

EXHIBIT 6

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

CHARLES WALEN, *et al.*,

Plaintiffs,

v.

DOUG BURGUM, in his official capacity as Governor
of the State of North Dakota, et al.,

Defendants,

v.

MANDAN, HIDATSA AND ARIKARA NATION, *et al.*,

Defendant-
Intervenors.

Civil No. 1:22-cv-00031-PDW-CRH

DECLARATION OF MARK N. FOX

I, Mark N. Fox, pursuant to 28 U.S.C. § 1746, based on my personal knowledge, declare that:

1. I am an enrolled member of the Mandan, Hidatsa and Arikara Nation (“MHA Nation”), also known as the Three Affiliated Tribes of the Fort Berthold Indian Reservation. I currently serve as the Chairman of the Tribal Business Council of the MHA Nation, which is the Tribe’s governing body. I live on the Fort Berthold Reservation.

2. MHA Nation is a federally recognized tribe and located on the Fort Berthold Reservation. The Tribal Headquarters are located at 404 Frontage Road, New Town, ND 58763.

3. MHA Nation has approximately 17,145 enrolled members, including approximately 11,796 members aged 18 and older. A substantial portion of these members are

eligible to vote and do vote in federal, state, and local elections on or near the Fort Berthold Reservation.

4. The Fort Berthold Reservation spans approximately 988,000 acres (or 1,543 square miles) in central North Dakota along the Missouri River. The Reservation intersects with McLean, Mountrail, Dunn, McKenzie, Mercer, and Ward Counties.

5. The Fort Berthold Reservation was established by executive order in 1870. Its present boundaries represent only a fraction of the ancestral territories of the Mandan, Hidatsa, and Sahnish (Arikara) Peoples and territories recognized by the 1851 Treaty of Fort Laramie.

6. The MHA Nation is comprised of Mandan, Hidatsa, and Sahnish (Arikara) Peoples, who have been present in North America since time immemorial. While the three Tribes have separate origins, they have commonly resided in the Missouri River Area and on the land where the Fort Berthold Reservation is located for centuries.

7. The political boundaries of the MHA Nation are defined by the borders of the Fort Berthold Reservation.

8. The political borders of the Fort Berthold Reservation have important legal implications, including those pertaining to the MHA Nation's governing authority. For instance, the MHA Nation, through its Tribal Business Council and Tribal Court, has jurisdiction to enforce its Constitution and Tribal Code within the boundaries of the Reservation. The Tribal Court of the MHA Nation has the authority to adjudicate civil disputes arising out of events occurring on the Fort Berthold Reservation.

9. Citizens of the MHA Nation have a unique political status, recognized by the MHA Nation and the United States, that goes well beyond any racial classification.

10. Because of their tribal membership, citizens of the MHA Nation have particular rights and obligations that are recognized by Tribal and Federal Governments, including the right to vote in tribal elections. Likewise, they are entitled to participate in tribal and federal programs reserved to members of federally recognized Indian tribes.

North Dakota Elections and the State Legislative Map

11. Prior to 2021, the Fort Berthold Reservation was wholly located within Legislative District 4. Residents of District 4, including citizens of the MHA Nation residing on the Fort Berthold Reservation, elected two State House Representatives, at large, and one State Senator from within the District. District 4 contained parts of six counties: McKenzie, Dunn, Mountrail, McLean, Mercer, and Ward.

12. The prior at large electoral system for District 4 prevented MHA Citizens from electing their candidates of choice to the State Legislature. No Members of the MHA Nation were elected to the North Dakota State House or State Senate from the previous District 4 under the 2011-2021 electoral map's at-large system, despite multiple Tribal Members running for the various at large seats.

13. For example, MHA Tribal Members Thomasina Mandan and Cesar Alvarez ran for the at large State House seats in District 4 in 2020 and 2016, respectively. Both candidates lost their bids, despite winning in precincts on the Reservation. Lisa Finley DeVille likewise lost her bid for State Senate in 2020 in the at large District 4.

14. The 2020 Census showed that the populations of the Fort Berthold Reservation and the former District 4 grew substantially. According to the Census population estimates, the population of the Fort Berthold Reservation increased from 6,341 in 2010 to 8,350 in 2020. Similarly, the population of former District 4 grew from 14,081 in 2010 to 16,794 in 2020. The

ideal population for an at-large legislative district during the 2021 Redistricting Cycle was 16,576 and 8,288 for a single-member house district.

