

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

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

Defendants

and

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

Defendants-Intervenors

CIVIL NO: 1:22-CV-00031

DEFENDANTS' ANSWER

Defendants Doug Burgum, in his official capacity as Governor of the State of North Dakota and Alvin Jaeger, in his official capacity as Secretary of the State of North Dakota ("State Defendants"), for their Answer to Plaintiff's Complaint For Declaratory And Injunctive Relief ("Complaint") (Doc. 1), state as follows:

1. Except as specifically admitted or qualified, the State Defendants deny each and every allegation in the Complaint.

NATURE OF ACTION

2. With respect to the allegations contained in paragraph 1 of the Complaint, the State Defendants assert this lawsuit challenges four subdistricts: 4A, 4B, 9A, and 9B, not two subdistricts as alleged in paragraph 1 of the Complaint. The State Defendants admit this is an action for declaratory and injunctive relief against the implementation and use of the newly enacted

legislative redistricting plan passed by the North Dakota Legislative Assembly and signed by Governor Burgum on November 11, 2021.

3. With respect to paragraph 2 of the Complaint, the State Defendants assert the allegation that the “Subdistricts intentionally include the boundaries of the Fort Berthold and Turtle Mountain Indian Reservations” is ambiguous, and the State Defendants therefore deny the same. The State defendants admit the new statewide legislative district map is at issue in this lawsuit and that the statewide legislative district map creates legislative subdistricts.

4. The State Defendants deny the allegations contained in paragraphs 3, 4, 5, and 6 of the Complaint.

5. With respect to the allegations contained in paragraph 7 of the Complaint, the State Defendants deny Plaintiffs are entitled to the relief sought at any time. Additionally, the State Defendants assert pursuant to the *Purcell* principle that it is too late for Plaintiffs to obtain the relief sought during the 2022 election cycle. The State Defendants deny the challenged subdistricts are invalid in any way.

JURISDICTION AND VENUE

6. With respect to the allegations contained in paragraph 8 of the Complaint, the State Defendants admit this Court has jurisdiction over this action pursuant to the cited statutes. The State Defendants deny all alleged wrongdoing and deny Plaintiffs are entitled to the relief sought.

7. With respect to the allegations contained in paragraph 9 of the Complaint, the State Defendants deny liability pursuant to 42 U.S.C. §§ 1983 and 1988(a). The State Defendants deny Plaintiffs are entitled to the relief sought.

8. With respect to the allegations contained in paragraph 10 of the Complaint, the State Defendants admit that venue is proper.

PARTIES

9. The State Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in paragraphs 11 and 12 of the Complaint.

10. The State Defendants admit the allegations contained in paragraphs 13 and 14 of the Complaint.

LEGAL BACKGROUND

11. With respect to the allegations contained in paragraphs 15, 16, 17, 18, 19, 20, 21, 22, and 23 of the Complaint, the State Defendants assert the cited legal authorities speak for themselves. The State Defendants deny all alleged violations of the United States Constitution and any other applicable law.

FACTUAL ALLEGATIONS

12. With respect to the allegations contained in paragraphs 24 and 25 of the Complaint, the State Defendants assert Article IV, Section 2 of the Constitution of North Dakota speaks for itself. The State Defendants deny all alleged violations of the Constitution of North Dakota and any other applicable law.

13. The State Defendants admit the allegations contained in paragraph 26 of the Complaint.

14. With respect to the allegations contained in paragraph 27 of the Complaint, the State Defendants admit the Governor issued Executive Order 2021-17, which convened a special session of the Legislative Assembly for purposes of “redistricting of government”. The State Defendants assert the special session was convened for other purposes as well.

15. The State Defendants admit the allegations contained in paragraph 28 of the Complaint.

16. With respect to the allegations contained in paragraph 29 of the Complaint, the State Defendants deny the Plaintiffs' characterization of the discussions made during the process of developing new legislative district maps, and therefore deny the same.

17. The State Defendants deny the allegations contained in paragraph 30 of the Complaint.

18. With respect to the allegations contained in paragraphs 31 and 32 of the Complaint, the State Defendants deny the referenced statements were made, or deny the statements were made in the context implied by Plaintiffs' Complaint.

