

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

TURTLE MOUNTAIN BAND OF CHIPPEWA
INDIANS, et al.,

Plaintiffs,

v.

MICHAEL HOWE, in his official capacity as
Secretary of State of North Dakota, et al.,

Defendant.

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

STIPULATED FACTS

The parties stipulate to the following facts.

1. All or part of five Indian reservations are located within the boundaries of the State of North Dakota. The entirety of the Fort Berthold Indian Reservation, where the Mandan, Hidatsa, and Arikara Nation is located, the Spirit Lake Reservation, where the Spirit Lake Tribe is located, and the Turtle Mountain Reservation, where the Turtle Mountain Band of Chippewa Indians is located, are located within the boundaries of North Dakota. The northern portions of the Standing Rock Reservation, where the Standing Rock Sioux Tribe is located, and the Lake Traverse Reservation, where the Sisseton Wahpeton Oyate Tribe is located, are located within the boundaries of North Dakota.

2. The North Dakota Constitution and statutes permit state house representatives to be elected either at-large or from subdistricts within a given senatorial district.

3. In preparation for the 2021 redistricting process, Governor Burgum signed House Bill 1397 on April 21, 2021, which established a legislative management redistricting committee

(“Redistricting Committee”) that was required to develop and submit to legislative leadership a redistricting plan by November 30, 2021, along with legislation to implement that plan.

4. On August 12, 2021, the Census Bureau released the Public Law 94-171 data in the “legacy” format that could be incorporated into redistricting software. The legislature procured licenses for the commercial software Maptitude, sold by Caliper Corporation, which released the 2020 state level data on August 16, 2021.

5. The Tribal and State Relations Committee held a joint public meeting with the Turtle Mountain Tribal Council on August 17, 2021 at Turtle Mountain Community College on the Turtle Mountain Reservation, and one topic addressed was redistricting. That Committee also held a public meeting, at which one topic was redistricting, at the Spirit Lake Casino and Resort on the Spirit Lake Reservation on September 1, 2021. The Tribal and State Relations Committee also held public meetings at which redistricting was discussed, at the MHA Nation Interpretive Center on the Fort Berthold Indian Reservation on August 31, 2021.

6. The Joint Redistricting Committee did not hold committee meetings on tribal lands.

7. The Census Bureau did not release the P.L. 94-171 data in a user-friendly format for the public until September 16, 2021.

8. According to the 2020 Census data, North Dakota’s population grew to 779,094, with an “any part” Native American voting age population (“VAP”) of 35,031 (5.9%).¹ Both figures increased from the 2010 Census, which reported 672,591 North Dakota residents, with a Native American VAP of 26,656 (5.1%). The Redistricting Committee relied on the “single race” definition of Native American in performing its redistricting work. According to the 2020 Census

¹ VAP is reported as “any part” Native American (e.g., alone or in combination with another race) in these Stipulated Facts, except where the “single race” figure is specified.

data, using the “single race” definition of Native American, Native American voting age population was 25,005 (4.2% of the total voting age population). According to the 2010 Census data, using the “single race” definition of Native American, Native American voting age population was 23,268 (4.5% of the total voting age population).

9. The Redistricting Committee held public meetings in Bismarck on August 26, 2021, in Fargo on September 8, 2021, and on September 15 and 16 in Bismarck. Additional public meetings of the Redistricting Committee were held in Bismarck on September 22 and 23, and September 28 and 29.

10. From 1983 until 2021, District 9 was wholly contained within Rolette County. According to the 2020 Census, however, Rolette County no longer had sufficient population for its own state legislative district.

11. Rolette County is home to the Reservation and Trust Lands of the Turtle Mountain Band of Chippewa Indians. Benson County, along with portions of Eddy, Ramsey, and Nelson Counties, are home to the Spirit Lake Nation.

12. With 47 legislative districts, the ideal district population according to the 2020 Census was 16,576. The ideal subdistrict population according to the 2020 Census was 8,288.

13. On October 29, 2021, North Dakota Governor Doug Burgum issued Executive Order 2021-17, convening a special session of the North Dakota Legislative Assembly to begin on November 8, 2021, to provide for redistricting of government pursuant to Article IV, Section 2, of the North Dakota Constitution, among other purposes.

14. On November 1, 2021, the Redistricting Committee proposed a legislative redistricting plan described in House Bill 1504, and delivered the proposed plan, proposed legislation, and a final report to legislative management.

15. House Bill 1504 would expand District 9 eastward into parts of Towner and Cavalier Counties. The Native American VAP of District 9 in the proposal was 51.7% measured by “single race” Native American population and 54.5% measured by “any part” Native American.

16. In addition, House Bill 1504 proposed to divide District 9 into two subdistricts, 9A and 9B, for purposes of state house districts. Under the proposal, District 9A would have a Native American VAP of 77.0% (single race) or 79.8% (any part). District 9B would have a Native American VAP of 29.4% (single race) or 32.2% (any part).

