

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

Charles Walen, an individual; and Paul  
Henderson, an individual,

Plaintiffs

vs.

Doug Burgum, in his official capacity as  
Governor of the State of North Dakota;  
Alvin Jaeger, in his official capacity as  
Secretary of the State of North Dakota,

Defendants

and

The Mandan, Hidatsa and Arikara Nation;  
Lisa DeVille, an individual; and  
Cesareo Alvarez, Jr., an individual.

Defendants-Intervenors

CIVIL NO: 1:22-CV-00031

**AFFIDAVIT OF IRWIN JAMES NARUM  
(JIM) SILRUM**

\*\*\*

\*\*\*

\*\*\*

STATE OF NORTH DAKOTA )  
COUNTY OF BURLEIGH ) ss.

Irwin James Narum (Jim) Silrum, states as follows:

1. I declare under penalty of perjury that the statements made in this affidavit are true and correct to the best of my knowledge and belief.

2. I am the Deputy Secretary of State (“Deputy”) for the State of North Dakota and have held this position since November 2003. As Deputy, my duties include assisting the North Dakota Secretary of State (“Secretary”) in carrying out the duties of the office of Secretary of State (“SOS”), including general duties, elections, licensing, central indexing, and business registration

and information. A detailed list of the duties can be found on the Secretary of State website at <https://sos.nd.gov/about-office/duties-secretary-state.html>.

3. My specific duties for the SOS in elections are to assist the Secretary who serves as North Dakota's chief election officer, specifically: training county election officials; prescribing the form and content of statewide election ballots, receiving, reviewing, and filing petitions for initiated, constitutional, and referred measures; receiving and reviewing candidate filings from individuals seeking statewide, legislative, or judicial office; filing oaths of office for legislative, judicial, and executive officials; filing campaign disclosure statements of statewide, judicial, and legislative candidates, state political parties, district political parties, political committees, and independent expenditure filers; and certifying names of elected statewide, judicial, legislative, and multi-county jurisdiction candidates of the state.

4. On April 21, 2021, Governor Doug Burgum ("Governor Burgum") signed House Bill 1397, which established an interim legislative management redistricting committee that was required among other things to develop and submit to the legislative management by November 30, 2021 a redistricting plan and legislation to implement the plan. The bill became law when filed with the SOS the next day. The signed bill is attached as ***Exhibit A***.

5. On October 29, 2021, Governor Burgum issued Executive Order 2021-17, which convened a special session of the Legislative Assembly on November 8, 2022 to, among other things, "provide for redistricting of government pursuant to Article IV, Section 2, of the North Dakota Constitution following the 2020 census". The signed executive order is attached as ***Exhibit B***.

6. House Bill 1504, which created the current legislative districts in North Dakota, was signed by Governor Burgum on November 11, 2021 and became law when filed with the SOS the next day. The signed bill is attached as ***Exhibit C***.

7. Under North Dakota law, "[l]egislative districts must be as nearly equal in population as is practicable." N.D.C.C. § 54-03-01.5(5). Therefore, a change to even one district of the state would have cascading impacts on the remaining 46 districts.

8. The board of county commissioners for each of North Dakota's 53 counties is required to divide the county into precincts and establish the county precinct boundaries no later than December 31 of the year immediately preceding an election cycle. N.D.C.C. §§ 16.1-04-01(1)(a); 16.1-04-01(3). North Dakota law prohibits a single precinct from encompassing more than one legislative district. N.D.C.C. § 16.1-04-01(1)(a). County commissions must establish the precincts in a properly noticed public meeting and those notices and meetings occurred during the month of December. If even one district were to be changed in the state, there would be cascading impacts that would require precinct boundaries of the impacted counties to be redrawn to comply with all aspects of applicable law. The county commissions drew precinct boundaries based on the legislative redistricting maps and the determination of appropriate precinct boundaries could change if subdistricts were to be removed or district boundaries were otherwise altered.

9. Since December 31, 2021, the date by which each county commission established the county precincts in advance of the 2022 election cycle, all 53 county auditors have been reviewing and updating the 47,117 street segments in the State's Central Voter File to ensure each residential address of the state is associated with the correct jurisdictional boundaries, e.g., legislative, judicial, water, city, library, ambulance, etc. based on the changes made by the legislature and each county commission. Individual street segments vary widely. As an example, a street segment might include all house numbers on a street from 100 to 1200. On a different street in the same precinct, a street segment might include only the odd house numbers, but not the even house numbers on the other side of the street because they are in an adjacent precinct. Every individual street segment must be reviewed by county auditors after precincts are established, whether or not the street segment is changed, to ensure the voters living at the addresses on the street segment will be given the proper ballot for the jurisdictions in which they reside. It took from December 31, 2021, until March 23, 2022, (four months) for all 53 counties in North Dakota to review and update the 47,117 street segments in the Central Voter File. If even one district were

to be changed in the state, there would be cascading impacts that would require this work to be entirely redone.

