
919 South 7th Street, Ste. 603
Bismarck, ND 58504
(888) 425-1483

- Nicole Donaghy has information regarding the testimony she provided to the Interim Tribal and State Relations Committee and testimony she provided to the Redistricting Committee.

19. Jamie Azure

Chairman, Turtle Mountain Band of Chippewa Indians
4180 Hwy 281
Belcourt, ND 58316
(701) 477-2600

- Jamie Azure has information regarding the testimony he provided to the Interim Tribal and State Relations Committee.

20. Karen Ehrens
Secretary, League of Women Voters of North Dakota
233 West Ave C
Bismarck, ND 58501
- Karen Ehrens has information regarding the testimony she provided to the Redistricting Committee.
21. Rick Gion
Director, North Dakota Voters First
- Rick Gion has information regarding the testimony he provided to the Redistricting Committee.
22. Matt Perdue
Lobbyist, North Dakota Farmers Union
- Matt Perdue has information regarding the testimony he provided to the Redistricting Committee.
23. Collette Brown
Executive Director, Gaming Commission, Spirit Lake Casino and Resort
7889 Hwy 57
Saint Michael, ND 58370
(701) 776-4747
- Collette Brown has information regarding the testimony she provided to the Redistricting Committee and regarding testimony she provided to the Tribal and State Relations Committee.
24. Mark Fox
Chairman, Three Affiliated Tribes of the Fort Berthold Reservation
404 Frontage Rd.
New Town, ND 58763
(701) 627-4781
- Mark Fox has information regarding the testimony he provided to the Tribal and State Relations Committee and testimony he provided to the Redistricting Committee,
25. Ted Lone Fight
- Ted Lone Flight has information regarding the testimony he provided to the Tribal and State Relations Committee.
26. Melanie Moniz
- Melanie Moniz has information regarding the testimony she provided to the Tribal and State Relations Committee.
27. Joletta Bird Bear

- Joletta Bird Bear has information regarding the testimony she provided to the Tribal and State Relations Committee.

28. Cynthia Monteau

- Cynthia Monteau has information regarding the testimony she provided to the Tribal and State Relations Committee.

29. Ruth Buffalo

- Ruth Buffalo has information regarding the testimony she provided to the Tribal and State Relations Committee.

30. Douglas Yankton

Sr., Chairman, Spirit Lake Tribe
P.O. Box 359
Fort Totten, ND 58335
(701) 381-2006

- Douglas Yankton has information regarding the testimony he provided to the Tribal and State Relations Committee and testimony he provided to the Redistricting Committee.

31. Mike Faith

Chairman, Standing Rock Sioux Tribe
1 Standing Rock Avenue
Fort Yates, ND 58538
(701) 854-8500

- Mike Faith has information regarding the testimony he provided to the Redistricting Committee.

32. Charles Walker

Councilman, Standing Rock Sioux Tribe
1 Standing Rock Avenue
Fort Yates, ND 58538
(701) 854-8500

- Charles Walker has information regarding the testimony he provided to the Redistricting Committee.

33. Matthew Campbell

Staff Attorney, Native American Rights Fund
1506 Broadway
Boulder, CO 80302
(303) 447-8760

- Matthew Campbell has information regarding the testimony he provided to the Redistricting Committee.

34. Erin Oban

- Erin Oban has information regarding the testimony she provided to the Redistricting Committee.

35. Pete Hanebutt

Director of Public Policy, North Dakota Farm Bureau
4900 Ottawa Street
Bismarck, ND 58503
(701) 224-0330

- Pete Hanebutt has information regarding the testimony he provided to the Redistricting Committee.

36. Kevin Hermann

- Kevin Hermann has information regarding the testimony he provided to the Redistricting Committee.

37. Aaron Birst

Legal Counsel and Assistant Director – Policy, North Dakota Association of Counties
1661 Capitol Way
Bismarck, ND 58502
(701) 328-7300

- Aaron Birst has information regarding the testimony he provided to the Redistricting Committee.

38. Kathy Skroch

10105 155th Avenue SE
Lidgerwood ND 58053-9761
(701) 538-7396

- Kathy Skroch has information regarding the testimony she provided to the Redistricting Committee.

39. Mike Schatz

400 East Ninth Street
New England, ND 58647-7528
(701) 579-4823

- Mike Schatz has information regarding the testimony he provided to the Redistricting Committee.

40. Gerald Wise

Mayor, City of Lincoln

- Gerald Wise has information regarding the testimony he provided to the Redistricting Committee.

41. Jan Jellif

- Jan Jelliff has information regarding the testimony she provided to the Redistricting Committee on September 22-23, 2021.

42. Jennifer Tarlin

- Jennifer Tarlin has information regarding the testimony she provided to the Redistricting Committee on September 22-23, 2021.

43. Terry Jones

P.O. Box 1964
New Town, ND 58763-1964
(701) 627-3397

- Terry Jones has information regarding the testimony he provided to the Redistricting Committee. He also has information regarding the matters he testified to at the hearing on the motion for preliminary injunction held May 5, 2022 in case no: 1:22-cv-00031.

44. Jason Heitkamp

921 Dakota Avenue, Suite F
Wahpeton, ND 58075-4341
(701) 640-4643

- Jason Heitkamp has information regarding the testimony he provided to the Redistricting Committee.

45. Norma Kjos

- Norma Kjos has information regarding the testimony she provided to the Redistricting Committee.

46. Peter Leedahl

- Peter Leedahl has information regarding the testimony he provided to the Redistricting Committee.

47. Marvin Nelson

P.O. Box 577
Rolla, ND 58367-0577
(701) 550-9731

- Marvin Nelson has information regarding the testimony he provided to the Redistricting Committee.

48. Gary Kreidt

3892 County Road 86
New Salem, ND 58563-9406
(701) 843-7074

- Gary Kreidt has information regarding the testimony he provided to the Redistricting Committee.

49. Howard Anderson

721 21st Avenue NW
Turtle Lake, ND 58575-9606
(701) 861-9749

- Howard Anderson has information regarding the testimony he provided to the Redistricting Committee.

50. Craig Headland

4950 92nd Avenue SE
Montpelier, ND 58472-9630
(701) 489-3184

- Craig Headland has information regarding the testimony he provided to the Redistricting Committee.

51. Sebastian Ertelt

P.O. Box 63
Gwinner, ND 58040-0063
(701) 683-2194

- Sebastian Ertelt has information regarding the testimony he provided to the Redistricting Committee.

52. Larry Bellew

812 Bel Air Place
Minot, ND 58703-1751
(701) 852-5786

- Larry Bellew has information regarding the testimony he provided to the Redistricting Committee.

53. All individual North Dakota legislators who participated in the subject redistricting process, including in the Interim Redistricting Committee, Interim Tribal and State Relations Committee, Joint Redistricting Committee, North Dakota House of Representatives, and/or North Dakota Senate.

54. All other individuals, whose names and addresses are presently unknown, who have knowledge regarding the allegations in Plaintiffs' Complaint, Defendant's Answer, and other matters at issue in this subject lawsuit.

(B) A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment:

1. All documents produced and/or referenced by Plaintiffs and/or Defendants-Intervenors in their Rule 26(a)(1) disclosures, to the extent not objected to.
2. Various documents within the control of Plaintiffs and/or Defendants-Intervenors in this matter which have not yet been provided and/or produced, to the extent not objected to.

3. All documents produced by any of the Plaintiffs and/or Defendants-Intervenors in response to discovery requests.
4. Miscellaneous documents previously provided via counsel.
5. Various other documents which may be located during the discovery process, to the extent not objected to.
6. All documents, exhibits, and evidence submitted in favor of or in opposition to plaintiffs' motion for preliminary injunction (case no: 1-22-cv-00031).
7. 2020 U.S. Census data, legislative redistricting data, and precinct data from the 53 counties in North Dakota. This data is kept in the electronic files of the Secretary of State's office.
8. Communications between the Secretary of State's office and county election officials regarding the implementation of the redistricting plan contained in House Bill 1504. These communications are kept in the electronic files of the Secretary of State's office.
9. Communications between the Secretary of State's office and state and district political parties regarding the implementation of the redistricting plan contained in House Bill 1504. These communications are kept in the electronic files of the Secretary of State's office.
10. Communications between the Secretary of State's office and Legislative Council regarding the implementation of the redistricting plan contained in House Bill 1504. These communications are kept in the electronic files of the Secretary of State's office.
11. Communications between the Secretary of State's office and members of the public regarding the implementation of the redistricting plan contained in House Bill 1504. These communications are kept in the electronic files of the Secretary of State's office.
12. Communications between the Secretary of State's office and state election vendors regarding the implementation of the redistricting plan contained in House Bill 1504. These communications are kept in the electronic files of the Secretary of State's office.
13. Communications between the Secretary of State's office and the Governor's office regarding redistricting, kept in the electronic files of the office of the Governor.
14. Various communications and documents to and from the Governor's office regarding redistricting, kept in the electronic files of the office of the Governor.

15. Communications and documents relating to House Bill No. 1504, kept in the electronic files of the office of the Governor.

16. All documents, files, and videos that are publicly available on the Redistricting Committee webpage:

<https://www.legis.nd.gov/assembly/67-2021/committees/interim/redistricting-committee>

17. All documents, files, and videos that are publicly available on the Tribal and State Relations Committee webpage:

<https://ndlegis.gov/assembly/67-2021/committees/interim/tribal-and-state-relations-committee>

18. All documents, files, and videos that are publicly available on the following webpage:

<https://www.ndlegis.gov/assembly/67-2021/special-session/bill-video/bv1504.html>

19. All Redistricting Committee memoranda publicly available on the following webpage:

<https://www.legis.nd.gov/assembly/67-2021/session-interim/2021-committee-memorandums>

20. All maps that are publicly available on the Redistricting Committee webpage:

<https://www.legis.nd.gov/assembly/67-2021/session-interim/2021-legislative-redistricting-maps>

21. All maps approved by the North Dakota Legislative Assembly during the November 2021 special session, and related files, data, charts, and Interactive Statewide Map publicly available on the following webpage:

<https://www.legis.nd.gov/assembly/67-2021/special/approved-legislative-redistricting-maps>

22. All maps of prior legislative districts, publicly available through the links on the following webpage:

<https://www.legis.nd.gov/assembly/67-2021/members/members-by-district>

(C) A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered:

Not applicable.

(D) For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment:

Not applicable

Defendant reserves the right to supplement or amend these disclosures if new or additional information becomes available.

Dated this 23rd day of June, 2022.

By: /s/ David R. Phillips
David R. Phillips
Special Assistant Attorney General
ND Bar # 06116
300 West Century Avenue
P.O. Box 4247
Bismarck, ND 58502-4247
(701) 751-8188
dphillips@bgwattorneys.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANT ALVIN JAEGER'S INITIAL RULE 26(A)(1) DISCLOSURES** was on the 23rd day of June, 2022, emailed to the following:

Mark P. Gaber
DC Bar No. 98807
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
mgaber@campaignlegal.org

Molly E. Danahy
DC Bar No. 1643411
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
mdanahy@campaignlegal.org

Michael S. Carter
OK No. 31961
Native American Rights Fund
1506 Broadway
Boulder, CO 80301
carter@narf.org

Timothy Q. Purdon
ND No. 05392
ROBINS KAPLAN LLP
1207 West Divide Avenue, Suite 200
Bismarck, ND 58501
TPurdon@RobinsKaplan.com

Bryan L. Sells
PO BOX 5493
Atlanta, GA 31107-0493
bryan@bryansellsllaw.com

Samantha Blencke Kelty
Native American Rights Fund
1514 P Street NW, Suite D
Washington, DC 20005
kelty@narf.org

By: /s/ David R. Phillips
DAVID R. PHILLIPS

EXHIBIT 2

Initial Objections

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

Case No: 3:22-cv-00022

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

Plaintiffs,)

v.)

Alvin Jaeger, in his official capacity as)
Secretary of State of North Dakota.)

Defendant)

**OBJECTION TO SUBPOENAS TO
PRODUCE DOCUMENTS**

I. INTRODUCTION

Plaintiffs Turtle Mountain Band of Chippewa Indians, Spirit Lake Tribe, Wesley Davis, Zachary S. King, and Collette Brown issued *Subpoenas to Produce Documents* upon North Dakota State Senators Ray Holmberg, Nicole Poolman, and Rich Wardner, and North Dakota State Representatives Bill Devlin, Mike Nathe, and Terry B. Jones, commanding them to produce protected documents by October 29, 2022.

Plaintiffs also issued a *Subpoena to Produce Documents* upon North Dakota Deputy Attorney General Claire Ness, formerly a member of the Legislative Council staff, commanding her to produce protected documents by October 30, 2022.

Because there are important privilege and public policy concerns affected by the subpoenas, the North Dakota Legislative Assembly and the respondents hereby submit this written objection to Plaintiff's *Subpoenas to Produce Documents*, pursuant to Federal Rule of Civil Procedure 45(d)(2)(b) and 45(e)(2).

II. FACTS

On September 29, 2022, Plaintiffs issued six *Subpoenas* upon the North Dakota Legislators.¹ These *Subpoenas* all commanded production of the following documents:

1. All Documents and Communications regarding Native Americans and/or Indian Reservations and the 2021 Redistricting Process or Maps.
2. All Documents and Communications regarding tribal input, including regarding written submissions or verbal testimony from tribal representatives, with respect to the 2021 Redistricting Process or Maps.
3. All Documents and Communications regarding redistricting criteria for the 2021 Redistricting Process or Maps.
4. All Documents and Communications regarding District 4, District 9, or District 15, and, where applicable, any subdistricts of these districts, including documents and communications regarding the applicability of the Voting Rights Act to these districts and subdistricts.
5. All Documents and Communications regarding trainings provided to legislators in preparation for or as a part of the 2021 Redistricting Process.
6. All Documents and Communications reflecting the identity of map drawers in the 2021 Redistricting Process.
7. All Documents and Communications related to racial polarization or demographic studies conducted by the Redistricting Committee or Legislature as a part of or in preparation for the 2021 Redistricting Process.

On September 30, 2022, Plaintiffs served a *Subpoena* upon Deputy Ness, making an identical command for production of documents relating to the seven topics listed above.

III. LAW AND ARGUMENT

The North Dakota Legislators and Deputy Ness object to these *Subpoenas to Produce Documents*, because they are unduly burdensome, and because they request documents and communications that are protected by privilege.

A. Plaintiffs' *Subpoenas* are Unduly Burdensome

First, the *Subpoenas*' command is unduly burdensome. It requests the respondents to provide documentation that is readily available to the Plaintiffs online. Both

<https://ndlegis.gov/assembly/67-2021/committees/interim/tribal-and-state-relations-committee> and <https://ndlegis.gov/assembly/67-2021/committees/interim/redistricting-committee> contain the documents and communications responsive to Plaintiffs' *Subpoenas*. These sites are readily available to the public, and contain not only all of the documentation presented to the committees, but also video recordings of the Redistricting Committee meetings and Tribal and State Relations Committee meetings at issue in the case.

Specifically, the website for the Redistricting Committee is directly responsive to Plaintiffs' requests. It contains links to proposed maps, including those proposed by Senator Holmberg, Senator Poolman, Representative Devlin, and Representative Nathe (see request No. 6). It includes video recording of meetings which include training (see request No. 3 & 5), and information regarding demographics (see request No. 7). Further, the videos and meeting minutes reflect not only public deliberations by legislators, but also testimony and communications from interested parties (see request No. 1, 2 and 4). These publicly available documents and communications are readily available for Plaintiffs to access at any time.

In addition, Plaintiffs' request is unduly burdensome because they do not allow the respondents a reasonable time to comply. See Fed.R.Civ.P. 45 (d)(1) and (3)(A)(i) and (iv). To the extent there are non-website-accessible documents available, they may consist of communications between legislators, staff and interested parties and constituents. The vast majority, if not all, of these documents are privileged. To the extent there are documents that are not privileged, less than 30 days response time is inadequate to sift through documents and communications and determine what is responsive and (1) not already available to plaintiffs via

¹ The North Dakota Legislators were served on different dates: Sens. Holmberg and Wardner on Sept. 30, Rep. Nathe on Oct. 1, Sen. Poolman on October 6, Rep. Devlin on Oct. 7, and Rep. Jones on Oct. 6 or 7.

the legislature's website, and (2) not protected by privilege. See Pointer v. DART, 417 F.3d 819, 821 (8th Cir. 2005).

B. Plaintiffs' *Subpoenas* Request Documents and Communications Protected by Privilege

The respondents further object because the *Subpoenas* request documents and communications that are protected by legislative privilege, deliberative process privilege, and attorney-client privilege, as well as communications that are work product. See Fed.R.Civ.P. 45(d)(3)(iii).

The documents and communications are protected by legislative privilege. Compare U.S.C.A. Const. Art. 1, § 6, cl. 1 ("The Senators and Representatives....and for any Speech or Debate in either house, they shall not be questioned in any other Place.") with N.D. Const. Art. IV, § 15 ("Members of the legislative assembly may not be questioned in any other place for any words used in any speech or debate in legislative proceedings."). Legislative privilege protects state legislators from producing documents in certain cases. Comm. for a Fair & Balanced Map v. Illinois State Bd. of Elections, No. 11 C 5065, 2011 WL 4837508, at *7 (N.D. Ill. Oct. 12, 2011). Legislative privilege "protects documents 'created prior to the passage and implementation [of a bill] that involve opinions, recommendations or advice about legislative decisions between legislators or between legislators and their aides.'" Id. at *9. Further, the North Dakota Century Code protects legislative work product and communications. See N.D.C.C. § 44-04-18.6. The documents and communications sought by Plaintiffs are either readily available online, or are believed to fall into this category – documents and communications that involve opinions, recommendations, or advice about legislative decisions between legislators and other legislators or their aides. They are protected by legislative privilege, and by the protections of N.D.C.C. § 44-04-18.6.

The documents and communications are also protected by the deliberative process privilege, which protects “the legislative decision-making process,” and “the confidentiality of communications with the office-holder involving the discharge of his or her office.” See Doe v. Nebraska, 788 F.Supp.2d 975, 984 (D. Neb. 2011). See also, Brandt v. Rutledge, No. 4:21CV00450 JM, 2022 WL 3108795, at *1 (E.D. Ark. Aug. 4, 2022), Shirt v. Hazeltine, No. CV. 01-3032-KES, 2003 WL 27384631, at *2 (D.S.D. Dec. 30, 2003). The materials requested by Plaintiffs are pre-decisional and deliberative, invoking the deliberative process privilege.

Finally, any communications between Legislative Council staff and members of the legislature are protected by attorney-client privilege (Fed. R. Civ. P. 26(b)(3)) and/or constitute work product. See City of Greensboro v. Guilford Cnty. Bd. of Elections, No. 1:15CV559, 2016 WL 11660626, at *5-6 (M.D.N.C. Dec. 20, 2016).

IV. CONCLUSION

The short timeframe between service of the subpoenas and the response date prevents the respondents from having adequate time to review all non-publicly available information and prepare a privilege log. Moreover, it is believed the vast majority of non-publicly available documents are subject to the privileges addressed above. If Plaintiffs request documents beyond what is available on the Legislature’s website, the respondents will require additional time to review the documents and communications in their possession to prepare a privilege log and / or to provide additional documents. For these reasons, the respondents object to the subpoenas.

Dated this 14th day of October, 2022.

SMITH PORSBORG SCHWEIGERT
ARMSTRONG MOLDENHAUER & SMITH

By /s/ Scott K. Porsborg

Scott K. Porsborg (ND Bar ID #04904)
sporsborg@smithporsborg.com
122 East Broadway Avenue
P.O. Box 460
Bismarck, ND 58502-0460
(701) 258-0630

Attorney for the North Dakota Legislative
Assembly, Senators Ray Holmberg, Nicole
Poolman, and Rich Wardner;
Representatives Bill Devlin, Mike Nathe,
and Terry B. Jones, and Deputy Attorney
General Claire Ness.

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of October, 2022, a true and correct copy of the foregoing **OBJECTION TO SUBPOENAS TO PRODUCE DOCUMENTS** was served upon the following:

ATTORNEYS FOR PLAINTIFFS

Michael S. Carter
Matthew Campbell
Attorneys At Law
1506 Broadway
Boulder, CO 80301

carter@narf.org
mcampbell@narf.org

ATTORNEYS FOR PLAINTIFFS

Mark P. Garber
Molley E. Danahy
Attorneys At Law
1101 14th St. NW, Ste. 400
Washington, DC 20005

mgaber@campaignlegal.org
mdanahy@campaignlegal.org

ATTORNEY FOR PLAINTIFFS

Timothy Q Purdon
Attorney at Law
1207 West Divide Avenue, Suite 200
Bismarck, ND 58501

tpurdon@robinskaplan.com

ATTORNEY FOR PLAINTIFFS

Samantha B. Kelty
Attorney at Law
1514 P St. NW, Suite D
Washington, D.C. 20005

kelty@narf.org

ATTORNEY FOR PLAINTIFF

Bryan Sells
Attorney at Law
P.O. Box 5493
Atlanta, GA 31107-0493

bryan@bryansellsllaw.com

ATTORNEYS FOR DEFENDANT ALVIN JAEGER

Matthew A Sagsveen
Assistant Attorney General
500 North 9th Street
Bismarck, ND 58501-4509

masagsve@nd.gov

David R. Phillips
Special Assistant Attorney General
300 West Century Avenue
P.O. Box 4247
Bismarck, ND 58502-4247

dphillips@bgwattorneys.com

By /s/ Scott K. Porsborg

SCOTT K. PORSBORG

EXHIBIT 3

Nov. 9 Email from S. Porsborg

Molly Danahy

From: Scott Porsborg <SPorsborg@smithporsborg.com>
Sent: Wednesday, November 9, 2022 4:39 PM
To: Molly Danahy; Mark Gaber; Anna Heinen; carter@narf.org; mcampbell@narf.org; tpurdon@robinskapal.com; kelty@narf.org; bryan@bryansellslaw.com
Cc: Austin Lafferty; April Heinz; masagsve@nd.gov; David Phillips
Subject: RE: Turtle Mountain Band of Chippewa Indians v. Alvin Jaeger - Case No 3:22-cv-22

Molly, I've been informed that LC believes about two weeks should be sufficient to gather the materials and prepare a log.

Scott K. Porsborg
Certified Civil Trial Specialist – National Board of Trial Advocacy
Smith Porsborg Schweigert Armstrong Moldenhauer & Smith
P.O. Box 460
122 East Broadway
Bismarck ND 58502-0460
Phone: 701-258-0630
sporsborg@smithporsborg.com

From: Molly Danahy <mdanahy@campaignlegalcenter.org>
Sent: Thursday, November 3, 2022 2:47 PM
To: Scott Porsborg <SPorsborg@smithporsborg.com>; Mark Gaber <MGaber@campaignlegalcenter.org>; Anna Heinen <AHeinen@smithporsborg.com>; carter@narf.org; mcampbell@narf.org; tpurdon@robinskapal.com; kelty@narf.org; bryan@bryansellslaw.com
Cc: Austin Lafferty <ALafferty@smithporsborg.com>; April Heinz <AHeinz@smithporsborg.com>; masagsve@nd.gov; Daniel Phillips <dphillips@solberglaw.com>
Subject: RE: Turtle Mountain Band of Chippewa Indians v. Alvin Jaeger - Case No 3:22-cv-22

Hi all –

We're available for a meet and confer on Wednesday, November 9 at 11 CT. If that works for everyone. I'll circulate a calendar invite.

Best,

Molly

Molly E. Danahy

Senior Legal Counsel, Litigation

202.868.4759 | mdanahy@campaignlegalcenter.org

Campaign Legal Center
1101 14th St. NW, Suite 400
Washington, DC 20005
campaignlegalcenter.org

From: Scott Porsborg <SPorsborg@smithporsborg.com>

Sent: Thursday, November 3, 2022 9:20 AM

To: Mark Gaber <MGaber@campaignlegalcenter.org>; Anna Heinen <AHeinen@smithporsborg.com>; carter@narf.org; mcampbell@narf.org; Molly Danahy <mdanahy@campaignlegalcenter.org>; tpurdon@robinskapal.com; kelty@narf.org; bryan@bryansellslaw.com

Cc: Austin Lafferty <ALafferty@smithporsborg.com>; April Heinz <AHeinz@smithporsborg.com>; masagsve@nd.gov; Daniel Phillips <dphillips@solberglaw.com>

Subject: RE: Turtle Mountain Band of Chippewa Indians v. Alvin Jaeger - Case No 3:22-cv-22

Mark, I'm available all of next week starting Tuesday, with the exception of Wednesday afternoon and Friday. Let me know what works for you.

Scott K. Porsborg

Certified Civil Trial Specialist – National Board of Trial Advocacy

Smith Porsborg Schweigert Armstrong Moldenhauer & Smith

P.O. Box 460

122 East Broadway

Bismarck ND 58502-0460

Phone: 701-258-0630

sporsborg@smithporsborg.com

From: Mark Gaber <MGaber@campaignlegalcenter.org>

Sent: Wednesday, November 2, 2022 8:46 PM

To: Anna Heinen <AHeinen@smithporsborg.com>; carter@narf.org; mcampbell@narf.org; Molly Danahy <mdanahy@campaignlegalcenter.org>; tpurdon@robinskapal.com; kelty@narf.org; bryan@bryansellslaw.com

Cc: Scott Porsborg <SPorsborg@smithporsborg.com>; Austin Lafferty <ALafferty@smithporsborg.com>; April Heinz <AHeinz@smithporsborg.com>; masagsve@nd.gov; Daniel Phillips <dphillips@solberglaw.com>

Subject: RE: Turtle Mountain Band of Chippewa Indians v. Alvin Jaeger - Case No 3:22-cv-22

Counsel—

Can we schedule a time for a phone call or zoom to meet and confer regarding the objections to the subpoenas referenced below?

Likewise, I have attached a deposition subpoena for Representative Devlin. The date and location are placeholders – we are hoping to conduct the deposition virtually by zoom if the witnesses and counsel are agreeable, and of course we will work with you on scheduling available dates this month. Please let me know if you will accept service of these subpoena, and the Representative's availability.

Sincerely,
Mark Gaber

From: Anna Heinen <AHeinen@smithporsborg.com>

Sent: Friday, October 14, 2022 2:38 PM

To: carter@narf.org; mcampbell@narf.org; Mark Gaber <MGaber@campaignlegalcenter.org>; Molly Danahy <mdanahy@campaignlegalcenter.org>; tpurdon@robinskapal.com; kelty@narf.org; bryan@bryansellslaw.com

Cc: Scott Porsborg <SPorsborg@smithporsborg.com>; Austin Lafferty <ALafferty@smithporsborg.com>; April Heinz <AHeinz@smithporsborg.com>; masagsve@nd.gov; Daniel Phillips <dphillips@solberglaw.com>

Subject: Turtle Mountain Band of Chippewa Indians v. Alvin Jaeger - Case No 3:22-cv-22

All:

Please find the attached Objection with regard to the above-captioned matter.

Feel free to contact me if you have any questions.

Thank you,

Anna

Anna M. Heinen

Paralegal to Scott Porsborg and Mitch Armstrong



122 East Broadway Avenue

P.O. Box 460

Bismarck, ND 58502-0460

Phone: 701.258.0630 / Fax: 701.258.6498

Email: aheinen@smithporsborg.com

CONFIDENTIALITY NOTE

This email, including attachments is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510 et seq., is confidential, and/or is legally privileged. It is intended for use only by the person to whom it is directed. If you are not the intended recipient and/or received it in error, you should (1) reply by email to the sender; (2) delete this email, including deletion of all associated text files from all storage locations including individual and network storage devices; and (3) refrain from disseminating or copying this communication. Thank you.

EXHIBIT 4

Supplemental Objection

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

Case No: 3:22-cv-00022

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

Plaintiffs,)

v.)

Alvin Jaeger, in his official capacity as)
Secretary of State of North Dakota.)

Defendant)

PRIVILEGE LOG

As stated in the Objection to Subpoenas to Produce Documents, the subpoenaed individuals asserted the subpoenaed documents are subject to privilege. Further, the subpoenaed individuals assert that responding to the subpoena is unduly burdensome. Specifically, the subpoenaed individuals assert the requested documents are protected by legislative privilege, deliberative process privilege, and attorney-client privilege.

As a threshold matter, the doctrine of legislative privilege “extends to discovery requests, even when the lawmaker is not named a party to the suit: complying with such requests detracts from the performance of official duties.” In re Hubbard, 803 F.3d 1298, 1310 (11th Cir. 2015). Further, this privilege “protects against inquiry into acts that occur in the regular course of the legislative process and *into the motivation for those acts*.” Id (emphasis in original).

Further, it is well-established that “courts have consistently held that ‘non-party status’ is a significant factor to be considered in determining whether the burden imposed by a subpoena is undue. Non-parties are afforded this special consideration because they have a different set of

expectations than parties.” Rossman v. EN Engineering, LLC, 467 F.Supp.3d 586, 590 (N.D. Ill. 2020).

Additionally, when the requested information clearly falls within the scope of a privilege and the non-privileged information requested by a subpoena is readily available to the public or of limited relevance to the Plaintiffs’ burden, it has been held a privilege log under Fed. R. Civ. P. 45 is not required. Jordan v. Commissioner, Mississippi Dept. of Corrections, 947 F.3d 1322, 1328 n. 3 (11th Cir. 2020). As stated in the Objection, all of these factors apply here and the subpoenaed individuals do not concede a privilege log is necessary under the circumstances.

Nonetheless, in an effort to comply with Rule 45 to the extent practical, the Legislative Council’s IT Department performed a key word search of each subpoenaed individual’s official email and Microsoft Teams messages for the time period of January 1, 2020, through November 16, 2022. We believe the search terms used have captured all relevant communications. Further review of each key word hit would require extensive resources and clearly be unduly burdensome to a non-party. The methodology and results of this key word search are explained below:

I. Privilege Log - Process Used and Search Results

A. A search was conducted on the emails within each subpoenaed individual's Outlook for the key words listed on the charts below. The search was applied to emails dated January 1, 2020 through November 16, 2022. The search for Ms. Ness’ emails is ongoing and the results using the same methodology explained below will be provided once complete.

1. Please note:

- i. In regard to communications sent through Teams, a search also was conducted on the Teams messages to which the Legislative Council's IT Department had access; specifically, the Teams messages for Representative William Devlin, Representative Mike Nathe, Senator Nicole Poolman, and Senator Rich Wardner. These results have been included on a separate table for each of the listed individuals.
 - ii. In regard to communications sent through text message, the IT Department does not have access to the subpoenaed individual's personal phones. A request was sent to the subpoenaed individuals for text messages responsive to the subpoena, along with directions on the manner in which individuals could search their devices for text messages using the standard list of key words used when searching for communications in Teams and Outlook.
 - iii. Senators Holmberg and Poolman as well as Representatives Devlin and Nathe indicated no search results from their personal phones. Ms. Ness performed a search on her phone which revealed the results shown in the applicable table. The search results from the remaining subpoenaed individuals' personal phones will be relayed as they are received.
- B. The total number of search results, generated by the key word search, were recorded.

