

**Civil No. 18-1725**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

Richard Brakebill, Dorothy Herman, Della Merrick,  
Elvis Norquay, Ray Norquay, and Lucille Vivier,  
on behalf of themselves,

Appellees

v.

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

Appellant.

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**MOTION FOR STAY PENDING APPEAL**

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Pursuant to Rules 8(a)(2) of the Federal Rules of Appellate Procedure, defendant Alvin Jaeger, in his official capacity as the North Dakota Secretary of State (the Secretary), moves the Court for an order suspending one aspect of the district court’s April 3, 2018, injunction while this appeal is pending. The Secretary seeks to stay or suspend that part of the order enjoining him from enforcing the “current residential street address” requirement found at N.D. Cent. Code § 16.1-01-04.1(2)(b) and requiring the defendant to allow any “voter to receive a ballot if they provide a . . . form of identification that includes . . . a current mailing address (P.O. Box or other address) in North Dakota.” Dist. Ct. Doc. ID #99 at 15. The district court’s order is attached as Exhibit 1.

The Secretary initially moved for a stay in the district court pursuant to Rule 8(a)(1) of the Federal Rules of Appellate Procedure. See Dist. Ct. Doc. ID #103. The district court denied the motion on April 30, 2018. See Dist. Ct. Doc. ID #112.

The district court's order denying the request for a stay pending appeal is attached as Exhibit 2; the reasons given by the district court for denying the stay are stated therein.

The reasons a stay or suspension should be granted by this Court include: (1) the six individual Appellees all have qualifying residential street addresses and thus lack standing to challenge North Dakota's residential street address requirement; (2) the residential street address requirement is facially constitutional under Crawford v. Marion County Election Board, [553 U.S. 181](#) (2008), because it imposes no burden on the vast majority of voters in North Dakota, including the Appellees; (3) the district court's statewide across-the-board injunction violates Crawford's limits on the individual as-applied injunctive relief that would be available to the six individual Appellees even if they had standing and could show they are specially burdened by the residency requirement; (4) application of Crawford's balancing test would weigh in favor of North Dakota even if the six individual Appellees had standing and could show they are specially burdened; and (5) leaving the injunction in place will irreparably harm North Dakota's interests in maintaining the integrity of future elections while the injunction is in force, because election officials will be required to permit nonresidents from other states who maintain a P.O. Box in the state to vote in North Dakota's elections. In addition, North Dakota residents who maintain a P.O. Box in a precinct other than the one where they reside will be permitted to vote in the wrong precincts.

The Secretary requests that the Court expedite its review of this motion so that an order permitting him to enforce North Dakota's current residential street address

requirement can be in place prior to the next statewide election to be held on June 12, 2018.

### **PRELIMINARY STATEMENT**

Every state, including North Dakota, has election laws that impose a residency requirement on voters. These requirements ensure that electors are qualified to vote as state residents and vote in the correct precincts for the correct candidates; they also prevent nonresidents from voting in another state's elections and prevent voter fraud. The vast majority of North Dakota voters have a current residential street address that satisfies the requirements of North Dakota's election laws, as well as a form of identification (ID) that lists their current address (or an ID that can be supplemented with documents the federal law recognizes as sufficiently trustworthy to update an address). The street-address requirement ensures that nonresidents who maintain a North Dakota post office (P.O.) Box may not vote in the state, and that residents vote in the precinct in which they reside, not in the precinct where the P.O. Box rests. The requirement is also consistent with voter application instructions under the National Voter Registration Act (NVRA), which expressly direct individuals not to use a P.O. Box for their home address when registering to vote.

The absence of any burden imposed on the vast majority of North Dakota voters establishes that North Dakota's residential street address requirement is facially constitutional under Crawford v. Marion County Election Board, [553 U.S. 181](#) (2008). For those individual voters who can allege and show an election law imposes a special burden on them, Crawford left intact as-applied challenges in which any special burdens imposed upon a select few are balanced against the

legitimate interests the state advances to justify those burdens. But Crawford prohibits across-the-board statewide injunctions for election laws that impose only minor or no burdens on most voters, limiting the type of injunctive relief a court may grant to the specific relief required to alleviate a special burden imposed upon a particular individual.

Against this backdrop, six individual Native Americans brought this non-class action lawsuit challenging, in part, North Dakota's current residential street address requirement. All six Appellees have failed to allege or show they have standing to challenge the requirement, however, because all six have addresses that qualify as current residential street addresses under North Dakota law. In addition, the six Appellees have failed to allege or show North Dakota's current election laws prevent them from voting with the photo tribal IDs they possess even when those IDs do not list their current residential street address, and all can obtain a second type of permissible non-photo tribal ID that lists their residential street addresses. In short, the six Appellees failed to allege or show they must depend upon a P.O. Box mailing address to vote.

Despite the Appellees' transparent lack of standing, the district court addressed their challenge to the residential street address requirement, held that the requirement violated the Equal Protection Clause, and enjoined the requirement statewide. The injunction will permit nonresidents from other states who maintain P.O. Boxes in North Dakota to vote in North Dakota by providing election officials with a form of identification that only discloses their North Dakota P.O. Box. The injunction will also permit residents who maintain a P.O. Box at a post office outside

the precinct where they reside to obtain a ballot in the wrong precinct by providing election officials with a form of identification that only discloses their P.O. Box.

All told, the district court's order defies the case-or-controversy requirement, is flatly wrong on the merits, and at the very least contravenes the bedrock rule that injunctions go no further than necessary to provide complete relief to the Appellees.

North Dakota's next statewide election will be held on June 12, 2018. If the order stays in place, the State's ability to guarantee the integrity of that election will be irreparably harmed.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **I. North Dakota's residential street address requirement within its unique non-registration election system.**

For over sixty-five years, North Dakota residents have voted without the burden of registration. See Arnold Affidavit at ¶ 4, Exhibit 3.<sup>1</sup> Unlike all other states that bar citizens from voting unless they register, all North Dakota residents are permitted to vote simply by establishing the basic qualifications to vote.

North Dakota's Constitution sets forth the three basic qualifications to vote. An individual must be (1) a citizen of the United States, (2) who is at least eighteen years of age, and (3) is a North Dakota resident. N.D. Const. Art. II, § 1; see also N.D. Cent. Code § 16.1-01-04. North Dakota defines residency for purposes of voting as having "resided in the precinct at least thirty days immediately preceding any election," N.D. Cent. Code § 16.1-01-04(1)(c); a residence is described as "an actual fixed permanent dwelling establishment, or any other abode to which the

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<sup>1</sup> Dist. Ct. Doc. ID # 81-1.

individual returns when not called elsewhere for labor or other special or temporary purposes.” N.D. Cent. Code § 16.1-01-04.2(1).<sup>2</sup> This definition of residence does not require a person to own property to vote.

Because North Dakota’s election system does not include the burden of registration, the means by which North Dakota determines its residency requirement is by having electors, on the day of an election, “provide a valid form of identification [ID] to the proper election official” that contains the individual’s “[l]egal name; . . . [c]urrent residential street address in North Dakota; and . . . [d]ate of birth.” N.D. Cent. Code § 16.1-01-04(2). North Dakota does not require photo IDs.

