

# EXHIBIT 4

## Supplemental Objection

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

Case No: 3:22-cv-00022

Turtle Mountain Band of Chippewa )  
Indians, Spirit Lake Tribe, Wesley Davis, )  
Zachary S. King, and Collette Brown. )

Plaintiffs, )

v. )

Alvin Jaeger, in his official capacity as )  
Secretary of State of North Dakota. )

Defendant )

**PRIVILEGE LOG**

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As stated in the Objection to Subpoenas to Produce Documents, the subpoenaed individuals asserted the subpoenaed documents are subject to privilege. Further, the subpoenaed individuals assert that responding to the subpoena is unduly burdensome. Specifically, the subpoenaed individuals assert the requested documents are protected by legislative privilege, deliberative process privilege, and attorney-client privilege.

As a threshold matter, the doctrine of legislative privilege “extends to discovery requests, even when the lawmaker is not named a party to the suit: complying with such requests detracts from the performance of official duties.” In re Hubbard, 803 F.3d 1298, 1310 (11<sup>th</sup> Cir. 2015). Further, this privilege “protects against inquiry into acts that occur in the regular course of the legislative process and *into the motivation for those acts*.” Id (emphasis in original).

Further, it is well-established that “courts have consistently held that ‘non-party status’ is a significant factor to be considered in determining whether the burden imposed by a subpoena is undue. Non-parties are afforded this special consideration because they have a different set of

expectations than parties.” Rossman v. EN Engineering, LLC, 467 F.Supp.3d 586, 590 (N.D. Ill. 2020).

Additionally, when the requested information clearly falls within the scope of a privilege and the non-privileged information requested by a subpoena is readily available to the public or of limited relevance to the Plaintiffs’ burden, it has been held a privilege log under Fed. R. Civ. P. 45 is not required. Jordan v. Commissioner, Mississippi Dept. of Corrections, 947 F.3d 1322, 1328 n. 3 (11<sup>th</sup> Cir. 2020). As stated in the Objection, all of these factors apply here and the subpoenaed individuals do not concede a privilege log is necessary under the circumstances.

Nonetheless, in an effort to comply with Rule 45 to the extent practical, the Legislative Council’s IT Department performed a key word search of each subpoenaed individual’s official email and Microsoft Teams messages for the time period of January 1, 2020, through November 16, 2022. We believe the search terms used have captured all relevant communications. Further review of each key word hit would require extensive resources and clearly be unduly burdensome to a non-party. The methodology and results of this key word search are explained below:

**I. Privilege Log - Process Used and Search Results**

A. A search was conducted on the emails within each subpoenaed individual's Outlook for the key words listed on the charts below. The search was applied to emails dated January 1, 2020 through November 16, 2022. The search for Ms. Ness’ emails is ongoing and the results using the same methodology explained below will be provided once complete.

1. Please note:

- i. In regard to communications sent through Teams, a search also was conducted on the Teams messages to which the Legislative Council's IT Department had access; specifically, the Teams messages for Representative William Devlin, Representative Mike Nathe, Senator Nicole Poolman, and Senator Rich Wardner. These results have been included on a separate table for each of the listed individuals.
  - ii. In regard to communications sent through text message, the IT Department does not have access to the subpoenaed individual's personal phones. A request was sent to the subpoenaed individuals for text messages responsive to the subpoena, along with directions on the manner in which individuals could search their devices for text messages using the standard list of key words used when searching for communications in Teams and Outlook.
  - iii. Senators Holmberg and Poolman as well as Representatives Devlin and Nathe indicated no search results from their personal phones. Ms. Ness performed a search on her phone which revealed the results shown in the applicable table. The search results from the remaining subpoenaed individuals' personal phones will be relayed as they are received.
- B. The total number of search results, generated by the key word search, were recorded.

C. When a key word strike was found, the IT Department tallied and further divided it into categories including:

1. Communications between the subpoenaed individual and legislators,
2. Communications between the subpoenaed individual and the Legislative Council staff, and
3. Communications between the subpoenaed individual and individuals other than legislators or the Legislative Council staff.