C. When a key word strike was found, the IT Department tallied and further divided it into categories including:

1. Communications between the subpoenaed individual and legislators,
2. Communications between the subpoenaed individual and the Legislative Council staff, and
3. Communications between the subpoenaed individual and individuals other than legislators or the Legislative Council staff.

Representative William Devlin				
OUTLOOK SEARCH RESULTS				
January 1, 2020 - November 16, 2022				
Searched Key Word	Total Number of Hits for the Key Word Searched	Communications Between the Subpoenaed Individual and Legislators	Communications Between the Subpoenaed Individual and Legislative Council Staff	Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals
1504	41	3	6	3
Redistricting	895	8	25	17
Map	257	9	19	10
Subdistrict	114	5	12	8
District	2,848	7	15	10
Race	204	4	15	9
Tribal	362	13	20	14
Native American	167	10	20	13
Indian	132	9	9	7
Reservation	211	12	25	10
Voting Rights Act or VRA	116	14	12	5
Demographic	39	8	2	-
Criteria	117	9	6	2
Training	518	11	20	7

Representative William Devlin				
TEAMS SEARCH RESULTS				
January 1, 2020 - November 16, 2022				
Searched Key Word	Total Number of Hits for the Key Word Searched	Communications Between the Subpoenaed Individual and Legislators	Communications Between the Subpoenaed Individual and Legislative Council Staff	Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals
1504	0	-	-	-
Redistricting	0	-	-	-
Map	0	-	-	-
Subdistrict	0	-	-	-
District	0	-	-	-
Race	0	-	-	-
Tribal	0	-	-	-
Native American	0	-	-	-
Indian	0	-	-	-
Reservation	0	-	-	-
Voting Rights Act or VRA	0	-	-	-
Demographic	0	-	-	-
Criteria	0	-	-	-
Training	0	-	-	-

Representative Ray Holmberg				
OUTLOOK SEARCH RESULTS				
January 1, 2020 - November 16, 2022				
Searched Key Word	Total Number of Hits for the Key Word Searched	Communications Between the Subpoenaed Individual and Legislators	Communications Between the Subpoenaed Individual and Legislative Council Staff	Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals
1504	74	2	-	2
Redistricting	920	32	31	27
Map	990	10	12	14
Subdistrict	53	16	7	9
District	1,862	23	12	24
Race	1,665	7	4	10
Tribal	629	21	10	16
Native American	193	9	5	11
Indian	362	8	6	9
Reservation	495	8	4	7
Voting Rights Act or VRA	95	12	7	11
Demographic	146	2	1	2
Criteria	374	10	2	4
Training	1,107	5	14	1

Representative Michael Nathe				
OUTLOOK SEARCH RESULTS				
January 1, 2020 - November 16, 2022				
Searched Key Word	Total Number of Hits for the Key Word Searched	Communications Between the Subpoenaed Individual and Legislators	Communications Between the Subpoenaed Individual and Legislative Council Staff	Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals
1504	63	1	1	-
Redistricting	49	8	-	2
Map	467	-	7	4
Subdistrict	14	4	1	5
District	2,606	8	2	3
Race	230	1	-	3
Tribal	427	2	-	3
Native American	120	-	-	1
Indian	229	2	-	1
Reservation	178	-	-	-
Voting Rights Act or VRA	3	1	-	-
Demographic	101	-	-	-
Criteria	220	-	-	1
Training	906	-	1	-

Representative Michael Nathe				
TEAMS SEARCH RESULTS				
January 1, 2020 - November 16, 2022				
Searched Key Word	Total Number of Hits for the Key Word Searched	Communications Between the Subpoenaed Individual and Legislators	Communications Between the Subpoenaed Individual and Legislative Council Staff	Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals
1504	0	-	-	-
Redistricting	0	-	-	-
Map	0	-	-	-
Subdistrict	0	-	-	-
District	0	-	-	-
Race	0	-	-	-
Tribal	0	-	-	-
Native American	0	-	-	-
Indian	0	-	-	-
Reservation	0	-	-	-
Voting Rights Act or VRA	0	-	-	-
Demographic	0	-	-	-
Criteria	0	-	-	-
Training	0	-	-	-

Senator Richard Wardner				
OUTLOOK SEARCH RESULTS				
January 1, 2020 - November 16, 2022				
Searched Key Word	Total Number of Hits for the Key Word Searched	Communications Between the Subpoenaed Individual and Legislators	Communications Between the Subpoenaed Individual and Legislative Council Staff	Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals
1504	41	1	-	1
Redistricting	181	10	7	8
Map	344	4	3	5
Subdistrict	28	6	6	4
District	1,107	11	8	8
Race	214	2	2	2
Tribal	425	2	2	3
Native American	90	3	2	1
Indian	243	1	1	-
Reservation	190	5	3	-
Voting Rights Act or VRA	17	2	1	1
Demographic	57	2	-	-
Criteria	244	3	-	-
Training	473	-	-	2

Senator Richard Wardner				
TEAMS SEARCH RESULTS				
January 1, 2020 - November 16, 2022				
Searched Key Word	Total Number of Hits for the Key Word Searched	Communications Between the Subpoenaed Individual and Legislators	Communications Between the Subpoenaed Individual and Legislative Council Staff	Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals
1504	0	-	-	-
Redistricting	0	-	-	-
Map	0	-	-	-
Subdistrict	0	-	-	-
District	0	-	-	-
Race	0	-	-	-
Tribal	0	-	-	-
Native American	0	-	-	-
Indian	0	-	-	-
Reservation	0	-	-	-
Voting Rights Act or VRA	0	-	-	-
Demographic	0	-	-	-
Criteria	0	-	-	-
Training	0	-	-	-

Senator Nicole Poolman				
OUTLOOK SEARCH RESULTS				
January 1, 2020 - November 16, 2022				
Searched Key Word	Total Number of Hits for the Key Word Searched	Communications Between the Subpoenaed Individual and Legislators	Communications Between the Subpoenaed Individual and Legislative Council Staff	Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals
1504	20	-	1	1
Redistricting	159	4	4	6
Map	447	3	2	7
Subdistrict	8	2	1	-
District	1,521	5	2	5
Race	499	1	-	1
Tribal	322	1	-	-
Native American	109	-	-	-
Indian	410	-	-	-
Reservation	107	-	1	1
Voting Rights Act or VRA	32	-	-	-
Demographic	111	-	-	-
Criteria	162	-	-	-
Training	1,069	-	1	-

Senator Nicole Poolman				
TEAMS SEARCH RESULTS				
January 1, 2020 - November 16, 2022				
Searched Key Word	Total Number of Hits for the Key Word Searched	Communications Between the Subpoenaed Individual and Legislators	Communications Between the Subpoenaed Individual and Legislative Council Staff	Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals
1504	0	-	-	-
Redistricting	0	-	-	-
Map	0	-	-	-
Subdistrict	0	-	-	-
District	0	-	-	-
Race	0	-	-	-
Tribal	0	-	-	-
Native American	0	-	-	-
Indian	0	-	-	-
Reservation	0	-	-	-
Voting Rights Act or VRA	0	-	-	-
Demographic	0	-	-	-
Criteria	0	-	-	-
Training	0	-	-	-

Representative Terry Jones				
OUTLOOK SEARCH RESULTS				
January 1, 2020 - November 16, 2022				
Searched Key Word	Total Number of Hits for the Key Word Searched	Communications Between the Subpoenaed Individual and Legislators	Communications Between the Subpoenaed Individual and Legislative Council Staff	Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals
1504	83	5	3	4
Redistricting	794	32	14	16
Map	2,529	21	6	6
Subdistrict	59	21	4	7
District	6,006	29	8	22
Race	2,351	4	1	6
Tribal	1,553	10	1	4
Native American	1,109	8	1	4
Indian	2,426	3	2	3
Reservation	609	11	2	4
Voting Rights Act or VRA	161	10	-	4
Demographic	372	2	-	1
Criteria	514	3	1	1
Training	3,671	1	3	2

Claire Ness				
TEST MESSAGE SEARCH RESULTS				
January 1, 2020 - November 16, 2022				
Searched Key Word	Total Number of Hits for the Key Word Searched	Communications Between the Subpoenaed Individual and Legislators	Communications Between the Subpoenaed Individual and Legislative Council Staff	Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals
1504	0	0	0	0
Redistricting	1	1	0	0
Map	5	0	5	0
Subdistrict	2	0	2	0
District	3	0	3	0
Race	1	0	1	0
Tribal	1	0	1	0
Native American	0	0	0	0
Indian	0	0	0	0
Reservation	0	0	0	0
Voting Rights Act or VRA	0	0	0	0
Demographic	0	0	0	0
Criteria	0	0	0	0
Training	0	0	0	1

Additionally, any draft redistricting maps that were not part of the public record have been withheld pursuant to legislative, deliberative process, and/or attorney-client privilege.

Dated this 1st day of December, 2022.

SMITH PORSBORG SCHWEIGERT
ARMSTRONG MOLDENHAUER & SMITH

By /s/ Scott K. Porsborg

Scott K. Porsborg (ND Bar ID #04904)

sporsborg@smithporsborg.com

Brian D. Schmidt (ND Bar ID #07498)

bschmidt@smithporsborg.com

Austin T. Lafferty (ND Bar ID #07833)

alafferty@smithporsborg.com

122 East Broadway Avenue

P.O. Box 460

Bismarck, ND 58502-0460

(701) 258-0630

Attorneys for Ray Holmberg, Nicole
Poolman, Rich Wardner, Bill Devlin,
Mike Nathe, and Terry B. Jones

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December, 2022, a true and correct copy of the foregoing **PRIVILEGE LOG** was served upon the following:

ATTORNEYS FOR PLAINTIFFS

Michael S. Carter
Matthew Campbell
Attorneys At Law
1506 Broadway
Boulder, CO 80301

carter@narf.org
mcampbell@narf.org

ATTORNEYS FOR PLAINTIFFS

Mark P. Garber
Molley E. Danahy
Attorneys At Law
1101 14th St. NW, Ste. 400
Washington, DC 20005

mgaber@campaignlegal.org
mdanahy@campaignlegal.org

ATTORNEY FOR PLAINTIFFS

Timothy Q Purdon
Attorney at Law
1207 West Divide Avenue, Suite 200
Bismarck, ND 58501

tpurdon@robinskaplan.com

ATTORNEY FOR PLAINTIFFS

Samantha B. Kelty
Attorney at Law
1514 P St. NW, Suite D
Washington, D.C. 20005

kelty@narf.org

ATTORNEY FOR PLAINTIFF

Bryan Sells
Attorney at Law
P.O. Box 5493
Atlanta, GA 31107-0493

bryan@bryansellslaw.com

ATTORNEYS FOR DEFENDANT ALVIN JAEGER

Matthew A Sagsveen
Assistant Attorney General
500 North 9th Street
Bismarck, ND 58501-4509

masagsve@nd.gov

David R. Phillips
Special Assistant Attorney General
300 West Century Avenue
P.O. Box 4247
Bismarck, ND 58502-4247

dphillips@bgwattorneys.com

By /s/ Scott K. Porsborg

SCOTT K. PORSBORG

EXHIBIT 5

May 5, 2022

Pl Hrg. Tr. Excerpt

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

- - - - -
Charles Walen and Paul)
Henderson,)
)
Plaintiffs,)
)
vs.)
)
Doug Burgum and Alvin)
Jaeger,)
)
Defendants,)
)
and)
)
Mandan, Hidatsa & Arikara)
Nation, Lisa DeVille,)
and Cesareo Alvarez, Jr.,)
)
Intervenor Defendants.)
- - - - -

FILE NO. 1:22-cv-31

**PARTIAL
T R A N S C R I P T
O F
P R O C E E D I N G S**

(Testiony of Terry B. Jones)

MOTION FOR PRELIMINARY INJUNCTION

**May 5, 2022
Pages 1-37**

HELD AT: QUENTIN BURDICK UNITED STATES COURTHOUSE
655 FIRST AVENUE NORTH
FARGO, NORTH DAKOTA 58102

BEFORE: THE HONORABLE RALPH R. ERICKSON, PETER D. WELTE
AND DANIEL L. HOVLAND

COURT REPORTER: KELLY A. KROKE

A P P E A R A N C E S

MR. PAUL R. SANDERSON **COUNSEL FOR PLAINTIFFS;**
MR. RYAN J. JOYCE

Attorneys at Law
1100 College Drive, Ste. 5
Bismarck, ND 58501

AND

MR. ROBERT W. HARMS

Attorney at Law
815 North Mandan Street
Bismarck, ND 58501

MR. DAVID R. PHILLIPS **COUNSEL FOR DEFENDANTS;**

Attorney at Law
300 West Century Avenue
Bismarck, ND 58502

AND

MR. MATTHEW A. SAGSVEEN

Attorney at Law
500 North 9th Street
Bismarck, ND 58501

MS. SAMANTHA KELTY **COUNSEL FOR INTERVENOR DEFENDANTS;**

Attorney at Law
1514 P Street NW, Ste. D
Washington, DC 20005

AND

MR. MICHAEL S. CARTER

Attorney at Law
1506 Broadway
Boulder, CO 80302

AND

MR. MARK GABER (Via Video)

Attorney at Law
1101 14th Street NW, Ste. 400
Washington, DC 20005

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

W I T N E S S E S

<u>PLAINTIFFS' :</u>	<u>PAGE NO.</u>
<u>TERRY B. JONES</u>	
Direct Examination by Mr. Sanderson	7
Cross-Examination by Ms. Kelty	16
Redirect Examination by Mr. Sanderson	30
Cross-Examination by Mr. Phillips	35

E X H I B I T S

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>OFR'D</u>	<u>REC'D</u>
	(See Clerk's Minutes - ECF Doc.#36)		

P R O C E E D I N G S

(May 5, 2022: The following proceedings commenced at 9:00 a.m.):

JUDGE ERICKSON: We'll go on the record in a case entitled Charles Walen, et al. Versus Doug Burgum, et al. It's File No. 1:22-cv-31. The record should reflect that -- well, all counsel are here. And why don't we go ahead and do this: Why don't we have counsel for the plaintiffs go ahead and identify themselves for the record.

MR. SANDERSON: Good morning, Your Honor. My name is Paul Sanderson. I represent the plaintiffs, Charles Walen and Paul Henderson. At counsel table with me is Attorney Ryan Joyce and Attorney Robert Harms.

JUDGE ERICKSON: All right. And for the defendants Burgum and Jaeger, Mr. Wrigley, do you wish to speak first?

MR. WRIGLEY: Speak first?

JUDGE ERICKSON: Well, no, I mean, I just want to -- you are the Attorney General. Excuse me, I'm sorry. You are the Attorney General. I thought I'd ask you first.

MR. WRIGLEY: I keep forgetting to -- nice to see you this morning.

JUDGE ERICKSON: All right. And do you want

1 to identify other counsel appearing on behalf of the
2 State employees, State defendants?

3 MR. PHILLIPS: David Phillips, Your Honor,
4 Special Assistant Attorney General. The Solicitor
5 General Matt Sagsveen is also present and the Deputy
6 Secretary of State Jim Silrum is present today.

7 JUDGE ERICKSON: All right. And then we
8 have -- who's appearing by video? I'm sorry.

9 MR. GABER: Mark Gaber for the intervenors,
10 Your Honor.

11 JUDGE ERICKSON: All right. Okay. And who
12 else -- is anyone else appearing on behalf of the
13 intervenors? Oh, I'm sorry, there you are. I kept
14 looking around saying I can't see where everybody is.

15 MR. CARTER: Good morning, Your Honor.
16 Michael Carter on behalf of the intervenors along with
17 Samantha Kelty and Emily deLisle assisting.

18 THE COURT: Thank you. All right. I am a
19 United States Circuit judge and so obviously this whole
20 presiding over a real proceeding is a little complicated
21 for me. But now that we've got the hard part done and
22 that is have all of the attorneys identified for the
23 record, I think I'll lay out just kind of in general
24 order the way that I see the proceedings.

25 I believe that the parties do have some

1 additional evidence or cross-examinations that they wish
2 to present and so we'll take up all evidence from any
3 party who wishes to present evidence at this hearing
4 first. Following that we'll likely take a short recess
5 and then come back and take argument on the legal
6 matters. I presume that we'll not -- that we will not
7 be in a position to rule from the bench so we'll
8 probably take it under advisement and look to get
9 something out in writing shortly thereafter.

10 The issue before the Court obviously is
11 we're here on the motion for a preliminary injunction
12 and the factors that we need to consider both the
13 substantive law relating to the Voting Rights Act and to
14 the issuance of preliminary injunctions is well-known
15 and so I won't summarize the law for you because I'm
16 pretty confident that you've got that piece of it down
17 so far.

18 All right. I say "so far" because we all
19 know that Courts have a tendency to, you know, get to a
20 place that is somewhat unexpected and so we'll see where
21 we go from there. All right. So at this point it's the
22 movants' case to present any additional evidence that
23 they wish.

24 A couple of general rules. I would like
25 whoever is going to examine the witness to examine from

1 the podium or the lectern so that they're closer to the
2 witness and so that the line of sight for the court
3 reporter is straight and because we have people sitting
4 over here on the left it just will be a problematic
5 otherwise, okay?

6 And so I don't know who's going to speak
7 first for the movants but they may call their first
8 witness.

9 MR. SANDERSON: Thank you, Your Honor. The
10 movants would call Representative Terry Jones.

11 JUDGE ERICKSON: Representative Jones, if
12 you would please come forward, stand before the clerk,
13 raise your right hand and take the oath.

14 (Witness sworn.)

15 THE COURT: Representative Jones, the
16 microphone in front of you is directional so it would be
17 helpful if you talk directly into it. It'll pick you up
18 a little bit better.

19 Thank you. You may proceed.

20 MR. SANDERSON: Thank you, Judge.

21 **TERRY B. JONES,**

22 HAVING BEEN FIRST DULY SWORN TO TELL THE TRUTH, THE
23 WHOLE TRUTH, AND NOTHING BUT THE TRUTH, RELATIVE TO
24 SAID CAUSE, TESTIFIED AS FOLLOWS:

24 **DIRECT EXAMINATION**

25 **BY MR. SANDERSON:**

1 Q. Good morning, Representative Jones. Could you
2 please state your full name and address for the record.

3 A. Terry Burton Jones, 413 Eagle Drive in New Town,
4 North Dakota, 58763.

5 Q. And, Representative Jones, are you currently one
6 of the elected North Dakota House of Representatives
7 from District 4?

8 A. Yes.

9 Q. What year were you first elected to the
10 Legislative Assembly?

11 A. 2016.

12 Q. And could you just briefly explain the areas --
13 the geographical areas that District 4 covers.

14 A. It's a huge district. It goes all the way from
15 Kenmare up against the Canadian border down to Halliday
16 and Dunn Center. It reached clear over just underneath
17 Minot. They've changed it here just recently and
18 shrunked it a little bit but it's a huge district,
19 covers a lot of country.

20 Q. And does District 4 also include the Fort
21 Berthold Indian Reservation?

22 A. It does.

23 Q. When was your most recent election in District 4?

24 A. We just were reelected in 2020.

25 Q. How long a term were you elected for in 2020?

1 A. I was elected for a four-year term.

2 Q. And currently are you up for election in 2022?

3 A. Yes. Because of the subdistricts, we had to run
4 again this year.

5 Q. Now, Representative Jones, I want to ask you a
6 few questions. You're aware that the Redistricting
7 Committee of the legislature met in 2021?

8 A. Yes.

9 Q. Were you a member of the Redistricting Committee?

10 A. No, I was not.

11 Q. Did you attend Redistricting Committee meetings?

12 A. I did.

13 Q. How many Redistricting Committee meetings did you
14 attend?

15 A. I believe I attended either two or three towards
16 the end of the redistricting work.

17 Q. Why would you as a representative of District 4
18 attend the Redistricting Committee meetings in 2021?

19 A. There was information coming to me from members
20 on the Redistricting Committee that they were
21 considering subdistricts in Districts 4 and District 9.
22 At first I wasn't too concerned about it but towards the
23 end the members on the committee were telling me that it
24 was getting very serious. It looked like it was going
25 to move forward.

1 Q. Did you testify before the Redistricting
2 Committee?

3 A. I did.

4 Q. And what was the purpose of your testimony before
5 the Redistricting Committee?

6 A. I'm a representative from District 4 and I
7 represent members, the district members. And the
8 information I was getting as I was studying was that
9 what was happening was not appropriate, was
10 unconstitutional. So in order to both uphold my oath to
11 support the Constitution of North Dakota and my job to
12 represent and serve the District 4 people, I attended
13 those meetings to try to make sure that we didn't do
14 something that was wrong.

15 Q. In addition to attending meetings, did you
16 discuss with members of the Redistricting Committee your
17 concerns about the redistricting process and
18 subdistricts in Districts 4 and 9?

19 A. Yes, I did.

20 Q. Based on your attendance in the meeting and your
21 testimony at the Redistricting Committee hearings, do
22 you have an understanding of why the Redistricting
23 Committee recommended subdistricts in Districts 4 and 9?

24 A. I do.

25 Q. And based on your observations, why did the

1 Redistricting Committee recommend subdistricts in their
2 maps for Districts 4 and 9?

3 A. Redistricting is a complex thing and there's been
4 some history with this particular issue here in
5 District 4. Previous redistricting attempts ended up
6 causing a lawsuit to occur and that lawsuit when it was
7 tried it was discovered that the first prong of the
8 Gingles case criteria had not been met. And so the
9 judge in that case said because the first prong hasn't
10 been met he dismissed it.

11 Somehow the members of the committee that
12 had been involved with that got the interpretation that
13 if the numbers were ever met that it was inevitable that
14 you would have to have a subdistrict. Somehow in my
15 discussions with them and in the stuff that I was
16 watching them discuss they missed the point that you had
17 to meet all three of those things, and so I was
18 desperately trying to explain to them that there's more
19 than just one criteria that had to have been met. And
20 so that's what was my main focus for attending the
21 meetings and visiting them with.

22 Q. And, Representative Jones, you indicated that
23 there was a prior lawsuit the State of North Dakota was
24 involved in. Was it your understanding that prior
25 lawsuit involved the Voting Rights Act claim?

1 A. Yes, it was.

2 Q. And based on your observations and attendance at
3 the subdistricting committee -- or the districting --
4 Redistricting Committee meetings, was race a predominant
5 factor the committee determined in creating the
6 subdistricts in Districts 4 and 9?

7 MR. PHILLIPS: Objection. Calls for a legal
8 conclusion.

9 JUDGE ERICKSON: It does call for a legal
10 conclusion in part. However, I think his understanding
11 of what the process was as a member of the legislature
12 is relevant, and I'll hear it for what it's worth. I
13 mean, this is a bench proceeding. We understand that
14 ultimately we'll be the people drawing that legal
15 conclusion.

16 You may answer.

17 THE WITNESS: Thank you, Your Honor.

18 A. It was my understanding that their concern was
19 based almost entirely on race of the group inside the
20 boundaries.

21 Q. (Mr. Sanderson continuing) Now one of the things
22 you testified a moment ago to, Representative Jones, was
23 the Gingles factor and you're referring to U. S. Supreme
24 Court case Thornburg v. Gingles; is that correct?

25 A. That is correct.

1 Q. Okay. Based on your observations and attendance
2 at the Redistricting Committee meetings, did the
3 Redistricting Committee ever retain or consult an expert
4 regarding voting patterns in Districts 4 and 9 during
5 the redistricting process?

6 A. They did not.

7 Q. Based on your observations and attendance at the
8 redistricting hearings, did the Redistricting Committee
9 ever review any previous election results in Districts 4
10 or District 9?

11 A. To my knowledge they did not.

12 Q. Now again based on your observations and
13 attendance at the Redistricting Committee hearings, did
14 the Redistricting Committee do any studies analyzing
15 voting results in Districts 4 and 9?

16 A. They did not.

17 Q. And along those same lines based on your
18 observation and attendance at those meetings, was there
19 ever any discussion regarding precinct voting analysis
20 in District 4 or District 9?

21 A. There was no discussion that I'm aware of.

22 Q. Now you're aware that the Redistricting Committee
23 passed maps that included subdistricts for Districts 4
24 or 9 and sent that to the House floor, correct?

25 A. That is correct for recommendation -- or with a

1 recommendation.

2 Q. As a member of the North Dakota Legislative
3 Assembly and the House of Representatives, were you
4 present on the House floor on November 9, 2021 when the
5 Redistricting Committee's proposed maps containing
6 subdistricts in District 4 and District 9 were debated?

7 A. Yes, I was.

8 Q. During the floor debates was the topic of
9 subdistricts in Districts 4 and 9 addressed?

10 A. Yes, it was.

11 Q. When the topics of subdistricts in Districts 4
12 and 9 were addressed that day, did you speak on the
13 floor?

14 A. Yes, I did.

15 Q. At this point we'd like to show a video to
16 Representative Jones.

17 JUDGE ERICKSON: You may.

18 (Unidentified video played.)

19 JUDGE WELTE: Counsel, could you pause the
20 video?

21 Are you able to do anything about the
22 volume? I believe Lori has it maxed out here.

23 MR. SANDERSON: I don't know why our
24 computer's not going through the Court's system.

25 JUDGE WELTE: And I would not be a good

1 person to answer that either but thank you.

2 (Unidentified video played.)

3 Q. (Mr. Sanderson continuing) Representative Jones,
4 following your floor testimony on November 9, 2021, did
5 the House vote on the Redistricting Committee's proposed
6 redistricting maps which includes subdistricts in
7 Districts 4 and 9?

8 A. Yes, they did.

9 Q. And what was the result of the House floor vote?

10 A. We passed the redistricting bill with
11 subdistricts included.

12 Q. Now following the passage of that bill and it
13 being signed into law by Governor Burgum in this case,
14 what district are you currently located in?

15 A. District 4.

16 Q. And what subdistrict are you currently located
17 in?

18 A. I'm in district -- Subdistrict 4A.

19 Q. And does your Subdistrict 4A, is it -- does it
20 contain the entire boundary of the Fort Berthold
21 Reservation?

22 A. Yes, it does. The boundary is the boundary of
23 Subdistrict 4A.

24 Q. Okay. And when you say that, 4A is comprised
25 solely of the Fort Berthold Indian Reservation?

1 A. That is correct.

2 Q. Okay. Now, Representative Jones, are you opposed
3 to the idea of subdistricts in North Dakota?

4 A. Absolutely not.

5 Q. If you felt the Gingles factors had been
6 demonstrated by the Redistricting Committee and the
7 evidence required, would you support the creation of
8 subdistricts in Districts 4 and 9?

9 A. Yes, I would.

10 MR. SANDERSON: I have no further questions
11 of this witness.

12 JUDGE ERICKSON: Thank you. Cross by the
13 State defendants?

14 MR. PHILLIPS: No questions, Your Honor.

15 JUDGE ERICKSON: Thank you. Cross by the
16 intervenors?

17 MS. KELTY: Yes, Your Honor.

18 **CROSS-EXAMINATION**

19 **BY MS. KELTY:**

20 Q. Hi, how are you?

21 A. Fine, thank you.

22 Q. Representative Jones, I'm Samantha Kelty. I
23 represent the Defendant Intervenors MHA Nation, Lisa
24 DeVille and Cesareo Alvarez.

25 Representative, you did not sit on the

1 Redistricting Committee, did you?

2 A. I did not.

3 Q. And how would the new map of District 4 affect
4 you in your election?

5 A. It changes the representation for District 4
6 subdistricts divided into two groups, 4A and 4B, and the
7 concerning part for me is that it leaves those people
8 that are in District 4 with only one representative
9 where previously they had two representatives
10 representing them.

11 Q. Are you aware of the testimony submitted to the
12 committees describing past election results and the
13 presence of racial bloc voting?

14 A. Could you repeat the question?

15 Q. Sure. Are you aware of the testimony that was
16 submitted to the Redistricting Committee describing past
17 election results and the presence of racial bloc voting?

18 A. No, I'm not aware of it. I heard the discussion
19 in the committee meetings that I was in but I was not
20 aware of the testimony in its entirety.

21 Q. So you did hear some of the discussion, correct?

22 A. Yes.

23 Q. Are you aware of North Dakota's recent voter ID
24 law that discriminates against Native American voters?

25 A. Could you explain how the new law discriminates

1 against Native American voters?

2 Q. Are you aware of the law that I'm referring to?

3 A. I'm not aware of any law that we've passed that
4 discriminates against Native American voters so I would
5 like you to explain how it discriminates so I can
6 understand which law you're referring to.

7 Q. Sure, Representative Jones. I'm just going to
8 ask you the questions here, okay?

9 Are you aware of the voter ID law,
10 Representative?

11 A. Yes.

12 Q. And did you vote for that?

13 A. Yes.

14 Q. Let's talk about the MHA Nation. In the House
15 you served on the Tribal and State Relations Committee,
16 didn't you?

17 A. Yes.

18 Q. Since 2021?

19 A. Yes.

20 Q. And part of that committee studies -- an
21 assignment was to study tribal/state issues, correct?

22 A. Yes.

23 Q. And you're familiar with the MHA Nation?

24 A. Yes.

25 Q. The Three Affiliated Tribes?

1 A. Yes.

2 Q. And the MHA Nation has a unique political status,
3 doesn't it?

4 A. I don't know what you mean "unique."

5 Q. Is the MHA Nation a sovereign entity?

6 A. MHA Nation is a sovereign entity, yes.

7 Q. And you're familiar with the MHA people?

8 A. Yes.

9 Q. The MHA people have a distinct history, right?

10 A. Yes.

11 Q. And MHA people have unique economic interests as
12 well, don't they?

13 A. No.

14 Q. Well, some of their economic interests arise from
15 the Nation's location on the Bakken Oil Formation,
16 correct?

17 A. Correct.

18 Q. And MHA people have their own languages; is that
19 right?

20 A. Yes.

21 Q. And they have a distinctive culture, correct?

22 A. Yes.

23 Q. The MHA people are a distinct population, right?

24 A. Yes.

25 Q. And as a representative during the redistricting

1 process, you learned about redistricting?

2 A. I missed the question. What did you say?

3 Q. Did you learn about redistricting during the
4 redistricting process?

5 A. Yes, I did learn more about it.

6 Q. And one of those trainings was from the National
7 Conference of State Legislatures, correct?

8 A. I'm not even sure if I attended that. I'm not
9 sure which training you're referring to. There's a lot
10 of stuff going on. I assume it's during session and I
11 can't recall exactly any particular training from that
12 organization.

13 Q. I understand. I sometimes can't remember last
14 month.

15 So if we could, Your Honor, I'd like to pull
16 up a copy of the NCSL PowerPoint.

17 JUDGE ERICKSON: You may.

18 MS. KELTY: Thank you. And let the record
19 reflect I've previously provided a copy to the other
20 counsel and we're looking here, this is ECF doc 21-1 and
21 it's starting at page 50 of the ECF doc 21-1.