The two primary forms of valid ID are: “(1) A driver’s license or nondriver’s identification card issued by the North Dakota department of transportation; or (2) An official form of identification issued by a tribal government to a tribal member residing in this state.” Id. § 16.1-01-04.1(3). If an ID is not current or is missing required information (e.g., current residential street address), the voter can present an election official with certain documents that provide the missing information. Those supplemental documents are “(1) A current utility bill; (2) A current bank statement; (3) A check issue by a federal, state, or local government; (4) A paycheck; or (5) A document issued by a federal, state, or local government.” N.D. Cent. Code § 16.1-01-04.1(3)(b). This list of supplemental documents is identical to the list of documents an elector without ID can use to register to vote under the Help America

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<sup>2</sup> The two most relevant statutes involved, N.D. Cent. Code §§ 16.1-01-04.1 & 16.1-01-04.2, are attached as Exhibits 15 and 16.

Vote Act (HAVA). See 52 U.S.C. § 21083(b)(2)(A)(i).

Establishing an elector's current residential street address is vital not only to verify the elector's basic qualifications to vote in North Dakota's non-registration election system, but also to provide the elector with the proper ballot. Ballots must be specifically tailored for many different local elections, such as district and municipal judges, county commissioners and state's attorneys, city mayors, council members, alderpersons, school boards, water authorities, diversion conservancies, park boards, ambulance district boards, vector control district boards, and library boards. Precinct and precinct part boundary lines must be drawn whenever one jurisdictional area covering a particular election is different from the jurisdictional area covering another election. As a result, neighbors living across the street from one another must cast different ballots with different contests included on each if the precinct or precinct part lines separate the two sides of the street.

For example, for the June 2016 primary election in North Dakota, no less than 807 separate optical scan ballots were required to properly administer the election statewide. See Exhibit 3 at ¶ 13.<sup>3</sup> County auditors also prepared an additional 102 paper ballots from which the votes were counted by hand rather than the voting machine for certain smaller contests, such as vector control district board elections, library boards, or ambulance boards. Id. ¶ 14. In all, then, a total of 909 different ballots were required statewide.

The integrity of any particular election, and the integrity of all races for public

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<sup>3</sup> The 807 optical scan ballots required for the June 2016 primary can be found in the district court record at Dist. Ct. Doc. ID # 81-2 through 81-54.

office and measures at issue in a given election, can be ensured only if the State can show that each elector was provided the correct ballot associated with the residential address where the individual resides. Id. ¶ 15. All candidates necessarily have an interest in ensuring that the votes they receive are valid, and that all voters eligible to vote for them receive the correct ballot. In addition, all voters have the right to have their votes be given full effect, undiluted by the votes of those who are ineligible to vote in a particular precinct or for a particular election. See, e.g., Anderson v. United States, [417 U.S. 211, 226](#) (1974) (discussing the right to have a vote be “given full value and effect, without being diluted or distorted by the casting of fraudulent [or otherwise invalid] ballots”). Thus, the failure of a voter to identify his or her exact residential street address has a direct impact on the integrity and validity of multiple election contests within each particular precinct in any given election.

## **II. Use of voter affidavits and the 2012 general election.**

Prior to 2013, North Dakota law permitted an individual to vote in an election by executing an affidavit attesting that he or she is a qualified elector. See N.D. Cent. Code § 16.1-05-07(2) (2012) (“If an individual offering to vote does not have or refuses to show an appropriate form of identification, the individual may be allowed to vote . . . according to section 16.1-05-06”); N.D. Cent. Code § 16.1-05-06 (2012) (setting forth the circumstances under which a putative elector could execute a Voter’s Affidavit and vote in the absence of providing a valid ID).

Although the practice of using self-authenticating affidavits in a non-registration system had been tolerated for many years in North Dakota, it had always



been problematic and subject to constitutional challenge. The practice permitted individuals to have their votes count in an election without the State first verifying whether those individuals possessed the basic qualifications to vote, and then having to rely upon post-election attempts to do so. Vote dilution claims could have been raised by qualified electors who challenged the State's reliance upon after-the-fact attempts to verify the threshold qualifications of other voters, with no means to separate those votes determined to be cast by unqualified voters.

The possibility of undetected and unchallenged voter fraud stemming from North Dakota's use of self-authenticating affidavits under a non-registration system dates back to the 1960s. In his book, *With No Apologies*, Barry Goldwater discussed the special election held in 1960 for a vacancy in the United States Senate due to William Langer's death, and his belief that voter fraud resulting from the use of affidavits resulted in John Davis losing the election to Quentin Burdick.<sup>4</sup> Goldwater also discussed the difficulty of investigating the fraud after the election results had already been certified:

Davis was a popular governor, but he did not enjoy the support of organized labor. North Dakota had the same kind of instant voter registration President Carter has advocated—that is, on election day a voter could present himself at the polls, announce his name, give an address, and sign an affidavit to cast it.

Davis lost that special election by about 1,000 votes, even though the polls had shown him in the lead. A few days after the ballots were counted I was informed the Republicans had discovered widespread vote fraud. In the city of Minot some 535 people had cast their ballots on the basis of that affidavit of qualification, but investigators could not locate the individuals or the addresses given. Similar results were discovered in Bismarck and Fargo.

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<sup>4</sup>Burdick's margin of victory was just 1,118 votes out of 218,745 total votes cast. Silrum Affidavit ¶ 7, Exhibit 4 (Dist. Ct. Doc. ID #81-55).

*With No Apologies, The Personal and Political Memoirs of United States Senator Barry M. Goldwater* at 107-08 (William Morrow and Company 1979).

North Dakota's tolerance for the likely unconstitutional practice of relying upon ineffective post-election attempts to verify a voter's threshold qualifications reached a head after the 2012 general election. In that election, there were 10,519 votes cast using self-authenticating affidavits in an election where the United States Senate race between Rick Berg and Heidi Heitkamp was decided by just 2,936 votes out of the 321,144 votes cast. Silrum Affidavit ¶ 10, Exhibit 4.<sup>5</sup> Similar to the 1960 "ghost vote" discussed by Goldwater, election officials had difficulty contacting those voters for verification purposes after the election for a number of reasons: "affiants . . . had moved to another address and had not left a forwarding address, [did] not include a unit number of the address provided, or did not reside at the address they listed." *Id.* ¶ 11.

In addition, there was no uniform statewide verification process because each county auditor had the post-election responsibility of verifying the eligibility and qualification of the affiants. *Id.* Because of the need to rely upon a post-election process to verify votes cast by self-authenticating affidavits, "[e]ven if it had been possible to identify ineligible voters, it would have been impossible to extract the votes cast by the ineligible voters from the final tally." *Id.* ¶ 11.

Based on these concerns about the qualifications of affiant voters in the 2012 election, the 2013 Legislature eliminated the self-authenticating affidavits from the

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<sup>5</sup> Dist. Ct. Doc. ID #81-55.

State's election process. Id. ¶ 14. At that time, North Dakota had determined that more than 97% of the voters listed in the state's Central Voter File (CVF) had a valid driver's license or non-driver's ID issued by the North Dakota Department of Transportation (DOT). Id. ¶ 14. To alleviate the minimal burden that might be imposed upon less than 3% of the known electorate that did not already have a valid ID, a non-driver's ID would be issued at no cost to any resident who did not already have a driver's license or non-driver's ID and who wanted an ID for voting. Id.; see also N.D. Cent. Code § 39-06-03.1(4).