<b>Representative William Devlin</b>				
<b>OUTLOOK SEARCH RESULTS</b>				
<b>January 1, 2020 - November 16, 2022</b>				
<b>Searched Key Word</b>	<b>Total Number of Hits for the Key Word Searched</b>	<b>Communications Between the Subpoenaed Individual and Legislators</b>	<b>Communications Between the Subpoenaed Individual and Legislative Council Staff</b>	<b>Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals</b>
<b>1504</b>	41	3	6	3
<b>Redistricting</b>	895	8	25	17
<b>Map</b>	257	9	19	10
<b>Subdistrict</b>	114	5	12	8
<b>District</b>	2,848	7	15	10
<b>Race</b>	204	4	15	9
<b>Tribal</b>	362	13	20	14
<b>Native American</b>	167	10	20	13
<b>Indian</b>	132	9	9	7
<b>Reservation</b>	211	12	25	10
<b>Voting Rights Act or VRA</b>	116	14	12	5
<b>Demographic</b>	39	8	2	-
<b>Criteria</b>	117	9	6	2
<b>Training</b>	518	11	20	7

<b>Representative William Devlin</b>				
<b>TEAMS SEARCH RESULTS</b>				
<b>January 1, 2020 - November 16, 2022</b>				
<b>Searched Key Word</b>	<b>Total Number of Hits for the Key Word Searched</b>	<b>Communications Between the Subpoenaed Individual and Legislators</b>	<b>Communications Between the Subpoenaed Individual and Legislative Council Staff</b>	<b>Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals</b>
<b>1504</b>	0	-	-	-
<b>Redistricting</b>	0	-	-	-
<b>Map</b>	0	-	-	-
<b>Subdistrict</b>	0	-	-	-
<b>District</b>	0	-	-	-
<b>Race</b>	0	-	-	-
<b>Tribal</b>	0	-	-	-
<b>Native American</b>	0	-	-	-
<b>Indian</b>	0	-	-	-
<b>Reservation</b>	0	-	-	-
<b>Voting Rights Act or VRA</b>	0	-	-	-
<b>Demographic</b>	0	-	-	-
<b>Criteria</b>	0	-	-	-
<b>Training</b>	0	-	-	-

<b>Representative Ray Holmberg</b>				
<b>OUTLOOK SEARCH RESULTS</b>				
<b>January 1, 2020 - November 16, 2022</b>				
<b>Searched Key Word</b>	<b>Total Number of Hits for the Key Word Searched</b>	<b>Communications Between the Subpoenaed Individual and Legislators</b>	<b>Communications Between the Subpoenaed Individual and Legislative Council Staff</b>	<b>Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals</b>
<b>1504</b>	74	2	-	2
<b>Redistricting</b>	920	32	31	27
<b>Map</b>	990	10	12	14
<b>Subdistrict</b>	53	16	7	9
<b>District</b>	1,862	23	12	24
<b>Race</b>	1,665	7	4	10
<b>Tribal</b>	629	21	10	16
<b>Native American</b>	193	9	5	11
<b>Indian</b>	362	8	6	9
<b>Reservation</b>	495	8	4	7
<b>Voting Rights Act or VRA</b>	95	12	7	11
<b>Demographic</b>	146	2	1	2
<b>Criteria</b>	374	10	2	4
<b>Training</b>	1,107	5	14	1



<b>Representative Michael Nathe</b>				
<b>OUTLOOK SEARCH RESULTS</b>				
<b>January 1, 2020 - November 16, 2022</b>				
<b>Searched Key Word</b>	<b>Total Number of Hits for the Key Word Searched</b>	<b>Communications Between the Subpoenaed Individual and Legislators</b>	<b>Communications Between the Subpoenaed Individual and Legislative Council Staff</b>	<b>Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals</b>
<b>1504</b>	63	1	1	-
<b>Redistricting</b>	49	8	-	2
<b>Map</b>	467	-	7	4
<b>Subdistrict</b>	14	4	1	5
<b>District</b>	2,606	8	2	3
<b>Race</b>	230	1	-	3
<b>Tribal</b>	427	2	-	3
<b>Native American</b>	120	-	-	1
<b>Indian</b>	229	2	-	1
<b>Reservation</b>	178	-	-	-
<b>Voting Rights Act or VRA</b>	3	1	-	-
<b>Demographic</b>	101	-	-	-
<b>Criteria</b>	220	-	-	1
<b>Training</b>	906	-	1	-