22 Q. (Ms. Kelty continuing) Representative, do you
23 recognize this?

24 A. It looks familiar, yes.

25 Q. Okay. What is this?

1 A. It's a presentation to the North Dakota
2 legislature on redistricting.

3 Q. By who?

4 A. NCSL.

5 Q. Were you shown this?

6 A. I believe so, yes.

7 Q. Okay. When?

8 A. Beginning of the session in the Brynhild Haugland
9 Room if I recall correctly.

10 Q. And it says there August 26, 2021; is that
11 correct?

12 A. Correct.

13 Q. Does that sound about when you were shown this?

14 A. No.

15 Q. So when were you shown it?

16 A. If I recall it was the beginning of the session,
17 which would have been closer in the December time.

18 Q. Okay, understood. And for what purpose were you
19 shown this?

20 A. To assist us as legislators in understanding the
21 redistricting process.

22 Q. Okay. Let's take a look at page 85 of the ECF,
23 85 of the PDF.

24 JUDGE ERICKSON: Before we do that I wonder
25 if we should not either stipulate that the exhibits that

1 have been filed and attached can be received and
2 considered by the Court or have an offer. And I think
3 we should have done the same thing with the video;
4 although the video I think we could have let in for
5 refreshing recollection. But it just seems to me that
6 if we're going to try and get this record so it's clean,
7 you know, if an appeal is taken we should know what
8 we're able to consider.

9 So let's start with the movants. First of
10 all, have you talked amongst yourselves about what you
11 would want in or not want in as evidence or should we
12 handle each exhibit just as being in an exhibit?

13 MS. KELTY: We did not, Your Honor. We
14 arrived a little late. If we had a few seconds that
15 would be great.

16 JUDGE ERICKSON: Why don't we take a couple
17 minutes, five minutes, and let's see if we can't hammer
18 out how we want to handle the exhibits, all right?
19 Because at this point what we've got in the record are a
20 bunch of things that haven't been marked and -- but we
21 do know where they are in the record so, I mean, it's
22 not a complete lost cause but I think we ought to arrive
23 at some consensus. We'll stand in recess for five
24 minutes.

25 (Recess taken; 9:25 a.m. to 9:40 a.m.)

1 JUDGE ERICKSON: We'll go back on the
2 record. All counsel of record are present. They've had
3 a chance to discuss the -- a potential stipulation on
4 the exhibits.

5 Have the parties reached an agreement?

6 MS. KELTY: We have, Your Honor, and we
7 appreciate that time to do so. We've stipulated to the
8 admission of all exhibits that have been submitted into
9 the record in addition to Intervenor's Exhibit 1 that
10 we've marked, which is an updated copy Dr. Loren
11 Collingwood's CV.

12 JUDGE ERICKSON: All right. And so --

13 MS. KELTY: And the video, excuse me.

14 JUDGE ERICKSON: We'll receive Intervenor's
15 Exhibit No. 1. I should have confirmed that the
16 stipulation has been accurately stated.

17 On the part of the movants?

18 MR. SANDERSON: Yes, Your Honor, other than
19 we talked about the video we showed. That's a public
20 record taken off the North Dakota legislature's website
21 and we do have a couple others we intend to show but our
22 understanding is that we have an agreement that those
23 will be admissible. That's our understanding.

24 JUDGE ERICKSON: All right. Thank you. And
25 does the State agree with the stipulation as noted?

1 MR. PHILLIPS: Yes, Your Honor.

2 JUDGE ERICKSON: All right. The Court will
3 receive all of the previously marked exhibits. I have
4 received Intervenor's 1. We will receive every video
5 that is shown during the course of this proceeding. The
6 other videos of the Redistricting Committee hearings are
7 a matter of public record. And I should note for the
8 record that I know that I've reviewed them and I suspect
9 my fellow judges on the panel have reviewed them as
10 well. And so that's where we're at on this.

11 And Representative Jones remains on the
12 stand and now we can go back to asking him some
13 questions.

14 MS. KELTY: Thank you, Judges, and thanks
15 for that clarification.

16 Q. (Ms. Kelty continuing) Before we took a break we
17 were taking a look at what is in the record as document
18 21-1 and I believe we were looking at page 50 of 109 of
19 that document. As reflected in the record the parties
20 have stipulated to the admission of the entirety of
21 document 21-1. Is it not displaying? Okay. For some
22 reason it's not connecting. Thank you, Lori.

23 And, Representative Jones, I have a hard copy
24 here. Would you like to take a look at that or -- in
25 addition to the video?

1 A. This will be fine, thank you.

2 Q. Great. We'll save some paper here. So does this
3 refresh your recollection as you stated that you did
4 receive a PowerPoint presentation from NCSL on
5 redistricting, Representative?

6 A. Yes.

7 Q. And so during this training you learned that
8 maintaining a community of interest is a traditional
9 redistricting principle, correct?

10 A. Correct.

11 Q. And let's take a look at page 85 of 109 of this
12 document. And here, Representative, this is the first
13 part of the presentation that speaks to the
14 criteria/principles. What does that say there in the
15 top left-hand corner of the screen?

16 A. "Criteria/Principles: Compactness."

17 Q. And let's scroll down to page 89 of 109 and what
18 is the topic -- what is the topic of this slide,
19 Representative?

20 A. It says, "Other critical (sic) NCSL tracks."

21 Q. "Other criteria NCSL tracks?"

22 A. "Other criteria," sorry.

23 Q. I know. I forgot my glasses so I'm having a hard
24 time seeing that. And what is the first bullet point
25 there?

1 A. "Preserving communities of interest."

2 Q. Okay, great. And we can take this down. Thank
3 you.

4 Representative, let's talk about the Fort
5 Berthold Reservation. You live here in North Dakota,
6 correct?

7 A. I live on the reservation in fact.

8 Q. Oh, okay, good to know. So how long have you
9 lived on the reservation?

10 A. I've been close to or onto it for 11 years.

11 Q. Wow, that's incredible. So you're familiar with
12 the reservation?

13 A. Yes.

14 Q. And that's the reservation on which the MHA
15 Nation is located, correct?

16 A. Yes, the Three Affiliated Tribes.

17 Q. And it's a community there, right?

18 A. Yes.

19 Q. An independent community?

20 A. Several communities actually.

21 Q. Right. Several distinct communities within the
22 reservation, correct?

23 A. Yes.

24 Q. And it's governed by its own government?

25 A. Several governments.

1 Q. And can you please explain your answer there?

2 A. Yes. There seems to be some confusion here about
3 the reservation. There's several towns in there that
4 are including my town which is New Town. There's
5 Parshall. There's several other towns included in the
6 reservation. The reservation boundary was moved up in
7 about 1972 six miles to include those towns. So you're
8 asking me to say that there's one form of government on
9 the reservation when in fact we have North Dakota
10 citizens, North Dakota property, taxpayers of North
11 Dakota, all of that represented within the boundaries of
12 that reservation as well as the tribal nation, the Three
13 Affiliated Tribes, and their government.

14 So you're asking a very complicated question
15 in a very simplistic way.

16 Q. I think you did reply to my question so, yeah, I
17 appreciate that. I was referring to the tribal
18 government so thanks for clarifying.

19 That tribal government has a Tribal Business
20 Council, correct?

21 A. Correct.

22 Q. And a chairman?

23 A. Correct.

24 Q. And MHA Nation is a federally recognized tribe?

25 A. Yes.

1 Q. And the Nation exercises sovereign authority,
2 right?

3 A. Yes.

4 Q. And you live on the reservation so you're
5 familiar with the reservation's boundaries?

6 A. I am.

7 Q. Its geographical boundaries?

8 A. Yes.

9 Q. And its boundaries are different from state
10 boundaries, right?

11 A. They're included in the state boundaries.

12 Q. But they are different. They are distinct from
13 the state boundaries; is that right?

14 A. Yes.

15 Q. And they are distinct from county boundaries,
16 right?

17 A. Correct.

18 Q. And they are also different from municipal
19 boundaries, right?

20 A. Correct.

21 Q. And, Representative, during redistricting the
22 Redistricting Committee created a policy to not split
23 reservations; is that right?

24 A. That has been a standing policy for many years.

25 Q. And during this year's redistricting at least the

1 committee chairman repeated this policy?

2 A. Yes.

3 Q. Numerous times?

4 A. Yes.

5 Q. And you're familiar with House Subdistrict 4A as
6 you testified in your direct, right?

7 A. Yes.

8 Q. And Subdistrict 4A follows the reservation's
9 boundaries, right?

10 A. Correct.

11 Q. In fact, it precisely follows the reservation's
12 boundaries, right?

13 A. Yes.

14 Q. The lines of HD 4A do not deviate from the lines
15 of the reservation, right?

16 A. Correct.

17 Q. And as a representative during the redistricting
18 process you also learned about other redistricting
19 principles, correct?

20 A. Yes.

21 Q. And so respecting political boundaries is a
22 redistricting principle, right?

23 A. Yes.

24 Q. A traditional redistricting principle.

25 A. Yes.

1 MS. KELTY: I have no further questions.

2 JUDGE ERICKSON: Thank you. Redirect from
3 the movants?

4 MR. SANDERSON: Yes. We're going to need to
5 show a video here for a second.

6 **REDIRECT EXAMINATION**

7 **BY MR. SANDERSON:**

8 Q. Representative Jones, you were asked about
9 document 21-1 and that was a presentation on
10 redistricting to the North Dakota Legislature by Ben
11 Williams from the National Council of State
12 Legislatures, correct?

13 A. Yes.

14 Q. And that was on August 26, 2021, correct?

15 A. The document is dated that and I just don't
16 recall meeting in August to go over that. I thought
17 maybe it was presented closer in the December time frame
18 but I could be -- I could be off on that.

19 Q. Representative Jones, I'm going to show you
20 briefly a video from the presentation Attorney Williams
21 presented to the Redistricting Committee on August 26,
22 2021, and then I want to ask you a few questions about
23 it.

24 (Unidentified video played.)

25 Q. (Mr. Sanderson continuing) Now, Representative

1 Jones, I just played to you a portion of Attorney
2 Williams' presentation to the Redistricting Committee
3 regarding the Gingles factors and you heard him discuss
4 the Gingles factors and the need for regression studies
5 based on precinct data. You heard that testimony?

6 A. I did.

7 Q. And again, Representative Jones, are you aware of
8 the Redistricting Committee ever performing any
9 regression studies based on precinct data to meet the
10 Gingles criteria?

11 A. No.

12 Q. Are you aware of any outside parties presenting
13 any regression study analysis to the Redistricting
14 Committee during their deliberations for creation of
15 subdistricts in Districts 4 and 9?

16 A. No.

17 MR. SANDERSON: Representative Jones, I have
18 no further questions. Thank you.

19 JUDGE ERICKSON: Thank you. From the State
20 defendants?

21 MR. PHILLIPS: Your Honor, I would like to
22 consult with my client.

23 JUDGE ERICKSON: You may.

24 MR. SANDERSON: Your Honor, before we move
25 on to the State may I ask another question of

1 Representative Jones? I know I rested and passed but
2 would ask the Court's permission to briefly address one
3 other topic that I overlooked.

4 JUDGE ERICKSON: Any objection from the
5 State defendants?

6 MR. PHILLIPS: No objection.

7 JUDGE ERICKSON: From the intervenors?

8 MS. KELTY: No objection.

9 JUDGE ERICKSON: You may.

10 Q. (Mr. Sanderson continuing) Representative Jones,
11 you also attended -- during the time you attended the
12 subdistricting committee meetings, were you also aware
13 that North Dakota Legislative counsel was present at
14 those meetings?

15 A. Yes.

16 Q. Okay. And during one of the meetings Legislative
17 Council Attorney Clair Ness spoke to the committee about
18 the Gingles factors. Were you present during that?

19 A. Yes.

20 Q. I'd like to play a brief video for you from a
21 Redistricting Committee hearing in this matter.

22 (Unidentified video played.)

23 MS. KELTY: Just asking for a bit of
24 foundation to verify who's speaking in this video.

25 JUDGE ERICKSON: Just a second. Okay. I

1 think the objection is it's not clear who was speaking.
2 I suspect I know but it's not my position to make that
3 finding so do you want to clarify who was actually
4 asking the question of Miss Ness?

5 Q. (Mr. Sanderson continuing) And, Representative
6 Jones, do you recognize the representative that asked
7 the question of Legislative Council Attorney Clair Ness?

8 A. Yes, I do.

9 Q. And who was that individual?

10 A. Representative Austen Schauer.

11 Q. And was Representative Schauer a member of the
12 Redistricting Committee in 2021?

13 A. Yes.

14 Q. And the video we're seeing, is that a legislative
15 Redistricting Committee meeting that occurred in 2021?

16 A. Correct.

17 Q. Okay. And so we'll replay the video from the
18 start for clarification but the video's going to show
19 Representative Schauer asking a question regarding the
20 Gingles factors to Legislative Council Attorney Clair
21 Ness.

22 (Unidentified video played.)

23 Q. (Mr. Sanderson continuing) And, Representative
24 Jones, my follow-up question there, are you aware of
25 Legislative Council ever performing any analytical data

1 on prior voting or precinct voting in Districts 4 and 9
2 and presenting that to the Redistricting Committee at
3 any time?

4 A. No. I'm not aware of any of that being
5 presented. And I asked multiple times if that had been
6 done and I was assured it had not been done.

7 Q. And when you say you'd asked, who did you request
8 whether voting data had been compiled for the
9 Redistricting Committee?

10 A. Members of the Redistricting Committee.

11 Q. Okay. And when you said had that been done, were
12 you referring to whether Legislative Council had
13 performed those analyses for the Redistricting
14 Committee?

15 A. Correct.

16 Q. And your understanding is Legislative Council
17 never performed any past voting data or precinct data
18 historical elections in Districts 4 and 9 for the
19 Redistricting Committee?

20 A. Correct.

21 MR. SANDERSON: I have no further questions.
22 Thank you.

23 JUDGE ERICKSON: Thank you. From the State
24 defendants?

25 MR. PHILLIPS: Your Honor, if we could?

1 JUDGE ERICKSON: You may.

2 MR. PHILLIPS: Thank you. Your Honor, I do
3 have a few questions.

4 JUDGE ERICKSON: You may.

5 MR. PHILLIPS: Just a few questions.

6 **RECROSS-EXAMINATION**

7 **BY MR. PHILLIPS:**

8 Q. Did you attend all three public meetings of the
9 Interim Tribal and State Relations Committee?

10 A. I assume you're asking about this year 2021-2022?
11 Yes, I have.

12 Q. You attended all three?

13 A. Yes.

14 Q. Did you attend all six public meetings of the
15 Interim Redistricting Committee?

16 A. No.

17 Q. Did you attend both meetings of the Joint
18 Redistricting Committee?

19 A. I believe I did towards the end, the two of them
20 that I did attend.

21 Q. Do you know which ones?

22 A. I do not other than it was the last two at the
23 end of the process.

24 Q. There was some discussion in your testimony
25 earlier and a video where Clair Ness was speaking. Do

1 you remember that?

2 A. Yes.

3 Q. Have you ever talked to Clair Ness about analyses
4 that she may have run?

5 A. Yes.

6 Q. You have spoken with her?

7 A. Yes.

8 Q. When did you speak with her?

9 A. I can't say exactly the time but it was during
10 this time when we were working on this stuff to find out
11 what had been done.

12 Q. You don't remember the time that you spoke with
13 her?

14 A. I believe I already said no, I do not know
15 specifically the time.

16 Q. You'd indicated earlier that someone told you
17 that Legislative Council did not perform a data
18 analysis; is that correct?

19 A. Yes.

20 Q. Who told you that?

21 A. I was talking to Austen Schauer and I was talking
22 to the chairman of the committee.

23 Q. Did they tell you whether they had spoken with
24 Clair Ness or anyone else with Legislative Council?

25 A. I don't recall.

1 MR. PHILLIPS: Thank you. No further
2 questions.

3 JUDGE ERICKSON: From the intervenors?

4 MS. KELTY: Could I have one moment, Your
5 Honor?

6 JUDGE ERICKSON: You may.

7 MS. KELTY: Thank you. No further
8 questions, thank you.

9 JUDGE ERICKSON: Thank you. You may step
10 down, Representative Jones.

11 MR. JONES: Thank you.

12 * * *

13 (Further proceedings reported but not
14 transcribed herein.)

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, Kelly A. Kroke, a duly appointed
Registered Professional Reporter;

DO HEREBY CERTIFY that I reported in
shorthand the foregoing proceedings had and made a
record at the time and place indicated.

I DO HEREBY FURTHER CERTIFY that the
foregoing and attached (37) typewritten pages contain an
accurate partial transcript of my shorthand notes then
and there taken.

Dated this 29th day of November, 2022.

/s/ Kelly A. Kroke
KELLY A. KROKE - RPR, RMR
United States District Court Reporter
District of North Dakota
Eastern Division

EXHIBIT 6

Henderson Depo. Tr.



Planet Depos®
We Make It *Happen™*

Transcript of Paul Henderson

Date: December 7, 2022

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

Planet Depos

Phone: 888-433-3767

Fax: 888-503-3767

Email: transcripts@planetdepos.com

www.planetdepos.com

December 7, 2022

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

December 7, 2022

<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>

December 7, 2022

<p>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>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>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>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>

December 7, 2022

<p>13</p> <p>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 </p>	<p>15</p> <p>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. </p>
<p>14</p> <p>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? </p>	<p>16</p> <p>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 </p>

December 7, 2022

<p>17</p> <p>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</p>	<p>19</p> <p>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.</p>
<p>18</p> <p>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?</p>	<p>20</p> <p>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.</p>

December 7, 2022

<p>21</p> <p>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 </p>	<p>23</p> <p>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? </p>
<p>22</p> <p>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 </p>	<p>24</p> <p>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 </p>

December 7, 2022

<p>25</p> <p>1 for governor before. Right?</p> <p>2 A He did.</p> <p>3 Q What was your impression in Cavalier</p> <p>4 County of folks' thoughts on him?</p> <p>5 A I don't really know that. I mean, I --</p> <p>6 it's not something I had conversations with people</p> <p>7 about more then.</p> <p>8 Q I gather from the vote totals, they liked</p> <p>9 your wife better?</p> <p>10 A Yeah. Yeah. Well, we worked hard, too,</p> <p>11 so there's that.</p> <p>12 Q So how did you become a plaintiff in this</p> <p>13 case?</p> <p>14 A Well, I became aware that the split was</p> <p>15 going to happen. And I think I had a conversation</p> <p>16 with Terry Jones on the phone one day, and we</p> <p>17 talked about it. And, you know, this was</p> <p>18 something that was brand-new, and that raised red</p> <p>19 flags for me right away. And I just latched onto</p> <p>20 the constitutional argument that's -- that I will</p> <p>21 stick with, that in District 9, during our</p> <p>22 election I got to vote for one representative, and</p> <p>23 the rest of the 47 -- or 45 districts in the state</p> <p>24 got to vote for two representatives. So I felt</p> <p>25 like that was probably not equal application of</p>	<p>27</p> <p>1 A Oh, I would say November, December of</p> <p>2 last year, somewhere in that area.</p> <p>3 Q And did he ask you if you would be</p> <p>4 willing to be a plaintiff?</p> <p>5 A No.</p> <p>6 Q What did he say?</p> <p>7 A We just generally talked about the split</p> <p>8 and how both him and I picked up on the fact that</p> <p>9 it was probably unconstitutional. And that was</p> <p>10 pretty general. Pretty general conversation.</p> <p>11 Q Do you know how he got your name or why</p> <p>12 he reached out to you?</p> <p>13 A I don't.</p> <p>14 Q He didn't tell you who had said that he</p> <p>15 should call you?</p> <p>16 A He did not. But you've got to realize</p> <p>17 that it's a small state, and I've been in the --</p> <p>18 politics for 25 years. So it's not like I'm</p> <p>19 unknown.</p> <p>20 Q And you were the -- at the time you were</p> <p>21 the Republican chair for what was District 10,</p> <p>22 which covered this part of this territory. Right?</p> <p>23 A Correct.</p> <p>24 Q And just I think we -- I think this was</p> <p>25 implied, but you live in the Subdistrict 9B.</p>
<p>26</p> <p>1 constitutional law.</p> <p>2 Q So I just want to -- to clarify for the</p> <p>3 record. When you say "the split," you mean</p> <p>4 District 9 being split into two subdistricts?</p> <p>5 A Correct.</p> <p>6 Q And you said you had a conversation with</p> <p>7 Terry Jones. Mr. Jones was an incumbent state</p> <p>8 representative from District 4.</p> <p>9 Is that correct?</p> <p>10 A That's correct.</p> <p>11 Q And did he reach out to you?</p> <p>12 A He did.</p> <p>13 Q How do you know Representative Jones?</p> <p>14 A I don't really know him.</p> <p>15 I mean, I know of him because he was in</p> <p>16 the House. But I didn't -- I don't have a</p> <p>17 personal relationship with Terry.</p> <p>18 Q What was the -- did he call you, did he</p> <p>19 e-mail you? How did he reach out?</p> <p>20 A I believe he called me.</p> <p>21 Q And what did you talk about?</p> <p>22 A Just the -- just the split of the</p> <p>23 district and how that -- how that was going to</p> <p>24 affect us going forward.</p> <p>25 Q When was that conversation?</p>	<p>28</p> <p>1 Is that right?</p> <p>2 A That's correct.</p> <p>3 Q And I think you explained it a little</p> <p>4 bit, but make sure I'm right.</p> <p>5 Your concern is that you're unable to</p> <p>6 vote for two state representatives at large; but,</p> <p>7 rather, you vote for one that's dedicated to your</p> <p>8 subdistrict.</p> <p>9 Is that your concern?</p> <p>10 A That's correct.</p> <p>11 Q And in terms of, you know, you mentioned</p> <p>12 that you thought it was unconstitutional. I</p> <p>13 gather that your complaint is that it's unequal</p> <p>14 for you to get one when other voters in the state</p> <p>15 get two representatives that they vote for.</p> <p>16 Is that correct?</p> <p>17 A Yeah. I'm not a lawyer, but I know</p> <p>18 enough to know that that's my experience.</p> <p>19 Q And when you say you thought it was</p> <p>20 unconstitutional, is that the unequal treatment</p> <p>21 that you were concerned about?</p> <p>22 A Correct.</p> <p>23 Q Do you have any other objections or</p> <p>24 complaints about the redistricting plan?</p> <p>25 A I guess I don't. I just -- that's what</p>

December 7, 2022

<p>29</p> <p>1 I'm basing my participation in, is that it's</p> <p>2 unconstitutional, in my view.</p> <p>3 Q And would you like to see the map</p> <p>4 changed?</p> <p>5 A I would like to have the opportunity to</p> <p>6 vote for two representatives, yeah.</p> <p>7 Q If that change made it harder for</p> <p>8 Republicans to win the district, would you like to</p> <p>9 see that?</p> <p>10 A It wouldn't matter.</p> <p>11 Q And aside from the fact that you cast</p> <p>12 your ballot for just one rather than two</p> <p>13 representatives, is there any other way in which</p> <p>14 you were affected by the way the map lines are</p> <p>15 drawn?</p> <p>16 A No. I guess that would be the height of</p> <p>17 my complaint.</p> <p>18 Q Did you cast a ballot in the 2022</p> <p>19 election? I assume your wife would have made you.</p> <p>20 A Yes, that is a correct statement.</p> <p>21 Q Do you regularly vote?</p> <p>22 A I do.</p> <p>23 Q Is there an election you've missed?</p> <p>24 A Not since I was 18. That's a long time</p> <p>25 ago.</p>	<p>31</p> <p>1 A Yeah.</p> <p>2 Q During the course of the campaign with</p> <p>3 your wife, did you guys text message each other?</p> <p>4 A I don't think so. We just talked.</p> <p>5 Q What kind of phone do you have?</p> <p>6 A Well, I had a Google phone, but I lost</p> <p>7 it. And I have an Apple phone now.</p> <p>8 Q Is that an iPhone?</p> <p>9 A Yeah. Don't ask me what flavor it is,</p> <p>10 though, because I couldn't tell you.</p> <p>11 Q Well, they're very expensive. I just had</p> <p>12 to get a new one. Not great.</p> <p>13 In your role as the Republican party</p> <p>14 chair for when it was for District 10, how did</p> <p>15 people, how did your sort of constituents or</p> <p>16 colleagues or party folks, how did they reach out</p> <p>17 to you? How do you all communicate?</p> <p>18 A Normally it was on -- by phone.</p> <p>19 Q Do you sometimes share text messages or</p> <p>20 back and forth over written communication with</p> <p>21 those folks?</p> <p>22 A No.</p> <p>23 Q Never?</p> <p>24 A I don't believe so.</p> <p>25 Q Who is paying for your attorneys in this</p>
<p>30</p> <p>1 Q Do you recall that you were -- the</p> <p>2 parties in the case were sent some document</p> <p>3 requests?</p> <p>4 A I don't understand that question. Go</p> <p>5 ahead.</p> <p>6 Q Sorry, that's the way we talk to each</p> <p>7 other.</p> <p>8 Did you look at any sort of document that</p> <p>9 had been sent by me or my colleagues or for the</p> <p>10 state for requests for production of the documents</p> <p>11 that you might have?</p> <p>12 A Yes. Yes, I perused those. Yes.</p> <p>13 Q What did you do, what was your process</p> <p>14 for determining whether you had material that</p> <p>15 would respond to those requests?</p> <p>16 A Just my memory.</p> <p>17 Q Did you look through any e-mail or look</p> <p>18 through your phone at all to see whether you had</p> <p>19 text messages or other materials that might</p> <p>20 respond?</p> <p>21 A I didn't. I just -- I don't text much</p> <p>22 and I don't e-mail much, so I didn't do any of</p> <p>23 those things.</p> <p>24 Q So you just thought about it, and that</p> <p>25 was basically the extent of it?</p>	<p>32</p> <p>1 matter?</p> <p>2 A That would be me and a few others.</p> <p>3 Q Is that like an hourly rate, or is that</p> <p>4 sort of a lump sum, capped amount? What is the</p> <p>5 arrangement there?</p> <p>6 A I believe it's an hourly rate.</p> <p>7 Q And who are -- you said you and some</p> <p>8 others. Who are the other people?</p> <p>9 A I don't actually have that in front of</p> <p>10 me. I mean, I know that Chuck is -- Chuck Walen</p> <p>11 has signed on to this complaint. I haven't really</p> <p>12 asked him how much money that he's put into the</p> <p>13 kitty.</p> <p>14 Q Any other people that you can identify?</p> <p>15 A I'm sorry to say I don't -- I don't know</p> <p>16 that.</p> <p>17 Q Do you know whether there are other</p> <p>18 people and you just don't know who, you can't</p> <p>19 think of who they are? Is that the case?</p> <p>20 A Yeah. I think there's -- there's some</p> <p>21 other donors, but I don't have their names in</p> <p>22 front of me.</p> <p>23 Q And what do you know about them? Are</p> <p>24 they individuals or are they any sort of entities</p> <p>25 or organizations?</p>

December 7, 2022

<p>33</p> <p>1 A I think they're all people.</p> <p>2 Q Is the Republican party contributing any</p> <p>3 funds to pay for the case?</p> <p>4 A No. No, they're not.</p> <p>5 Q Have you discussed this lawsuit with any</p> <p>6 legislators?</p> <p>7 A Besides Terry, I don't believe I have.</p> <p>8 Q I suppose -- when is your wife sworn in?</p> <p>9 Is that January?</p> <p>10 A They actually got sworn in yesterday.</p> <p>11 Q Oh.</p> <p>12 A And, so, but this is all preliminary</p> <p>13 stuff. The actual session starts in January.</p> <p>14 MR. GABER: I am going to have us take a</p> <p>15 short break, if you don't mind. I don't think I</p> <p>16 have a ton more questions for you, but I want to</p> <p>17 think a little bit and talk to some folks. So</p> <p>18 maybe just a ten-minute break. Ten- or 15-minute</p> <p>19 break sound good?</p> <p>20 MR. SANDERSON: Yeah, that's fine.</p> <p>21 MR. GABER: Thank you.</p> <p>22 (A recess was taken.)</p> <p>23 MR. GABER: I do not have any further</p> <p>24 questions for you.</p> <p>25 I am going to pass the witness to</p>	<p>35</p> <p>1 A 1980.</p> <p>2 Q After high school did you attend any</p> <p>3 college?</p> <p>4 A Yeah. I took two years of-- at NDSU,</p> <p>5 and then I did one semester at NDSCS in Wahpeton.</p> <p>6 Q What did you study at NDSU?</p> <p>7 A Agronomy.</p> <p>8 Q And did that result in a degree?</p> <p>9 A It did not.</p> <p>10 Q What about in Wahpeton? You took one</p> <p>11 semester. Did you have any degree at the</p> <p>12 conclusion of that?</p> <p>13 A I did not.</p> <p>14 Q What did you study in Wahpeton?</p> <p>15 A Well, my wife was going there for dental</p> <p>16 hygiene, so I studied her quite a bit. Actually,</p> <p>17 it was an agronomy, it was an agronomy semester as</p> <p>18 well.</p> <p>19 Q Have you had any other education since</p> <p>20 high school in terms of technical training or any</p> <p>21 other formal education?</p> <p>22 A I just, I went through the EMT basic</p> <p>23 course. You know, that's probably 20 years ago.</p> <p>24 I was an EMT for seven years.</p> <p>25 Q Where did you do the EMT course?</p>
<p>34</p> <p>1 Mr. Phillips.</p> <p>2 MR. PHILLIPS: Thank you.</p> <p>3 EXAMINATION BY COUNSEL FOR DEFENDANTS</p> <p>4 BY MR. PHILLIPS:</p> <p>5 Q Still good morning, Mr. Henderson. I'm</p> <p>6 doing the questioning second today, so I will do</p> <p>7 my best not to repeat any of the questions you've</p> <p>8 already been asked. But if I do ask something</p> <p>9 you've already answered, please just bear with me.</p> <p>10 I am David Phillips. I'm not sure if we</p> <p>11 have met before specifically, but I represent the</p> <p>12 Governor in this case and the Secretary of State.</p> <p>13 And I will be doing the followup questions today.</p> <p>14 A Hello.</p> <p>15 Q I wanted to do just a few followups to</p> <p>16 clean up some of the matters that I heard you</p> <p>17 testify to earlier and to add a little bit more</p> <p>18 detail.</p> <p>19 I want to start with your background.</p> <p>20 Where did you go to high school?</p> <p>21 A I went to a now defunct high school</p> <p>22 called Border Central.</p> <p>23 Q Border Central. Where is that located?</p> <p>24 A In Calvin. Or it was.</p> <p>25 Q What year did you graduate?</p>	<p>36</p> <p>1 A In Rolla.</p> <p>2 Q What do you do currently for a living?</p> <p>3 A I'm in agriculture.</p> <p>4 Q And are you employed or self-employed?</p> <p>5 A As the owner and operator of a farm.</p> <p>6 Q What's the name of the operation?</p> <p>7 A There is no technical name. It's all</p> <p>8 under my name.</p> <p>9 Q How long have you been doing that?</p> <p>10 A Since I was 18.</p> <p>11 Q And you just farm the property around</p> <p>12 your residence in Calvin?</p> <p>13 A Yeah. I mean, there's -- it's spread out</p> <p>14 a little bit. But, yeah, it's around.</p> <p>15 Q I'm at a point where I'm likely to jump</p> <p>16 around between topics just because I've crossed</p> <p>17 things off my list that Mr. Gaber already covered</p> <p>18 with you. So please bear with me on that.</p> <p>19 What do you consider to be your race or</p> <p>20 ethnicity?</p> <p>21 A White, I guess.</p> <p>22 Q Do you consider yourself to be Native</p> <p>23 American?</p> <p>24 A No.</p> <p>25 Q And what's the race or ethnicity of your</p>