### **III. The Appellees' original complaint.**

On January 20, 2016, seven individual Native Americans<sup>6</sup> suing only on behalf of themselves initiated this lawsuit. See Complaint, Exhibit 5.<sup>7</sup> The Appellees alleged that certain aspects of North Dakota's voter ID laws violated their rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment as well as Section 2 of the Voting Rights Act, [52 U.S.C. § 10301](#). Id. at ¶¶ 1, 177-205. The complaint primarily focused on the alleged burdens involved in traveling to DOT sites to obtain state IDs, id. at ¶¶ 69-70, 82-94, and the alleged costs involved in obtaining the requisite ID for voting, id. at ¶¶ 95-125.<sup>8</sup>

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<sup>6</sup> The seven original plaintiffs were Richard Brakebill, Deloris Baker, Dorothy Herman, Della Merrick, Elvis Norquay, Ray Norquay, and Lucille Vivier. On March 12, 2018, the district court granted Appellees' counsel's motion to drop Deloris Baker as a plaintiff. See Dist. Ct. Doc. ID #97.

<sup>7</sup> Dist. Ct. Doc. ID #1.

<sup>8</sup> Tribal IDs can, of course, be obtained by Native Americans right on their reservations. By permitting the option of using tribal IDs to vote, North Dakota purposefully eliminated any potential burdens Native Americans may face in traveling to a DOT site to obtain a state-issued ID.

All Appellees are members of the Turtle Mountain Band of Chippewa tribe. See id. at ¶¶ 6-12. Most of the original complaint focused not on their specific individual burdens, but on burdens allegedly faced by other Native Americans who were not named as parties. For example, the Appellees did not allege how far each of them was required to travel to a DOT site, see id., but did include the mean travel distance (11.0 miles) and mean travel time (17.4 minutes) for a hypothetical member of their tribe to reach a DOT site. Id. at ¶ 92, Chart 4. The Appellees also relied upon much longer travel distances (ranging from 14.0 to 60.8 miles) and travel times (ranging from 25.3 to 106.62 minutes) to reach a DOT site that may be encountered by Native Americans from other reservations who were not named as parties. Id.; see also id. at ¶¶ 85, 87-89.

In fact, the original complaint focused largely on statistical data about Native Americans in general and the socioeconomic differences between the Native American and White populations in North Dakota, rather than on the specific and unique burdens allegedly facing the seven named plaintiffs suing on behalf of themselves. See id. at ¶¶ 47-81, 93-125.

#### **IV. The first preliminary injunction.**

On June 20, 2016, the Appellees moved for a preliminary injunction to prevent North Dakota from enforcing the voter ID laws enacted by the 2013 North Dakota Legislative Assembly, and asked the district court to order the Secretary to “conduct elections according to the laws and practices in force before the enactment of HB 1332 and HB 1333.” Dist. Ct. Doc. ID #42 at 1. In relevant part, the Appellees noted that North Dakota’s prior laws “allowed its citizens to vote . . . by executing

an affidavit under penalty of perjury declaring they are eligible to vote.” Dist. Ct. Doc. ID #44 at 9 (Brief Page 1).

On August 1, 2016, the district court granted the Appellees’ request for a preliminary injunction, concluding that the voter ID requirements passed by the 2013 Legislature violated the equal protection rights of Native American citizens. Dist. Ct. Doc. ID #50. The district court determined that Native Americans face disproportionate burdens in obtaining acceptable forms of ID to vote in a state election. Id. at 9. The district court noted the 2013 laws eliminated both of the former “fail-safe” provisions – the Voter’s Affidavit and Poll Worker Verification - - that allowed putative electors who lack valid IDs (or neglect to bring a valid ID with them to a polling place) to still be able to cast votes. Id. at 3. The Court determined that some form of “fail-safe” provision was required to allow a putative elector to cast a vote. Id. at 28-29.

The district court discussed Crawford but without acknowledging that Crawford held that the burdens associated with traveling to a government office to obtain a valid ID are minor burdens for the vast majority of voters and thus do not render a voter ID law invalid on its face. Contrary to Crawford, the district court did not limit its analysis of the Appellees’ claims to as-applied challenges based on the specific burdens the seven individuals alleged North Dakota’s voter ID law placed upon them. Nor did the district court limit injunctive relief to the seven individuals who had sued only on behalf of themselves. Instead, the district court emphasized general statistical evidence about Native Americans who were not parties to this lawsuit, and treated North Dakota’s law as if it were facially unconstitutional.

Shortly before the November 2016 general election, the district court entered an implementing order that allowed all electors in the state – not just the seven individual plaintiffs – to utilize a self-authenticating affidavit to cast votes in elections held in the state “until further order of this Court.” Dist. Ct. Doc. ID #62 at 3.

**V. The November 2016 election.**

During the November 2016 general election, 16,215 individuals cast ballots using self-authenticating affidavits pursuant to the district court’s injunction. Silrum Affidavit, Exhibit 4 at ¶ 21.<sup>9</sup> Due to North Dakota’s status as a non-registration state where anyone can vote simply by showing up on election day and claiming they are qualified to vote by use of a self-authenticating affidavit, election officials were once again forced to rely upon post-election efforts to attempt to verify whether the individuals who were allowed to cast ballots via affidavit were actually qualified to vote. Despite extensive and expensive post-election efforts to do so, election officials were unable to verify the validity of many of the votes cast by affidavit. Id. at ¶¶ 22-34. Following the November 2016 general election, the state has not been able to verify the qualifications of 3,682 voters who cast ballots in that election. Id. at ¶ 33. The number of ballots cast by affidavit for some offices exceeded the vote differential for those contests, with candidates from both parties advantaged or disadvantaged by the ballots cast by affidavits. Id. at ¶ 36-37.

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<sup>9</sup> Dist. Ct. Doc. ID #81-55.

## **VI. The change in law.**

Following the November 2016 general election, the North Dakota Legislative Assembly passed HB 1369. HB 1369 is now codified in various sections of Title 16.1 and, in relevant part, adopts a set aside ballot “fail-safe” for voters who do not possess a valid ID when appearing to vote. See N.D. Cent. Code § 16.1-01-04.1(5). Unlike the process for voting by use of a self-authenticating affidavit, the set aside ballot “fail safe” is compatible with North Dakota’s use of a non-registration election system and does not result in unverifiable ballots being included in election results. Voters who do not possess a valid ID when appearing to vote are still permitted to mark a ballot, but that ballot is initially set aside, and the voter is given not less than six days to establish their voting qualifications through a valid form of identification, or through supplemental documents identical to those permitted under HAVA. Compare [52 U.S.C. § 21083\(b\)\(2\)\(A\)\(i\)](#) with N.D. Cent. Code § 16.1-01-04.1(3)(b)(1) through (5). The set aside ballot is included in the final certification of an election if a putative voter thereafter establishes his or her basic qualifications to vote.

## **VII. Appellees’ amended complaint.**

On December 27, 2017, the Appellees filed an amended complaint in response to North Dakota’s new law. See Amended Complaint, Exhibit 6.<sup>10</sup> The amended complaint renews the allegations regarding the alleged burdens involved in traveling to DOT sites to obtain state IDs, id. at ¶¶ 248-284, and the alleged costs involved in

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<sup>10</sup> Dist. Ct. Doc. ID #77.

obtaining the requisite ID for voting, id. at ¶¶ 285-310, but also adds a claim alleging that North Dakota's voter ID law imposes a property ownership requirement on electors, id. at ¶¶ 4, 83-84, 412-415.

Similar to the original complaint, most of the amended complaint focuses not on specific burdens the six remaining Appellees themselves face, but on burdens allegedly faced by other Native Americans who were not named as parties. For example, only Richard Brakebill included allegations about how far he was required to travel to a DOT site, see id., at ¶ 9, but the Appellees again included the mean travel distance (11.0 miles) and mean travel time (17.4 minutes) for a hypothetical member of their tribe to reach a DOT site. Id. at ¶ 266, Chart 5. The Appellees also relied upon much longer travel distances (ranging from 14.0 to 60.8 miles) and travel times (ranging from 25.3 to 106.62 minutes) to reach a DOT site that may be encountered by Native Americans from other reservations who were not named as parties. Id.; see also id. at ¶¶ 257-265.

