

**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 the State of North Dakota,

Defendant.

Civil No. 3:22-cv-00022

**SECRETARY HOWE’S STATUS REPORT AND
OPPOSED PROPOSAL FOR FUTURE PROCEEDINGS**

On April 29, 2026, the Supreme Court decided *Louisiana v. Callais*, 146 S. Ct. 1131 (2026). The Supreme Court explained that Section 2 of the VRA “imposes liability only when the evidence supports a strong inference that the State *intentionally* drew its districts to afford minority voters less opportunity because of their race.” *Id.* at 1157 (emphasis added). To succeed on a Section 2 claim, the Supreme Court explained that a plaintiff’s illustrative maps “cannot use race as a districting criterion,” and they “must meet all the State’s legitimate districting objectives” “just as well” as the State’s enacted map. *Id.* at 1159. Plaintiffs must also “provide an analysis that controls for party affiliation,” which is “critical for ‘disentangl[ing] race and politics.’” *Id.* (citation omitted). Additionally, the totality of circumstances analysis must focus on “present-day intentional racial discrimination regarding voting.” *Id.* at 1160.

At the time of the *Callais* decision, this case was pending before the Supreme Court. On June 29, 2026, the Supreme Court granted, vacated, and remanded this matter in light of *Callais*. On July 07, 2026, the Eighth Circuit in turn remanded to this Court, stating “[t]he district court ruled before *Callais* was decided, and ... thus applied what is now an incorrect legal framework.

Accordingly, we vacate the district court's judgment of November 17, 2023, and remand ... for further proceedings in light of *Callais*.” Order of July 7, 2026 (8th Cir. 23-3655).

The parties have conferred repeatedly since June 29, 2026, but have been unable to reach agreement on a schedule for remand proceedings before this Court. In short:

- The Secretary believes the parties should submit dispositive motions to resolve this case on the current record in light of *Callais*, and that this case should be resolved based on the claims that Plaintiffs previously pleaded, which the parties have now litigated for years, and on which this Court already held a trial.
- As the Secretary understands Plaintiffs' position, Plaintiffs may instead seek to file an amended complaint, re-open expert discovery, and request that the Court schedule another trial based on their new, amended claims.¹
- The Secretary believes that revising the pleadings at this time would not only be exceedingly untimely, but that any amendments to Plaintiffs' complaint that could potentially satisfy the requirements of a VRA Section 2 claim, as clarified by the *Callais* decision, would require pleading fundamentally different claims that wholly change the nature of this litigation.

Based on those positions, the Secretary respectfully requests that the Court set a schedule for dispositive briefing as to the viability of Plaintiffs' claims on the current record. The Secretary also proposes that the propriety of any request to reconstitute Plaintiffs' claims at this late stage be considered in the context of a motion by Plaintiffs to amend their complaint, filed in conjunction with their opposition to a dispositive motion. Accordingly, the Secretary respectfully proposes

¹ The Secretary does not purport to speak on behalf of Plaintiffs. If the Secretary has misunderstood Plaintiffs' position as it relates to the conduct of these remand proceedings, he would respectfully ask Plaintiffs to provide correction or clarification.

that the Court adopt the following schedule for further proceedings:

Aug 07 – Secretary’s Dispositive Motion

Aug 28 – Plaintiffs’ Opposition to Dispositive Motion and Motion to Amend Complaint

Sep 11 – Secretary’s Reply in Support of Dispositive Motion and Opposition to Motion to Amend Complaint

Sep 25 – Plaintiffs’ Reply in Support of Motion to Amend Complaint

If the Court denies the Secretary’s dispositive motion and/or grants Plaintiffs leave to file an amended complaint, the Secretary would propose that the parties be directed to then confer and propose a schedule for further proceedings.

Plaintiffs have indicated that they oppose the scheduling proposal outlined above and that they intend to file a different proposal/motion.

In order to efficiently plan and prepare for these remand proceedings, the Secretary respectfully requests that the Court enter an order adopting the above briefing schedule (or other schedule, as the Court may deem appropriate) ahead of August 07, 2026—the date by which the Secretary proposes to file a dispositive motion.

Dated July 22, 2026.

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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/ David R. Phillips
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capacity as Secretary of State of North
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