December 7, 2022

<p>37</p> <p>1 wife?</p> <p>2 A I believe she would be white as well.</p> <p>3 Q Is she Native American?</p> <p>4 A She is not.</p> <p>5 Q I believe you had said in your testimony</p> <p>6 earlier that you voted in all of the elections</p> <p>7 since you were 18.</p> <p>8 Am I remembering that correctly?</p> <p>9 A That's correct.</p> <p>10 Q Would that include all state-wide</p> <p>11 elections in North Dakota?</p> <p>12 A As to the best of my recollection, yes.</p> <p>13 Q And all state legislative elections?</p> <p>14 A Correct.</p> <p>15 Q What's your current address?</p> <p>16 A 7980 99th Street, Northeast, Calvin with</p> <p>17 a C, C-A-L-V-I-N, North Dakota, 58323.</p> <p>18 Q And do you live there all year round?</p> <p>19 A I do.</p> <p>20 Q Do you own any other homes at all?</p> <p>21 A I don't.</p> <p>22 Q Some people spend part of the year down</p> <p>23 south. Are you that type of person, or do you</p> <p>24 live --</p> <p>25 A Haven't got there yet. We will be</p>	<p>39</p> <p>1 A Yeah.</p> <p>2 I mean, we may have taken some vacations</p> <p>3 and that type of thing, but our residency has</p> <p>4 always been Calvin.</p> <p>5 Q In this lawsuit, is it correct to say</p> <p>6 that you're seeking to eliminate the subdistrict</p> <p>7 seat in District 9?</p> <p>8 A That would be the end result, yes.</p> <p>9 Q Are you concerned in terms of what that</p> <p>10 would mean for your wife's current seat in the</p> <p>11 legislature?</p> <p>12 A I mean, obviously it's a concern, but I</p> <p>13 don't -- it doesn't raise itself to the level of</p> <p>14 overcoming my principles for the</p> <p>15 unconstitutionality of the process here.</p> <p>16 Q Do you know what the effect would be if</p> <p>17 the subdistricts were eliminated on your wife's</p> <p>18 seat?</p> <p>19 A I don't. I mean, it's never been done</p> <p>20 before. We don't know what's the court going to</p> <p>21 rule. I mean, that's, we don't know. If-- we</p> <p>22 could talk about what-ifs, I guess. But, I mean,</p> <p>23 I don't know.</p> <p>24 I don't know. I just -- I mean, it's</p> <p>25 possible that they would require a new election in</p>
<p>38</p> <p>1 renting a place here in Bismarck for the duration</p> <p>2 of the session.</p> <p>3 Q Have you already found a place to rent?</p> <p>4 A We have.</p> <p>5 Q And have you signed a lease?</p> <p>6 A No.</p> <p>7 Q So I take it you have not yet moved to</p> <p>8 Bismarck?</p> <p>9 A We have not.</p> <p>10 Q Your current address, is that in what's</p> <p>11 currently districted as Subdistrict 9B?</p> <p>12 A That's correct.</p> <p>13 Q Have you ever lived in the area that's</p> <p>14 subdistricted as Subdistrict 9A?</p> <p>15 A No.</p> <p>16 Q Has your wife lived with you the entire</p> <p>17 time you've been married?</p> <p>18 A She has.</p> <p>19 Q How long have you been married?</p> <p>20 A Changes every year. I think it's 39, but</p> <p>21 don't quote me on that, because I could get in</p> <p>22 trouble.</p> <p>23 Q That's fair.</p> <p>24 And has she lived there continuously that</p> <p>25 whole 39 years?</p>	<p>40</p> <p>1 2024 over the whole district. And if that</p> <p>2 happens, I guess we will work hard for</p> <p>3 re-election.</p> <p>4 Q Mr. Gaber had asked you earlier about</p> <p>5 your written discovery responses.</p> <p>6 Do you remember those questions?</p> <p>7 A Yeah. I mean, I looked at them.</p> <p>8 Q And did you sign those written discovery</p> <p>9 responses?</p> <p>10 A Yes. Yes.</p> <p>11 Q Did you look for documents to produce in</p> <p>12 response to those discovery requests that were</p> <p>13 made in this case?</p> <p>14 A No. I didn't really look a lot because I</p> <p>15 don't text and I don't e-mail a lot. I don't do</p> <p>16 that. Most of my communication is in person or</p> <p>17 over the phone.</p> <p>18 Q Did you look for any physical paper</p> <p>19 documents?</p> <p>20 A I don't have those, so I didn't look. I</p> <p>21 mean, I just -- I know I didn't write any letters</p> <p>22 or correspond with anybody in that vein, so ...</p> <p>23 Q Have you looked at the legislative record</p> <p>24 in this case on the legislative assembly website?</p> <p>25 A I --</p>


December 7, 2022

<p>41</p> <p>1 Q I'm sorry, I cut you off. Go ahead.</p> <p>2 A I have not.</p> <p>3 Q You haven't looked at any of the</p> <p>4 documents or other materials on the legislative</p> <p>5 website relating to redistricting?</p> <p>6 A I have not.</p> <p>7 Q Did you look at those in preparing the</p> <p>8 answers to the written discovery?</p> <p>9 A No.</p> <p>10 Q Earlier I believe you had testified about</p> <p>11 a conversation that you had with Terry Jones.</p> <p>12 Do you recall that?</p> <p>13 A Vaguely. I mean, it was a year ago, so I</p> <p>14 don't -- I can't get specific what we exactly</p> <p>15 talked about. Generally, though, we talked about</p> <p>16 this, the unconstitutionality of the split.</p> <p>17 Q You had mentioned the discussion of the</p> <p>18 split.</p> <p>19 Do you have any recollection of any</p> <p>20 specific statement that you made during that call?</p> <p>21 A I don't.</p> <p>22 Q And do you have any recollection of any</p> <p>23 specific statement that Mr. Jones made during that</p> <p>24 call?</p> <p>25 A Specifically, no.</p>	<p>43</p> <p>1 Q Did you, personally, attend or provide</p> <p>2 any testimony at the redistricting hearings at the</p> <p>3 legislature?</p> <p>4 A I did not.</p> <p>5 Q Did you, personally, attend the House or</p> <p>6 Senate floor debate on the redistricting?</p> <p>7 A I did not.</p> <p>8 Q Have you ever reviewed the videos of any</p> <p>9 of those hearings or debates of the redistricting</p> <p>10 that took place in 2021?</p> <p>11 A No.</p> <p>12 Q Have you ever reviewed transcripts of</p> <p>13 those proceedings?</p> <p>14 A I have not.</p> <p>15 Q Have you reviewed any documentation at</p> <p>16 all during the course of this litigation?</p> <p>17 A Just the -- I signed the complaint and</p> <p>18 I've read that. And of course we had meetings</p> <p>19 with counsel.</p> <p>20 Q I don't want you to tell me about</p> <p>21 anything that you talked about with your counsel.</p> <p>22 But anything else that you've reviewed? Documents</p> <p>23 you've reviewed or materials you've reviewed?</p> <p>24 A No.</p> <p>25 Q Have you retained an expert to testify at</p>
<p>42</p> <p>1 Q Do you remember any details at all from</p> <p>2 that call, other than it involved the split of the</p> <p>3 districts?</p> <p>4 A No.</p> <p>5 Q Have you ever had any conversation with</p> <p>6 any other North Dakota legislator about the 2021</p> <p>7 redistricting?</p> <p>8 A No. Not to my recollection.</p> <p>9 Q Have you ever had a conversation with</p> <p>10 anyone employed with the North Dakota Legislative</p> <p>11 Council about the 2021 redistricting?</p> <p>12 A No.</p> <p>13 Q And that would include Claire Ness. If</p> <p>14 you had a conversation with her?</p> <p>15 A I don't know who that is.</p> <p>16 Q What about Emily Thompson?</p> <p>17 A No.</p> <p>18 Q And also Samantha Kramer; have you had a</p> <p>19 conversation with her?</p> <p>20 A Not that I'm aware of, no.</p> <p>21 Q Other than the conversation with Terry</p> <p>22 Jones, have you had any conversation with any</p> <p>23 other employee or agent of the State of North</p> <p>24 Dakota about the 2021 redistricting?</p> <p>25 A No.</p>	<p>44</p> <p>1 trial in this case regarding the Voting Rights</p> <p>2 Act?</p> <p>3 A I would have to defer to counsel on that.</p> <p>4 I don't know.</p> <p>5 MR. PHILLIPS: Can we take just a</p> <p>6 few-minute break. I want to review a few things.</p> <p>7 I may be done, but I just want to check my notes.</p> <p>8 Let's go off the record briefly.</p> <p>9 (A recess was taken.)</p> <p>10 MR. PHILLIPS: I don't have any further</p> <p>11 questions, Mr. Henderson.</p> <p>12 THE WITNESS: Okay.</p> <p>13 MR. PHILLIPS: Thank you.</p> <p>14 MR. SANDERSON: Any further questions,</p> <p>15 Mark?</p> <p>16 MR. GABER: No, nothing from me.</p> <p>17 Thank you for your time, sir.</p> <p>18 MR. SANDERSON: All right. I have no</p> <p>19 questions.</p> <p>20 Mr. Henderson, you have the right to read</p> <p>21 and sign your deposition, or you can waive that</p> <p>22 right. It's your choice. What would you like to</p> <p>23 do?</p> <p>24 THE WITNESS: I will waive today.</p> <p>25 COURT REPORTER: Mr. Phillips, do you</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

December 7, 2022

<p>45</p> <p>1 need a copy of the transcript?</p> <p>2 MR. PHILLIPS: Yes.</p> <p>3 COURT REPORTER: Mr. Sanderson, do you</p> <p>4 need a copy of the transcript?</p> <p>5 MR. SANDERSON: Yeah. Electronic</p> <p>6 condensed, please.</p> <p>7 MR. PHILLIPS: I'll second that,</p> <p>8 electronic condensed is fine.</p> <p>9 (Off the record at 10:36 a.m. EST.)</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>47</p> <p>1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC</p> <p>2 I, Debra A. Whitehead, the officer before whom the</p> <p>3 foregoing proceedings were taken, do hereby certify</p> <p>4 that the foregoing transcript is a true and correct</p> <p>5 record of the proceedings; that said proceedings</p> <p>6 were taken by me stenographically and thereafter</p> <p>7 reduced to typewriting under my supervision; that</p> <p>8 reading and signing was not requested; and that I am</p> <p>9 neither counsel for, related to, nor employed by any</p> <p>10 of the parties to this case and have no interest,</p> <p>11 financial or otherwise, in its outcome.</p> <p>12 IN WITNESS WHEREOF, I have hereunto set my hand and</p> <p>13 affixed my notarial seal this 16th day of December,</p> <p>14 2022.</p> <p>15</p> <p>16 My commission expires:</p> <p>17 April 30, 2023</p> <p>18</p> <p>19 </p> <p>20 _____</p> <p>21 E-NOTARY PUBLIC IN AND FOR THE</p> <p>22 STATE OF MARYLAND</p> <p>23</p> <p>24</p> <p>25</p>
<p>46</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2 I, PAUL HENDERSON, do hereby acknowledge</p> <p>3 that I have read and examined the foregoing</p> <p>4 testimony, and the same is a true, correct and</p> <p>5 complete transcription of the testimony given by</p> <p>6 me, and any corrections appear on the attached</p> <p>7 Errata sheet signed by me.</p> <p>8</p> <p>9 _____</p> <p>10 (DATE) (SIGNATURE)</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></p>

A			
ability	35:2	always	anyone
11:13, 17:12	again	39:4	10:9, 12:1,
about	17:15, 22:12	american	42:10
13:9, 17:18,	against	4:13, 4:19,	anything
19:2, 21:24,	22:6, 22:16,	36:23, 37:3	11:5, 11:10,
23:13, 23:16,	24:22	amount	11:12, 43:21,
23:18, 25:7,	agent	32:4	43:22
25:17, 26:21,	42:23	ann	appear
27:7, 28:21,	ago	2:13	46:6
28:24, 30:24,	17:17, 19:18,	another	apple
32:23, 35:10,	29:25, 35:23,	8:9	31:7
39:22, 40:4,	41:13	answer	application
41:10, 41:15,	agriculture	8:19, 9:14,	25:25
42:6, 42:11,	36:3	9:18, 9:21,	appointed
42:16, 42:24,	agronomy	11:13	13:13, 14:4
43:20, 43:21	35:7, 35:17	answered	april
acknowledge	ahead	34:9	17:1, 47:17
46:2	8:20, 9:17,	answers	area
acknowledgment	30:5, 41:1	8:13, 41:8	27:2, 38:13
46:1	all	anticipate	argument
across	12:6, 13:2,	7:24, 8:22,	25:20
10:12, 10:13,	13:7, 20:13,	9:15	arikara
16:6	20:18, 22:23,	any	2:4
act	30:18, 31:17,	8:16, 9:21,	around
44:2	33:1, 33:12,	10:15, 10:18,	36:11, 36:14,
actively	36:7, 37:6,	10:21, 11:14,	36:16
18:18	37:10, 37:13,	11:15, 12:3,	arrangement
actual	37:18, 37:20,	12:25, 17:8,	32:5
33:13	42:1, 43:16,	18:2, 18:10,	aside
actually	44:18	18:12, 19:23,	18:8, 19:21,
32:9, 33:10,	allison	22:3, 22:6,	29:11
35:16	4:11	28:23, 29:13,	asked
add	allowed	30:8, 30:17,	9:12, 32:12,
34:17	15:2, 15:13,	30:22, 32:14,	34:8, 40:4
address	16:6	32:24, 33:2,	assembly
37:15, 38:10	along	33:5, 33:23,	40:24
advantage	14:24	34:7, 35:2,	assist
24:15	already	35:11, 35:19,	12:3
affect	34:8, 34:9,	35:20, 37:20,	assume
26:24	36:17, 38:3	40:18, 40:21,	9:4, 29:19
affected	also	41:3, 41:19,	attached
29:14	5:2, 7:22,	41:22, 42:1,	46:6
affixed	8:16, 13:6,	42:5, 42:6,	attend
47:13	15:21, 24:10,	42:22, 43:2,	35:2, 43:1,
after	42:18	43:8, 43:15,	43:5
9:13, 14:19,	alvarez	44:10, 44:14,	attending
	2:5	46:6, 47:9	16:10
	alvin	anybody	attorney-client
	1:13	40:22	9:14

attorneys 7:8, 31:25 available 14:20, 17:20 avenue 3:13 aware 25:14, 42:20 away 14:2, 25:19 <hr/> <p style="text-align: center;">B</p> <hr/> back 31:20 background 34:19 bakke 3:12 ballot 29:12, 29:18 basic 35:22 basically 30:25 basing 29:1 bear 34:9, 36:18 became 25:14 because 7:18, 7:23, 11:17, 15:2, 15:8, 24:18, 26:15, 31:10, 36:16, 38:21, 40:14 become 25:12 been 7:3, 7:13, 13:5, 13:6, 13:14, 18:22, 21:14, 22:18, 27:17, 30:9, 34:8, 36:9, 38:17, 38:19, 39:4, 39:19	before 2:13, 7:13, 11:18, 19:13, 25:1, 34:11, 39:20, 47:2 behalf 3:2, 3:10, 4:2 being 26:4 believe 17:1, 22:8, 26:20, 31:24, 32:6, 33:7, 37:2, 37:5, 41:10 besides 33:7 best 8:2, 9:7, 34:7, 37:12 better 22:16, 23:1, 23:4, 25:9 between 22:20, 36:16 bismarck 3:7, 3:14, 3:16, 38:1, 38:8 bit 7:17, 28:4, 33:17, 34:17, 35:16, 36:14 block 16:8 blocks 14:2 board 13:3, 13:4, 13:10, 13:11, 13:12, 13:13, 13:14, 14:6, 17:10, 19:23 body 16:6 border 23:12, 34:22, 34:23 both 7:20, 8:3, 27:8	boulder 4:15 boundaries 15:13, 15:22, 23:16 box 3:15 boy 19:10 brand-new 25:18 break 8:17, 8:20, 8:24, 33:15, 33:18, 33:19, 44:6 briefly 44:8 brings 18:2 broadway 4:14 burgum 1:10 <hr/> <p style="text-align: center;">C</p> <hr/> c-a-l-v-i-n 37:17 call 26:18, 27:15, 41:20, 41:24, 42:2 called 26:20, 34:22 calvin 12:13, 12:14, 13:23, 34:24, 36:12, 37:16, 39:4 campaign 4:6, 31:2 campaigns 18:13 can't 9:21, 24:17, 32:18, 41:14 candidate 18:25, 19:2,	20:21 candidates 18:23 capacity 1:11, 1:14 capped 32:4 caption 1:18, 2:1 carter 4:12 case 1:9, 7:9, 7:16, 8:1, 15:3, 25:13, 30:2, 32:19, 33:3, 34:12, 40:13, 40:24, 44:1, 47:10 cast 29:11, 29:18 cavalier 12:17, 25:3 center 4:6 central 34:22, 34:23 century 3:13 certainly 18:14, 20:25 certificate 47:1 certify 47:3 cesar 2:5 chair 14:8, 16:16, 17:6, 27:21, 31:14 chairman 13:9, 17:11 chairmanship 20:5 chairs 15:22 chance 23:2, 23:23
--	---	--	---

change 15:7, 29:7 changed 15:12, 23:12, 29:4 changes 38:20 charles 1:5, 21:13 check 44:7 choice 21:25, 44:22 chuck 5:4, 32:10 city 13:23, 14:4 claire 42:13 clarify 9:7, 26:2 clean 34:16 clear 8:12 closer 24:14 cognizant 8:4 colleagues 30:9, 31:16 college 3:6, 35:3 colorado 4:15 combining 23:22 come 16:22, 16:25 comes 24:16 coming 11:13 commission 47:16 commissioners 14:7 committee 17:13	committeeman 17:22, 17:24 communicate 31:17 communication 31:20, 40:16 community 13:1 complaint 28:13, 29:17, 32:11, 43:17 complaints 28:24 complete 46:5 computer 10:21 concern 28:5, 28:9, 39:12 concerned 28:21, 39:9 conclusion 35:12 condensed 45:6, 45:8 conducted 1:20, 2:9 confident 11:13 consider 36:19, 36:22 constituents 20:18, 31:15 constitutional 25:20, 26:1 continue 24:4 continued 1:18, 2:1 continuously 38:24 contributing 33:2 controversy 14:21, 15:2, 15:14 convention 20:10, 20:13,	20:16, 20:17, 20:20, 21:7 conventions 17:21 conversation 7:18, 7:24, 25:15, 26:6, 26:25, 27:10, 41:11, 42:5, 42:9, 42:14, 42:19, 42:21, 42:22 conversations 22:13, 25:6 copy 45:1, 45:4 correct 10:6, 11:9, 14:11, 19:7, 19:12, 20:4, 21:11, 21:16, 22:21, 23:4, 24:12, 24:24, 26:5, 26:9, 26:10, 27:23, 28:2, 28:10, 28:16, 28:22, 29:20, 37:9, 37:14, 38:12, 39:5, 46:4, 47:4 corrections 46:6 correctly 37:8 correspond 40:22 could 7:10, 24:7, 24:8, 38:21, 39:22 couldn't 31:10 council 42:11 counsel 7:4, 9:10, 9:11, 9:14, 11:16, 34:3,	43:19, 43:21, 44:3, 47:9 counsel's 10:3 counties 23:22 county 12:17, 13:4, 14:5, 19:22, 25:4 couple 7:15, 10:1, 14:2, 17:11, 17:21, 19:18 course 31:2, 35:23, 35:25, 43:16, 43:18 court 1:1, 7:18, 8:11, 8:15, 39:20, 44:25, 45:3 covered 27:22, 36:17 crossed 36:16 current 14:15, 14:18, 16:16, 37:15, 38:10, 39:10 currently 36:2, 38:11 cut 41:1 cycle 18:4, 24:19
D			
dakota 1:2, 1:12, 1:15, 3:7, 3:14, 3:16, 12:11, 12:12, 12:16, 17:2, 37:11, 37:17, 42:6, 42:10, 42:24 damschen 21:13			

danahy 4:4 date 46:10 david 3:11, 34:10 day 25:16, 47:13 dc 4:8, 4:21 debate 43:6 debates 43:9 debra 1:25, 2:13, 47:2 december 1:21, 15:19, 27:1, 47:13 decided 16:7, 17:5, 23:1 deciding 22:19 decision 22:10 declare 20:19 dedicated 28:7 defendant-interv- enors 7:9 defendants 1:16, 3:10, 34:3 defer 44:3 defunct 34:21 degree 35:8, 35:11 democratic 18:25 dental 35:15 department 13:5	depends 24:16 deponent 46:1 deposed 7:13 deposition 1:19, 2:9, 7:17, 9:25, 11:11, 44:21 detail 34:18 details 42:1 determining 30:14 deville 2:6 different 7:17, 13:24, 15:18 discovery 40:5, 40:8, 40:12, 41:8 discussed 33:5 discussion 41:17 dissolved 22:13 district 1:1, 1:2, 13:9, 14:9, 14:15, 14:18, 15:8, 15:22, 16:11, 16:17, 17:7, 19:9, 20:1, 20:20, 21:7, 21:15, 22:14, 22:24, 23:12, 23:13, 23:21, 24:9, 24:10, 25:21, 26:4, 26:8, 26:23, 27:21, 29:8, 31:14, 39:7, 40:1 district-wide 22:17	districted 38:11 districts 25:23, 42:3 division 1:3 document 30:2, 30:8 documentation 43:15 documents 12:3, 30:10, 40:11, 40:19, 41:4, 43:22 doing 9:24, 34:6, 34:13, 36:9 done 11:18, 39:19, 44:7 donna 19:4, 22:12, 24:20 donors 32:21 doug 1:10 down 7:21, 8:5, 8:11, 12:21, 12:24, 14:1, 37:22 drawn 29:15 drive 3:6 due 16:25 duly 7:3 duration 38:1 during 25:21, 31:2, 41:20, 41:23, 43:16 <hr/> E <hr/> e-mail 11:4, 26:19, 30:17, 30:22, 40:15 e-notary 2:14, 47:21 each 7:22, 8:6, 30:6, 31:3 earlier 34:17, 37:6, 40:4, 41:10 eastern 1:3 easy 8:6 edge 12:14 education 35:19, 35:21 effect 39:16 elected 13:11, 13:12, 19:8, 19:19, 19:21, 19:23, 20:3, 20:4 election 16:23, 18:3, 18:17, 19:14, 20:5, 21:5, 24:19, 25:22, 29:19, 29:23, 39:25 elections 13:16, 20:14, 37:6, 37:11, 37:13 electronic 45:5, 45:8 eliminate 39:6 eliminated 39:17 else 10:9, 12:1, 43:22 emily 42:16 employed 36:4, 42:10,
--	--	--

47:9 employee 42:23 emt 13:5, 35:22, 35:24, 35:25 end 39:8 endorsement 20:22, 21:2, 21:6 endorsing 20:10, 20:13, 20:15, 20:17, 20:20 enough 28:18 entire 12:20, 38:16 entities 32:24 equal 25:25 errata 46:7 esquire 3:3, 3:4, 3:11, 4:3, 4:4, 4:5, 4:11, 4:12, 4:18 est 1:22, 45:9 ethnicity 36:20, 36:25 even 11:7 evenson 3:5 ever 38:13, 42:5, 42:9, 43:8, 43:12 every 13:17, 38:20 everything 7:19 exactly 41:14 examination 6:2, 7:4, 34:3	examined 46:3 example 11:16 excited 23:13 excitement 23:16 exclusively 18:22 executive 17:10, 17:12 expensive 31:11 experience 23:6, 28:18 expert 43:25 expires 47:16 explain 20:12 explained 28:3 extent 30:25 <hr/> F <hr/> fact 8:4, 27:8, 29:11 fair 38:23 family 12:21 far 24:3 farm 12:10, 12:19, 36:5, 36:11 favored 24:10 felt 24:6, 25:24 few 32:2, 34:15, 44:6 few-minute 44:6	financial 47:11 fine 33:20, 45:8 fire 13:5 five 17:16 flags 25:19 flavor 31:9 floor 43:6 folks 9:11, 15:15, 25:4, 31:16, 31:21, 33:17 follows 7:3 followup 34:13 followups 34:15 foregoing 46:3, 47:3, 47:4 formal 35:21 former 24:9 formerly 21:15 forth 18:2, 31:20 forward 26:24 found 38:3 four-year 17:16 frequently 13:16 front 10:15, 10:18, 32:9, 32:22 fully 9:22	function 20:18 fund 4:13, 4:19 funds 33:3 further 33:23, 44:10, 44:14 <hr/> G <hr/> gaber 4:3, 6:3, 7:6, 7:8, 33:14, 33:21, 33:23, 36:17, 40:4, 44:16 gather 10:3, 25:8, 28:13 gave 17:12, 23:23 general 27:10 generally 27:7, 41:15 getting 12:4 give 8:9, 8:12, 8:19 given 22:25, 46:5 glen 13:25 go 7:15, 8:20, 8:25, 9:17, 20:19, 30:4, 34:20, 41:1, 44:8 going 8:22, 9:25, 25:15, 26:23, 26:24, 33:14, 33:25, 35:15, 39:20 good 7:7, 8:8, 9:3,
--	---	---	---

16:20, 24:6, 33:19, 34:5 google 31:6 government 13:2 governor 1:11, 25:1, 34:12 graduate 34:25 great 23:21, 31:12 grinolds 3:12 ground 7:15 guess 11:1, 20:1, 28:25, 29:16, 36:21, 39:22, 40:2 guy 11:2 guys 22:19, 22:25, 31:3	head 8:10 heard 34:16 hearings 43:2, 43:9 height 29:16 held 17:7, 19:23 hello 34:14 henderson 1:6, 1:19, 2:9, 6:2, 7:2, 7:7, 7:12, 19:5, 34:5, 44:11, 44:20, 46:2 here 7:19, 8:5, 9:10, 9:11, 12:10, 24:17, 38:1, 39:15 hereby 46:2, 47:3 hereunto 47:12 hidatsa 2:4 high 34:20, 34:21, 35:2, 35:20 historically 15:12 hold 14:14 homes 37:20 hopefully 8:24 hourly 32:3, 32:6 hours 9:1 house 19:9, 19:15, 22:2, 23:7, 26:16, 43:5	hygiene 35:16 <hr/> I <hr/> idea 21:3, 23:3 identify 32:14 implied 27:25 important 7:20, 8:9, 8:15 impression 25:3 improvement 23:25, 24:2 include 37:10, 42:13 incumbent 21:9, 21:14, 22:3, 22:6, 22:17, 24:23, 24:25, 26:7 independent 19:2 individual 1:5, 1:7 individuals 32:24 instructed 9:13 intend 17:3 interest 47:10 interject 7:25 interpreted 15:5 interrupt 7:22, 8:2 intervenor-defen- dants 2:7, 4:2, 7:5 involved 13:1, 13:6, 18:18, 42:2 iphone 31:8	isle 13:25 issue 8:24, 9:16, 14:24, 22:3 itself 39:13 <hr/> J <hr/> jaeger 1:13 january 17:1, 33:9, 33:13 job 1:23 jones 25:16, 26:7, 26:13, 41:11, 41:23, 42:22 joyce 3:4, 10:8, 10:11 jump 36:15 <hr/> K <hr/> kelty 4:18 kind 14:1, 14:3, 16:20, 21:25, 31:5 kitty 32:13 knew 11:12 know 8:14, 8:17, 8:20, 9:1, 10:23, 11:1, 11:2, 11:7, 13:22, 14:21, 15:3, 20:13, 20:23, 21:1, 21:17, 21:25, 22:17, 22:24, 23:11, 24:1,
<hr/> H <hr/> hand 47:12 handily 24:21 hansen 4:5 happen 25:15 happened 14:25 happening 16:4 happens 17:4, 40:2 hard 7:23, 8:11, 25:10, 40:2 harder 29:7			

