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

Civil No: 1:22-CV-00031

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| Charles Walen, an individual; and Paul Henderson, an individual,<br><br>Plaintiffs<br><br>vs.<br><br>Doug Burgum, in his official capacity as Governor of the State of North Dakota; Michael Howe, in his official capacity as Secretary of the State of North Dakota,<br><br>Defendants<br><br>and<br><br>The Mandan, Hidatsa and Arikara Nation; Lisa DeVille, an individual; and Cesareo Alvarez, Jr., an individual.<br><br>Defendants-Intervenors | ) | **DEFENDANTS DOUG BURGUM AND MICHAEL HOWE'S MEMORANDUM IN RESPONSE TO INTERVENOR-DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** |

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Defendants Doug Burgum, in his official capacity as Governor of the State of North Dakota and Michael Howe, in his official capacity as Secretary of State of North Dakota ("State Defendants") submit this memorandum in response to *Intervenor-Defendants' Motion for Summary Judgment* (Doc. 107) and *Intervenor-Defendants' Memorandum in Support of Motion for Summary Judgment* (Doc. 108).

Relying on much of the same undisputed evidence and controlling and persuasive case law as set forth in State Defendants' previous summary judgment briefing (Doc. 102), Intervenor-Defendants' likewise move the court for summary judgment, requesting the complete dismissal

with prejudice of Plaintiffs' lawsuit claims. As set forth below, State Defendants join in some, *but not all*, of Intervenor-Defendants arguments and evidence.

With respect to the challenged subdistricting in Districts 4 and 9, Intervenor Defendants argue: (1) Plaintiffs' lack the necessary Article III standing to challenge the State's subdistricting as neither Plaintiff resides in the allegedly gerrymandered Subdistrict 4A; (2) Plaintiffs have not shown a cognizable injury with respect to either of the Challenged Subdistricts; and (3) Plaintiffs' claimed injuries and requested relief that includes removing the challenged subdistricting is not redressable. State Defendants join in all of the foregoing bases for summary judgment, and further join in and ask the Court to adopt as its own the evidence and analysis of Intervenor-Defendants in this regard. State Defendants and the Intervenor-Defendants should be granted summary judgment on the foregoing bases.

With respect to the challenged subdistricting in District 4, Intervenor-Defendants move the Court for summary judgment on additional legal bases, arguing: (1) race did not predominate in the drawing of Subdistrict 4A; (2) the drawing of Subdistrict 4A is narrowly tailored to serve a compelling governmental interest; and (3) the State drew Subdistrict 4A in order to comply with Section 2 of the VRA. State Defendants join in all three of these bases for summary judgment as well, but their joinder is based on the evidence and analysis set forth in State Defendants' briefing.

Dated this 21st day of March, 2023.

By: */s/ Bradley N. Wiederholt*
David R. Phillips (# 06116)
Bradley N. Wiederholt (#06354)
Special Assistant Attorney General
300 West Century Avenue
P.O. Box 4247
Bismarck, ND 58502-4247
(701) 751-8188
dphillips@bgwattorneys.com
bwiederholt@bgwattorneys.com

James E. Nicolai (#04789)
Interim Solicitor General
Courtney R. Titus (#08810)
Deputy Solicitor General
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
(701) 328-4509
jnicolai@nd.gov
ctitus@nd.gov

Attorney for Defendants Doug Burgum, in his official capacity as Governor of the State of North Dakota; Michael Howe, in his official capacity as Secretary of State of the State North Dakota

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **DEFENDANTS DOUG BURGUM AND MICHAEL HOWE'S MEMORANDUM IN RESPONSE TO INTERVENOR-DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** was on the 21st day of March, 2023, 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
rjoyce@esattorneys.com

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

Mark P. Gaber (DC Bar No. 988077)
Molly Danahy
Nicole Hansen
CAMPAIGN LEGAL CENTER
1101 14th St. NW, Ste. 400
Washington, DC 20005
mgaber@campaignlegal.org
mdanahy@campaignlegalcenter.org

nhansen@campaignlegalcenter.org

Michael S. Carter, OK No. 31961
Matthew Lee Campbell
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, CO 80301
carter@narf.org
mcampbell@narf.org

Bryan L. Sells
PO BOX 5493
Atlanta, GA 31107-0493
bryan@bryansellslaw.com

Samantha Blencke Kelty
Native American Rights Fund
1514 P Street NW, Suite D
Washington, DC 20005
kelty@narf.org

By: */s/ Bradley N. Wiederholt*
Bradley N. Wiederholt