19. The State Defendants deny the allegations contained in paragraphs 33, 34, 35, and 36 of the Complaint.

20. The State Defendants admit the allegations contained in paragraph 37 of the Complaint.

21. With respect to the allegations contained in paragraph 38 of the Complaint, the State Defendants assert the North Dakota House debated House Bill 1504 in a floor session on November 9, 2021. The State Defendants deny the Plaintiffs' characterization of the statements of proponents of the bill. The State Defendants deny race was a predominate factor.

22. With respect to the allegations contained in paragraph 39 of the Complaint, the State Defendants assert the North Dakota House passed House Bill 1504 on November 9, 2021 and the North Dakota Senate passed House Bill 1504 on November 10, 2021. The State Defendants admit House Bill 1504 was signed by the Governor on November 11, 2021, but assert the bill became law on November 12, 2021 when it was filed in the Office of the North Dakota Secretary of State.

23. With respect to the allegations contained in paragraph 40 of the Complaint, the State Defendants deny there is an alleged tradition with respect to redistricting. The State Defendants admit the challenged redistricting plan subdivides Districts 4 and 9 into Subdistricts 4A and 4B, and 9A and 9B, such that Representatives elected from those subdistricts are elected by the citizens residing in their respective subdistricts.

24. The State Defendants deny the allegations contained in paragraphs 41, 42, and 43 of the Complaint.

CAUSE OF ACTION

Violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution

25. With respect to the allegations contained in paragraph 44 of the Complaint, the State Defendants reassert and incorporate all denials, admissions, and clarifications in the paragraphs above.

26. With respect to the allegations contained in paragraph 45 of the Complaint, the State Defendants assert the Fourteenth Amendment to the United States Constitution speaks for itself. The State Defendants deny all alleged violations of the United States Constitution and any other applicable law.

27. The State Defendants deny the allegations contained in paragraphs 46, 47, 48, 49, 50, and 51 of the Complaint.

28. With respect to Plaintiffs' prayer for relief, the State Defendants deny Plaintiffs are entitled to the relief sought at any time. Additionally, the State Defendants assert pursuant to the *Purcell* principle that it is too late for Plaintiffs to obtain the relief sought during the 2022 election cycle. The State Defendants deny the challenged subdistricts are unconstitutional or invalid in any way.

AFFIRMATIVE DEFENSES

29. The Complaint fails to state a claim upon which relief may be granted.
30. Plaintiffs lack standing to bring the claims in the Complaint.
31. The State Defendants are immune from Plaintiffs' claims pursuant to the Eleventh Amendment to the United States Constitution and other applicable law.
32. The State Defendants deny any alleged violation of the United States Constitution, the Constitution of North Dakota, and any other applicable legal authority.
33. Plaintiffs have not been deprived of any constitutional, civil, statutory, common-law or other right.
34. Pending completion of discovery, the State Defendants assert and incorporate by reference all affirmative defenses available pursuant to Rules 8, 9, and 12 of the Federal Rules of Civil Procedure.

WHEREFORE, the State Defendants respectfully request that the Complaint be, in all things, dismissed and that the State Defendants be awarded costs, disbursements, and any other relief the Court deems just and equitable.

Dated this 22nd day of April, 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

Matthew A. Sagsveen
North Dakota Solicitor General
ND Bar # 05613
Office of Attorney General
500 N. 9th Street

Bismarck, ND 58501-4509
masagsve@nd.gov

Attorney for Defendants Doug Burgum, in his official capacity as Governor of the State of North Dakota; Alvin Jaeger, in his official capacity as Secretary of State of the State North Dakota

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANTS' ANSWER** was on the 22nd day of April, 2022, filed electronically with the Clerk of Court through ECF:

Paul Sanderson (#05830)
Ryan Joyce (#09549)
Evenson Sanderson PC
1100 College Drive, Suite 5
Bismarck, ND 58501
psanderson@esattorneys.com
rjoyce@esattorneys.com

Robert Harms (#03666)
815 N. Mandan St.
Bismarck, ND 58501
robert@harmsgroup.net

Mark P. Gaber
DC Bar No. 988077
CAMPAIGN LEGAL CENTER
1101 14th St. NW, Ste. 400
Washington, DC 20005
mgaber@campaignlegal.org

Michael S. Carter, OK No. 31961
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, CO 80301
carter@narf.org

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