25:5, 25:17, 26:13, 26:14, 26:15, 27:11, 28:11, 28:17, 28:18, 32:10, 32:15, 32:17, 32:18, 32:23, 35:23, 39:16, 39:20, 39:21, 39:23, 39:24, 40:21, 42:15, 44:4 kramer 42:18	let's 44:8 letters 40:21 level 39:13 life 12:20, 22:1 liked 25:8 likely 36:15 lines 14:24, 29:14 lisa 2:6 list 36:17 litigation 43:16 little 7:17, 28:3, 33:17, 34:17, 36:14 litvin's 16:15 live 14:2, 27:25, 37:18, 37:24 lived 38:13, 38:16, 38:24 living 36:2 local 13:2, 13:7, 21:2 located 34:23 long 12:19, 13:14, 21:17, 29:24, 36:9, 38:19 look 30:8, 30:17, 40:11, 40:14, 40:18, 40:20, 41:7	looked 24:5, 40:7, 40:23, 41:3 looking 10:24, 23:4 lost 31:6 lot 8:23, 24:14, 40:14, 40:15 lump 32:4	maybe 7:25, 33:18 mean 13:3, 15:1, 24:5, 24:17, 24:21, 25:5, 26:3, 26:15, 32:10, 36:13, 39:2, 39:10, 39:12, 39:19, 39:21, 39:22, 39:24, 40:7, 40:21, 41:13 meeting 11:19, 11:24, 14:22, 15:15, 15:18, 15:19 meetings 11:15, 13:8, 43:18 memory 30:16 mentioned 28:11, 41:17 mentions 23:14 message 31:3 messages 30:19, 31:19 messaging 11:4 met 11:20, 34:11 michael 4:12 might 18:3, 30:11, 30:19 mind 33:15 minute 33:18 missed 29:23 molly 4:4 money 32:12
L		M	
large 24:20, 28:6 last 15:20, 27:2 latched 25:19 laurie 5:3 law 10:3, 15:5, 15:12, 26:1 lawsuit 33:5, 39:5 lawyer 28:17 leadership 15:4 lease 38:5 legal 4:6 legislative 37:13, 40:23, 40:24, 41:4, 42:10 legislator 42:6 legislators 33:6 legislature 20:8, 39:11, 43:3			

more 8:3, 15:7, 23:7, 25:7, 33:16, 34:17 morning 7:7, 8:23, 34:5 most 8:15, 21:5, 40:16 motivated 21:22 motivation 22:4 moved 22:14, 38:7 moving 23:21 much 8:24, 30:21, 30:22, 32:12 <hr/> N <hr/> name 7:7, 7:11, 21:12, 23:2, 27:11, 36:6, 36:7, 36:8 names 16:21, 32:21 narf 5:3 nation 2:5 national 17:18, 17:20, 18:1, 18:9 native 4:13, 4:19, 36:22, 37:3 ndscs 35:5 ndsu 35:4, 35:6 nearby 13:23 necessary 8:21 need 8:17, 9:1,	45:1, 45:4 needing 9:16 neither 47:9 nelson 24:25 ness 42:13 neswood 4:11 never 11:17, 18:25, 20:7, 31:23, 39:19 new 15:12, 16:25, 18:2, 18:3, 19:9, 23:13, 23:16, 31:12, 39:25 next 1:18 nicole 4:5 nine 13:9 nodding 8:10 none 6:8, 10:24 nonpartisan 13:21 normal 7:18, 7:23 normally 31:18 north 1:2, 1:12, 1:15, 3:7, 3:14, 3:16, 12:10, 12:12, 12:16, 17:2, 37:11, 37:17, 42:6, 42:10, 42:23 northeast 37:16 notarial 47:13	notary 47:1 notes 10:15, 10:17, 10:18, 44:7 nothing 15:11, 44:16 notice 2:13 november 15:6, 27:1 numbers 24:6 nw 4:7, 4:20 <hr/> O <hr/> object 9:12 objection 9:17 objections 28:23 obviously 9:24, 14:12, 39:12 occur 11:19 office 10:4, 19:13, 19:16, 19:24 officer 47:2 official 1:10, 1:13, 18:8, 21:2 oh 27:1, 33:11 okay 8:7, 16:23, 21:20, 44:12 one 7:8, 8:25, 14:7, 15:24, 22:24, 24:19, 25:16, 25:22, 28:7, 28:14, 29:12, 31:12,	35:5, 35:10 only 14:2, 22:11, 24:19 open 10:22 operate 12:10 operation 36:6 operator 36:5 opportunity 23:20, 29:5 organizations 18:10, 32:25 other 7:22, 8:6, 10:22, 17:6, 17:8, 18:10, 19:16, 19:23, 28:14, 28:23, 29:13, 30:7, 30:19, 31:3, 32:8, 32:14, 32:17, 32:21, 35:19, 35:21, 37:20, 41:4, 42:2, 42:6, 42:21, 42:23 others 32:2, 32:8 otherwise 9:5, 47:11 ourselves 16:9 out 15:16, 15:25, 24:16, 26:11, 26:19, 27:12, 31:16, 36:13 outcome 47:11 over 7:15, 8:6, 11:22, 21:9, 31:20, 40:1, 40:17
--	---	--	--

overcoming 39:14 own 12:10, 37:20 owner 36:5 <hr/> <p style="text-align: center;">P</p> <hr/> page 1:18, 2:1, 6:2 pages 1:24 paper 40:18 paralegal 5:3 part 18:6, 18:10, 22:4, 27:22, 37:22 participants 15:25 participated 13:7 participation 29:1 particular 23:18 parties 30:2, 47:10 partisan 13:18, 13:20 party 14:9, 14:15, 14:18, 14:22, 15:5, 17:9, 17:19, 17:21, 18:1, 18:3, 18:5, 18:9, 19:17, 20:2, 20:18, 21:2, 31:13, 31:16, 33:2 pass 33:25 passed 12:21, 12:23, 15:6	past 13:6 paul 1:6, 1:19, 2:9, 3:3, 6:2, 7:2, 7:12, 10:8, 10:13, 46:2 pay 33:3 paying 31:25 pending 8:18 people 25:6, 31:15, 32:8, 32:14, 32:18, 33:1, 37:22 percent 15:7, 24:22 percentages 24:18 period 11:20 person 11:22, 11:23, 37:23, 40:16 person's 21:12 personal 21:25, 22:13, 26:17 personally 43:1, 43:5 perused 30:12 phillips 3:11, 6:4, 34:1, 34:2, 34:4, 34:10, 44:5, 44:10, 44:13, 44:25, 45:2, 45:7 phone 11:22, 25:16, 30:18, 31:5, 31:6, 31:7, 31:18, 40:17	physical 40:18 picked 27:8 place 38:1, 38:3, 43:10 plaintiff 25:12, 27:4 plaintiffs 1:8, 3:2 plan 28:24 platform 18:5 play 13:1, 22:9, 22:11 please 7:10, 8:12, 8:17, 9:6, 34:9, 36:18, 45:6 point 8:16, 14:2, 15:10, 16:7, 36:15 political 18:10, 18:12, 20:17 politics 13:7, 27:18 population 15:7 portion 23:21 position 13:11, 13:13, 14:14, 14:17, 17:3, 17:6, 19:17, 19:19, 19:22, 21:18, 22:2 positioned 22:16 positions 14:23, 16:24, 17:8 possibility 24:7	possible 17:5, 39:25 preliminary 33:12 prepare 11:10 preparing 12:7, 41:7 present 5:2, 11:24 pretty 18:18, 27:10 previous 2:1 primary 20:14, 20:24, 22:7 principles 39:14 prior 14:12 privilege 9:15 probably 8:2, 13:15, 17:15, 17:16, 23:1, 25:25, 27:9, 35:23 proceedings 43:13, 47:3, 47:5 process 23:11, 30:13, 39:15 produce 40:11 production 30:10 property 36:11 provide 43:1 proxy 16:10, 16:14 public 2:14, 47:1, 47:21 pull 24:7
--	---	---	--

<p>pursuant 2:13</p> <p>put 32:12</p> <hr/> <p>Q</p> <hr/> <p>question 8:18, 8:19, 9:5, 9:12, 9:18, 16:20, 30:4</p> <p>questioning 34:6</p> <p>questions 9:22, 10:1, 11:14, 33:16, 33:24, 34:7, 34:13, 40:6, 44:11, 44:14, 44:19</p> <p>quite 35:16</p> <p>quote 38:21</p> <hr/> <p>R</p> <hr/> <p>race 36:19, 36:25</p> <p>races 23:7</p> <p>radio 23:7</p> <p>raise 39:13</p> <p>raised 25:18</p> <p>ran 19:8, 19:17, 20:9, 22:23, 22:24, 24:21</p> <p>rate 32:3, 32:6</p> <p>rather 28:7, 29:12</p> <p>re-election 40:3</p> <p>reach 26:11, 26:19, 31:16</p>	<p>reached 27:12</p> <p>read 43:18, 44:20, 46:3</p> <p>reading 47:8</p> <p>ready 12:4, 22:1</p> <p>reality 24:1, 24:2</p> <p>realize 27:16</p> <p>really 11:12, 15:11, 25:5, 26:14, 32:11, 40:14</p> <p>reason 9:21, 22:7, 22:11</p> <p>reasons 9:15</p> <p>recall 30:1, 41:12</p> <p>recent 21:5, 23:11</p> <p>recess 33:22, 44:9</p> <p>recognition 23:2</p> <p>recollection 37:12, 41:19, 41:22, 42:8</p> <p>record 7:11, 26:3, 40:23, 44:8, 45:9, 47:5</p> <p>red 25:18</p> <p>redistricting 14:13, 14:20, 14:23, 15:8, 22:9, 23:11, 28:24, 41:5, 42:7, 42:11, 42:24, 43:2, 43:6, 43:9</p> <p>reduced 47:7</p>	<p>reference 14:1</p> <p>regarding 44:1</p> <p>regional 17:11, 20:5</p> <p>regularly 29:21</p> <p>related 14:22, 15:21, 47:9</p> <p>relating 41:5</p> <p>relationship 26:17</p> <p>relevant 12:23, 18:2, 18:3</p> <p>remember 40:6, 42:1</p> <p>remembering 37:8</p> <p>remotely 9:25</p> <p>remove 16:8</p> <p>rent 38:3</p> <p>renting 38:1</p> <p>reorg 15:2</p> <p>reorganization 14:19</p> <p>reorganizations 17:2</p> <p>reorganize 15:9, 15:13</p> <p>repeat 34:7</p> <p>reported 1:25</p> <p>reporter 7:19, 8:11, 8:15, 44:25, 45:3, 47:1</p> <p>represent 34:11</p>	<p>representative 19:9, 21:10, 25:22, 26:8, 26:13</p> <p>representatives 25:24, 28:6, 28:15, 29:6, 29:13</p> <p>republican 13:8, 14:9, 14:15, 14:22, 15:4, 17:8, 17:18, 17:21, 18:1, 18:9, 18:23, 20:2, 23:23, 27:21, 31:13, 33:2</p> <p>republicans 16:17, 17:7, 20:19, 24:10, 24:16, 29:8</p> <p>requested 47:8</p> <p>requests 30:3, 30:10, 30:15, 40:12</p> <p>require 39:25</p> <p>residence 36:12</p> <p>residency 39:3</p> <p>resolution 17:22, 17:24</p> <p>resolutions 17:25, 18:2</p> <p>respond 30:15, 30:20</p> <p>response 40:12</p> <p>responses 8:10, 40:5, 40:9</p> <p>rest 25:23</p> <p>result 35:8, 39:8</p> <p>retained 43:25</p>
--	--	--	---

review 12:3, 44:6 reviewed 43:8, 43:12, 43:15, 43:22, 43:23 reviews 18:1 right 10:5, 10:14, 11:8, 14:4, 14:10, 15:17, 16:1, 16:12, 19:6, 19:11, 20:3, 24:11, 24:20, 24:23, 25:1, 25:19, 27:22, 28:1, 28:4, 44:18, 44:20, 44:22 rights 4:13, 4:19, 44:1 role 20:15, 22:9, 22:12, 31:13 roles 12:25, 18:8 rolla 22:15, 22:25, 23:14, 36:1 rollette 23:22 room 10:2, 10:7, 10:9 round 37:18 rule 8:3, 39:21 rules 7:16 run 14:17, 17:3, 19:13, 19:16, 20:7, 20:21, 20:23, 21:22, 22:1, 22:6,	22:16, 22:20, 24:25 running 21:24 ryan 3:4, 10:8, 10:13, 11:25 <hr/> S <hr/> said 13:22, 14:8, 26:6, 27:14, 32:7, 37:5, 47:5 samantha 4:18, 42:18 same 22:23, 46:4 sanderson 3:3, 3:5, 10:8, 10:11, 33:20, 44:14, 44:18, 45:3, 45:5 saw 24:3 say 7:20, 8:16, 9:5, 9:6, 14:3, 15:19, 18:15, 21:19, 26:3, 27:1, 27:6, 28:19, 32:15, 39:5 saying 7:25, 15:6 says 23:10 school 34:20, 34:21, 35:2, 35:20 screen 10:21, 10:22, 10:25 seal 47:13 seat 39:7, 39:10, 39:18 seated 10:12, 10:13,	10:14 second 34:6, 45:7 secretary 1:14, 34:12 see 23:10, 29:3, 29:9, 30:18 seeking 39:6 self-employed 36:4 semester 35:5, 35:11, 35:17 senate 43:6 sense 9:19 sent 30:2, 30:9 served 17:22, 21:21 session 33:13, 38:2 set 47:12 seven 8:25, 35:24 share 23:15, 31:19 sheet 46:7 short 33:15 shorthand 47:1 should 8:4, 9:16, 19:21, 22:20, 27:15 side 10:12, 13:8 sign 40:8, 44:21 signature 46:10 signature-plkal 47:18	signed 32:11, 38:5, 43:17, 46:7 signing 47:8 since 29:24, 35:19, 36:10, 37:7 sir 44:17 sit 24:17 slight 24:15 slot 17:1 slowly 7:21 small 11:20, 12:13, 12:14, 27:17 software 11:4 some 11:4, 14:21, 15:1, 15:14, 16:7, 30:2, 32:7, 32:20, 33:17, 34:16, 37:22, 39:2 someone 7:24 something 25:6, 25:18, 34:8 sometimes 7:23, 31:19 somewhere 27:2 sorry 14:5, 19:22, 24:4, 30:6, 32:15, 41:1 sort 11:4, 12:25, 16:23, 22:19, 23:15, 30:8, 31:15, 32:4,
--	--	--	---

32:24 sound 33:19 sounds 11:6 south 37:23 specific 41:14, 41:20, 41:23 specifically 34:11, 41:25 spend 37:22 split 25:14, 26:3, 26:4, 26:22, 27:7, 41:16, 41:18, 42:2 spread 36:13 staggered 13:19 start 12:22, 34:19 starts 33:13 state 1:12, 1:15, 2:14, 7:10, 9:11, 15:5, 15:19, 17:8, 18:9, 19:15, 19:17, 20:7, 20:23, 21:9, 22:2, 23:7, 25:23, 26:7, 27:17, 28:6, 28:14, 30:10, 34:12, 37:13, 42:23, 47:22 state-wide 37:10 statement 29:20, 41:20, 41:23 states 1:1	stayed 22:23 stenographically 47:6 stick 25:21 still 20:23, 34:5 stint 17:16 stirling 5:3 street 4:7, 4:20, 37:16 studied 35:16 study 35:6, 35:14 stuff 33:13 subdistrict 27:25, 28:8, 38:11, 38:14, 39:6 subdistricted 38:14 subdistricts 26:4, 39:17 suite 3:6, 4:7, 4:20 sum 32:4 supervision 47:7 suppose 33:8 sure 11:3, 28:4, 34:10 sworn 7:3, 33:8, 33:10 <hr/> T <hr/> take 8:11, 8:20, 22:1, 33:14,	38:7, 44:5 taken 33:22, 39:2, 44:9, 47:3, 47:6 takes 17:25 taking 8:5, 8:23, 10:17 talk 7:20, 8:6, 12:6, 26:21, 30:6, 33:17, 39:22 talked 21:24, 25:17, 27:7, 31:4, 41:15, 43:21 tampa 17:23 task 8:6 tech 11:2 technical 35:20, 36:7 televisions 23:8 tell 24:18, 27:14, 31:10, 43:20 ten 33:18 ten-minute 33:18 terms 17:11, 28:11, 35:20, 39:9 terrible 16:21 territory 27:22 terry 25:16, 26:7, 26:17, 33:7, 41:11, 42:21 testified 7:3, 41:10	testify 34:17, 43:25 testimony 37:5, 43:2, 46:4, 46:5 text 30:19, 30:21, 31:3, 31:19, 40:15 th 4:7, 37:16, 47:13 thank 33:21, 34:2, 44:13, 44:17 thereafter 47:6 thing 39:3 things 8:16, 8:25, 22:23, 30:23, 36:17, 44:6 think 8:14, 17:15, 21:21, 22:5, 22:16, 22:22, 23:20, 24:15, 24:22, 25:15, 27:24, 28:3, 31:4, 32:19, 32:20, 33:1, 33:15, 33:17, 38:20 thompson 42:16 thought 28:12, 28:19, 30:24 thoughts 25:4 through 30:17, 30:18, 35:22 tim 16:15 time 8:23, 11:21,
---	--	---	--

17:1, 21:23, 22:1, 22:6, 27:20, 29:24, 38:17, 44:17 today 9:22, 12:4, 12:7, 34:6, 34:13, 44:24 ton 33:16 took 35:4, 35:10, 43:10 topics 36:16 totals 25:8 town 13:10, 13:11, 13:14, 14:3, 19:23, 22:15 towner 23:22 township 13:3, 13:12, 13:24, 13:25, 14:1 training 35:20 transcribing 7:19 transcript 8:12, 45:1, 45:4, 47:4 transcription 46:5 transcripts 43:12 treatment 28:20 trial 44:1 trouble 38:22 true 23:9, 46:4, 47:4 truthfully 9:22	try 8:4 twenty-five 13:15, 18:16 two 8:15, 22:20, 25:24, 26:4, 28:6, 28:15, 29:6, 29:12, 35:4 type 37:23, 39:3 typewriting 47:7 <hr/> U <hr/> uh-huh 8:10 unable 28:5 unconstitutional 27:9, 28:12, 28:20, 29:2 unconstitutional-ity 39:15, 41:16 under 36:8, 47:7 understand 9:4, 9:6, 19:4, 30:4 unequal 28:13, 28:20 united 1:1 unknown 27:19 unless 9:5, 9:13 unprofessional 16:5 unsuccessful 20:11 <hr/> V <hr/> vacations 39:2 vaguely 41:13	vein 40:22 verbal 8:10, 8:12 versus 20:13 videos 43:8 view 16:3, 23:15, 23:25, 24:13, 29:2 views 16:6 village 12:13, 12:14 violate 8:3 virtually 1:20, 2:10 volunteer 13:4, 13:5 vote 20:20, 24:17, 24:18, 25:8, 25:22, 25:24, 28:6, 28:7, 28:15, 29:6, 29:21 voted 37:6 voters 28:14 voting 44:1 <hr/> W <hr/> wahpeton 35:5, 35:10, 35:14 wait 9:17 waive 44:21, 44:24 walen 1:5, 5:4, 12:6, 32:10 walked 15:15, 15:25	want 11:3, 15:19, 20:19, 20:21, 21:19, 26:2, 33:16, 34:19, 43:20, 44:6, 44:7 wanted 34:15 washington 4:8, 4:21 way 9:12, 29:13, 29:14, 30:6 we're 8:22, 9:24, 14:3 we've 24:19 website 23:10, 40:24, 41:5 wednesday 1:21 went 34:21, 35:22 weren't 15:2 west 3:13 what-ifs 39:22 whatnot 15:22 whenever 18:17 whereof 47:12 whether 30:14, 30:18, 32:17 white 36:21, 37:2 whitehead 1:25, 2:13, 47:2 whole 8:23, 38:25,
---	---	--	---

<p>40:1 wiederholt 3:12 wife 19:4, 21:6, 21:22, 25:9, 29:19, 31:3, 33:8, 35:15, 37:1, 38:16 wife's 39:10, 39:17 willing 27:4 win 23:24, 24:8, 29:8 windows 10:22 wisconsin 23:6 within 14:14, 17:8 witness 33:25, 44:12, 44:24, 47:12 won 24:20, 24:21 words 7:21, 8:5 work 9:8, 12:9, 18:5, 22:25, 40:2 worked 18:12, 18:25, 22:15, 23:14, 25:10 working 18:20 wouldn't 10:1, 11:7, 29:10 write 40:21 written 31:20, 40:5, 40:8, 41:8</p> <hr/> <p>Y</p> <hr/> <p>yeah 8:8, 11:17,</p>	<p>12:23, 13:3, 13:25, 15:1, 15:4, 16:13, 17:10, 18:19, 22:22, 25:10, 28:17, 29:6, 31:1, 31:9, 32:20, 33:20, 35:4, 36:13, 36:14, 39:1, 40:7, 45:5 year 13:17, 15:20, 16:25, 27:2, 34:25, 37:18, 37:22, 38:20, 41:13 years 13:9, 13:15, 17:16, 19:18, 21:19, 21:21, 22:15, 27:18, 35:4, 35:23, 35:24, 38:25 yesterday 11:20, 33:10 yourself 36:22</p> <hr/> <p>Z</p> <hr/> <p>zoning 13:4, 13:13, 14:5 zoom 10:22</p> <hr/> <p>0</p> <hr/> <p>00031 1:10</p> <hr/> <p>1</p> <hr/> <p>10 13:9, 14:9, 17:7, 20:1, 21:15, 22:14, 22:24, 23:21, 24:9, 27:21, 31:14, 45:9</p>	<p>1100 3:6 1101 4:7 12 21:19, 21:21 1243 3:8 14 4:7, 22:15 15 1:22, 33:18 1506 4:14 1514 4:20 16 47:13 18 29:24, 36:10, 37:7 1980 35:1 1:-cv--crh 1:10</p> <hr/> <p>2</p> <hr/> <p>20 35:23 20005 4:8, 4:21 2012 17:22 2018 20:10 202 4:9, 4:22 2021 42:6, 42:11, 42:24, 43:10 2022 1:21, 29:18, 47:14 2023 47:17 2024 40:1 22 1:10</p>	<p>2200 4:9 25 15:7, 27:18</p> <hr/> <p>3</p> <hr/> <p>30 47:17 300 3:13 303 4:16 34 6:4 36 45:9 39 38:20, 38:25</p> <hr/> <p>4</p> <hr/> <p>400 4:7 4166 4:22 4247 3:15, 3:16 447 4:16 45 25:23 47 1:24, 25:23 473885 1:23</p> <hr/> <p>5</p> <hr/> <p>50 24:14 56.5 24:22 58323 37:17 58501 3:7 58502 3:16 58503 3:14</p>
---	--	--	---

7	
701	
3:8, 3:17	
716	
4:9	
751	
3:8, 3:17	
785	
4:22	
7980	
37:16	
8	
80301	
4:15	
8188	
3:17	
8760	
4:16	
9	
9	
1:22	
99	
37:16	
9a	
38:14	
9b	
19:9, 21:7,	
23:13, 23:16,	
24:13, 27:25,	
38:11	

EXHIBIT 7

Walen Depo. Tr.



Planet Depos®
We Make It *Happen™*

Transcript of Charles Leander Walen

Date: December 7, 2022

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

Planet Depos

Phone: 888-433-3767

Fax: 888-503-3767

Email: transcripts@planetdepos.com

www.planetdepos.com

December 7, 2022

<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF NORTH DAKOTA</p> <p>3 EASTERN DIVISION</p> <p>4 - - - - - x</p> <p>5 CHARLES WALEN, an individual; :</p> <p>6 and PAUL HENDERSON, an : 7 individual, : 8 Plaintiffs, : 9 v. : Case No.</p> <p>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</p> <p>18 (Caption continued on next page)</p> <p>19 Deposition of CHARLES LEANDER WALEN 20 Conducted Virtually 21 Wednesday, December 7, 2022 22 2:02 p.m. EST</p> <p>23 Job No.: 473885 24 Pages 1 - 37 25 Reported by: Debra A. Whitehead</p>	<p>1 APPEARANCES</p> <p>2 ON BEHALF OF PLAINTIFFS:</p> <p>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</p> <p>10 ON BEHALF OF DEFENDANTS:</p> <p>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)</p> <p>2 - - - - - x</p> <p>3 and : 4 MANDAN, HIDATSA AND ARIKARA : 5 NATION, CESAR ALVAREZ, and : 6 LISA DEVILLE, : 7 Intervenor-Defendants. : 8 - - - - - X</p> <p>9 Deposition of CHARLES LEANDER WALEN, conducted 10 virtually.</p> <p>11 12 13 Pursuant to notice, before Debra Ann Whitehead, 14 E-Notary Public in and for the State of Maryland. 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 APPEARANCES CONTINUED</p> <p>2 ON BEHALF OF INTERVENOR-DEFENDANTS:</p> <p>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>

December 7, 2022

<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>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>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>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>

December 7, 2022

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

December 7, 2022

<p>13</p> <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>	<p>15</p> <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>
<p>14</p> <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>	<p>16</p> <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>

December 7, 2022

<p>17</p> <p>1 Q And how long have you been the Northwest 2 regional chair for the party?</p> <p>3 A Four years.</p> <p>4 Q Is that also elected?</p> <p>5 A Yes.</p> <p>6 Q Do you have any other positions with the 7 North Dakota Republican party?</p> <p>8 A No.</p> <p>9 Q What about the national Republican party; 10 do you have any involvement there?</p> <p>11 A No, none.</p> <p>12 Q And any other political organizations?</p> <p>13 A No.</p> <p>14 Q Have you worked on political campaigns?</p> <p>15 A Yes; in my district.</p> <p>16 Q And which types of campaigns?</p> <p>17 A The legislative for Senator and for 18 Congress for North Dakota.</p> <p>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?</p> <p>22 A I don't -- he just asked if there's any 23 way he could help.</p> <p>24 Q Did you speak with him by phone in 25 addition to the text exchange?</p>	<p>19</p> <p>1 redistricting process, yes.</p> <p>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.</p> <p>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.</p> <p>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?</p> <p>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.</p> <p>18 Q Well, it's good that you got his name 19 spelled right.</p> <p>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?</p> <p>24 A It would be after the bill was passed.</p> <p>25 Q And aside from Representative Jones and</p>
<p>18</p> <p>1 A Other than his reaching out to me by his 2 text, I talked to him by phone.</p> <p>3 Q And what did you discuss in that 4 conversation?</p> <p>5 A I don't remember. That's over a year 6 ago.</p> <p>7 Q Have you run for office other than the 8 party positions?</p> <p>9 A Yes.</p> <p>10 Q What offices?</p> <p>11 A West Fargo School Board. I won.</p> <p>12 Q Anything else?</p> <p>13 A No.</p> <p>14 Q How did you become involved in this 15 lawsuit?</p> <p>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.</p> <p>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?</p> <p>25 A He reached out to me after seeing the</p>	<p>20</p> <p>1 the other two folks you mentioned, was anyone else 2 involved in conversations about the potential to 3 file a lawsuit?</p> <p>4 A No.</p> <p>5 Q And Jordan, is it Kannianen?</p> <p>6 A Kannianen.</p> <p>7 Q Jordan K, is he a member of the state 8 legislature?</p> <p>9 A He is the state Senator.</p> <p>10 Q Okay.</p> <p>11 A District 4.</p> <p>12 Q When did you first get in touch with your 13 attorneys in this case?</p> <p>14 A I will defer to them on that question.</p> <p>15 Don't remember the date exactly.</p> <p>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?</p> <p>20 A It would be short -- very shortly after 21 the redistricting.</p> <p>22 Q And did you reach out to them or did they 23 reach out to you?</p> <p>24 MR. SANDERSON: Object to the form, to 25 the extent it calls for attorney-client</p>

December 7, 2022

<p>21</p> <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>	<p>23</p> <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>
<p>22</p> <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>	<p>24</p> <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>

December 7, 2022

<p>25</p> <p>1 THE WITNESS: Okay.</p> <p>2 EXAMINATION BY COUNSEL FOR DEFENDANTS</p> <p>3 BY MR. PHILLIPS:</p> <p>4 Q Thank you, Mr. Walen. I'm -- did we lose</p> <p>5 him? Oh.</p> <p>6 A Yeah.</p> <p>7 Q Mr. Walen, I am David Phillips. I'm the</p> <p>8 attorney representing the defendants in this case,</p> <p>9 Governor Burgum and Secretary Jaeger. And I have</p> <p>10 just a few followup questions for you and we'll</p> <p>11 get you out of here.</p> <p>12 Mr. Walen, what is your race or</p> <p>13 ethnicity?</p> <p>14 A American, Caucasian.</p> <p>15 Q I think the very beginning of there cut</p> <p>16 off. I'm sorry, could you just repeat your</p> <p>17 answer?</p> <p>18 A I'm American, Caucasian.</p> <p>19 Q And white would be another way to</p> <p>20 describe you?</p> <p>21 A Yes.</p> <p>22 Q Do you consider yourself to be Native</p> <p>23 American?</p> <p>24 A I am an American native. I was born in</p> <p>25 this country.</p>	<p>27</p> <p>1 A Yes.</p> <p>2 Q And all other state-wide elections?</p> <p>3 A Yes.</p> <p>4 Q The home that you're in in New Town, do</p> <p>5 you own or rent that home?</p> <p>6 A Own.</p> <p>7 Q And do you live there all year round, or</p> <p>8 do you leave for part of the year?</p> <p>9 A I live here all year round.</p> <p>10 Q The home that you live in now, is that in</p> <p>11 the subdistrict that's known as Subdistrict 4A?</p> <p>12 A Correct.</p> <p>13 Q Have you ever lived in the subdistrict</p> <p>14 that's known as Subdistrict 4B?</p> <p>15 A No.</p> <p>16 Q In this case the defendants and the</p> <p>17 intervenors have served what's known as written</p> <p>18 discovery. Those are interrogatories and requests</p> <p>19 for production of documents.</p> <p>20 Do you remember participating in</p> <p>21 answering those?</p> <p>22 A Yes.</p> <p>23 Q And did you sign at the bottom of those</p> <p>24 answers?</p> <p>25 A Yes.</p>
<p>26</p> <p>1 Q Would it be fair to say you don't</p> <p>2 consider yourself to be an American Indian?</p> <p>3 A Correct.</p> <p>4 Q I may jump around here a little bit, my</p> <p>5 apologies in advance. I just wanted to clarify a</p> <p>6 few things that you testified to earlier.</p> <p>7 You had talked earlier about running and</p> <p>8 winning a seat on the West Fargo School Board.</p> <p>9 Is that correct?</p> <p>10 A Yes.</p> <p>11 Q I just want to follow up briefly.</p> <p>12 What years were you on the school board?</p> <p>13 A Approximately -- well, it would be in the</p> <p>14 1990s.</p> <p>15 Q For how many years?</p> <p>16 A Four years.</p> <p>17 Q And a few other clarifications.</p> <p>18 If I recall correctly, did you say you</p> <p>19 voted in every election since you were 18?</p> <p>20 A Yes.</p> <p>21 Q Were all of those elections in the State</p> <p>22 of North Dakota?</p> <p>23 A Yes.</p> <p>24 Q And would that include all state</p> <p>25 legislative elections?</p>	<p>28</p> <p>1 Q Earlier today you talked about some</p> <p>2 searching that you did today on your phone and</p> <p>3 your e-mail.</p> <p>4 Did you do any searching of electronic</p> <p>5 records before today for purposes of responding to</p> <p>6 discovery requests?</p> <p>7 A No.</p> <p>8 Q Have you reviewed the legislative record</p> <p>9 about the 2021 redistricting that's found on the</p> <p>10 website of our state legislature?</p> <p>11 A Only to the extent to know what the</p> <p>12 boundaries were.</p> <p>13 Q In other words, looking at the boundary</p> <p>14 maps?</p> <p>15 A Correct.</p> <p>16 Q Have you watched any of the videos in the</p> <p>17 legislative record dealing with the 2021</p> <p>18 redistricting?</p> <p>19 A No.</p> <p>20 Q Other than the maps, have you looked at</p> <p>21 any other documents in the legislative record?</p> <p>22 A Yes. I try to look at them when they're</p> <p>23 in session.</p> <p>24 Q Which documents would those have been?</p> <p>25 A Daily -- it would be the videos of the</p>