In fact, just like the original complaint, the amended complaint focuses largely on statistical data about Native Americans in general and the socioeconomic differences between the Native American and White populations in North Dakota, rather than on the specific and unique burdens allegedly facing the six named Appellees suing only on behalf of themselves. See id. at ¶¶ 186-310.

The full extent of the six Appellees' particular and individualized allegations about how North Dakota's voter ID law allegedly violates their individual rights are contained in just six paragraphs (¶¶ 9-14) of the 430-paragraph amended complaint. Significantly, those six paragraphs do not contain any allegations that the Appellees



lack qualifying residential street addresses, or that they would have to depend upon a P.O. Box mailing address in order to vote. In addition, the Appellees either admit to possessing IDs that can be used to vote without impediment under current North Dakota law, or fail to allege how North Dakota's current law would impede their ability to vote.

Three of the six Appellees (Ray Norquay, Della Merrick, and Dorothy Herman) only make allegations regarding voting difficulties they faced in 2014 under a previous version of North Dakota law, and make no allegations whatsoever about alleged burdens under the current law and its residential street address requirement. Id. at ¶¶ 11, 12, 14. None of the other three Appellees (Richard Brakebill, Elvis Norquay, and Lucille Vivier) would be burdened by the requirement.

Richard Brakebill alleges his ability to obtain documents to supplement his ID is constrained, but admits to possessing a soon-to-expire tribal ID that lists his current residential street address. Id. at ¶ 9. Because his tribal ID lists his current residential street address, Brakebill has no need to rely upon supplemental documentation. In addition, the fact that his tribal ID will soon expire does not prevent Brakebill from using it to vote, as North Dakota has never prohibited the use of an expired tribal ID for voting purposes. See N.D. Cent. Code § 16.1-01-04.1(3)(a)(2) (2017) (identifying “[a]n official form of identification issued by a tribal government to a tribal member residing in this state” as a “valid form of identification” without imposing any requirement that the ID be “current”); N.D. Cent. Code § 16.1-05-07(1)(b) (2015) (identifying “[a]n official form of

identification issued by a tribal government” as a “valid form[] of identification” without imposing any requirement that the ID be “current”).<sup>11</sup>

Elvis Norquay admits he currently has a tribal ID that lists his former address. Exhibit 6 at ¶ 10. The amended complaint (filed December 27, 2017) also alleges that Elvis Norquay became homeless within the last year and is residing at a community homeless shelter called the Fayer Albert building, *id.*, which may or may not be consistent with a subsequent declaration he filed in support of the motion for a second preliminary injunction in which he avers that “[i]n November of 2017” he moved to “Dunseith, into a homeless apartment complex near Willow Creek” and “currently live[s] in apartment number one.” Elvis Norquay Declaration, Exhibit 7 at ¶ 9.<sup>12</sup> This subsequent assertion is consistent with the residential street address Elvis Norquay provided in his answers to interrogatories: “215 SE Willow Creek #9001, Dunseith.” Elvis Norquay Answers to Interrogatories at Response 1(d), Exhibit 8.<sup>13</sup>

Under North Dakota law, a person who has become homeless and not yet obtained a new residence can still use his former address for voting purposes. See N.D. Cent. Code § 16.1-01-04.2(3) (“For purposes of voting . . . [a]n individual retains a residence in this state until another has been gained.”). Elvis Norquay

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<sup>11</sup> In contrast, North Dakota law used to provide that a state-issued driver’s license or non-driver’s ID had to be “current” to be used to vote. That requirement no longer exists. Compare N.D. Cent. Code § 16.1-05-07(1)(a) (2015) (identifying a valid form of identification as “[a] **current** driver’s license or nondriver identification card issued by the department of transportation”) (emphasis added) with N.D. Cent. Code § 16.1-01-04.1(3)(a)(1) (2017) (deleting the reference to “current” and identifying a valid form of identification as any “driver’s license or nondriver’s identification card issued by the North Dakota department of transportation.”)

<sup>12</sup> Dist. Ct. Doc. ID #90-13.

<sup>13</sup> Dist. Ct. Doc. ID #104-5.

admits the tribal ID he currently possesses lists his former address before he became homeless, Exhibit 6 at ¶ 10, which his later declaration indicates was “4604 BIA Rd 10 #664,” Exhibit 7 at ¶ 8, which qualifies as a residential street address under North Dakota law. Thus, if Elvis Norquay chooses, he can use his current tribal ID listing his former residence to vote without any impediment. Contrary to the claim made by Appellees’ counsel that using a former residence in Belcourt, North Dakota, will itself cause a burden to Elvis because it will require him to travel the fifteen miles between Dunseith and Belcourt to vote, see Dist. Ct. Doc. ID # 98 at 21, 23 (Brief pp. 17,19), North Dakota law permits Elvis Norquay to vote from Dunseith by mail-in ballot without having to travel to a polling place in Belcourt.<sup>14</sup> See N.D. Cent. Code §§ 16.1-07-01; 16.1-11.1-01.

Appellees’ counsel also contends that Elvis Norquay should not be required to “vote in a district where he no longer has interests and [be kept] from voting in the district where he currently does have interests.” Dist. Ct. Doc. ID #98 at 21 (Brief page 17). But Elvis Norquay has resided in Dunseith for more than thirty days, and nothing prevents him from using his current residential street address at 215 SE Willow Creek #9001, Dunseith, to vote even though his tribal ID lists his former address. Under current law, Elvis Norquay can vote in Dunseith with the tribal ID that lists his former address by providing the missing information (i.e., his new

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<sup>14</sup> Appellees’ counsel’s claim that the fifteen mile trip back and forth between Dunseith and Belcourt imposes a financial burden on Elvis Norquay because he “has no access to reliable transportation,” Dist. Ct. Doc. ID #98 at 21 (Brief page 17), is suspect given that Elvis Norquay admitted in his declaration that he travels back and forth between Dunseith and Belcourt to “pick up my mail at my prior residential address 4604 BIA Rd #10 in Belcourt.” Exhibit 7 at ¶ 12.

Dunseith address) through a list of supplemental documents identical to the list of documents an elector without ID can use to register to vote under HAVA. Those documents include a “current utility bill.” N.D. Cent. Code § 16.1-01-04.1(3)(b)(1). Elvis Norquay specifically admits that he receives his utility bill at his Willow Creek address in Dunseith. See Exhibit 7 at ¶ 13. Although Elvis Norquay avers that he does not keep his utility bills and turns them over to Rolla Social Services for payment, id., the simple act of copying a bill before turning it over for payment or asking Social Services to make him a copy is not a severe burden on Elvis Norquay’s right to vote.

