

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

Civil No: 1:22-CV-00031

Charles Walen, an individual; and Paul
Henderson, an individual,

Plaintiffs

vs.

Doug Burgum, in his official capacity as
Governor of the State of North Dakota;
Michael Howe, in his official capacity as
Secretary of the State of North Dakota,

Defendants

**DEFENDANTS DOUG BURGUM AND
MICHAEL HOWE’S MEMORANDUM
IN RESPONSE TO INTERVENOR-
DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT**

and

The Mandan, Hidatsa and Arikara Nation;
Lisa DeVille, an individual; and
Cesareo Alvarez, Jr., an individual.

Defendants-Intervenors

Defendants Doug Burgum, in his official capacity as Governor of the State of North Dakota and Michael Howe, in his official capacity as Secretary of State of North Dakota (“State Defendants”) submit this memorandum in response to *Intervenor-Defendants’ Motion for Summary Judgment* (Doc. 107) and *Intervenor-Defendants’ Memorandum in Support of Motion for Summary Judgment* (Doc. 108).

Relying on much of the same undisputed evidence and controlling and persuasive case law as set forth in State Defendants’ previous summary judgment briefing (Doc. 102), Intervenor-Defendants’ likewise move the court for summary judgment, requesting the complete dismissal

with prejudice of Plaintiffs' lawsuit claims. As set forth below, State Defendants join in some, *but not all*, of Intervenor-Defendants arguments and evidence.

With respect to the challenged subdistricting in Districts 4 and 9, Intervenor Defendants argue: (1) Plaintiffs' lack the necessary Article III standing to challenge the State's subdistricting as neither Plaintiff resides in the allegedly gerrymandered Subdistrict 4A; (2) Plaintiffs have not shown a cognizable injury with respect to either of the Challenged Subdistricts; and (3) Plaintiffs' claimed injuries and requested relief that includes removing the challenged subdistricting is not redressable. State Defendants join in all of the foregoing bases for summary judgment, and further join in and ask the Court to adopt as its own the evidence and analysis of Intervenor-Defendants in this regard. State Defendants and the Intervenor-Defendants should be granted summary judgment on the foregoing bases.

With respect to the challenged subdistricting in District 4, Intervenor-Defendants move the Court for summary judgment on additional legal bases, arguing: (1) race did not predominate in the drawing of Subdistrict 4A; (2) the drawing of Subdistrict 4A is narrowly tailored to serve a compelling governmental interest; and (3) the State drew Subdistrict 4A in order to comply with Section 2 of the VRA. State Defendants join in all three of these bases for summary judgment as well, but their joinder is based on the evidence and analysis set forth in State Defendants' briefing.

Dated this 21st day of March, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANTS DOUG BURGUM AND MICHAEL HOWE'S MEMORANDUM IN RESPONSE TO INTERVENOR-DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** was on the 21st day of March, 2023, filed electronically with the Clerk of Court through ECF:

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