December 7, 2022

<p>29</p> <p>1 sessions, and then I just watch bits and pieces.</p> <p>2 Q Those videos, did you watch those live as</p> <p>3 they were taking place during the redistricting</p> <p>4 process?</p> <p>5 A No.</p> <p>6 Q Other than the videos, have you reviewed</p> <p>7 any documentation, either before or after the</p> <p>8 commencement of this lawsuit, generated at the</p> <p>9 legislature relating to redistricting?</p> <p>10 A No.</p> <p>11 Q You had testified earlier about some</p> <p>12 conversations that you had with North Dakota</p> <p>13 legislators. And you had mentioned Terry Jones,</p> <p>14 Clayton Fegley. My handwriting is horrible and</p> <p>15 the spelling was difficult. Who were the other</p> <p>16 names again?</p> <p>17 A Jordan Kannianen.</p> <p>18 Q And if I --</p> <p>19 A (Inaudible.)</p> <p>20 Q Say that one more time?</p> <p>21 A Senator Jordan Kannianen.</p> <p>22 Q And was there one more?</p> <p>23 A No; it was just those three.</p> <p>24 Q Correct me if I'm wrong. If I remember</p> <p>25 your testimony, I believe you said that those</p>	<p>31</p> <p>1 A How the process was going.</p> <p>2 Q Do you remember anything that Clayton</p> <p>3 told you about how the process was going?</p> <p>4 A No.</p> <p>5 Q Do you remember anything that you told to</p> <p>6 Clayton during those conversations?</p> <p>7 A Yes.</p> <p>8 Q What did you tell Clayton, that you can</p> <p>9 recall?</p> <p>10 A That depending on how the redistricting</p> <p>11 turned out, that we'd look at what legal action we</p> <p>12 could take to keep it together, if they decided to</p> <p>13 split it.</p> <p>14 Q When you say "keep it together," do you</p> <p>15 mean not subdistricted?</p> <p>16 A Correct.</p> <p>17 Q How many conversations during the</p> <p>18 redistricting process did you have with Jordan,</p> <p>19 and I won't attempt the last name.</p> <p>20 A Regarding the lawsuit, not that many. He</p> <p>21 is my son-in-law, so I communicate with him daily.</p> <p>22 Q And during the redistricting process you</p> <p>23 had multiple conversations with him?</p> <p>24 A Yes.</p> <p>25 Q And do you remember anything that he told</p>
<p>30</p> <p>1 conversations all took place after the</p> <p>2 redistricting was completed at the state in 2021.</p> <p>3 Is that correct?</p> <p>4 A I talk with them regularly as the</p> <p>5 district chair.</p> <p>6 Q Did you talk with them --</p> <p>7 A Only related to this lawsuit, it would be</p> <p>8 after.</p> <p>9 Q Related to the lawsuit, after.</p> <p>10 What conversations did you have with</p> <p>11 Terry Jones during the redistricting process?</p> <p>12 A Just discussed bound -- you know, asking</p> <p>13 what our boundaries would be.</p> <p>14 Q Did you have any discussions about the</p> <p>15 issues you're raising in this lawsuit?</p> <p>16 A Yes, we could have.</p> <p>17 Q Do you know how many times you talked to</p> <p>18 Terry Jones during the redistricting process?</p> <p>19 A I talked to him almost four or five times</p> <p>20 a week.</p> <p>21 Q What about Clayton Fegley; how many times</p> <p>22 did you talk to Clayton during the redistricting</p> <p>23 process?</p> <p>24 A Two, three times, maybe four at most.</p> <p>25 Q And what did you talk about with Clayton?</p>	<p>32</p> <p>1 you in those conversations during the</p> <p>2 redistricting process about the redistricting</p> <p>3 process?</p> <p>4 A No.</p> <p>5 Q Do you remember anything that you told</p> <p>6 him during the redistricting process about the</p> <p>7 redistricting process?</p> <p>8 A That if -- that if the district got</p> <p>9 split, that we'd look at what legal actions we</p> <p>10 could take to keep it together.</p> <p>11 Q Did you have any conversations with any</p> <p>12 of those three individuals during the</p> <p>13 redistricting process about the Voting Rights Act?</p> <p>14 A No.</p> <p>15 Q Have you ever had a conversation with</p> <p>16 anyone employed with the North Dakota Legislative</p> <p>17 Council about the 2021 redistricting process?</p> <p>18 A No.</p> <p>19 Q Have you ever had a conversation with</p> <p>20 anyone else who's employed by or is an agent of</p> <p>21 the State of North Dakota about the 2021</p> <p>22 redistricting process?</p> <p>23 A No.</p> <p>24 Q Did you, personally, attend or provide</p> <p>25 any testimony at any of the committee hearings or</p>

December 7, 2022

<p>33</p> <p>1 debates on redistricting in 2021?</p> <p>2 A No.</p> <p>3 Q Have you hired an expert to testify at</p> <p>4 trial about the Voting Rights Act in this case?</p> <p>5 A I have not.</p> <p>6 Q Were you aware of whether or not the</p> <p>7 plaintiffs have done so, including you or your</p> <p>8 co-plaintiffs?</p> <p>9 A You'll have to ask the attorneys.</p> <p>10 MR. PHILLIPS: Let's take a short break.</p> <p>11 We'll go off the record for just a few minutes.</p> <p>12 (A recess was taken.)</p> <p>13 BY MR. PHILLIPS:</p> <p>14 Q You testified earlier about going through</p> <p>15 and searching your e-mails and texts today.</p> <p>16 Since the commencement of this lawsuit,</p> <p>17 have you deleted any texts that have been deleted</p> <p>18 and wouldn't have shown up in your results?</p> <p>19 A No.</p> <p>20 Q Do you keep all of your text messages</p> <p>21 without ever deleting them?</p> <p>22 A They're -- after a period of time they're</p> <p>23 automatically deleted. I don't know what that</p> <p>24 time frame is.</p> <p>25 Q From your Samsung phone?</p>	<p>35</p> <p>1 MR. GABER: Nothing further from me.</p> <p>2 Thank you, Mr. Walen, I appreciate it.</p> <p>3 MR. SANDERSON: And, Chuck, you have the</p> <p>4 right to read and sign your deposition or you can</p> <p>5 waive that right. It's up to you. Paul waived</p> <p>6 his earlier, if that's what you want to do.</p> <p>7 THE WITNESS: I can waive it.</p> <p>8 MR. SANDERSON: All right. Chuck, thank</p> <p>9 you for your time.</p> <p>10 COURT REPORTER: Mr. Phillips, same order</p> <p>11 as earlier?</p> <p>12 MR. PHILLIPS: Yes.</p> <p>13 COURT REPORTER: Mr. Sanderson, same</p> <p>14 order as earlier?</p> <p>15 MR. SANDERSON: Same order, please.</p> <p>16 COURT REPORTER: Thank you.</p> <p>17 (Off the record at 2:57 p.m. EST.)</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>34</p> <p>1 A Correct.</p> <p>2 Q And what about your e-mails; are they --</p> <p>3 have they been deleted either automatically or by</p> <p>4 you since the commencement of this lawsuit?</p> <p>5 A Not that I'm aware of.</p> <p>6 Q So we will likely be making a followup</p> <p>7 request in this case. And so I would ask that you</p> <p>8 preserve and don't make any deletions, to the</p> <p>9 extent it's already happened don't do any further</p> <p>10 deletions of any texts on your phone or any</p> <p>11 e-mails so that we can make that request and that</p> <p>12 they don't get inadvertently deleted.</p> <p>13 And additionally, I would also ask, we'll</p> <p>14 likely make a request for the notes that you</p> <p>15 discussed earlier that you took in the last</p> <p>16 deposition today, the first deposition today, I</p> <p>17 should say. I'd request that you keep those and</p> <p>18 hold on to them, too, because we'll likely be</p> <p>19 making a request for a copy of those.</p> <p>20 A I will send those to the attorney, to our</p> <p>21 attorneys.</p> <p>22 Q Perfect.</p> <p>23 MR. PHILLIPS: Thank you. I have no</p> <p>24 further questions.</p> <p>25 Mr. Gaber?</p>	<p>36</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2 I, CHARLES LEANDER WALEN, do hereby</p> <p>3 acknowledge that I have read and examined the</p> <p>4 foregoing testimony, and the same is a true,</p> <p>5 correct and complete transcription of the</p> <p>6 testimony given by me, and any corrections appear</p> <p>7 on the attached Errata sheet signed by me.</p> <p>8</p> <p>9 _____</p> <p>10 (DATE) (SIGNATURE)</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>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Charles Leander Walen
December 7, 2022

10 (37 to 40)

37

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

25

A			
<p>able 23:13</p> <p>about 7:18, 13:2, 17:9, 19:6, 20:2, 22:13, 22:18, 23:16, 26:7, 28:1, 28:9, 29:11, 30:14, 30:21, 30:25, 31:3, 32:2, 32:6, 32:13, 32:17, 32:21, 33:4, 33:14, 34:2</p> <p>accountant 15:25</p> <p>acknowledge 36:3</p> <p>acknowledgment 36:1</p> <p>act 32:13, 33:4</p> <p>action 31:11</p> <p>actions 32:9</p> <p>actually 15:16</p> <p>addition 17:25</p> <p>additionally 34:13</p> <p>address 12:22, 15:13, 15:17</p> <p>advance 26:5</p> <p>affiliated 13:21</p> <p>affixed 37:13</p> <p>after 11:23, 14:7, 18:25, 19:22, 19:24, 20:20,</p>	<p>23:1, 29:7, 30:1, 30:8, 30:9, 33:22</p> <p>afterwards 20:18</p> <p>again 8:14, 29:16</p> <p>agent 32:20</p> <p>ago 7:18, 7:19, 18:6</p> <p>agreement 21:16</p> <p>ahead 9:4, 9:6, 9:18</p> <p>all 7:20, 7:24, 9:13, 21:11, 22:12, 24:16, 26:21, 26:24, 27:2, 27:7, 27:9, 30:1, 33:20, 35:8</p> <p>allison 4:11</p> <p>almost 30:19</p> <p>already 34:9</p> <p>also 5:2, 8:4, 17:4, 19:17, 24:2, 34:13</p> <p>alvarez 2:5</p> <p>alvin 1:13</p> <p>always 22:12</p> <p>american 4:13, 4:19, 25:14, 25:18, 25:23, 25:24, 26:2</p> <p>among 21:16</p> <p>ann 2:13</p>	<p>another 8:9, 8:14, 25:19</p> <p>answer 8:6, 9:5, 9:18, 9:22, 10:10, 12:2, 12:9, 25:17</p> <p>answering 27:21</p> <p>answers 11:10, 27:24</p> <p>anticipate 9:1</p> <p>any 9:5, 9:21, 10:3, 10:9, 11:4, 12:3, 13:24, 14:20, 15:9, 16:13, 17:6, 17:10, 17:12, 17:22, 21:3, 22:17, 24:22, 28:4, 28:16, 28:21, 29:7, 30:14, 32:11, 32:25, 33:17, 34:8, 34:9, 34:10, 36:6, 37:9</p> <p>anyone 9:25, 20:1, 32:16, 32:20</p> <p>anything 11:5, 12:13, 14:13, 18:12, 21:7, 23:16, 31:2, 31:5, 31:25, 32:5</p> <p>apologies 26:5</p> <p>appear 36:6</p> <p>appreciate 35:2</p> <p>approximately 16:22, 26:13</p> <p>april 37:17</p>	<p>areas 12:13</p> <p>arikara 2:4</p> <p>around 26:4</p> <p>arrangement 21:18, 21:19</p> <p>aside 19:25</p> <p>asked 14:23, 17:22</p> <p>asking 7:9, 8:21, 30:12</p> <p>assume 8:18</p> <p>attached 36:7</p> <p>attempt 31:19</p> <p>attend 32:24</p> <p>attorney 13:1, 13:5, 25:8, 34:20</p> <p>attorney-client 20:25</p> <p>attorneys 9:15, 20:13, 33:9, 34:21</p> <p>automatically 33:23, 34:3</p> <p>avenue 3:13</p> <p>aware 21:20, 21:21, 33:6, 34:5</p> <p>away 22:13</p> <p>awkward 8:2, 8:15</p> <hr/> <p>B</p> <hr/> <p>b-y-e 19:15</p> <p>back 14:5, 17:19</p>

background 16:11	26:4	can't 8:10, 9:21	clarifications 26:17
bakke 3:12	bits 29:1	cannot 11:8	clarify 8:22, 26:5
based 12:18, 12:19	board 18:11, 26:8, 26:12	capacity 1:11, 1:14	clayton 22:4, 29:14, 30:21, 30:22, 30:25, 31:2, 31:6, 31:8
bear 9:10	born 25:24	caption 1:18, 2:1	clear 21:5
because 8:2, 11:7, 12:7, 22:23, 34:18	both 8:23, 14:8	carter 4:12	close 11:8
become 18:14, 22:20, 22:21, 22:22	bottom 27:23	case 1:9, 7:8, 9:5, 12:14, 20:13, 25:8, 27:16, 33:4, 34:7, 37:10	co-plaintiffs 33:8
been 7:3, 7:13, 7:22, 16:20, 17:1, 19:22, 20:17, 23:9, 28:24, 33:17, 34:3	boulder 4:15	caucasian 25:14, 25:18	cognizant 7:23
before 2:13, 7:13, 11:16, 11:18, 15:7, 28:5, 29:7, 37:2	boundaries 28:12, 30:13	cellphone 14:15	college 3:6, 16:12
beginning 25:15	boundary 28:13	cenex 16:7	colorado 4:15
behalf 3:2, 3:10, 4:2	box 3:15	center 4:6	com 12:23
being 23:9	break 9:2, 9:3, 9:7, 24:18, 33:10	century 3:13	come 16:12, 19:3
believe 19:13, 29:25	briefly 26:11	certificate 37:1	commencement 29:8, 33:16, 34:4
benefit 8:4	bring 10:3	certify 37:3	commission 37:16
besides 14:12, 15:10	broadway 4:14	cesar 2:5	committee 19:8, 19:14, 32:25
best 8:5, 10:11	bulk 16:6	chair 16:17, 16:18, 16:21, 17:2, 22:9, 30:5	communicate 31:21
between 13:1	burgum 1:10, 25:9	changed 23:24	communication 13:10, 22:10
bill 19:22, 19:24	business 16:3, 16:5	charles 1:5, 1:19, 2:9, 6:2, 7:2, 7:12, 21:2, 36:2	communications 21:1, 21:3
bismarck 3:7, 3:14, 3:16	bye 19:7, 19:15	calls 20:25	company 11:7
bit 12:10, 22:25,	calls 20:25	came 19:6	complaint 23:12, 23:15
	came 19:6	campaign 4:6	complete 36:5
	campaigns 17:14, 17:16	chuck 35:3, 35:8	completed 30:2
		chuckwalen@gmail 12:23	computer 11:6
		circle 17:19	

conducted 1:20, 2:9 congress 17:18 consider 25:22, 26:2 constituent 13:17, 13:20 contact 21:8 continued 1:18, 2:1 contributing 21:22 conversation 8:3, 17:20, 17:21, 18:4, 32:15, 32:19 conversations 20:2, 29:12, 30:1, 30:10, 31:6, 31:17, 31:23, 32:1, 32:11 cooperative 16:2 copy 34:19 correct 12:21, 14:11, 15:23, 23:7, 23:8, 23:22, 24:1, 26:3, 26:9, 27:12, 28:15, 29:24, 30:3, 31:16, 34:1, 36:5, 37:4 corrections 36:6 correctly 26:18 could 12:9, 17:23, 19:11, 25:16, 30:16, 31:12, 32:10 council 32:17	counsel 7:4, 10:14, 11:18, 11:23, 21:4, 21:10, 25:2, 37:9 country 25:25 county 15:1 couple 7:20 court 1:1, 7:23, 19:11, 35:10, 35:13, 35:16 currently 22:5 cut 25:15 cutting 22:25 <hr/> D <hr/> d-o-n-i-t-a 19:15 daily 28:25, 31:21 dakota 1:2, 1:12, 1:15, 3:7, 3:14, 3:16, 15:8, 15:15, 17:7, 17:18, 26:22, 29:12, 32:16, 32:21 danahy 4:4 date 14:4, 20:15, 36:10 dates 10:19 david 3:11, 25:7 day 37:13 dc 4:8, 4:21	dealing 28:17 debates 33:1 debra 1:25, 2:13, 37:2 december 1:21, 37:13 decide 22:20, 22:21, 22:22 decided 18:18, 31:12 defendants 1:16, 3:10, 25:2, 25:8, 27:16 defer 20:14 deleted 33:17, 33:23, 34:3, 34:12 deleting 33:21 deletions 34:8, 34:10 depending 31:10 deponent 36:1 deposed 7:13 deposition 1:19, 2:9, 10:7, 11:11, 11:14, 11:16, 11:19, 11:24, 12:4, 12:8, 14:22, 21:4, 34:16, 35:4 describe 25:20 determination 12:16 deville 2:6 difficult 29:15	direct 10:13 discovery 27:18, 28:6 discuss 18:3, 21:3 discussed 19:9, 21:25, 30:12, 34:15 discussions 30:14 district 1:1, 1:2, 13:15, 13:16, 13:17, 13:21, 15:20, 15:21, 16:17, 16:20, 17:15, 18:18, 18:20, 19:9, 20:11, 22:9, 22:24, 23:2, 23:24, 23:25, 24:2, 30:5, 32:8 division 1:3 documentation 29:7 documents 12:3, 12:6, 12:24, 12:25, 14:20, 27:19, 28:21, 28:24 doing 8:12 done 7:22, 33:7 donita 19:7, 19:15 doug 1:10 down 7:24, 8:11, 24:11 drive 3:6, 14:25 duly 7:3 during 11:11, 20:17,
---	--	---	--

29:3, 30:11, 30:18, 30:22, 31:6, 31:17, 31:22, 32:1, 32:6, 32:12	16:10 else 9:25, 14:13, 18:12, 20:1, 23:16, 32:20 employed 32:16, 32:20, 37:9 end 23:3 endeavor 7:25 entitled 10:15 equal 21:17 errata 36:7 esquire 3:3, 3:4, 3:11, 4:3, 4:4, 4:5, 4:11, 4:12, 4:18 est 1:22, 35:17 ethnicity 25:13 even 8:12 evenson 3:5 ever 22:11, 27:13, 32:15, 32:19, 33:21 every 24:9, 26:19 exactly 20:15, 20:16 examination 6:2, 7:4, 25:2 examined 36:3 exchange 14:3, 17:25, 18:22 executive 19:8, 19:14 expert 33:3	expires 37:16 explanation 19:4 extent 20:25, 23:19, 28:11, 34:9	followup 25:10, 34:6 foregoing 36:4, 37:3, 37:4 form 20:24, 22:10 found 28:9 four 17:3, 19:20, 26:16, 30:19, 30:24 frame 33:24 frequently 24:15 fuel 16:6 full 23:24 fully 9:22 fund 4:13, 4:19 further 24:22, 34:9, 34:24, 35:1
E	F	G	
e-mail 11:5, 11:7, 11:10, 12:8, 12:20, 12:22, 14:8, 14:19, 28:3 e-mails 33:15, 34:2, 34:11 e-notary 2:14, 37:21 each 8:1, 8:16 eagle 14:25 earlier 26:6, 26:7, 28:1, 29:11, 33:14, 34:15, 35:6, 35:11, 35:14 eastern 1:3 educational 16:11 either 29:7, 34:3 elected 16:23, 17:4 election 24:6, 24:9, 26:19 elections 24:8, 26:21, 26:25, 27:2 electronic 28:4 elevator 16:7 eleven 15:4, 15:6,	fact 18:16 fair 26:1 family 22:15 fargo 15:8, 18:11, 26:8 feel 22:23 fegley 22:4, 29:14, 30:21 few 21:12, 25:10, 26:6, 26:17, 33:11 fifteen-plus 7:19 file 20:3 financial 37:11 find 12:24 fine 10:17, 10:21, 11:9 first 20:12, 34:16 five 30:19 folks 19:14, 20:1, 22:11 follow 26:11 follows 7:3	gabber 4:3, 6:3, 7:6, 7:7, 10:20, 11:2, 24:17, 24:21, 34:25, 35:1 generate 19:2 generated 21:8, 29:8 give 8:9, 8:15, 19:4 given 36:6 giving 8:5 go 9:3, 9:6, 9:18,	

33:11 going 17:19, 24:17, 31:1, 31:3, 33:14 good 9:8, 9:9, 11:2, 19:18 governor 1:11, 24:23, 25:9 graduate 16:12 grinolds 3:12 grocery 16:7 ground 7:21 group 19:3, 21:17 groups 21:22 guess 19:2, 22:6	26:4, 27:9 hereby 36:2, 37:3 hereunto 37:12 hidatsa 2:4 high 16:12 hired 33:3 hoerter 5:3 hold 13:24, 16:13, 34:18 home 27:4, 27:5, 27:10 horrible 29:14 house 15:10, 15:21, 24:4, 24:11 houses 22:13	initiated 21:8 instruct 21:2 interest 37:10 interrogatories 11:15, 14:23, 27:18 intervenor-defen- dants 2:7, 4:2, 7:5, 7:8 intervenors 27:17 involved 18:14, 19:5, 20:2 involvement 17:10 issues 30:15	jump 26:4
H	I	J	K
hand 37:12 handwriting 29:14 hansen 4:5 happened 34:9 harder 8:12 head 8:11 hearings 32:25 help 13:9, 17:23 helpful 19:10 henderson 1:6, 21:14 here 7:21, 25:11,	idea 19:2 identify 21:13 imagine 8:13 important 7:25 inadvertently 34:12 include 26:24 including 33:7 indian 26:2 individual 1:5, 1:7 individuals 32:12	justified 21:8 justify 21:2 justice 37:10 justices 11:15, 14:23, 27:18 justifier 2:7, 4:2, 7:5, 7:8 justifiers 27:17 justified 18:14, 19:5, 20:2 justification 17:10 justices 30:15	kannianen 19:16 kannianen 19:8, 19:16, 20:5, 20:6, 22:1, 29:17, 29:21 keep 8:4, 9:13, 31:12, 31:14, 32:10, 33:20, 34:17 kelty 4:18 kind 14:15, 19:4 knew 15:16 know 8:2, 8:11, 8:19, 8:22, 9:3, 9:17, 10:12, 10:13, 10:15, 10:22, 12:1, 14:4, 18:21, 19:3, 20:16, 21:7, 21:11, 21:19, 21:21, 21:23, 28:11, 30:12, 30:17, 33:23 known 27:11, 27:14, 27:17 kristin 5:3
			L
			last 19:11, 20:19, 31:19, 34:15 laurie 5:4 lawsuit 12:19, 13:9,

14:9, 18:15, 20:3, 22:18, 29:8, 30:7, 30:9, 30:15, 31:20, 33:16, 34:4 lawyer 7:8 leander 1:19, 2:9, 6:2, 7:2, 36:2 least 19:12 leave 27:8 legal 4:6, 21:10, 31:11, 32:9 legislative 15:20, 17:17, 20:18, 26:25, 28:8, 28:17, 28:21, 32:16 legislators 22:17, 29:13 legislature 19:22, 20:8, 21:24, 28:10, 29:9 let's 33:10 likely 34:6, 34:14, 34:18 lisa 2:6 litigation 21:25 little 12:10, 22:25, 26:4 live 14:24, 15:7, 27:7, 27:9, 27:10, 29:2 lived 15:3, 27:13 lives 22:12, 24:16	local 16:24 long 7:18, 9:14, 15:3, 16:9, 16:20, 17:1 look 14:4, 28:22, 31:11, 32:9 looked 12:8, 28:20 looking 12:11, 14:18, 28:13 looks 23:1 lose 25:4 lost 18:16 lumberyard 16:7 <hr/> M <hr/> main 7:22 make 8:7, 9:19, 10:25, 12:15, 34:8, 34:11, 34:14 makes 7:25, 22:15 making 34:6, 34:19 mandan 2:4 many 7:15, 26:15, 30:17, 30:21, 31:17, 31:20 maps 28:14, 28:20 mark 4:3, 7:7 maryland 2:14, 37:22 matter 10:25	maybe 10:13, 24:18, 30:24 mean 21:5, 21:7, 31:15 meet 11:18, 11:23 member 13:15, 13:16, 13:23, 20:7 members 16:24, 21:24 mentioned 9:24, 20:1, 29:13 message 13:6, 14:2 messages 12:9, 13:3, 14:20, 33:20 michael 4:12 might 8:13, 9:15, 10:9 mind 8:4, 9:10 minutes 7:21, 24:18, 33:11 missed 22:3 molly 4:4 more 12:10, 29:20, 29:22 morning 10:8, 10:12, 11:17 morning's 11:24, 12:7 most 30:24 mountrail 15:2 much 9:1	multiple 31:23 myself 13:1, 19:7 <hr/> N <hr/> name 7:7, 7:10, 19:18, 21:21, 31:19 names 10:19, 19:12, 19:13, 29:16 narf 5:3, 5:4 nation 2:5 national 17:9 native 4:13, 4:19, 25:22, 25:24 nature 10:6, 16:3, 16:5 need 9:2, 9:3 needs 22:23, 23:1 neither 37:9 neswood 4:11 new 14:25, 15:10, 27:4 next 1:18 nicole 4:5 nods 8:11 none 6:8, 17:11 normal 8:3 north 1:2, 1:12,
---	---	--	--

<p>1:15, 3:7, 3:14, 3:16, 15:8, 15:14, 17:7, 17:18, 26:22, 29:12, 32:16, 32:21 northwest 16:18, 17:1 notarial 37:13 notary 37:1 notes 10:3, 10:6, 10:8, 10:14, 10:16, 10:19, 34:14 nothing 35:1 notice 2:13 nw 4:7, 4:20</p> <hr/> <p>O</p> <p>object 9:16, 20:24, 23:17 objection 9:17, 23:4 office 9:12, 9:24, 18:7 officer 37:2 offices 18:10 official 1:10, 1:13, 13:24 often 22:14 oh 25:5 okay 8:16, 8:24, 9:11, 11:2, 14:6, 14:17,</p>	<p>20:10, 24:18, 24:19, 25:1 one 7:16, 7:22, 8:3, 8:14, 9:4, 9:15, 11:25, 13:4, 18:19, 22:3, 22:13, 23:5, 23:11, 23:14, 23:21, 23:24, 29:20, 29:22 ones 21:15 ongoing 19:21 only 9:4, 10:18, 11:20, 11:25, 12:25, 13:4, 21:5, 23:10, 28:11, 30:7 open 11:4, 11:5, 11:7 options 19:9 order 35:10, 35:14, 35:15 organizations 17:12 other 8:1, 9:15, 11:3, 11:4, 14:18, 14:20, 14:22, 15:9, 17:6, 17:12, 18:1, 18:7, 19:13, 20:1, 21:22, 22:17, 26:17, 27:2, 28:13, 28:20, 28:21, 29:6, 29:15 otherwise 37:11 out 13:18, 13:19,</p>	<p>18:1, 18:23, 18:25, 20:22, 20:23, 22:25, 25:11, 31:11 outcome 37:11 outside 13:4 over 8:1, 8:5, 18:5 own 27:5, 27:6</p> <hr/> <p>P</p> <p>page 1:18, 2:1, 6:2, 8:23 pages 1:24 paralegal 5:3, 5:4 paraphrasing 13:7 part 27:8 participating 27:20 particular 12:11 parties 16:14, 37:10 party 13:22, 13:23, 13:25, 16:19, 16:24, 17:2, 17:7, 17:9, 18:8 passed 19:23, 19:24 past 23:10 paul 1:6, 3:3, 10:8, 10:22, 21:14, 35:5 paying 21:10, 21:11 pending 9:6</p>	<p>people 18:18, 18:19, 21:17, 21:22, 22:7 perfect 34:22 period 33:22 person 23:21 personal 12:20 personally 24:5, 32:24 pertained 12:14 phillips 3:11, 6:4, 24:23, 25:3, 25:7, 33:10, 33:13, 34:23, 35:10, 35:12 phone 11:20, 17:24, 18:2, 28:2, 33:25, 34:10 pieces 29:1 place 16:8, 29:3, 30:1 plaintiff 22:20, 22:22 plaintiffs 1:8, 3:2, 33:7 plan 23:17, 23:20 please 8:4, 8:21, 9:3, 19:6, 35:15 political 16:14, 17:12, 17:14 poor 8:21 position 13:24, 16:23 positions 16:13, 17:6,</p>
--	--	--	---

18:8 potential 20:2 preference 10:23 preparation 12:4 prepare 11:13, 14:21 present 5:2, 10:12 preserve 34:8 previous 2:1 private 9:12 probably 10:11 problem 11:1 proceedings 37:3, 37:5 process 12:17, 19:1, 20:18, 29:4, 30:11, 30:18, 30:23, 31:1, 31:3, 31:18, 31:22, 32:2, 32:3, 32:6, 32:7, 32:13, 32:17, 32:22 producing 10:17, 10:21 production 27:19 provide 32:24 public 2:14, 37:1, 37:21 purposes 28:5 pursuant 2:13	question 8:16, 8:20, 9:5, 9:16, 9:18, 11:25, 12:2, 12:9, 16:4, 20:14 questions 7:9, 8:10, 8:19, 9:22, 10:9, 11:11, 24:22, 24:25, 25:10, 34:24	redistricting 12:19, 14:7, 14:10, 19:1, 19:21, 20:21, 23:17, 28:9, 28:18, 29:3, 29:9, 30:2, 30:11, 30:18, 30:22, 31:10, 31:18, 31:22, 32:2, 32:6, 32:7, 32:13, 32:17, 32:22, 33:1 reduced 37:7 regarding 31:20 regional 16:18, 17:2 register 15:14 registered 15:12 regularly 22:8, 24:8, 30:4 related 30:7, 30:9, 37:9 relating 29:9 remember 7:16, 18:5, 20:15, 21:9, 21:15, 27:20, 29:24, 31:2, 31:5, 31:25, 32:5 remotely 8:12 rent 27:5 repeat 25:16 reported 1:25 reporter 7:23, 19:11,	35:10, 35:13, 35:16, 37:1 represent 18:17, 18:19, 22:24, 23:2 representative 18:17, 19:25, 22:5, 23:5 representatives 23:6, 23:13 represented 23:9, 23:21, 24:3 representing 24:23, 25:8 republican 13:22, 13:23, 16:19, 16:21, 17:7, 17:9 republicans 24:3 request 10:25, 34:7, 34:11, 34:14, 34:17, 34:19 requested 37:8 requests 27:18, 28:6 required 15:14 residences 15:9 respect 13:2 responding 28:5 response 8:15 responses 8:10 rest 23:10 restate 16:4 results 33:18 review 12:3, 14:20
	R		
	race 25:12 raising 30:15 rather 10:16, 23:5, 23:21 reach 20:22, 20:23 reached 13:18, 13:19, 18:23, 18:25 reaching 18:1 read 11:15, 35:4, 36:3 reading 37:8 reason 7:17, 9:21, 23:23 recall 26:18, 31:9 recess 24:20, 33:12 record 7:11, 28:8, 28:17, 28:21, 33:11, 35:17, 37:5 records 14:5, 28:5 redistricted 13:8		
	Q		
quality 16:2			

reviewed 28:8, 29:6 right 7:20, 9:13, 15:19, 15:22, 18:24, 19:19, 22:16, 24:13, 35:4, 35:5, 35:8 rights 4:13, 4:19, 32:13, 33:4 role 13:22 room 8:14, 9:25 roughly 20:17, 22:6 round 27:7, 27:9 rules 7:21 run 12:16, 18:7 running 26:7 ryan 3:4	sandstrom 13:11, 13:12, 17:20, 18:22, 21:15 say 8:19, 13:16, 13:20, 15:5, 17:21, 26:1, 26:18, 29:20, 31:14, 34:17 school 16:12, 18:11, 26:8, 26:12 screen 11:4 screens 11:4 seal 37:13 search 12:16, 12:18, 12:19, 14:12, 14:13 searching 14:9, 14:10, 14:19, 28:2, 28:4, 33:15 seat 26:8 secretary 1:14, 24:24, 25:9 see 10:15, 12:13, 22:14, 23:24, 24:2 seeing 18:25 senate 15:20 senator 17:17, 20:9, 29:21 send 34:20 sense 8:7, 9:19, 22:15	served 27:17 session 28:23 sessions 29:1 set 37:12 seven 15:5 share 21:18 sheet 36:7 short 20:20, 24:17, 33:10 shorthand 37:1 shortly 20:20 should 18:19, 23:13, 34:17 shouldn't 10:25 shown 33:18 sign 27:23, 35:4 signature 36:10 signature-mig2k 37:18 signed 36:7 signing 37:8 similar 10:9 since 7:21, 7:22, 8:11, 24:9, 26:19, 33:16, 34:4 slowly 7:25 smartphone 14:16	sole 23:23 some 7:9, 7:21, 10:8, 24:24, 28:1, 29:11 someone 9:15, 10:14, 11:10, 18:21, 19:3, 22:23, 23:1 something 8:19, 23:1 sometimes 8:2 son-in-law 19:17, 31:21 sorry 15:16, 25:16 sort 19:4, 20:16 sound 9:8 sounds 9:9, 10:20, 11:2 speak 17:24 specific 12:11 spell 19:11 spelled 19:19 spelling 29:15 spend 7:20 split 21:17, 31:13, 32:9 spoken 22:7, 22:18 start 7:10 state 1:12, 1:15, 2:14, 7:10,
S			
said 13:7, 21:6, 23:1, 24:10, 24:11, 29:25, 37:5 samantha 4:18 same 8:13, 8:23, 35:10, 35:13, 35:15, 36:4 samsung 14:16, 14:17, 33:25 sanderson 3:3, 3:5, 10:24, 20:24, 35:3, 35:8, 35:13, 35:15			