<b>Representative Michael Nathe</b>				
<b>TEAMS SEARCH RESULTS</b>				
<b>January 1, 2020 - November 16, 2022</b>				
<b>Searched Key Word</b>	<b>Total Number of Hits for the Key Word Searched</b>	<b>Communications Between the Subpoenaed Individual and Legislators</b>	<b>Communications Between the Subpoenaed Individual and Legislative Council Staff</b>	<b>Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals</b>
<b>1504</b>	0	-	-	-
<b>Redistricting</b>	0	-	-	-
<b>Map</b>	0	-	-	-
<b>Subdistrict</b>	0	-	-	-
<b>District</b>	0	-	-	-
<b>Race</b>	0	-	-	-
<b>Tribal</b>	0	-	-	-
<b>Native American</b>	0	-	-	-
<b>Indian</b>	0	-	-	-
<b>Reservation</b>	0	-	-	-
<b>Voting Rights Act or VRA</b>	0	-	-	-
<b>Demographic</b>	0	-	-	-
<b>Criteria</b>	0	-	-	-
<b>Training</b>	0	-	-	-

<b>Senator Richard Wardner</b>				
<b>OUTLOOK SEARCH RESULTS</b>				
<b>January 1, 2020 - November 16, 2022</b>				
<b>Searched Key Word</b>	<b>Total Number of Hits for the Key Word Searched</b>	<b>Communications Between the Subpoenaed Individual and Legislators</b>	<b>Communications Between the Subpoenaed Individual and Legislative Council Staff</b>	<b>Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals</b>
<b>1504</b>	41	1	-	1
<b>Redistricting</b>	181	10	7	8
<b>Map</b>	344	4	3	5
<b>Subdistrict</b>	28	6	6	4
<b>District</b>	1,107	11	8	8
<b>Race</b>	214	2	2	2
<b>Tribal</b>	425	2	2	3
<b>Native American</b>	90	3	2	1
<b>Indian</b>	243	1	1	-
<b>Reservation</b>	190	5	3	-
<b>Voting Rights Act or VRA</b>	17	2	1	1
<b>Demographic</b>	57	2	-	-
<b>Criteria</b>	244	3	-	-
<b>Training</b>	473	-	-	2

<b>Senator Richard Wardner</b>				
<b>TEAMS SEARCH RESULTS</b>				
<b>January 1, 2020 - November 16, 2022</b>				
<b>Searched Key Word</b>	<b>Total Number of Hits for the Key Word Searched</b>	<b>Communications Between the Subpoenaed Individual and Legislators</b>	<b>Communications Between the Subpoenaed Individual and Legislative Council Staff</b>	<b>Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals</b>
<b>1504</b>	0	-	-	-
<b>Redistricting</b>	0	-	-	-
<b>Map</b>	0	-	-	-
<b>Subdistrict</b>	0	-	-	-
<b>District</b>	0	-	-	-
<b>Race</b>	0	-	-	-
<b>Tribal</b>	0	-	-	-
<b>Native American</b>	0	-	-	-
<b>Indian</b>	0	-	-	-
<b>Reservation</b>	0	-	-	-
<b>Voting Rights Act or VRA</b>	0	-	-	-
<b>Demographic</b>	0	-	-	-
<b>Criteria</b>	0	-	-	-
<b>Training</b>	0	-	-	-