15. Given this population growth, the historic failure of the at large system to allow MHA Tribal Members to elect a candidate of choice to the Legislature, and the unique needs of the MHA Nation and its Members, I testified twice in my official capacity as Chair of the Tribal Business Council regarding the MHA Nation's position in support of a State House subdistrict in District 4 that would follow the boundaries of the Fort Berthold Reservation.

16. Other MHA Tribal Members similarly testified in support of a State House subdistrict in District 4.

17. The 2021 Redistricting Plan places the Fort Berthold Reservation into a single-member State House subdistrict, House District 4A, that follows the Reservation's boundaries. House District 4A has a population of 8,350. The majority of the citizen voting age population of House District 4A are Members of the MHA Nation.

18. The MHA Nation intervened as defendant in this case on its own behalf and on behalf of its members to protect the voting rights of its members and to defend the Fort Berthold Reservation as a community of interest in which House District 4A should remain.

MHA Nation as a Community of Interest

19. The Fort Berthold Reservation is a community of interest. MHA Nation Tribal Members living on the Fort Berthold Reservation share common economic, cultural, language, demographic, and social interests that are distinct from the surrounding populations.

20. Members of the MHA Nation are united in their unique relationship with the United States government and their status as citizens of the United States and State of North Dakota as well as citizens of the MHA Nation. This relationship has particular implications for the ways in

which MHA Nation Tribal Members access certain government services, such as healthcare, emergency response services, education, and housing support.

21. Members of the MHA Nation likewise share common languages, cultures, and religious practices. The MHA Nation offers services in support of these shared interests, like the programs of our Culture and Language Center.

22. Many Members of the MHA Nation who live on the Fort Berthold Reservation also share similar socioeconomic statuses and educational backgrounds, resulting in common needs when it comes to social services and other programs and objectives of the Tribal, State, and Federal Governments.

23. The MHA Nation and its Citizens further share a common relationship with the Missouri River that is unique from residents of the surrounding areas. For centuries, the Mandan, Hidatsa, and Sahnish Peoples who comprise the contemporary MHA Nation have lived along the Missouri River and in the Missouri Riverbed, using the River for sustenance, transportation, trade, and religious and cultural practices. When the MHA Nation negotiated with the United States for the location of the Fort Berthold Reservation, ensuring that the Nation could remain on the Missouri Riverbed and on lands that included the Missouri River was crucial.

24. Today, the Missouri River remains of paramount importance to the MHA Nation. The River is critical to our shared cultural and religious practices, social interests, and our languages. Likewise, Tribal Members continue to use the Missouri River for subsistence. Because of the importance of the Missouri River to the MHA Nation, the MHA Nation and its Members have continued to defend the Nation's ownership of the Riverbed against encroachment by the State of North Dakota. In fact, the Department of Interior recognized the MHA Nation's unique relationship with the Missouri River that sets the Nation apart from the State and residents of the

surrounding areas in 2022 in an official opinion affirming the MHA Nation's ownership of the Missouri Riverbed. This relationship is distinct from residents of the surrounding areas.


25. The MHA Nation and residents of the Fort Berthold Reservation also share common economic and regulatory interests arising from the Bakken Oil Formation, which has significant reservoirs below the Fort Berthold Reservation.

26. The needs and concerns of the residents of the Fort Berthold Reservation are distinct from those of the surrounding community, including the rest of District 4 outside of the Fort Berthold Reservation. Placing the Fort Berthold Reservation into a larger at-large two seat legislative house district would threaten to subsume the interests of its residents into the interests of the broader community, leaving behind the unique needs of the Tribe and its Members.

27. Subdistrict 4A provides an opportunity for Citizens of the MHA Nation who reside on the Fort Berthold Reservation to elect a candidate of their choice in the State House, and ensures that their unique needs are represented in the Legislature.

I am competent to testify on the matters stated in this declaration. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February ___, 2023,

pr@adobe.com (Feb 28, 2023 21:14 CST)

Mark N. Fox
Chairman of the Tribal Business Council
Mandan, Hidatsa and Arikara Nation