10. According to N.D.C.C. § 16.1-03-17, if redistricting of the Legislative Assembly becomes effective after the organization of political parties and before the primary or the general election, some of the political parties in newly established districts are required to reorganize as closely as possible in conformance with Chapter 16.1-03 to assure compliance with primary election filing deadlines. This would include districts in which the population residing within any new geographic area added to the district is at least 25 percent of the district's total population. N.D.C.C. § 16.1-03-17(2). After the 2021 redistricting boundaries were established, 26 legislative district political parties from the 47 districts were required to reorganize. (See *Exhibit D* for district population numbers, percentage of change, and whether reorganization was required.) It should be noted that the new geographical area added to Legislative District 9, in its current form, is very close to the percentage of population change requiring reorganization and any change to the district boundaries could force reorganization of the district political parties. Since January 1, 2022, the legislative district parties required to reorganize according to N.D.C.C. § 16.1-03-17 have been following the steps required in N.D.C.C. § 16.1-03-01 (regarding party caucuses). A change in the legislative district boundaries would require the legislative district political parties to complete this work again and more could be impacted depending on the extent of the changes.

11. Based on the current redistricting maps, 98 of the 141 Senate and House member offices are required to be on the ballots in 2022. These offices are from 34 of the 47 legislative districts. Therefore, the legislative district political parties of the state have met to endorse candidates for these positions. The House candidates endorsed by the political parties for office representing a subdistrict must reside within the subdistrict. This naturally reduces the number of qualified candidates in subdistricts compared to districts that are not subdivided. If subdistricts were eliminated, the legislative district parties could endorse different candidates, however, the deadline for the candidate paperwork to be filed is fast approaching on April 11, 2022. N.D.C.C. § 16.1-11-06(1). Legislative district political parties also elected delegates to attend the state

political party conventions that have already occurred in late March and early April. This work began in January and was not completed until early April of this year. A change in the legislative district boundaries would require the legislative district political parties to complete this work all over again and more could be impacted depending on the extent of the changes.

12. For candidates running by Petition, the filed Petition must contain, among other things, the signatures and printed names of qualified electors, the number of which for legislative offices is determined by N.D.C.C. § 16.1-11-06(1)(b)(3)(d), which requires “the signatures of at least one percent of the total resident population of the legislative district as determined by the most recent federal decennial census.” The SOS has interpreted this to require candidates running for the House in subdistricts to submit signatures of at least one percent of the total resident population of the subdistrict in which they are running. The SOS has already given this guidance to individuals who have inquired regarding the total number of signatures required to run for a House seat in a subdistrict. (See *Exhibit E* for signature requirements.) As such, candidates running for the House in Subdistrict 4A, 4B, 9A, and 9B are currently collecting approximately half the signatures that would be required of a candidate running for the Senate in the entire district. For example, as shown on *Exhibit E*, a candidate running for the Senate in District 4 is required to submit not less than 164 valid signatures, but the signature requirements for House candidates in Subdistrict 4A is 83 and 4B is 81. Similarly, a candidate running for the Senate in District 9 is required to submit not less than 161 valid signatures, but the signature requirements for House candidates in Subdistrict 9A is 79 and 9B is 82. As indicated above, the signatures must be submitted no later than 4 p.m. on April 11, 2022, under N.D.C.C. § 16.1-11-06. If Subdistrict 4A, 4B, 9A, and/or 9B were eliminated in advance of the 2022 elections, candidates that would have qualified to be on the ballot based on the number of signatures required in a subdistrict might no longer qualify, as they would not have sufficient signatures to be a candidate for an entire district. I have spoken with potential candidates residing in the four subdistricts about the number of valid signatures required to run for the House seat in the subdistrict in which they reside, and I provided

the information as shown on ***Exhibit E***. It is my understanding that other representatives from the SOS and the political parties have also shared this information with potential candidates.

13. Endorsed candidates and those that are running by Petition are required to complete and file with the SOS an Affidavit of Candidacy, Statement of Interests, and either a Certificate of Endorsement or Petition. Candidates may begin this work no earlier than January 1 and the paperwork must be filed no later than 4 p.m. on April 11, 2022, under N.D.C.C. § 16.1-11-06.