Finally, Lucille Vivier admits she has a tribal ID that lists her former address (her mother’s) but not her current address (her boyfriend’s). Exhibit 6 at ¶ 13. She does not, however, allege which address she claims as her permanent address for voting purposes.<sup>15</sup> If she considers her mother’s address to be her voting address, using a tribal ID listing that address will impose no impediment to voting. If she considers her boyfriend’s home to be a new permanent address, current law permits her to vote using a tribal ID with an incorrect address by providing the missing information (i.e., the correct address) through a list of supplemental documents identical to the list of documents an elector without ID can use to register to vote under HAVA. The amended complaint contains no allegations indicating Vivier is

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<sup>15</sup> Vivier submitted a declaration that avers her mother’s address is 3680 BIA Rd 8 and her boyfriend’s address is 208 Cottonwood Drive. Vivier Declaration, Exhibit 9 at ¶¶ 4, 12 (Dist. Ct. Doc. ID #109-1). Both of those addresses are valid residential street addresses. Vivier also alleges confusion about her correct residential street address based on information given to her by paramedics, the Bureau of Indian Affairs, and the United States Postal Service. See id. at ¶ 13. Any confusion caused by outside parties, rather than the statute itself, cannot form the basis for a claim that the statutory requirement is a cause of injury to Vivier for standing purposes.

unable to obtain the supplemental documents permitted under current law. Current law also permits Vivier to vote by using a non-photo ID issued by the tribe, which need consist of nothing more than an official letter from the tribe setting forth her basic qualifications to vote, i.e., legal name, date of birth, and current residential street address in North Dakota. See N.D. Cent. Code §§ 16.1-01-04.1(2) and (3)(a)(2).

Significantly, all six Appellees listed addresses that qualify as valid residential street addresses in their answers to interrogatories. See Exhibits 8, 10-14 at Response 1(d).<sup>16</sup>

**VIII. The Secretary moves to dissolve the first injunction and Appellees move for a second preliminary injunction.**

On January 16, 2018, the Secretary filed a motion to dissolve the district court's first preliminary injunction. See Dist. Ct. Doc. ID #80. The Appellees opposed the motion and sought to keep the voter affidavit requirement in place and countered with a second motion for preliminary injunction that sought to enjoin the defendant from enforcing the new law. See Dist. Ct. Doc. ID #89. Briefing on the two motions was consolidated. See Dist. Ct. Doc. ID #87. In support of the request to dissolve the first injunction and in opposing the motion for a second injunction the Secretary argued, among other things, that the Appellees had failed to allege or show they had standing to challenge the residential street address requirement or that they had to rely upon a P.O. Box mailing address to vote; the Secretary also argued the Appellees were not likely to succeed on the merits of a claim under Section 2 of

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<sup>16</sup> Dist. Ct. Doc. ID ## 104-2 through 104-7.

the Voting Rights Act because several circuit courts of appeal have recognized that Section 2 claims based upon statistical evidence showing a minority voting group is less likely to possess valid IDs will not satisfy the first prong of a Section 2 analysis absent evidence that the challenged law itself *caused* the disparity. See generally Dist. Ct. Doc. ID #94.

**IX. The district court dissolves the first injunction and grants a second preliminary injunction.**

On April 3, 2018, the district court entered an order that dissolved its first injunction but granted, in part, the Appellees’ request for a second preliminary injunction. See Exhibit 1. In relevant part, the order held that the current residential street address requirement violates the Equal Protection Clause. The order enjoins the Secretary from enforcing the requirement and permits any “qualified voter to receive a ballot if they provide a . . . form of identification that includes . . . a current mailing address (P.O. Box or other address) in North Dakota.” Id. at 15. The district court did not address the Secretary’s argument that the Appellees failed to allege or show that they lack a qualifying residential street address or that they must depend upon a P.O. Box mailing address to vote. Nor did the court explain how the statewide order is consistent with Crawford’s prohibition on statewide injunctions.

**X. The district court denies the initial motion for a stay pending appeal.**

On April 4, 2018, the Secretary appealed the district court’s order to this Court pursuant to 28 U.S.C. § 1292(a)(1). See Dist. Ct. Doc ID #101. On April 10, 2018, pursuant to Rule 8(a)(1) of the Federal Rules of Appellate Procedure, the Secretary moved for an initial motion in district court asking the district court to stay its order preventing the Secretary from enforcing the residential street address requirement.

See Dist. Ct. Doc. ID #103. The Secretary again argued, in part, that the Appellees had failed to allege or show that they lack a qualifying residential street address or must depend upon a P.O. Box mailing address to vote, and thus lacked standing to challenge that aspect of North Dakota law. See Dist. Ct. Doc. ID #104.

On April 30, the district court denied the motion for a stay. See Exhibit 2.<sup>17</sup> The reasons given by the district court for denying the motion for a stay are set forth therein.

### **LAW AND ARGUMENT**

The Eighth Circuit considers the following four factors when determining whether to stay an order of a district court pending appeal or to suspend an order granting an injunction while an appeal is pending: “(1) the likelihood that a party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay.” Iowa Utilities Bd. v. F.C.C., [109 F.3d 418, 423](#) (8th Cir. 1996). These factors are analogous to those considered in determining whether to grant a preliminary injunction; the most significant factor in that determination is the likelihood of success on the merits. See, e.g., S.J.W. ex rel. Wilson v. Lee's Summit R-7 Sch. Dist., [696 F.3d 771, 776](#) (8th Cir. 2012).

The Secretary satisfies this test. He is likely to succeed on the merits because the Appellees lack standing and the district court’s statewide injunction violates

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<sup>17</sup> Dist. Ct. Doc. ID #112.

Crawford. And the district court order, if left in place, will inflict irreparable harm on the State by enabling nonresidents to vote and residents to vote in the wrong precinct.

**I. The Secretary is likely to succeed on the merits.**

**A. The Appellees lack standing.**

Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy. “The doctrine developed in our case law to ensure that federal courts do not exceed their authority as it has been traditionally understood. The doctrine limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong.” Spoke, Inc. v. Robins, \_\_\_ U.S. \_\_\_, [136 S.Ct. 1540, 1547](#) (2016) (internal citation omitted). “To demonstrate Article III standing, a plaintiff ‘must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.’” Heglund v. Aitkin Cty., [871 F.3d 572, 577](#) (8th Cir. 2017) (quoting Spokeo, [136 S. Ct. at 1547](#)).

“The party invoking federal jurisdiction bears the burden of establishing these elements.” Lujan v. Defs. of Wildlife, [504 U.S. 555, 561](#) (1992). “Where, as here, a case is at the pleading stage, the plaintiff must clearly allege facts demonstrating each element.” Spokeo, [136 S. Ct. at 1547](#) (internal quotation marks and citation omitted). Standing is determined as of the time a suit is commenced. Park v. Forest Serv. of United States, [205 F.3d 1034, 1038](#) (8th Cir. 2000).

The injury in fact element requires that the injury be both particularized and concrete, and actual or imminent rather than conjectural or hypothetical. Lujan, [504](#)



U.S. at 560. “For an injury to be ‘particularized,’ it ‘must affect the plaintiff in a personal and individual way.’” Spokeo, 136 S. Ct. at 1548 (quoting Lujan, 504 U.S. at 560 n.1).

Appellees’ amended complaint does not allege facts that demonstrate any of them are affected in a personal and individual way by North Dakota’s residential street address requirement. The Appellees’ general complaint is that some Native Americans are injured by the address requirement because they do not have residential street addresses and therefore cannot obtain a valid ID for voting purposes without relying upon a P.O. Box mailing address. But none of the six Appellees fall into that category.

None of the Appellees have alleged that they lack a qualifying residential street address, or that they must rely upon a P.O. Box mailing address to vote. In fact, the record establishes just the opposite; the addresses set forth in the supplemental declarations submitted by the Appellees are all qualifying residential street addresses under North Dakota law, and the Appellees all set forth qualifying residential street addresses in their answers to interrogatories. See Exhibits 7-14. Because Appellees all have qualifying addresses for voting purposes under North Dakota law, they cannot show the residential street address requirement injures them in a personal and individual way, and thus lack standing.

