

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

**PUBLIC INTEREST LEGAL
FOUNDATION, INC.**

Plaintiff,

v.

STEVE SIMON, in his official capacity as the
Secretary of State for the State of Minnesota,

Defendant.

Case No. 0:24-cv-01561-SRN-DJF

**PLAINTIFF’S SUR-REPLY IN OPPOSITION TO
DEFENDANT’S MOTION TO DISMISS**

I. The Foundation May Invoke the Equal State Sovereignty Principle.

The Secretary claims the Foundation may not invoke the equal state sovereignty principle because the Foundation “has no standing to invoke the legal interests of U.S. states that are not party to this action.” (Doc. 17 at 6.) The Secretary is wrong. The Supreme Court has held that a private party may raise constitutional principles, including principles embodied in the Tenth Amendment, in suits seeking relief from personal injuries. In other words, the sovereignty of America’s states does not depend on the identity of the plaintiff, nor does the Foundation lose standing because its injury is caused more directly by something other than the constitutional principle invoked.

In *Bond v. United States*, 564 U.S. 211 (2011), the Supreme Court considered “whether a person indicted for violating a federal statute has standing to challenge its validity on grounds that, by enacting it, Congress exceeded its powers under the

Constitution, thus intruding upon the sovereignty and authority of the States.” *Id.* at 214.

The Court answered that question “yes.” *Id.*

An *amicus* appointed to defend the contrary decision of the court of appeals claimed, like the Secretary here, that “to argue that the National Government has interfered with state sovereignty in violation of the Tenth Amendment is to assert the legal rights and interests of States and States alone,” which is forbidden by the “prudential rule” that a party “cannot rest his claim to relief on the legal rights or interests of third parties.” *Id.* at 220. “[N]ot so,” ruled the Supreme Court, *id.* “The individual, in a proper case, can assert injury from governmental action taken in excess of the authority that federalism defines. Her rights in this regard do not belong to a State.” *Id.* The Supreme Court continued,

The limitations that federalism entails are not therefore a matter of rights belonging only to the States. States are not the sole intended beneficiaries of federalism. *See New York, supra*, at 181, 112 S. Ct. 2408, 120 L. Ed. 2d 120. An individual has a direct interest in objecting to laws that upset the constitutional balance between the National Government and the States when the enforcement of those laws causes injury that is concrete, particular, and redressable. **Fidelity to principles of federalism is not for the States alone to vindicate.**

Bond, 564 U.S. at 222 (emphasis added).

The Supreme Court is clear: “[W]here the litigant is a party to an otherwise justiciable case or controversy, she is not forbidden to object that her injury results from disregard of the federal structure of our Government.” *Id.* 225-26. That is precisely the case here. The Foundation’s injury, or case, is premised on a violation of the NVRA. That injury “results from disregard of the federal structure of our Government,” *id.*,

namely, the equal state sovereignty principle embodied in the Tenth Amendment. Under *Bond*, the Foundation may invoke that principle to secure relief for its statutory injury. *See also Carson v. Simon*, 978 F.3d 1051, 1059 (8th Cir. 2020) (citing *Bond* with approval); *Gillespie v. City of Indianapolis*, 185 F.3d 693, 703 (7th Cir. 1999) (“Gillespie, in making Tenth Amendment claims, actually is asserting his own rights.”).

Dated: July 17, 2024.

For the Plaintiff Public Interest Legal Foundation:

/s/ Noel H. Johnson

Noel H. Johnson* (Wisconsin Bar #1068004)

Kaylan L. Phillips* (Indiana Bar #30405-84)

Public Interest Legal Foundation, Inc.

107 S. West Street, Suite 700

Alexandria, VA 22314

Tel. (703) 745-5870

njohnson@PublicInterestLegal.org

kphillips@PublicInterestLegal.org

* *Admitted pro hac vice*

Douglas P. Seaton (#127759)

James V. F. Dickey (#393613)

Allie K. Howell (#504850)

Upper Midwest Law Center

8421 Wayzata Blvd., Suite 300

Golden Valley, Minnesota 55426

James.Dickey@umlc.org

(612) 428-7000

*Attorneys for Plaintiff Public Interest Legal
Foundation*

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2024, I electronically filed the foregoing using the Court's ECF system, which will serve notice on all parties.

/s/ Noel H. Johnson

Noel H. Johnson
njohnson@publicinterestlegal.org
Counsel for Plaintiff

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