17. House Bill 1504 proposed to split Benson County, with its western portion in District 14 and its eastern portion, home to the Spirit Lake Nation, in District 15. Benson County was previously split between Districts 14 and 23 in the prior redistricting. District 15 would include Ramsey County, part of Towner County, and part of Eddy County. The Native American VAP of District 15 would be 20.4% (single race) or 23.1% (any part).

18. On November 1, 2021, Chairman Jamie Azure of the Turtle Mountain Band of Chippewa Indians and then-Chairman Douglas Yankton of the Spirit Lake Nation sent a letter to Governor Burgum, Speaker Koppelman, and Leaders Pollert, Boschee, Wardner, and Heckaman, requesting an alternative District 9 which included the Turtle Mountain Reservation and the Spirit Lake Reservation within its boundaries.

19. The Chairmen attached an alternative version of the Legislature’s proposed statewide plan, which included their alternative District 9, to the November 1, 2021 letter.

20. At the November 8, 2021 Redistricting Committee hearing during the special session called by the Governor, Representative Boschee moved the adoption of an amendment to include the Turtle Mountain and Spirit Lake proposal, but the Committee rejected it.

21. On November 9, 2021, the House of Representatives debated and passed House Bill 1504. On November 10, 2021, the Senate debated House Bill 1504 and rejected Senator Marcellais' amendment to adopt the proposal of Turtle Mountain and Spirit Lake. The Senate passed House Bill 1504, which was signed by Governor Burgum on November 11, 2021 and became law when filed with the Secretary of State the next day. The district descriptions were codified as North Dakota Century Code Section 54-03-01.14 after technical corrections were made.

22. The 2021 Redistricting Plan, as enacted by HB 1504, created 47 state legislative districts and subdivided District 4 and District 9 into single-member House Subdistricts 4A, 4B, 9A, and 9B.

23. The 2021 Redistricting Plan, as enacted by HB 1504, did not place the Turtle Mountain and Spirit Lake reservations in the same state legislative district.

24. The 2021 Redistricting Plan, as enacted by HB 1504, placed the Turtle Mountain Reservation into Senate District 9 and State House Subdistrict 9A and placed portions of Turtle Mountain Trust Lands located within Rolette County into State House Subdistrict 9B.

25. The 2021 Redistricting Plan, as enacted by HB 1504, placed the Spirit Lake Reservation into District 15.

26. Voters in Senate District 9, Senate District 4, and Senate District 15 each elect a single State Senator.

27. Voters in House Subdistricts 9A and 9B and 4A and 4B each elect a single representative to the North Dakota House of Representatives.

28. Voters in District 15 elect two representatives at-large to the North Dakota House of Representatives.

29. House District 4A encompasses the Fort Berthold Indian Reservation of the Mandan, Hidatsa, and Arikara Nation.

30. Voting in full Districts 9 and 15 is racially polarized, with Native American voters cohesively supporting one set of candidates and White voters cohesively supporting a different set of candidates.

31. Plaintiff Turtle Mountain Band of Chippewa Indians is a federally recognized Tribe, recognized by the Bureau of Indian Affairs under 88 Fed. Reg. 2112 (2023), possessing “the immunities and privileges available to federally recognized Indian Tribes[.]” The Turtle Mountain Band of Chippewa Indians maintains a government-to-government relationship with the United States and the State of North Dakota.

32. Plaintiff Spirit Lake Tribe is a federally recognized Tribe, recognized by the Bureau of Indian Affairs under 88 Fed. Reg. 2112 (2023), possessing “the immunities and privileges available to federally recognized Indian Tribes[.]” The Spirit Lake Tribe maintains a government-to-government relationship with the United States and the State of North Dakota.

33. Plaintiff Wesley Davis is an enrolled member of the Turtle Mountain Band of Chippewa Indians. He lives on the Turtle Mountain Reservation and is eligible to vote. He voted in the 2022 election and plans to continue voting in federal, state, and local elections in North Dakota. He currently resides in Senate District 9 and House District 9A.

34. Plaintiff Zachary King is an enrolled member of the Turtle Mountain Band of Chippewa Indians. He lives on the Turtle Mountain Reservation and is eligible to vote. He voted in the 2022 election and plans to continue voting in federal, state, and local elections in North Dakota. He currently resides in Senate District 9 and House District 9A.

35. Defendant Michael Howe is sued in his official capacity as Secretary of State of North Dakota.

36. Venue is proper in the United States District Court for the District of North Dakota.

June 11, 2023

Respectfully submitted,

/s/ Michael S. Carter

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Dated this 11th day of June, 2023.

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Attorney for Defendant Michael Howe, in his
official capacity as Secretary of State of
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CERTIFICATE OF SERVICE

I certify that the foregoing was served on all counsel of record via the Court's CM/ECF system.

/s/ Mark P. Gaber
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Counsel for Plaintiffs