<b>Senator Nicole Poolman</b>				
<b>OUTLOOK SEARCH RESULTS</b>				
<b>January 1, 2020 - November 16, 2022</b>				
<b>Searched Key Word</b>	<b>Total Number of Hits for the Key Word Searched</b>	<b>Communications Between the Subpoenaed Individual and Legislators</b>	<b>Communications Between the Subpoenaed Individual and Legislative Council Staff</b>	<b>Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals</b>
<b>1504</b>	20	-	1	1
<b>Redistricting</b>	159	4	4	6
<b>Map</b>	447	3	2	7
<b>Subdistrict</b>	8	2	1	-
<b>District</b>	1,521	5	2	5
<b>Race</b>	499	1	-	1
<b>Tribal</b>	322	1	-	-
<b>Native American</b>	109	-	-	-
<b>Indian</b>	410	-	-	-
<b>Reservation</b>	107	-	1	1
<b>Voting Rights Act or VRA</b>	32	-	-	-
<b>Demographic</b>	111	-	-	-
<b>Criteria</b>	162	-	-	-
<b>Training</b>	1,069	-	1	-



<b>Senator Nicole Poolman</b>				
<b>TEAMS SEARCH RESULTS</b>				
<b>January 1, 2020 - November 16, 2022</b>				
<b>Searched Key Word</b>	<b>Total Number of Hits for the Key Word Searched</b>	<b>Communications Between the Subpoenaed Individual and Legislators</b>	<b>Communications Between the Subpoenaed Individual and Legislative Council Staff</b>	<b>Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals</b>
<b>1504</b>	0	-	-	-
<b>Redistricting</b>	0	-	-	-
<b>Map</b>	0	-	-	-
<b>Subdistrict</b>	0	-	-	-
<b>District</b>	0	-	-	-
<b>Race</b>	0	-	-	-
<b>Tribal</b>	0	-	-	-
<b>Native American</b>	0	-	-	-
<b>Indian</b>	0	-	-	-
<b>Reservation</b>	0	-	-	-
<b>Voting Rights Act or VRA</b>	0	-	-	-
<b>Demographic</b>	0	-	-	-
<b>Criteria</b>	0	-	-	-
<b>Training</b>	0	-	-	-

<b>Representative Terry Jones</b>				
<b>OUTLOOK SEARCH RESULTS</b>				
<b>January 1, 2020 - November 16, 2022</b>				
<b>Searched Key Word</b>	<b>Total Number of Hits for the Key Word Searched</b>	<b>Communications Between the Subpoenaed Individual and Legislators</b>	<b>Communications Between the Subpoenaed Individual and Legislative Council Staff</b>	<b>Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals</b>
<b>1504</b>	83	5	3	4
<b>Redistricting</b>	794	32	14	16
<b>Map</b>	2,529	21	6	6
<b>Subdistrict</b>	59	21	4	7
<b>District</b>	6,006	29	8	22
<b>Race</b>	2,351	4	1	6
<b>Tribal</b>	1,553	10	1	4
<b>Native American</b>	1,109	8	1	4
<b>Indian</b>	2,426	3	2	3
<b>Reservation</b>	609	11	2	4
<b>Voting Rights Act or VRA</b>	161	10	-	4
<b>Demographic</b>	372	2	-	1
<b>Criteria</b>	514	3	1	1
<b>Training</b>	3,671	1	3	2



Claire Ness				
TEST MESSAGE SEARCH RESULTS				
January 1, 2020 - November 16, 2022				
Searched Key Word	Total Number of Hits for the Key Word Searched	Communications Between the Subpoenaed Individual and Legislators	Communications Between the Subpoenaed Individual and Legislative Council Staff	Communications Between the Subpoenaed Individual and Non-Legislator, Non-Legislative Council Staff Individuals
1504	0	0	0	0
Redistricting	1	1	0	0
Map	5	0	5	0
Subdistrict	2	0	2	0
District	3	0	3	0
Race	1	0	1	0
Tribal	1	0	1	0
Native American	0	0	0	0
Indian	0	0	0	0
Reservation	0	0	0	0
Voting Rights Act or VRA	0	0	0	0
Demographic	0	0	0	0
Criteria	0	0	0	0
Training	0	0	0	1

Additionally, any draft redistricting maps that were not part of the public record have been withheld pursuant to legislative, deliberative process, and/or attorney-client privilege.

Dated this 1st day of December, 2022.

SMITH PORSBORG SCHWEIGERT  
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By /s/ Scott K. Porsborg

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of December, 2022, a true and correct copy of the foregoing **PRIVILEGE LOG** was served upon the following:

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