9:17, 15:20, 15:21, 16:18, 20:7, 20:9, 23:5, 23:6, 23:10, 24:3, 24:24, 26:21, 26:24, 28:10, 30:2, 32:21, 37:22 state-wide 27:2 states 1:1 stay 24:15 stenographically 37:6 still 19:21 stirling 5:4 stop 16:6 store 16:7 street 4:7, 4:20, 24:11 subdistrict 27:11, 27:13, 27:14 subdistricted 31:15 suite 3:6, 4:7, 4:20 supervision 37:7 supposed 11:8 sure 21:11 sworn 7:3	31:12, 32:10, 33:10 taken 24:20, 33:12, 37:3, 37:6 taking 7:24, 9:1, 29:3 talk 7:25, 8:1, 8:5, 22:8, 30:4, 30:6, 30:22, 30:25 talked 18:2, 19:5, 26:7, 28:1, 30:17, 30:19 talking 18:17 tell 21:6, 31:8 ten 16:22, 24:18 terms 14:12 terry 19:7, 19:12, 21:14, 22:1, 22:12, 24:11, 29:13, 30:11, 30:18 testified 7:3, 26:6, 29:11, 33:14 testify 21:3, 33:3 testimony 29:25, 32:25, 36:4, 36:6 text 12:8, 13:2, 13:6, 14:2, 14:3, 14:19, 17:25, 18:2, 18:22, 22:11, 33:20 texts 14:8, 33:15, 33:17, 34:10	th 4:7, 37:13 thank 24:22, 25:4, 34:23, 35:2, 35:8, 35:16 thereafter 37:6 thing 9:4, 10:18 things 26:6 think 19:10, 19:12, 23:12, 23:20, 24:10, 24:24, 25:15 third 22:3 three 22:7, 22:13, 29:23, 30:24, 32:12 through 11:15, 14:18, 14:19, 33:14 time 7:16, 9:2, 24:16, 24:23, 29:20, 33:22, 33:24, 35:9 times 7:15, 8:15, 30:17, 30:19, 30:21, 30:24 today 9:2, 9:22, 10:4, 11:22, 14:21, 28:1, 28:2, 28:5, 33:15, 34:16 today's 11:13, 11:19 together 31:12, 31:14, 32:10 told 31:3, 31:5,	31:25, 32:5 took 10:8, 30:1, 34:15 touch 20:12 town 14:25, 15:10, 27:4 transcript 37:4 transcription 36:5 treatment 23:19 trial 33:4 trouble 11:12 truck 16:6 true 36:4, 37:4 truthfully 9:22 try 8:14, 9:13, 28:22 turned 31:11 two 14:12, 19:12, 19:13, 20:1, 23:6, 23:9, 23:10, 23:13, 23:21, 24:3, 30:24 types 17:16 typewriting 37:7 typically 10:14
T			U
take 8:10, 9:4, 9:6, 22:11, 24:17,			under 37:7 understand 8:17, 8:18,

8:20, 13:7 unequal 23:19 united 1:1, 16:2 unless 8:19 use 14:15, 15:17	watched 11:16, 28:16 way 17:23, 25:19 we'll 25:10, 33:11, 34:13, 34:18 we're 8:12, 15:14 website 28:10 wednesday 1:21 week 30:20 west 3:13, 15:8, 18:11, 26:8 whereof 37:12 whether 21:20, 33:6 white 25:19 whitehead 1:25, 2:13, 37:2 wiederholt 3:12 willing 13:9 winning 26:8 within 18:18 without 33:21 witness 10:18, 24:19, 25:1, 35:7, 37:12 won 18:11 word 14:9, 14:10 words 7:24, 28:13 work 9:9, 15:24,	16:1 work-related 7:17 worked 16:9, 17:14 wouldn't 33:18 written 27:17 wrong 29:24	14 4:7 1506 4:14 1514 4:20 16 37:13 18 24:9, 26:19 1990 26:14 1:-cv--crh 1:10
V		Y	2
verbal 8:10, 8:15, 22:12 videos 28:16, 28:25, 29:2, 29:6 virtually 1:20, 2:10 vote 15:12, 15:17, 23:5, 24:6, 24:8 voted 26:19 voting 32:13, 33:4		yeah 25:6 year 18:5, 20:18, 20:19, 27:7, 27:8, 27:9 years 7:19, 15:4, 16:10, 16:22, 17:3, 26:12, 26:15, 26:16 yesterday 11:22 yourself 25:22, 26:2	1:-cv--crh 1:10
W		Z	2
waive 35:5, 35:7 waived 35:5 walen 1:5, 1:19, 2:9, 6:2, 7:2, 7:7, 7:12, 11:3, 24:21, 25:4, 25:7, 25:12, 35:2, 36:2 want 11:11, 12:1, 21:6, 26:11, 35:6 wanted 26:5 washington 4:8, 4:21 watch 29:1, 29:2		zoom 11:3	2 1:22, 35:17 20005 4:8, 4:21 202 4:9, 4:22 2021 28:9, 28:17, 30:2, 32:17, 32:21, 33:1 2022 1:21, 24:6, 37:14 2023 37:17 22 1:10 2200 4:9 25 6:4
		0	3
		1	30 37:17 300 3:13 303 4:16 37 1:24
			4
			400 4:7

4166 4:22 422 14:25 4247 3:15, 3:16 447 4:16 473885 1:23 4a 15:21, 27:11 4b 22:4, 27:14 <hr/> 5 <hr/> 57 35:17 58501 3:7 58502 3:16 58503 3:14 <hr/> 7 <hr/> 701 3:8, 3:17 716 4:9 751 3:8, 3:17 785 4:22 <hr/> 8 <hr/> 80301 4:15 8188 3:17 8760 4:16	
--	--

EXHIBIT 8

SUBPOENA COMPILATION

UNITED STATES DISTRICT COURT

for the

District of North Dakota

Turtle Mountain Band of Chippewa Indians, et al.

Plaintiff

v.

Alvin Jaeger, in his official capacity as Secretary of
State of North Dakota*Defendant*

Civil Action No. 3:22-cv-00022

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

William R. Devlin

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A

Place: Robins Kaplan LLP, Attn: Timothy Q. Purdon
1207 West Divide Avenue, Ste. 200 Bismarck, ND 58501
OR
Spirit Lake Nation C/O Chairman Doug Yankton, Attn: Tim Purdon
PO Box 359, Fort Totten, ND 58335

Date and Time:
October 29, 2022

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/29/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Molly E. Danahy

*Attorney's signature*The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* **Plaintiffs**

, who issues or requests this subpoena, are:

Molly Danahy, Campaign Legal Center, 1101 14th St. NW, Ste. 400, Washington, D.C. 20005, 202-736-2200
mdanahy@campaignlegalcenter.org

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:22-cv-00022

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT A

DEFINITIONS

1. “You,” “Your,” and refers to William R. Devlin, whether in your official capacity as a legislator, your capacity as a candidate, or your capacity as an individual, and all past and present agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on your behalf or subject to your control.
2. “Legislature” refers to the North Dakota Legislative Assembly and all past and present members, committees, agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on its behalf or subject to its control.
3. “Redistricting Committee” refers to the interim Redistricting Committee of the 67th Legislature of the State of North Dakota convened for the purpose of developing a legislative redistricting plan and all past and present committee members, agents, advisors, representatives, attorneys, consultants, contractors, or other persons or entities acting on its behalf or subject to its control.
4. “2021 State Legislative Maps” or “Maps” refer to the Statewide Redistricting Plan for Legislative Districts in the State of North Dakota, adopted in House Bill 1504, H.B. 1504, 67th Leg., Spec. Sess. (N.D. 2021).
5. “2021 Redistricting Process” refers to the legislative process leading up to and during the placement of district lines in the 2021 State Legislative Maps.
6. “Communication(s)” shall mean any exchange or transfer of information between two or more persons or entities, including, but not limited to documents, audio recordings, photographs, data, or in any other form including electronic forms such as e-mails or text messages.
7. “Concern,” “concerning,” or “regarding” shall mean having any connection, relation, or reference to and include, by way of example and without limitation, discussing, identifying, containing, showing, evidencing, describing, reflecting, dealing with, regarding, pertaining to, analyzing, evaluating, estimating, constituting, comprising, studying, surveying, projecting, recording, relating to, summarizing, assessing, criticizing, reporting, commenting on, referring to in any way, either directly or indirectly, or otherwise involving, in whole or in part.
8. “Document” shall mean all documents, electronically stored information, and tangible things within the broadest possible interpretation of writing, as contained within Rule 1001 of the Federal Rules of Evidence, and/or within the broadest possible interpretation of “document,” “electronically stored information,” or “tangible thing,” as contained in Rule 34 of the Federal Rules of Civil Procedure.

9. “Item” is defined as documents, communications, electronically stored information, and tangible things. See, e.g., Fed. R. Civ. P. 34.
10. “Person” means any natural person, firm, association, partnership, joint venture, corporation, business trust, banking institution, unincorporated association, government agency or any other entity, its officers, directors, partners, employees, agents, and representatives.
11. “And” and “or” mean and include both the conjunctive and the disjunctive, and shall be construed as necessary to bring within the scope of this production request all responses that might otherwise be construed to be outside their scope.
12. In these definitions and in the Requests below, the singular form of a noun or pronoun includes the plural form, and the plural form includes the singular.

INSTRUCTIONS

1. This subpoena requires You to produce all responsive, non-privileged Documents that are in Your actual or constructive possession, custody, or control under Federal Rule of Civil Procedure 45. Unless otherwise requested, your responses to this subpoena shall comprise all information in Your possession, custody, or control; these requests are not limited to Documents within your physical possession. You shall make a diligent, reasonable, good-faith effort to produce any and all requested documents that are readily ascertainable and in Your possession, or that are readily ascertainable and otherwise within Your “control,” meaning documents that You have the “legal right to obtain” within the meaning of the local rules of this Court and binding Eighth Circuit precedent.
2. Your response must provide each Document or category of Documents requested in electronic form. Where an electronic copy of a particular Document cannot be obtained, You must produce copies of the Document or state with specificity the grounds for objecting to the request. See Fed. R. Civ. P. Rule 45(a)(1), (d)(2)(B).
3. To the extent that Your responses to this subpoena may be enlarged, diminished, or otherwise modified by information acquired subsequent to Your initial responses hereto, Plaintiffs request that You promptly supplement Your responses with Documents reflecting such changes.
4. In providing the Documents called for by this subpoena, You shall produce them as they are kept in the usual course of business, including all file folders, envelopes, labels, indices, or other identifying or organizing material in which such Documents are stored or filed, under which they are organized, or which accompany such Documents or organize and label them to correspond with the specific request(s) to which they relate.

5. In the event that any Document called for by this subpoena has since been destroyed, discarded or otherwise disposed of, identify each such Document by stating: (i) the author, addressor or addressee; (ii) the addressee or recipient of any indicated or blind copies; (iii) the date, subject matter and number of pages of the Document; (iv) the identity of any attachments or appendices to the Document; (v) all persons to whom the Document was distributed, shown or explained; (vi) the date, reason and circumstances of disposal of the Document; and (vii) the person authorizing and carrying out such disposal and each and every person with knowledge concerning the circumstances under which such Document was destroyed or disposed of.
6. This subpoena contemplates production of each requested Document in its entirety, without abbreviation or expurgation, except as justified by claims of attorney-client privilege or attorney work product protection. Any redacted material must be clearly identified on the Document.
7. If You claim any portion of any responsive Document is privileged or otherwise excludable from production or disclosure, You are requested to produce the non-privileged portion of the Document, with the privileged portion thereof redacted, and provide information that adequately describes the nature of the redacted portion in a manner that allows Plaintiffs to assess each claim of privilege or exclusion. Examples of information that adequately describes the nature of each redacted portion include: (i) the type of Document; (ii) the author, addressor, or addressee; (iii) the addressee or recipient of any indicated or blind copies; (iv) the date, subject matter, and number of pages of the document; (v) the identity of any attachments or appendices to the Document; (vi) all persons to whom the Document was distributed, shown, or explained; and (vii) the custodian and location of the Document. For each portion of any responsive Document redacted, You must expressly state the type of privilege claimed or other reason for withholding the information and the circumstances upon which You base Your claim of privilege or exclusion. *See* Fed. R. Civ. P. 45(e)(2)(A).
8. If You claim that you are unable to provide certain responses to this subpoena on the basis of the “undue burden or expense” requirement under Federal Rule of Civil Procedure 45(d)(1), please identify the documents You are unable to provide and the basis for Your determination that providing them would result in “undue burden or expense.”
9. Unless otherwise indicated, all requests refer to Items created between January 1, 2020 and the present.

DOCUMENTS TO BE PRODUCED

1. All Documents and Communications regarding Native Americans and/or Indian Reservations and the 2021 Redistricting Process or Maps.

2. All Documents and Communications regarding tribal input, including regarding written submissions or verbal testimony from tribal representatives, with respect to the 2021 Redistricting Process or Maps.
3. All Documents and Communications regarding redistricting criteria for the 2021 Redistricting Process or Maps.
4. All Documents and Communications regarding District 4, District 9, or District 15, and, where applicable, any subdistricts of these districts, including documents and communications regarding the applicability of the Voting Rights Act to these districts and subdistricts.
5. All Documents and Communications regarding trainings provided to legislators in preparation for or as a part of the 2021 Redistricting Process.
6. All Documents and Communications reflecting the identity of map drawers in the 2021 Redistricting Process.
7. All Documents and Communications related to racial polarization or demographic studies conducted by the Redistricting Committee or Legislature as a part of or in preparation for the 2021 Redistricting Process.

UNITED STATES DISTRICT COURT

for the

District of North Dakota

Turtle Mountain Band of Chippewa Indians, et al.

Plaintiff

v.

Alvin Jaeger, in his official capacity as Secretary of
State of North Dakota*Defendant*

Civil Action No. 3:22-cv-00022

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Ray Holmberg

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A

Place: Robins Kaplan LLP, Attn: Timothy Q. Purdon
1207 West Divide Avenue, Ste. 200 Bismarck, ND 58501
OR
Spirit Lake Nation C/O Chairman Doug Yankton, Attn: Tim Purdon
PO Box 359, Fort Totten, ND 58335

Date and Time:
October 29, 2022

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/29/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Molly E. Danahy

*Attorney's signature*The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* **Plaintiffs**

, who issues or requests this subpoena, are:

Molly Danahy, Campaign Legal Center, 1101 14th St. NW, Ste. 400, Washington, D.C. 20005, 202-736-2200
mdanahy@campaignlegalcenter.org

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:22-cv-00022

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT A

DEFINITIONS

1. “You,” “Your,” and refers to Ray Holmberg, whether in your official capacity as a legislator, your capacity as a candidate, or your capacity as an individual, and all past and present agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on your behalf or subject to your control.
2. “Legislature” refers to the North Dakota Legislative Assembly and all past and present members, committees, agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on its behalf or subject to its control.
3. “Redistricting Committee” refers to the interim Redistricting Committee of the 67th Legislature of the State of North Dakota convened for the purpose of developing a legislative redistricting plan and all past and present committee members, agents, advisors, representatives, attorneys, consultants, contractors, or other persons or entities acting on its behalf or subject to its control.
4. “2021 State Legislative Maps” or “Maps” refer to the Statewide Redistricting Plan for Legislative Districts in the State of North Dakota, adopted in House Bill 1504, H.B. 1504, 67th Leg., Spec. Sess. (N.D. 2021).
5. “2021 Redistricting Process” refers to the legislative process leading up to and during the placement of district lines in the 2021 State Legislative Maps.
6. “Communication(s)” shall mean any exchange or transfer of information between two or more persons or entities, including, but not limited to documents, audio recordings, photographs, data, or in any other form including electronic forms such as e-mails or text messages.
7. “Concern,” “concerning,” or “regarding” shall mean having any connection, relation, or reference to and include, by way of example and without limitation, discussing, identifying, containing, showing, evidencing, describing, reflecting, dealing with, regarding, pertaining to, analyzing, evaluating, estimating, constituting, comprising, studying, surveying, projecting, recording, relating to, summarizing, assessing, criticizing, reporting, commenting on, referring to in any way, either directly or indirectly, or otherwise involving, in whole or in part.
8. “Document” shall mean all documents, electronically stored information, and tangible things within the broadest possible interpretation of writing, as contained within Rule 1001 of the Federal Rules of Evidence, and/or within the broadest possible interpretation of “document,” “electronically stored information,” or “tangible thing,” as contained in Rule 34 of the Federal Rules of Civil Procedure.

9. “Item” is defined as documents, communications, electronically stored information, and tangible things. See, e.g., Fed. R. Civ. P. 34.
10. “Person” means any natural person, firm, association, partnership, joint venture, corporation, business trust, banking institution, unincorporated association, government agency or any other entity, its officers, directors, partners, employees, agents, and representatives.
11. “And” and “or” mean and include both the conjunctive and the disjunctive, and shall be construed as necessary to bring within the scope of this production request all responses that might otherwise be construed to be outside their scope.
12. In these definitions and in the Requests below, the singular form of a noun or pronoun includes the plural form, and the plural form includes the singular.

INSTRUCTIONS

1. This subpoena requires You to produce all responsive, non-privileged Documents that are in Your actual or constructive possession, custody, or control under Federal Rule of Civil Procedure 45. Unless otherwise requested, your responses to this subpoena shall comprise all information in Your possession, custody, or control; these requests are not limited to Documents within your physical possession. You shall make a diligent, reasonable, good-faith effort to produce any and all requested documents that are readily ascertainable and in Your possession, or that are readily ascertainable and otherwise within Your “control,” meaning documents that You have the “legal right to obtain” within the meaning of the local rules of this Court and binding Eighth Circuit precedent.
2. Your response must provide each Document or category of Documents requested in electronic form. Where an electronic copy of a particular Document cannot be obtained, You must produce copies of the Document or state with specificity the grounds for objecting to the request. See Fed. R. Civ. P. Rule 45(a)(1), (d)(2)(B).
3. To the extent that Your responses to this subpoena may be enlarged, diminished, or otherwise modified by information acquired subsequent to Your initial responses hereto, Plaintiffs request that You promptly supplement Your responses with Documents reflecting such changes.
4. In providing the Documents called for by this subpoena, You shall produce them as they are kept in the usual course of business, including all file folders, envelopes, labels, indices, or other identifying or organizing material in which such Documents are stored or filed, under which they are organized, or which accompany such Documents or organize and label them to correspond with the specific request(s) to which they relate.

5. In the event that any Document called for by this subpoena has since been destroyed, discarded or otherwise disposed of, identify each such Document by stating: (i) the author, addressor or addressee; (ii) the addressee or recipient of any indicated or blind copies; (iii) the date, subject matter and number of pages of the Document; (iv) the identity of any attachments or appendices to the Document; (v) all persons to whom the Document was distributed, shown or explained; (vi) the date, reason and circumstances of disposal of the Document; and (vii) the person authorizing and carrying out such disposal and each and every person with knowledge concerning the circumstances under which such Document was destroyed or disposed of.
6. This subpoena contemplates production of each requested Document in its entirety, without abbreviation or expurgation, except as justified by claims of attorney-client privilege or attorney work product protection. Any redacted material must be clearly identified on the Document.
7. If You claim any portion of any responsive Document is privileged or otherwise excludable from production or disclosure, You are requested to produce the non-privileged portion of the Document, with the privileged portion thereof redacted, and provide information that adequately describes the nature of the redacted portion in a manner that allows Plaintiffs to assess each claim of privilege or exclusion. Examples of information that adequately describes the nature of each redacted portion include: (i) the type of Document; (ii) the author, addressor, or addressee; (iii) the addressee or recipient of any indicated or blind copies; (iv) the date, subject matter, and number of pages of the document; (v) the identity of any attachments or appendices to the Document; (vi) all persons to whom the Document was distributed, shown, or explained; and (vii) the custodian and location of the Document. For each portion of any responsive Document redacted, You must expressly state the type of privilege claimed or other reason for withholding the information and the circumstances upon which You base Your claim of privilege or exclusion. *See* Fed. R. Civ. P. 45(e)(2)(A).
8. If You claim that you are unable to provide certain responses to this subpoena on the basis of the “undue burden or expense” requirement under Federal Rule of Civil Procedure 45(d)(1), please identify the documents You are unable to provide and the basis for Your determination that providing them would result in “undue burden or expense.”
9. Unless otherwise indicated, all requests refer to Items created between January 1, 2020 and the present.

DOCUMENTS TO BE PRODUCED

1. All Documents and Communications regarding Native Americans and/or Indian Reservations and the 2021 Redistricting Process or Maps.

2. All Documents and Communications regarding tribal input, including regarding written submissions or verbal testimony from tribal representatives, with respect to the 2021 Redistricting Process or Maps.
3. All Documents and Communications regarding redistricting criteria for the 2021 Redistricting Process or Maps.
4. All Documents and Communications regarding District 4, District 9, or District 15, and, where applicable, any subdistricts of these districts, including documents and communications regarding the applicability of the Voting Rights Act to these districts and subdistricts.
5. All Documents and Communications regarding trainings provided to legislators in preparation for or as a part of the 2021 Redistricting Process.
6. All Documents and Communications reflecting the identity of map drawers in the 2021 Redistricting Process.
7. All Documents and Communications related to racial polarization or demographic studies conducted by the Redistricting Committee or Legislature as a part of or in preparation for the 2021 Redistricting Process.

UNITED STATES DISTRICT COURT

for the

District of North Dakota

Turtle Mountain Band of Chippewa Indians, et al.

Plaintiff

v.

Alvin Jaeger, in his official capacity as Secretary of
State of North Dakota*Defendant*

Civil Action No. 3:22-cv-00022

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To:

Terry B. Jones

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A

Place: Robins Kaplan LLP
Attn: Timothy Q. Purdon
1207 West Divide Avenue, Ste. 200
Bismarck, ND 58501

Date and Time:
October 29, 2022

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/29/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Molly E. Danahy

*Attorney's signature*The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* **Plaintiffs**

, who issues or requests this subpoena, are:

Molly Danahy, Campaign Legal Center, 1101 14th St. NW, Ste. 400, Washington, D.C. 20005, 202-736-2200
mdanahy@campaignlegalcenter.org

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:22-cv-00022

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT A

DEFINITIONS

1. “You,” “Your,” and refers to Terry B. Jones, whether in your official capacity as a legislator, your capacity as a candidate, or your capacity as an individual, and all past and present agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on your behalf or subject to your control.
2. “Legislature” refers to the North Dakota Legislative Assembly and all past and present members, committees, agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on its behalf or subject to its control.
3. “Redistricting Committee” refers to the interim Redistricting Committee of the 67th Legislature of the State of North Dakota convened for the purpose of developing a legislative redistricting plan and all past and present committee members, agents, advisors, representatives, attorneys, consultants, contractors, or other persons or entities acting on its behalf or subject to its control.
4. “2021 State Legislative Maps” or “Maps” refer to the Statewide Redistricting Plan for Legislative Districts in the State of North Dakota, adopted in House Bill 1504, H.B. 1504, 67th Leg., Spec. Sess. (N.D. 2021).
5. “2021 Redistricting Process” refers to the legislative process leading up to and during the placement of district lines in the 2021 State Legislative Maps.
6. “Communication(s)” shall mean any exchange or transfer of information between two or more persons or entities, including, but not limited to documents, audio recordings, photographs, data, or in any other form including electronic forms such as e-mails or text messages.
7. “Concern,” “concerning,” or “regarding” shall mean having any connection, relation, or reference to and include, by way of example and without limitation, discussing, identifying, containing, showing, evidencing, describing, reflecting, dealing with, regarding, pertaining to, analyzing, evaluating, estimating, constituting, comprising, studying, surveying, projecting, recording, relating to, summarizing, assessing, criticizing, reporting, commenting on, referring to in any way, either directly or indirectly, or otherwise involving, in whole or in part.
8. “Document” shall mean all documents, electronically stored information, and tangible things within the broadest possible interpretation of writing, as contained within Rule 1001 of the Federal Rules of Evidence, and/or within the broadest possible interpretation of “document,” “electronically stored information,” or “tangible thing,” as contained in Rule 34 of the Federal Rules of Civil Procedure.

9. “Item” is defined as documents, communications, electronically stored information, and tangible things. See, e.g., Fed. R. Civ. P. 34.
10. “Person” means any natural person, firm, association, partnership, joint venture, corporation, business trust, banking institution, unincorporated association, government agency or any other entity, its officers, directors, partners, employees, agents, and representatives.
11. “And” and “or” mean and include both the conjunctive and the disjunctive, and shall be construed as necessary to bring within the scope of this production request all responses that might otherwise be construed to be outside their scope.
12. In these definitions and in the Requests below, the singular form of a noun or pronoun includes the plural form, and the plural form includes the singular.

INSTRUCTIONS

1. This subpoena requires You to produce all responsive, non-privileged Documents that are in Your actual or constructive possession, custody, or control under Federal Rule of Civil Procedure 45. Unless otherwise requested, your responses to this subpoena shall comprise all information in Your possession, custody, or control; these requests are not limited to Documents within your physical possession. You shall make a diligent, reasonable, good-faith effort to produce any and all requested documents that are readily ascertainable and in Your possession, or that are readily ascertainable and otherwise within Your “control,” meaning documents that You have the “legal right to obtain” within the meaning of the local rules of this Court and binding Eighth Circuit precedent.
2. Your response must provide each Document or category of Documents requested in electronic form. Where an electronic copy of a particular Document cannot be obtained, You must produce copies of the Document or state with specificity the grounds for objecting to the request. See Fed. R. Civ. P. Rule 45(a)(1), (d)(2)(B).
3. To the extent that Your responses to this subpoena may be enlarged, diminished, or otherwise modified by information acquired subsequent to Your initial responses hereto, Plaintiffs request that You promptly supplement Your responses with Documents reflecting such changes.
4. In providing the Documents called for by this subpoena, You shall produce them as they are kept in the usual course of business, including all file folders, envelopes, labels, indices, or other identifying or organizing material in which such Documents are stored or filed, under which they are organized, or which accompany such Documents or organize and label them to correspond with the specific request(s) to which they relate.

5. In the event that any Document called for by this subpoena has since been destroyed, discarded or otherwise disposed of, identify each such Document by stating: (i) the author, addressor or addressee; (ii) the addressee or recipient of any indicated or blind copies; (iii) the date, subject matter and number of pages of the Document; (iv) the identity of any attachments or appendices to the Document; (v) all persons to whom the Document was distributed, shown or explained; (vi) the date, reason and circumstances of disposal of the Document; and (vii) the person authorizing and carrying out such disposal and each and every person with knowledge concerning the circumstances under which such Document was destroyed or disposed of.
6. This subpoena contemplates production of each requested Document in its entirety, without abbreviation or expurgation, except as justified by claims of attorney-client privilege or attorney work product protection. Any redacted material must be clearly identified on the Document.
7. If You claim any portion of any responsive Document is privileged or otherwise excludable from production or disclosure, You are requested to produce the non-privileged portion of the Document, with the privileged portion thereof redacted, and provide information that adequately describes the nature of the redacted portion in a manner that allows Plaintiffs to assess each claim of privilege or exclusion. Examples of information that adequately describes the nature of each redacted portion include: (i) the type of Document; (ii) the author, addressor, or addressee; (iii) the addressee or recipient of any indicated or blind copies; (iv) the date, subject matter, and number of pages of the document; (v) the identity of any attachments or appendices to the Document; (vi) all persons to whom the Document was distributed, shown, or explained; and (vii) the custodian and location of the Document. For each portion of any responsive Document redacted, You must expressly state the type of privilege claimed or other reason for withholding the information and the circumstances upon which You base Your claim of privilege or exclusion. *See* Fed. R. Civ. P. 45(e)(2)(A).
8. If You claim that you are unable to provide certain responses to this subpoena on the basis of the “undue burden or expense” requirement under Federal Rule of Civil Procedure 45(d)(1), please identify the documents You are unable to provide and the basis for Your determination that providing them would result in “undue burden or expense.”
9. Unless otherwise indicated, all requests refer to Items created between January 1, 2020 and the present.

DOCUMENTS TO BE PRODUCED

1. All Documents and Communications regarding Native Americans and/or Indian Reservations and the 2021 Redistricting Process or Maps.

2. All Documents and Communications regarding tribal input, including regarding written submissions or verbal testimony from tribal representatives, with respect to the 2021 Redistricting Process or Maps.
3. All Documents and Communications regarding redistricting criteria for the 2021 Redistricting Process or Maps.
4. All Documents and Communications regarding District 4, District 9, or District 15, and, where applicable, any subdistricts of these districts, including documents and communications regarding the applicability of the Voting Rights Act to these districts and subdistricts.
5. All Documents and Communications regarding trainings provided to legislators in preparation for or as a part of the 2021 Redistricting Process.
6. All Documents and Communications reflecting the identity of map drawers in the 2021 Redistricting Process.
7. All Documents and Communications related to racial polarization or demographic studies conducted by the Redistricting Committee or Legislature as a part of or in preparation for the 2021 Redistricting Process.

UNITED STATES DISTRICT COURT

for the

District of North Dakota

Turtle Mountain Band of Chippewa Indians, et al.

Plaintiff

v.

