

**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’S ANSWER TO
SUPPLEMENTAL COMPLAINT**

Defendant Michael Howe¹, in his official capacity as Secretary of State of North Dakota (“Defendant”), for his Answer to the Supplemental Complaint (Doc. 44), states as follows:

1. Except as specifically admitted or qualified, Defendant denies each and every allegation in the Supplemental Complaint. Defendant also reasserts and incorporates by reference all admissions, denials, and qualifications in Defendant’s Answer (Doc. 31).

SUPPLEMENTAL COMPLAINT

2. With respect to the allegations contained in the unnumbered first paragraph in the Supplemental Complaint, Defendant admits on November 8, 2022, a general election was held

¹ This action was originally commenced against Alvin Jaeger, in his official capacity as Secretary of State of North Dakota. After the commencement of this action, Michael Howe won the general election for Secretary of State of North Dakota on November 8, 2022 and assumed the office on January 1, 2023. Under Federal Rule of Civil Procedure 25(d), “An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties’ substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.” Michael Howe is therefore automatically substituted as the Defendant in this case.

under the redistricting plan challenged in this case. Defendant denies the remaining allegations contained in the unnumbered first paragraph in the Supplemental Complaint and specifically denies any violation of federal law or other alleged wrongdoing.

SUPPLEMENTAL FACTS

3. Defendant admits the allegations contained in paragraph 1 of the Supplemental Complaint.

4. With respect to the allegations contained in paragraph 2 of the Supplemental Complaint, Defendant admits the November 8, 2022 general election included races in state senate District 9, state house subdistricts 9A and 9B, and state senate and house elections in District 15. Defendant admits the Turtle Mountain Indian Reservation is located in District 9 and the Spirit Lake Reservation is located in District 15. Defendant denies the remaining allegations contained in paragraph 2 of the Supplemental Complaint.

5. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraph 3 of the Supplemental Complaint.

2022 District 9 State Senate Election

6. With respect to the allegations contained in paragraph 4 of the Supplemental Complaint, Defendant admits State Senator Richard Marcellais ran for reelection in the November 2022 election. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in paragraph 4 of the Supplemental Complaint.

7. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraph 5 of the Supplemental Complaint.

8. With respect to the allegations contained in paragraph 6 of the Supplemental Complaint, Defendant admits the redistricting plan enacted in 2021 did not combine the Turtle

Mountain and Spirit Lake reservations. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in paragraph 6 of the Supplemental Complaint.

9. With respect to the allegations contained in paragraph 7 of the Supplemental Complaint, Defendant admits Senator Marcellais lost reelection on November 8, 2022 to Kent Weston. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in paragraph 7 of the Supplemental Complaint.

10. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraphs 8, 9 10, 11, 12, 13, 14, 15, and 16 of the Supplemental Complaint. Defendant specifically denies any violation of federal law or other alleged wrongdoing.

2022 Subdistricts 9A and 9B State House Elections

11. With respect to the allegations contained in paragraph 17 of the Supplemental Complaint, Defendant denies the allege packing and cracking of Native American voters. Defendant asserts the redistricting maps before and after the 2021 redistricting speak for themselves. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in paragraph 17 of the Supplemental Complaint.

12. With respect to the allegations contained in paragraph 18 of the Supplemental Complaint, Defendant admits Jayme Davis won the election in subdistrict 9A on November 8, 2022. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in paragraph 18 of the Supplemental Complaint.

13. With respect to the allegations contained in paragraph 19 of the Supplemental Complaint, Defendant admits Marvin Nelson lost the election in subdistrict 9B on November 8,

2022. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in paragraph 19 of the Supplemental Complaint.

14. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraphs 20 and 21 of the Supplemental Complaint. Defendant specifically denies any violation of federal law or other alleged wrongdoing.

2022 District 15 State Senate and State House Elections

15. With respect to the allegations contained in paragraph 22 of the Supplemental Complaint, Defendant admits the Spirit Lake Reservation is contained in District 15 and admits Collette Brown lost the election for state senate in District 15 in the November 8, 2022 election. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in paragraph 22 of the Supplemental Complaint.

16. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraphs 23 and 24 of the Supplemental Complaint.

17. With respect to the allegations contained in paragraph 25 of the Supplemental Complaint, Defendant admits Kathy Frelich and Dennis Johnson won the election for state house in District 15 and Heather Lawrence-Skadsem lost the election for state house in District 15 in the November 8, 2022 election. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in paragraph 25 of the Supplemental Complaint.

18. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraphs 26 and 27 of the Supplemental Complaint.

19. Defendant denies the allegations contained in paragraph 28 of the Supplemental Complaint.

20. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraph 29 of the Supplemental Complaint.

SUPPLEMENTAL REQUESTED RELIEF

21. With respect to Plaintiffs' requested relief, including the incorporated paragraphs A-F and the supplemental paragraph G, Defendant denies Plaintiffs are entitled to the requested relief.

22. Defendant reasserts and incorporates by reference all defenses and affirmative defenses in Defendant's Answer (Doc. 31).

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

Dated this 6th day of January, 2023.

By: /s/ David R. Phillips

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANT'S ANSWER TO SUPPLEMENTAL COMPLAINT** was on the 6th day of January, 2023, filed electronically with the Clerk of Court through ECF:

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