In the district court, the Appellees cited Common Cause/Georgia v. Billups, 554 F.3d 1340, 1351 (11th Cir. 2009) to contend they have standing to challenge North Dakota’s residential street address. Billups involved two “registered voters who do not possess an acceptable photo identification and would be required to make

a special trip to the county registrar’s office that is not required of voters who have driver’s licenses or passports.” Id. (internal quotation marks omitted). The court held that additional burden – a special trip to obtain ID – was sufficient to confer standing because “[u]nlike voters who already have photo identification, Young and Taylor are required to obtain photo identification before they can vote, and the imposition of that burden is sufficient to confer standing regardless of whether Young and Taylor are able to obtain photo identification.” Id.

Billups is inapposite. Unlike the plaintiffs in Billups, North Dakota law does not impose any additional burdens upon the Appellees to obtain a qualifying residential street address. These six Appellees already have qualifying addresses. Thus, the additional burden that gave the Billups plaintiffs standing is absent here.

Appellees also contend that the residential street address requirement is integrally tied to their alleged burden in obtaining a valid ID for voting purposes, and their standing is therefore established by their alleged burden in obtaining a valid ID. As discussed above, however, not only have the Appellees failed to allege or show they lack qualifying residential street addresses, but their allegations fail to demonstrate that current North Dakota law imposes any barriers that would prevent them from voting with the tribal IDs they possess, or from obtaining non-photo tribal IDs that list their current residential street addresses.

The district court did not address the Secretary’s standing argument before granting the preliminary injunction. The district court’s order asserts, however, that the “State has acknowledged that Native American communities often lack residential street addresses,” referring to the Appellees’ reliance upon testimony that

Deputy Secretary of State Jim Silrum gave before the legislature in 2011. See Dist. Doc. ID #92 at 7 (Brief Page No. 6) (referring to April 20, 2011 statement of Jim Silrum, H. Political Subdivisions Comm.).

The full question and answer from the 2011 legislative history states as follows:

**Senator Nelson:** My concern deals with some of the folks that live in the downtown areas of major cities that have post office boxes. So when we get a list from a political party it lists post office boxes and because of that they may not be living in my district. If all their utility bills are coming to the post office box that is not going to verify residency. What can we do for those people? Many of them are venerable [sic] people so I am worried about them being left out of the system.

**Jim Silrum:** You are right. This is very much the case also in small town North Dakota where if you sent something to their street address the post office will return it because it needs to go to their post office box. So there are many issues that we are going to need to work with. We hope to work with the utility companies to make sure that although a bill would be sent to the post office box for proper mailing delivery maybe the bill could also be made to ensure to include the physical address of the place to which they are providing power or water. *We are also going to need to work with the tribal governments to make sure because a couple of our counties that have reservations in the state have not completed their 911 addressing.* Even if they have the residents of those counties don't know what their 911 address is. So there are many situations that we are going to need to work with please take our word for this that our guarantee is that we are going to work with all of those situations that are identified to us as been problem issues so that everyone is able to appear at the polls with some form of identification and it would make it easier for them to have excess [sic] to voting and not need to find a buddy to come along with them to verify.

Hearing on H.B. 1447 Before the House Political Subdivisions Committee, 2011 N.D. Leg. (Apr. 20).

Thus, what the State actually acknowledged is that in April of 2011 – seven years ago – “a couple of our counties that have reservations in the state have not completed their 911 addressing.” Evidence of general conditions about 911 addressing around the State does not substitute for evidence that the six individual

Appellees have a particular and individualized injury resulting from North Dakota's residential street address requirement. And even assuming this evidence pertained specifically to the Appellees, relying upon stale evidence that is seven years old – without submitting any evidence to show current conditions – would still be insufficient to establish standing. It is the plaintiffs' burden to prove standing (not the defendant's to disprove it), and the plaintiffs must do so at the time a suit is commenced. Park, [205 F.3d at 1036-1038](#). Evidence indicating that a couple counties in North Dakota had not completed their 911 addressing in 2011 does not even generally establish that Native American communities still lack residential street addresses in 2018.

Indeed, the court can examine the government website located at <https://www.nd.gov/gis/apps/HubExplorerV2/> and zoom in on Rolette County to confirm that all roads and streets located on the Turtle Mountain Indian Reservation have now been designated with names or numbers that can be used to determine a residential street address for voting purposes. See Missourians for Fiscal Accountability v. Klahr, [830 F.3d 789, 793](#) (8th Cir. 2016) (acknowledging that courts can take judicial notice of government websites); see also Fed. R. Evid. 201(b)(2) (authorizing judicial notice of a fact not subject to reasonable dispute because it “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned [e.g., government websites].”).

The speculative and conjectural nature of the Appellees' reliance upon testimony from seven years ago is precisely why the Supreme Court's well-established standing doctrine requires the court to have a live person before it who

suffers from an actual injury-in-fact before it can redress an alleged wrong. Without such a person before it, the court can only speculate that any Native Americans still lack residential street addresses and must depend upon P.O. Box mailing addresses to vote.

Lack of standing is fatal to the Appellees' challenge to the current residential street address requirement, and establishes that the Secretary is likely to succeed on the merits of his appeal.

**B. The residential street address requirement is constitutional under Crawford.**

Even if lack of standing does not preclude these six Appellees from challenging North Dakota's current residential street address requirement, the Secretary is still likely to prevail on the merits of his appeal because the current residential street address requirement is facially valid and did not justify the across-the-board injunction permitting anyone to use a form of identification that includes a North Dakota P.O. Box to vote.

Among other things, the Supreme Court's decision in Crawford established two broad principles, both of which apply here. First, Crawford established that an election law that advances a state's important interests (including safeguarding voter confidence, protecting the integrity of elections, aligning state law with the requirements of federal law, preventing voter fraud, and assessing the eligibility and qualifications of voters) is facially constitutional when it imposes nothing more than a limited burden on the vast majority of voters. [553 U.S. at 202-04.](#)

Second, Crawford preserved as-applied challenges for the "small number of voters who may experience a special burden under the statute" in which that special

burden is weighed “against the State’s broad interests in protecting election integrity” under a “unique balancing analysis.” Id. at 200. With respect to this second principle, specially-burdened plaintiffs bringing as-applied challenges cannot “demonstrate[] that the proper remedy—even assuming an unjustified burden on some voters—would be to invalidate the entire statute.” Id. at 203; see also Frank v. Walker, [819 F.3d 384, 386](#) (7th Cir. 2016) (applying Crawford and explaining that “the burden *some* voters faced could not prevent the state from applying the law generally” but that an as-applied challenge is compatible with Crawford because the “high hurdles for some persons eligible to vote [may] entitle *those particular persons* to relief”) (emphasis added); see also Veasey v. Abbott, [830 F.3d 216, 249](#) & n.40 (5th Cir. 2016). The district court’s order cannot be reconciled with these two rules.

North Dakota’s current residential street address requirement advances the important state interests recognized in Crawford. It protects the integrity of elections, prevents voter fraud, and assesses the eligibility and qualifications of voters by ensuring that individuals who vote in state elections are actually from North Dakota (instead of nonresidents who maintain North Dakota P.O. Boxes) and that resident voters obtain the proper precinct ballot among the 900-some ballots generally required for a state election. See Dist. Ct. Doc. ID #81 at 10-12 (Brief pages 4-6). The requirement protects all candidates’ interest in ensuring that the votes they receive are from valid constituents who reside in the precinct or precincts the candidates represent, and further protects all voters’ interests by ensuring that valid votes are not diluted by ineligible voters who should be voting in a different precinct or not voting at all. See Anderson, [417 U.S. at 226](#) (discussing the right to

have a vote be “given full value and effect, without being diluted or distorted by the casting of fraudulent [or otherwise invalid] ballots”).