Alvin Jaeger, in his official capacity as Secretary of
State of North Dakota*Defendant*

Civil Action No. 3:22-cv-00022

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To:

Michael Nathe

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A

Place: Robins Kaplan LLP
Attn: Timothy Q. Purdon
1207 West Divide Avenue, Ste. 200
Bismarck, ND 58501

Date and Time:
October 29, 2022

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/29/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Molly E. Danahy

*Attorney's signature*The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* **Plaintiffs**

, who issues or requests this subpoena, are:

Molly Danahy, Campaign Legal Center, 1101 14th St. NW, Ste. 400, Washington, D.C. 20005, 202-736-2200
mdanahy@campaignlegalcenter.org

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:22-cv-00022

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT A

DEFINITIONS

1. “You,” “Your,” and refers to Michael Nathe, whether in your official capacity as a legislator, your capacity as a candidate, or your capacity as an individual, and all past and present agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on your behalf or subject to your control.
2. “Legislature” refers to the North Dakota Legislative Assembly and all past and present members, committees, agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on its behalf or subject to its control.
3. “Redistricting Committee” refers to the interim Redistricting Committee of the 67th Legislature of the State of North Dakota convened for the purpose of developing a legislative redistricting plan and all past and present committee members, agents, advisors, representatives, attorneys, consultants, contractors, or other persons or entities acting on its behalf or subject to its control.
4. “2021 State Legislative Maps” or “Maps” refer to the Statewide Redistricting Plan for Legislative Districts in the State of North Dakota, adopted in House Bill 1504, H.B. 1504, 67th Leg., Spec. Sess. (N.D. 2021).
5. “2021 Redistricting Process” refers to the legislative process leading up to and during the placement of district lines in the 2021 State Legislative Maps.
6. “Communication(s)” shall mean any exchange or transfer of information between two or more persons or entities, including, but not limited to documents, audio recordings, photographs, data, or in any other form including electronic forms such as e-mails or text messages.
7. “Concern,” “concerning,” or “regarding” shall mean having any connection, relation, or reference to and include, by way of example and without limitation, discussing, identifying, containing, showing, evidencing, describing, reflecting, dealing with, regarding, pertaining to, analyzing, evaluating, estimating, constituting, comprising, studying, surveying, projecting, recording, relating to, summarizing, assessing, criticizing, reporting, commenting on, referring to in any way, either directly or indirectly, or otherwise involving, in whole or in part.
8. “Document” shall mean all documents, electronically stored information, and tangible things within the broadest possible interpretation of writing, as contained within Rule 1001 of the Federal Rules of Evidence, and/or within the broadest possible interpretation of “document,” “electronically stored information,” or “tangible thing,” as contained in Rule 34 of the Federal Rules of Civil Procedure.

9. “Item” is defined as documents, communications, electronically stored information, and tangible things. See, e.g., Fed. R. Civ. P. 34.
10. “Person” means any natural person, firm, association, partnership, joint venture, corporation, business trust, banking institution, unincorporated association, government agency or any other entity, its officers, directors, partners, employees, agents, and representatives.
11. “And” and “or” mean and include both the conjunctive and the disjunctive, and shall be construed as necessary to bring within the scope of this production request all responses that might otherwise be construed to be outside their scope.
12. In these definitions and in the Requests below, the singular form of a noun or pronoun includes the plural form, and the plural form includes the singular.

INSTRUCTIONS

1. This subpoena requires You to produce all responsive, non-privileged Documents that are in Your actual or constructive possession, custody, or control under Federal Rule of Civil Procedure 45. Unless otherwise requested, your responses to this subpoena shall comprise all information in Your possession, custody, or control; these requests are not limited to Documents within your physical possession. You shall make a diligent, reasonable, good-faith effort to produce any and all requested documents that are readily ascertainable and in Your possession, or that are readily ascertainable and otherwise within Your “control,” meaning documents that You have the “legal right to obtain” within the meaning of the local rules of this Court and binding Eighth Circuit precedent.
2. Your response must provide each Document or category of Documents requested in electronic form. Where an electronic copy of a particular Document cannot be obtained, You must produce copies of the Document or state with specificity the grounds for objecting to the request. See Fed. R. Civ. P. Rule 45(a)(1), (d)(2)(B).
3. To the extent that Your responses to this subpoena may be enlarged, diminished, or otherwise modified by information acquired subsequent to Your initial responses hereto, Plaintiffs request that You promptly supplement Your responses with Documents reflecting such changes.
4. In providing the Documents called for by this subpoena, You shall produce them as they are kept in the usual course of business, including all file folders, envelopes, labels, indices, or other identifying or organizing material in which such Documents are stored or filed, under which they are organized, or which accompany such Documents or organize and label them to correspond with the specific request(s) to which they relate.

5. In the event that any Document called for by this subpoena has since been destroyed, discarded or otherwise disposed of, identify each such Document by stating: (i) the author, addressor or addressee; (ii) the addressee or recipient of any indicated or blind copies; (iii) the date, subject matter and number of pages of the Document; (iv) the identity of any attachments or appendices to the Document; (v) all persons to whom the Document was distributed, shown or explained; (vi) the date, reason and circumstances of disposal of the Document; and (vii) the person authorizing and carrying out such disposal and each and every person with knowledge concerning the circumstances under which such Document was destroyed or disposed of.
6. This subpoena contemplates production of each requested Document in its entirety, without abbreviation or expurgation, except as justified by claims of attorney-client privilege or attorney work product protection. Any redacted material must be clearly identified on the Document.
7. If You claim any portion of any responsive Document is privileged or otherwise excludable from production or disclosure, You are requested to produce the non-privileged portion of the Document, with the privileged portion thereof redacted, and provide information that adequately describes the nature of the redacted portion in a manner that allows Plaintiffs to assess each claim of privilege or exclusion. Examples of information that adequately describes the nature of each redacted portion include: (i) the type of Document; (ii) the author, addressor, or addressee; (iii) the addressee or recipient of any indicated or blind copies; (iv) the date, subject matter, and number of pages of the document; (v) the identity of any attachments or appendices to the Document; (vi) all persons to whom the Document was distributed, shown, or explained; and (vii) the custodian and location of the Document. For each portion of any responsive Document redacted, You must expressly state the type of privilege claimed or other reason for withholding the information and the circumstances upon which You base Your claim of privilege or exclusion. *See* Fed. R. Civ. P. 45(e)(2)(A).
8. If You claim that you are unable to provide certain responses to this subpoena on the basis of the “undue burden or expense” requirement under Federal Rule of Civil Procedure 45(d)(1), please identify the documents You are unable to provide and the basis for Your determination that providing them would result in “undue burden or expense.”
9. Unless otherwise indicated, all requests refer to Items created between January 1, 2020 and the present.

DOCUMENTS TO BE PRODUCED

1. All Documents and Communications regarding Native Americans and/or Indian Reservations and the 2021 Redistricting Process or Maps.

2. All Documents and Communications regarding tribal input, including regarding written submissions or verbal testimony from tribal representatives, with respect to the 2021 Redistricting Process or Maps.
3. All Documents and Communications regarding redistricting criteria for the 2021 Redistricting Process or Maps.
4. All Documents and Communications regarding District 4, District 9, or District 15, and, where applicable, any subdistricts of these districts, including documents and communications regarding the applicability of the Voting Rights Act to these districts and subdistricts.
5. All Documents and Communications regarding trainings provided to legislators in preparation for or as a part of the 2021 Redistricting Process.
6. All Documents and Communications reflecting the identity of map drawers in the 2021 Redistricting Process.
7. All Documents and Communications related to racial polarization or demographic studies conducted by the Redistricting Committee or Legislature as a part of or in preparation for the 2021 Redistricting Process.

UNITED STATES DISTRICT COURT

for the

District of North Dakota

Turtle Mountain Band of Chippewa Indians, et al.

Plaintiff

v.

Alvin Jaeger, in his official capacity as Secretary of
State of North Dakota*Defendant*

Civil Action No. 3:22-cv-00022

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Claire Ness

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A

Place: Robins Kaplan LLP
Attn: Timothy Q. Purdon
1207 West Divide Avenue, Ste. 200
Bismarck, ND 58501

Date and Time:
October 29, 2022

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/29/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Molly E. Danahy

*Attorney's signature*The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* **Plaintiffs**

, who issues or requests this subpoena, are:

Molly Danahy, Campaign Legal Center, 1101 14th St. NW, Ste. 400, Washington, D.C. 20005, 202-736-2200
mdanahy@campaignlegalcenter.org

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:22-cv-00022

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT A

DEFINITIONS

1. “You,” “Your,” and refers to Claire Ness, whether in your official capacity or as an individual, and all past and present agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on your behalf or subject to your control.
2. “Legislature” refers to the North Dakota Legislative Assembly and all past and present members, committees, agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on its behalf or subject to its control.
3. “Redistricting Committee” refers to the interim Redistricting Committee of the 67th Legislature of the State of North Dakota convened for the purpose of developing a legislative redistricting plan and all past and present committee members, agents, advisors, representatives, attorneys, consultants, contractors, or other persons or entities acting on its behalf or subject to its control.
4. “2021 State Legislative Maps” or “Maps” refer to the Statewide Redistricting Plan for Legislative Districts in the State of North Dakota, adopted in House Bill 1504, H.B. 1504, 67th Leg., Spec. Sess. (N.D. 2021).
5. “2021 Redistricting Process” refers to the legislative process leading up to and during the placement of district lines in the 2021 State Legislative Maps.
6. “Communication(s)” shall mean any exchange or transfer of information between two or more persons or entities, including, but not limited to documents, audio recordings, photographs, data, or in any other form including electronic forms such as e-mails or text messages.
7. “Concern,” “concerning,” or “regarding” shall mean having any connection, relation, or reference to and include, by way of example and without limitation, discussing, identifying, containing, showing, evidencing, describing, reflecting, dealing with, regarding, pertaining to, analyzing, evaluating, estimating, constituting, comprising, studying, surveying, projecting, recording, relating to, summarizing, assessing, criticizing, reporting, commenting on, referring to in any way, either directly or indirectly, or otherwise involving, in whole or in part.
8. “Document” shall mean all documents, electronically stored information, and tangible things within the broadest possible interpretation of writing, as contained within Rule 1001 of the Federal Rules of Evidence, and/or within the broadest possible interpretation of “document,” “electronically stored information,” or “tangible thing,” as contained in Rule 34 of the Federal Rules of Civil Procedure.

9. “Item” is defined as documents, communications, electronically stored information, and tangible things. See, e.g., Fed. R. Civ. P. 34.
10. “Person” means any natural person, firm, association, partnership, joint venture, corporation, business trust, banking institution, unincorporated association, government agency or any other entity, its officers, directors, partners, employees, agents, and representatives.
11. “And” and “or” mean and include both the conjunctive and the disjunctive, and shall be construed as necessary to bring within the scope of this production request all responses that might otherwise be construed to be outside their scope.
12. In these definitions and in the Requests below, the singular form of a noun or pronoun includes the plural form, and the plural form includes the singular.

INSTRUCTIONS

1. This subpoena requires You to produce all responsive, non-privileged Documents that are in Your actual or constructive possession, custody, or control under Federal Rule of Civil Procedure 45. Unless otherwise requested, your responses to this subpoena shall comprise all information in Your possession, custody, or control; these requests are not limited to Documents within your physical possession. You shall make a diligent, reasonable, good-faith effort to produce any and all requested documents that are readily ascertainable and in Your possession, or that are readily ascertainable and otherwise within Your “control,” meaning documents that You have the “legal right to obtain” within the meaning of the local rules of this Court and binding Eighth Circuit precedent.
2. Your response must provide each Document or category of Documents requested in electronic form. Where an electronic copy of a particular Document cannot be obtained, You must produce copies of the Document or state with specificity the grounds for objecting to the request. See Fed. R. Civ. P. Rule 45(a)(1), (d)(2)(B).
3. To the extent that Your responses to this subpoena may be enlarged, diminished, or otherwise modified by information acquired subsequent to Your initial responses hereto, Plaintiffs request that You promptly supplement Your responses with Documents reflecting such changes.
4. In providing the Documents called for by this subpoena, You shall produce them as they are kept in the usual course of business, including all file folders, envelopes, labels, indices, or other identifying or organizing material in which such Documents are stored or filed, under which they are organized, or which accompany such Documents or organize and label them to correspond with the specific request(s) to which they relate.

5. In the event that any Document called for by this subpoena has since been destroyed, discarded or otherwise disposed of, identify each such Document by stating: (i) the author, addressor or addressee; (ii) the addressee or recipient of any indicated or blind copies; (iii) the date, subject matter and number of pages of the Document; (iv) the identity of any attachments or appendices to the Document; (v) all persons to whom the Document was distributed, shown or explained; (vi) the date, reason and circumstances of disposal of the Document; and (vii) the person authorizing and carrying out such disposal and each and every person with knowledge concerning the circumstances under which such Document was destroyed or disposed of.
6. This subpoena contemplates production of each requested Document in its entirety, without abbreviation or expurgation, except as justified by claims of attorney-client privilege or attorney work product protection. Any redacted material must be clearly identified on the Document.
7. If You claim any portion of any responsive Document is privileged or otherwise excludable from production or disclosure, You are requested to produce the non-privileged portion of the Document, with the privileged portion thereof redacted, and provide information that adequately describes the nature of the redacted portion in a manner that allows Plaintiffs to assess each claim of privilege or exclusion. Examples of information that adequately describes the nature of each redacted portion include: (i) the type of Document; (ii) the author, addressor, or addressee; (iii) the addressee or recipient of any indicated or blind copies; (iv) the date, subject matter, and number of pages of the document; (v) the identity of any attachments or appendices to the Document; (vi) all persons to whom the Document was distributed, shown, or explained; and (vii) the custodian and location of the Document. For each portion of any responsive Document redacted, You must expressly state the type of privilege claimed or other reason for withholding the information and the circumstances upon which You base Your claim of privilege or exclusion. *See* Fed. R. Civ. P. 45(e)(2)(A).
8. If You claim that you are unable to provide certain responses to this subpoena on the basis of the “undue burden or expense” requirement under Federal Rule of Civil Procedure 45(d)(1), please identify the documents You are unable to provide and the basis for Your determination that providing them would result in “undue burden or expense.”
9. Unless otherwise indicated, all requests refer to Items created between January 1, 2020 and the present.

DOCUMENTS TO BE PRODUCED

1. All Documents and Communications regarding Native Americans and/or Indian Reservations and the 2021 Redistricting Process or Maps.

2. All Documents and Communications regarding tribal input, including regarding written submissions or verbal testimony from tribal representatives, with respect to the 2021 Redistricting Process or Maps.
3. All Documents and Communications regarding redistricting criteria for the 2021 Redistricting Process or Maps.
4. All Documents and Communications regarding District 4, District 9, or District 15, and, where applicable, any subdistricts of these districts, including documents and communications regarding the applicability of the Voting Rights Act to these districts and subdistricts.
5. All Documents and Communications regarding trainings provided to legislators in preparation for or as a part of the 2021 Redistricting Process.
6. All Documents and Communications reflecting the identity of map drawers in the 2021 Redistricting Process.
7. All Documents and Communications related to racial polarization or demographic studies conducted by the Redistricting Committee or Legislature as a part of or in preparation for the 2021 Redistricting Process.

UNITED STATES DISTRICT COURT

for the

District of North Dakota

Turtle Mountain Band of Chippewa Indians, et al.

Plaintiff

v.

Alvin Jaeger, in his official capacity as Secretary of
State of North Dakota*Defendant*

Civil Action No. 3:22-cv-00022

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Nicole Poolman

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A

Place: Robins Kaplan LLP
Attn: Timothy Q. Purdon
1207 West Divide Avenue, Ste. 200
Bismarck, ND 58501

Date and Time:
October 29, 2022

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/29/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Molly E. Danahy

*Attorney's signature*The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* **Plaintiffs**

, who issues or requests this subpoena, are:

Molly Danahy, Campaign Legal Center, 1101 14th St. NW, Ste. 400, Washington, D.C. 20005, 202-736-2200
mdanahy@campaignlegalcenter.org

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:22-cv-00022

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT A

DEFINITIONS

1. “You,” “Your,” and refers to Nicole Poolman, whether in your official capacity as a legislator, your capacity as a candidate, or your capacity as an individual, and all past and present agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on your behalf or subject to your control.
2. “Legislature” refers to the North Dakota Legislative Assembly and all past and present members, committees, agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on its behalf or subject to its control.
3. “Redistricting Committee” refers to the interim Redistricting Committee of the 67th Legislature of the State of North Dakota convened for the purpose of developing a legislative redistricting plan and all past and present committee members, agents, advisors, representatives, attorneys, consultants, contractors, or other persons or entities acting on its behalf or subject to its control.
4. “2021 State Legislative Maps” or “Maps” refer to the Statewide Redistricting Plan for Legislative Districts in the State of North Dakota, adopted in House Bill 1504, H.B. 1504, 67th Leg., Spec. Sess. (N.D. 2021).
5. “2021 Redistricting Process” refers to the legislative process leading up to and during the placement of district lines in the 2021 State Legislative Maps.
6. “Communication(s)” shall mean any exchange or transfer of information between two or more persons or entities, including, but not limited to documents, audio recordings, photographs, data, or in any other form including electronic forms such as e-mails or text messages.
7. “Concern,” “concerning,” or “regarding” shall mean having any connection, relation, or reference to and include, by way of example and without limitation, discussing, identifying, containing, showing, evidencing, describing, reflecting, dealing with, regarding, pertaining to, analyzing, evaluating, estimating, constituting, comprising, studying, surveying, projecting, recording, relating to, summarizing, assessing, criticizing, reporting, commenting on, referring to in any way, either directly or indirectly, or otherwise involving, in whole or in part.
8. “Document” shall mean all documents, electronically stored information, and tangible things within the broadest possible interpretation of writing, as contained within Rule 1001 of the Federal Rules of Evidence, and/or within the broadest possible interpretation of “document,” “electronically stored information,” or “tangible thing,” as contained in Rule 34 of the Federal Rules of Civil Procedure.

9. “Item” is defined as documents, communications, electronically stored information, and tangible things. See, e.g., Fed. R. Civ. P. 34.
10. “Person” means any natural person, firm, association, partnership, joint venture, corporation, business trust, banking institution, unincorporated association, government agency or any other entity, its officers, directors, partners, employees, agents, and representatives.
11. “And” and “or” mean and include both the conjunctive and the disjunctive, and shall be construed as necessary to bring within the scope of this production request all responses that might otherwise be construed to be outside their scope.
12. In these definitions and in the Requests below, the singular form of a noun or pronoun includes the plural form, and the plural form includes the singular.

INSTRUCTIONS

1. This subpoena requires You to produce all responsive, non-privileged Documents that are in Your actual or constructive possession, custody, or control under Federal Rule of Civil Procedure 45. Unless otherwise requested, your responses to this subpoena shall comprise all information in Your possession, custody, or control; these requests are not limited to Documents within your physical possession. You shall make a diligent, reasonable, good-faith effort to produce any and all requested documents that are readily ascertainable and in Your possession, or that are readily ascertainable and otherwise within Your “control,” meaning documents that You have the “legal right to obtain” within the meaning of the local rules of this Court and binding Eighth Circuit precedent.
2. Your response must provide each Document or category of Documents requested in electronic form. Where an electronic copy of a particular Document cannot be obtained, You must produce copies of the Document or state with specificity the grounds for objecting to the request. See Fed. R. Civ. P. Rule 45(a)(1), (d)(2)(B).
3. To the extent that Your responses to this subpoena may be enlarged, diminished, or otherwise modified by information acquired subsequent to Your initial responses hereto, Plaintiffs request that You promptly supplement Your responses with Documents reflecting such changes.
4. In providing the Documents called for by this subpoena, You shall produce them as they are kept in the usual course of business, including all file folders, envelopes, labels, indices, or other identifying or organizing material in which such Documents are stored or filed, under which they are organized, or which accompany such Documents or organize and label them to correspond with the specific request(s) to which they relate.

5. In the event that any Document called for by this subpoena has since been destroyed, discarded or otherwise disposed of, identify each such Document by stating: (i) the author, addressor or addressee; (ii) the addressee or recipient of any indicated or blind copies; (iii) the date, subject matter and number of pages of the Document; (iv) the identity of any attachments or appendices to the Document; (v) all persons to whom the Document was distributed, shown or explained; (vi) the date, reason and circumstances of disposal of the Document; and (vii) the person authorizing and carrying out such disposal and each and every person with knowledge concerning the circumstances under which such Document was destroyed or disposed of.
6. This subpoena contemplates production of each requested Document in its entirety, without abbreviation or expurgation, except as justified by claims of attorney-client privilege or attorney work product protection. Any redacted material must be clearly identified on the Document.
7. If You claim any portion of any responsive Document is privileged or otherwise excludable from production or disclosure, You are requested to produce the non-privileged portion of the Document, with the privileged portion thereof redacted, and provide information that adequately describes the nature of the redacted portion in a manner that allows Plaintiffs to assess each claim of privilege or exclusion. Examples of information that adequately describes the nature of each redacted portion include: (i) the type of Document; (ii) the author, addressor, or addressee; (iii) the addressee or recipient of any indicated or blind copies; (iv) the date, subject matter, and number of pages of the document; (v) the identity of any attachments or appendices to the Document; (vi) all persons to whom the Document was distributed, shown, or explained; and (vii) the custodian and location of the Document. For each portion of any responsive Document redacted, You must expressly state the type of privilege claimed or other reason for withholding the information and the circumstances upon which You base Your claim of privilege or exclusion. *See* Fed. R. Civ. P. 45(e)(2)(A).
8. If You claim that you are unable to provide certain responses to this subpoena on the basis of the “undue burden or expense” requirement under Federal Rule of Civil Procedure 45(d)(1), please identify the documents You are unable to provide and the basis for Your determination that providing them would result in “undue burden or expense.”
9. Unless otherwise indicated, all requests refer to Items created between January 1, 2020 and the present.

DOCUMENTS TO BE PRODUCED

1. All Documents and Communications regarding Native Americans and/or Indian Reservations and the 2021 Redistricting Process or Maps.

2. All Documents and Communications regarding tribal input, including regarding written submissions or verbal testimony from tribal representatives, with respect to the 2021 Redistricting Process or Maps.
3. All Documents and Communications regarding redistricting criteria for the 2021 Redistricting Process or Maps.
4. All Documents and Communications regarding District 4, District 9, or District 15, and, where applicable, any subdistricts of these districts, including documents and communications regarding the applicability of the Voting Rights Act to these districts and subdistricts.
5. All Documents and Communications regarding trainings provided to legislators in preparation for or as a part of the 2021 Redistricting Process.
6. All Documents and Communications reflecting the identity of map drawers in the 2021 Redistricting Process.
7. All Documents and Communications related to racial polarization or demographic studies conducted by the Redistricting Committee or Legislature as a part of or in preparation for the 2021 Redistricting Process.

UNITED STATES DISTRICT COURT

for the

District of North Dakota

Turtle Mountain Band of Chippewa Indians, et al.

Plaintiff

v.

Alvin Jaeger, in his official capacity as Secretary of
State of North Dakota*Defendant*

Civil Action No. 3:22-cv-00022

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Richard Wardner

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A

Place: Robins Kaplan LLP
Attn: Timothy Q. Purdon
1207 West Divide Avenue, Ste. 200
Bismarck, ND 58501

Date and Time:
October 29, 2022

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/29/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Molly E. Danahy

*Attorney's signature*The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* **Plaintiffs**

, who issues or requests this subpoena, are:

Molly Danahy, Campaign Legal Center, 1101 14th St. NW, Ste. 400, Washington, D.C. 20005, 202-736-2200
mdanahy@campaignlegalcenter.org

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:22-cv-00022

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT A

DEFINITIONS

1. “You,” “Your,” and refers to Richard Wardner, whether in your official capacity as a legislator, your capacity as a candidate, or your capacity as an individual, and all past and present agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on your behalf or subject to your control.
2. “Legislature” refers to the North Dakota Legislative Assembly and all past and present members, committees, agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on its behalf or subject to its control.
3. “Redistricting Committee” refers to the interim Redistricting Committee of the 67th Legislature of the State of North Dakota convened for the purpose of developing a legislative redistricting plan and all past and present committee members, agents, advisors, representatives, attorneys, consultants, contractors, or other persons or entities acting on its behalf or subject to its control.
4. “2021 State Legislative Maps” or “Maps” refer to the Statewide Redistricting Plan for Legislative Districts in the State of North Dakota, adopted in House Bill 1504, H.B. 1504, 67th Leg., Spec. Sess. (N.D. 2021).
5. “2021 Redistricting Process” refers to the legislative process leading up to and during the placement of district lines in the 2021 State Legislative Maps.
6. “Communication(s)” shall mean any exchange or transfer of information between two or more persons or entities, including, but not limited to documents, audio recordings, photographs, data, or in any other form including electronic forms such as e-mails or text messages.
7. “Concern,” “concerning,” or “regarding” shall mean having any connection, relation, or reference to and include, by way of example and without limitation, discussing, identifying, containing, showing, evidencing, describing, reflecting, dealing with, regarding, pertaining to, analyzing, evaluating, estimating, constituting, comprising, studying, surveying, projecting, recording, relating to, summarizing, assessing, criticizing, reporting, commenting on, referring to in any way, either directly or indirectly, or otherwise involving, in whole or in part.
8. “Document” shall mean all documents, electronically stored information, and tangible things within the broadest possible interpretation of writing, as contained within Rule 1001 of the Federal Rules of Evidence, and/or within the broadest possible interpretation of “document,” “electronically stored information,” or “tangible thing,” as contained in Rule 34 of the Federal Rules of Civil Procedure.

9. “Item” is defined as documents, communications, electronically stored information, and tangible things. See, e.g., Fed. R. Civ. P. 34.
10. “Person” means any natural person, firm, association, partnership, joint venture, corporation, business trust, banking institution, unincorporated association, government agency or any other entity, its officers, directors, partners, employees, agents, and representatives.
11. “And” and “or” mean and include both the conjunctive and the disjunctive, and shall be construed as necessary to bring within the scope of this production request all responses that might otherwise be construed to be outside their scope.
12. In these definitions and in the Requests below, the singular form of a noun or pronoun includes the plural form, and the plural form includes the singular.

INSTRUCTIONS

1. This subpoena requires You to produce all responsive, non-privileged Documents that are in Your actual or constructive possession, custody, or control under Federal Rule of Civil Procedure 45. Unless otherwise requested, your responses to this subpoena shall comprise all information in Your possession, custody, or control; these requests are not limited to Documents within your physical possession. You shall make a diligent, reasonable, good-faith effort to produce any and all requested documents that are readily ascertainable and in Your possession, or that are readily ascertainable and otherwise within Your “control,” meaning documents that You have the “legal right to obtain” within the meaning of the local rules of this Court and binding Eighth Circuit precedent.
2. Your response must provide each Document or category of Documents requested in electronic form. Where an electronic copy of a particular Document cannot be obtained, You must produce copies of the Document or state with specificity the grounds for objecting to the request. See Fed. R. Civ. P. Rule 45(a)(1), (d)(2)(B).
3. To the extent that Your responses to this subpoena may be enlarged, diminished, or otherwise modified by information acquired subsequent to Your initial responses hereto, Plaintiffs request that You promptly supplement Your responses with Documents reflecting such changes.
4. In providing the Documents called for by this subpoena, You shall produce them as they are kept in the usual course of business, including all file folders, envelopes, labels, indices, or other identifying or organizing material in which such Documents are stored or filed, under which they are organized, or which accompany such Documents or organize and label them to correspond with the specific request(s) to which they relate.

5. In the event that any Document called for by this subpoena has since been destroyed, discarded or otherwise disposed of, identify each such Document by stating: (i) the author, addressor or addressee; (ii) the addressee or recipient of any indicated or blind copies; (iii) the date, subject matter and number of pages of the Document; (iv) the identity of any attachments or appendices to the Document; (v) all persons to whom the Document was distributed, shown or explained; (vi) the date, reason and circumstances of disposal of the Document; and (vii) the person authorizing and carrying out such disposal and each and every person with knowledge concerning the circumstances under which such Document was destroyed or disposed of.
6. This subpoena contemplates production of each requested Document in its entirety, without abbreviation or expurgation, except as justified by claims of attorney-client privilege or attorney work product protection. Any redacted material must be clearly identified on the Document.
7. If You claim any portion of any responsive Document is privileged or otherwise excludable from production or disclosure, You are requested to produce the non-privileged portion of the Document, with the privileged portion thereof redacted, and provide information that adequately describes the nature of the redacted portion in a manner that allows Plaintiffs to assess each claim of privilege or exclusion. Examples of information that adequately describes the nature of each redacted portion include: (i) the type of Document; (ii) the author, addressor, or addressee; (iii) the addressee or recipient of any indicated or blind copies; (iv) the date, subject matter, and number of pages of the document; (v) the identity of any attachments or appendices to the Document; (vi) all persons to whom the Document was distributed, shown, or explained; and (vii) the custodian and location of the Document. For each portion of any responsive Document redacted, You must expressly state the type of privilege claimed or other reason for withholding the information and the circumstances upon which You base Your claim of privilege or exclusion. *See* Fed. R. Civ. P. 45(e)(2)(A).
8. If You claim that you are unable to provide certain responses to this subpoena on the basis of the “undue burden or expense” requirement under Federal Rule of Civil Procedure 45(d)(1), please identify the documents You are unable to provide and the basis for Your determination that providing them would result in “undue burden or expense.”
9. Unless otherwise indicated, all requests refer to Items created between January 1, 2020 and the present.

DOCUMENTS TO BE PRODUCED

1. All Documents and Communications regarding Native Americans and/or Indian Reservations and the 2021 Redistricting Process or Maps.

2. All Documents and Communications regarding tribal input, including regarding written submissions or verbal testimony from tribal representatives, with respect to the 2021 Redistricting Process or Maps.
3. All Documents and Communications regarding redistricting criteria for the 2021 Redistricting Process or Maps.
4. All Documents and Communications regarding District 4, District 9, or District 15, and, where applicable, any subdistricts of these districts, including documents and communications regarding the applicability of the Voting Rights Act to these districts and subdistricts.
5. All Documents and Communications regarding trainings provided to legislators in preparation for or as a part of the 2021 Redistricting Process.
6. All Documents and Communications reflecting the identity of map drawers in the 2021 Redistricting Process.
7. All Documents and Communications related to racial polarization or demographic studies conducted by the Redistricting Committee or Legislature as a part of or in preparation for the 2021 Redistricting Process.

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

TURTLE MOUNTAIN BAND OF CHIPPEWA
INDIANS, et al.,

Plaintiffs,

v.

ALVIN JAEGER, in his official capacity as Governor
of the State of North Dakota, et al.,

Defendant.

Civil No. 3:22-cv-00022-PDW-ARS

[PROPOSED] ORDER

[PROPOSED] ORDER GRANTING MOTION TO ENFORCE

Upon consideration of Plaintiffs' Motion to Enforce, it is hereby ORDERED that the Motion is GRANTED. It is further ORDERED that (1) documents and communications shared with non-legislators and non-legislative staff be produced, (2) Rep. Jones has waived any legislative privilege with respect to the 2021 redistricting and all his responsive documents and communications be produced, and (3) an adequate privilege log be produced specifying the date, subject, recipients, privilege claimed, and basis for claimed privilege with respect to specific documents and communications.

Dated: December ___, 2022

The Honorable Peter D. Welte, Chief Judge
United States District Court for the District of North Dakota