14. To assist the Court with its analysis of this case, below are important election deadlines for the 2022 elections, with citations to applicable statutes or other authorities:

June 14, 2022, Primary Election (all dates in 2022)

1. Pre-election:

- a. January 1 candidates could begin circulating petitions to obtain the required number of signatures to have their names included on the primary election ballot. N.D.C.C. § 16.1-11-15.
- b. 100-day notice of contests included on the ballot – March 6. N.D.C.C. § 16.1-07-30(1) – Requirement already met at 2022 Primary Election Contest/Candidate List (<https://vip.sos.nd.gov/candidatelist.aspx?eid=325>).
- c. 64-day candidate filing deadline – April 11 not later than 4 p.m. This deadline is in multiple statutes, but N.D.C.C. § 16.1-11-06 includes the deadline for legislative candidates.
- d. 46-day deadline on which ballots must be sent to military and overseas voters who have applied for a ballot by that day – April 29. N.D.C.C. § 16.1-07-23.
- e. 40-day deadline on which ballots must be sent to all other voters who have applied for a ballot by that day – May 5. N.D.C.C. § 16.1-07-04.
- f. 15-day early voting may begin – May 30. N.D.C.C. § 16.1-07-15.

2. Post-election:

- a. 13<sup>th</sup> day – County Canvassing Board meetings – June 27. N.D.C.C. § 16.1-15-17.
- b. 17<sup>th</sup> day – State Canvassing Board meeting – July 1. N.D.C.C. § 16.1-15-35.



November 8, 2022, General Election

1. Pre-election:

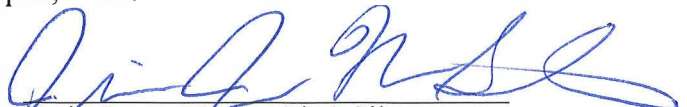
- a. 100-day notice of contests included on the ballot – July 31. N.D.C.C. § 16.1-07-30(1) – Requirement will be met at 2022 General Election Contest/Candidate List (<https://vip.sos.nd.gov/candidatelist.aspx?eid=325>)
- b. 64-day candidate filing deadline – September 5 not later than 4 p.m. – This deadline is in multiple statutes, but N.D.C.C. § 16.1-12-04(3) includes the deadline for legislative candidates.
- c. 46-day deadline on which ballots must be sent to military and overseas voters who have applied for a ballot by that day – September 23. N.D.C.C. § 16.1-07-23.
- d. 40-day deadline on which ballots must be sent to all other voters who have applied for a ballot by that day – September 29. N.D.C.C. § 16.1-07-04.
- e. 15-day early voting may begin – October 24. N.D.C.C. § 16.1-07-15.


2. Post-election:

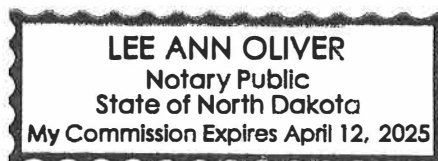
- a. 13<sup>th</sup> day – County Canvassing Board meetings – November 21. N.D.C.C. § 16.1-15-17.
- b. 17<sup>th</sup> day – State Canvassing Board meeting – November 25. N.D.C.C. § 16.1-15-35.
- c. December 1 – Elected legislators begin terms. Article IV, Section 7 of ND Constitution

State of North Dakota  
County of Burleigh

Signed and sworn to before me on this 7<sup>th</sup> day of April, 2022.

  
Irwin James Narum (Jim) Silrum  
North Dakota Deputy Secretary of State

  
Notary Public



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **AFFIDAVIT OF IRWIN JAMES NARUM (JIM) SILRUM** was on the 7<sup>th</sup> day of April, 2022, filed electronically with the Clerk of Court through ECF:

Paul Sanderson (#05830)  
Ryan Joyce (#09549)  
Evenson Sanderson PC  
1100 College Drive, Suite 5  
Bismarck, ND 58501  
[psanderson@esattorneys.com](mailto:psanderson@esattorneys.com)  
[rjoyce@esattorneys.com](mailto:rjoyce@esattorneys.com)

Robert Harms (#03666)  
815 N. Mandan St.  
Bismarck, ND 58501  
[robert@harmsgroup.net](mailto:robert@harmsgroup.net)

Mark P. Gaber  
DC Bar No. 988077  
CAMPAIGN LEGAL CENTER  
1101 14th St. NW, Ste. 400  
Washington, DC 20005  
[mgaber@campaignlegal.org](mailto:mgaber@campaignlegal.org)

Michael S. Carter, OK No. 31961  
NATIVE AMERICAN RIGHTS FUND  
1506 Broadway  
Boulder, CO 80301  
[carter@narf.org](mailto:carter@narf.org)

By: /s/ David R. Phillips  
DAVID R. PHILLIPS