In addition, the current residential street address requirement imposes no burden on the vast majority of North Dakota voters. The evidence shows that more than 97% of the voters in North Dakota’s Central Voter File (CVF) already have a valid ID and thus by necessary extension a current residential street address that qualifies for voting purposes. See Exhibit 4 at ¶ 8.

Thus, in this case, as in Crawford, the “broad application [of the current residential street address requirement] to all [North Dakota] voters . . . imposes only a limited burden on voters’ rights [and the] precise interests advanced by the State are therefore sufficient to defeat [the plaintiffs’] facial challenge to [North Dakota’s voter ID laws].” 553 U.S. at 202-03 (internal quotation marks and citations omitted). In this case, as in Crawford, the plaintiffs “have not demonstrated that the proper remedy—even assuming an unjustified burden on some voters—would be to invalidate the [current residential street address requirement].” Id. at 203. “The application of the statute to the vast majority of [North Dakota] voters is amply justified by the valid interest in protecting the integrity and reliability of the electoral process.” Id. at 204 (internal quotation marks and citation omitted); see also United States v. Salerno, 481 U.S. 739, 745 (1987) (“A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid. The fact that [a statute] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid, since we

have not recognized an ‘overbreadth’ doctrine outside the limited context of the First Amendment.”) (internal citations and quotations omitted).

The district court’s across-the-board injunction therefore violates Crawford. See Frank v. Walker, [819 F.3d at 387](#) (“The predicament of people who cannot get acceptable photo ID with reasonable effort would not have supported the sweeping injunction the district court entered.”). It also violates the principle that “injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” Califano v. Yamasaki, [442 U.S. 682, 702](#) (1979); see also Gerlich v. Leath, [861 F.3d 697, 710](#) (8th Cir. 2017) (“An injunction must not be ‘broader than necessary to remedy the underlying wrong.’”) (quoting Coca-Cola Co. v. Purdy, [382 F.3d 774, 790](#) (8th Cir. 2004)). “While district courts are not categorically prohibited from granting injunctive relief benefitting an entire class in an *individual suit*, such broad relief is rarely justified because injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” Sharpe v. Cureton, [319 F.3d 259, 273](#) (6th Cir. 2003) (citing Yamasaki, [442 U.S. at 702](#)).

In the specific context of a voting rights case involving a facially constitutional statute, Crawford essentially placed a categorical prohibition against injunctive relief beyond that available to individual plaintiffs in as-applied challenges. Thus, even assuming these six Appellees suing solely on their own behalf could show that North Dakota’s residential street address requirement imposes a special burden on them, the Court should still suspend the district court’s statewide across-the-board injunction that improperly grants relief to non-parties



unburdened by the residential street address requirement.

In reaching the opposite conclusion, the district court asserted that “[n]either the National Registration Voting Act nor any other federal or state laws the Court is aware of require a ‘current residential street address’ in order to be able to vote.” Exhibit 1 at 9. The opposite is true.

The application instructions under the NVRA expressly instruct individuals not to use a post office box for their home address when completing the official Voter Registration Application to register to vote. See National Voter Registration Application Form for U.S. Citizens, Application Instructions for Box 2 on page 2, found at [https://www.eac.gov/assets/1/6/Federal\\_Voter\\_Registration\\_4-18-18\\_ENG.pdf](https://www.eac.gov/assets/1/6/Federal_Voter_Registration_4-18-18_ENG.pdf). Other provisions of the NVRA clearly contemplate that registered voters have a residential address in accordance with state law. See 52 U.S.C. § 20504(d) (providing that a “change of address form submitted in accordance with State law for purposes of a State motor vehicle driver’s license” will serve as notification of a change of address of that individual’s voter registration record, unless the individual specifically opts out); 52 U.S.C. § 20506(a)(6)(A) (requiring “voter registration agencies” (agencies either offering public assistance or engaging in providing services to individuals with disabilities) to distribute voter registration forms when issuing change of address forms related to the services that the agency provides for the purpose of keeping residential addresses current on voter registration records); 52 U.S.C. § 20507(a)(4)(B) (establishing procedures by which states can remove the names of ineligible voters based on “a change in the residence of the registrant”); see also 52 U.S.C. § 21083(b)(2) (detailing the requirements for registering by mail,

which include providing a “current and valid photo identification” or “a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter” and by requiring these items to be “current,” implicitly recognizing that registrants have a current residence).

And virtually every state has a residential address requirement similar to North Dakota’s for voting purposes, some of which expressly prohibit the use of a P.O. Box for voting purposes. See Alaska Stat. §§ 15.07.060(a)(4) (requiring a voter to register with his or her “Alaska residence address”) & 15.07.064(c) (“A voter requesting registration in a municipality or established village that has been divided into more than one precinct or that includes more than one section of a local or regional election subdivision shall provide the director with information that describes the location of the residence of the voter. In this subsection, the use of a post office box, a postal service center box, a rural route number, general delivery, or other description identified only as a mailing address does not establish the residence of the voter.”); Colo. Rev. Stat. §§ 1-7-110(1)(a) (requiring an “elector’s name and residential address” to appear in the voter registration system) & 1-2-102(1)(a)(II) (“The mailing address of a homeless individual may include a shelter, a homeless service provider, or a private residence, but it may not include a post office box or general delivery at a post office.”); N.H. Rev. Stat. Ann. §§ 654:7 (requiring a “street ward number” to be listed as part of the “domicile address” on a voter registration form) & 654:12(I)(c)(1)(B)(vi) (excluding a “postal service or commercial post office box” from the type of evidence that can be used to prove a “person’s permanent address”); Okla. Stat. tit. 26, § 4-112(G) (requiring registered

voters to provide a “residence address [that] shall include the street address of the residence, including a full house number, street name or number, apartment or suite number” and stating a “post office box may not be given as a residence address”).

In One Wisconsin Inst., Inc. v. Thomsen, [198 F. Supp. 3d 896, 937](#) (W.D. Wis. 2016), the court applied Crawford to a Wisconsin statute that required, in part, that a registering voter must provide a “current and complete residential address, including a numbered street address, if any, and the name of a municipality . . . in order to be considered proof of residence.” Wis. Stat. Ann. § 6.34. This residency requirement was challenged by “young voters who live with their parents, elderly voters, economically disadvantaged voters who live with friends or relatives, women voters whose residency documents are in their husbands’ names, and *minority voters who suffer from higher rates of residential instability*.” [198 F. Supp. 3d at 935](#) (emphasis added). The court determined the challenged requirement did not violate the Constitution:

Residence is a bona fide voter qualification. . . . [A] voter's residence in a particular municipality is a qualification for voting in that municipality. The state has an interest in making sure that only qualified voters are participating in elections, and the proof of residence requirement is directly linked to that goal.

Id. at 937.

Finally, contrary to the Appellees’ contentions, North Dakota’s residency requirement does not impose a property ownership requirement on electors. North Dakota defines a residence for voting purposes as an “actual fixed permanent dwelling, establishment, or any other abode to which the individual returns when not called elsewhere for labor or other special or temporary purposes.” N.D. Cent. Code

§ 16.1-01-04.2(1). This definition can be satisfied by children over the age of 18 who reside with their parents but who do not have a property interest in their residence, a person who resides rent-free with a friend and sleeps on a couch, a homeless person (such as Elvis Norquay) residing in a homeless shelter, apartment dwellers, a college student residing in a dormitory, an elderly parent residing in an adult child's home, etc.

In sum, the district court's order defies the case or controversy requirement by disregarding the Appellees' lack of standing, wrongly concludes the residential street address requirement is unconstitutional, and violates Crawford in any event by issuing a statewide injunction that improperly grants relief beyond the six named Appellees in this suit.

## **II. The district court's injunction will cause irreparable harm to the state.**

The Secretary's ability to maintain the integrity of North Dakota's election process will be irreparably harmed absent a stay. The district court's order requires the Secretary to provide a ballot to anyone who provides a "form of identification that includes . . . a current mailing address (P.O. Box or other address) in North Dakota." Dist. Ct. Doc. ID #99 at 15. Yet nonresidents can maintain P.O. Box mailing addresses in North Dakota. Under the district court's order, therefore, the Secretary will be required to provide ballots to individuals who reside in other states but maintain a P.O. Box in North Dakota when they present a form of identification (e.g., a utility bill, a paycheck, etc.) that only reveals their North Dakota P.O. Box

without revealing their actual state or place of residence.<sup>18</sup>

In addition, North Dakota residents with a vested interest in a particular in-state election could unfairly influence its outcome by obtaining a P.O. Box in a precinct other than the one where they actually reside, present a form of identification that only reveals the P.O. Box mailing address, and thus require election officials to provide them a ballot that will not coincide with the precinct where they actually reside. Election officials provided with no residential information other than a P.O. Box will have to issue ballots based on the arbitrary geographical location of a post office rather than an individual's actual place of residence. Residents of Lincoln, Fargo, Jamestown, Valley City, Morton County, Cass County, etc., could obtain a P.O. Box in Bismarck in order to influence a Bismarck election for which they would not otherwise be eligible to vote.

For example, some portions of the City of Wilton are in Burleigh County and require a ballot offered in a Burleigh County voting precinct, see Dist. Ct. Doc. ID #81-9 at 20, and some portions of the City of Wilton are in McLean County and require a ballot offered in a McLean County voting precinct, see Dist. Ct. Doc. ID #81-29 at 28. Wilton residents who live in Burleigh County pay Burleigh County property taxes and therefore should vote for Burleigh County offices, but the Wilton Post Office is located in McLean County. If a Wilton resident who lives in Burleigh

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<sup>18</sup> The district court's condition that a voter be "qualified" before receiving a ballot is of no help. Without the protection afforded by North Dakota's ID law, including the current residential street address requirement, there will be no means to determine whether a nonresident voter who provides a form of identification that reveals nothing more than a P.O. Box mailing address in North Dakota is "qualified" to vote.

County provides an election official with an ID containing her Wilton Post Office P.O. Box mailing address as the only place of residence, the election official will have no choice but to issue a ballot from a McLean County precinct based on nothing more than the arbitrary geographical location of the Wilton Post Office. This would allow the individual to vote for McLean County commissioners, auditor, sheriff, and state's attorney despite none of those officials actually representing the voter's Burleigh County interests. This would dilute the votes of other McLean County voters who actually have an interest in McLean County, and rob all Burleigh County candidates of the vote of someone who should have voted in a Burleigh County precinct.<sup>19</sup>

The district court cavalierly dismissed these concerns by stating the “theoretical possibility of voter fraud exists in every election nationwide.” Exhibit 2 at 3. But the concerns underlying the residential street address requirement are far from theoretical. The district court order expressly enables a particular kind of election fraud to take place. The injunction, granted on behalf of the six individual Appellees who already have qualifying residential street addresses, will violate the constitutional rights of every other North Dakota resident who votes in future elections whenever a nonresident takes advantage of the injunction to vote in North

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<sup>19</sup> Contrary to the district court's observation that the North Dakota Constitution does not impose the type of requirement that is satisfied by the “current residential street address” requirement of N.D. Cent. Code § 16.1-01-04.1(2)(b), the North Dakota Constitution clearly contemplates that residents must vote in the precinct in which they reside. See N.D. Const. Art. II § 1 (“When an elector moves within the state, he shall be entitled to vote in the precinct from which he moves until he establishes voting residence in another precinct.”). The North Dakota Constitution also gives the legislature the power to determine residency requirements. See *id.* (“The legislative assembly shall provide by law for the determination of residence for voting eligibility[.]”).

Dakota, or whenever a state resident takes advantage of the injunction to vote in a precinct other than the one where he or she actually resides. The right to vote necessarily encompasses more than just the right to cast a ballot; it also includes the right to have a vote be “given full value and effect, without being diluted or distorted by the casting of fraudulent [or otherwise invalid] ballots.” Anderson, 417 U.S. at 226. To avoid irreparable harm to the integrity of the election process, it is in the public’s interest for the court to grant a stay of the injunction pending the Secretary’s appeal.

In addition, the district court’s order places no limits on the forms of identification that can be presented to obtain a ballot. An individual could create his own identification, place a North Dakota P.O. Box on it, and present it to election officials to obtain a ballot.

Finally, granting a stay of the injunction pending appeal will not harm the plaintiffs. As previously stated, the six individuals who brought this lawsuit already have qualifying residential street addresses. The district court’s P.O. Box mailing address injunction therefore does not provide them with any relief they require to vote in a North Dakota election.

## **CONCLUSION**

For the reasons stated, the Secretary respectfully requests that the Court grant a stay pending appeal and suspend the portion of the district court’s order requiring him to accept P.O. Box mailing addresses for voting. The Secretary respectfully requests that the Court expedite review of this motion so that a stay can be in place prior to North Dakota’s next statewide election on June 12, 2018.

Dated this 2<sup>nd</sup> day of May, 2018.

State of North Dakota  
Wayne Stenehjem  
Attorney General

By: /s/ James E. Nicolai  
James E. Nicolai  
Deputy Solicitor General  
State Bar ID No. 04789  
Office of Attorney General  
500 North 9th Street  
Bismarck, ND 58501-4509  
Telephone (701) 328-3640  
Facsimile (701) 328-4300  
Email [jnicolai@nd.gov](mailto:jnicolai@nd.gov)

Attorneys for Appellants.



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

Richard Brakebill, Dorothy Herman,	)	
Della Merrick, Elvis Norquay,	)	
Ray Norquay, and Lucille Vivier,	)	
on behalf of themselves,	)	
	)	<b>ORDER GRANTING PLAINTIFFS’</b>
	)	<b>MOTION FOR SECOND</b>
Plaintiffs,	)	<b>PRELIMINARY INJUNCTION</b>
	)	<b>IN PART</b>
vs.	)	Case No. 1:16-cv-008
	)	
Alvin Jaeger, in his official capacity as the	)	
North Dakota Secretary of State,	)	
	)	
Defendants.	)	

Before the Court is the Defendant’s “Motion to Dissolve Preliminary Injunction” filed on January 16, 2018. See Docket No. 80. The Defendants seek to set aside the “Order Granting Plaintiffs’ Motion for Preliminary Injunction” issued on August 1, 2016. Also before the Court is the Plaintiffs’ Second Motion for Preliminary Injunction filed on February 16, 2018. See Docket Nos. 89 and 92.

In August 2016, this Court carefully considered the *Dataphase* factors and concluded the public interest in protecting the right to vote for thousands of Native Americans who lacked a qualifying ID and cannot obtain one, outweighed the purported interests and arguments of the State. As a result, the North Dakota Secretary of State was enjoined from enforcing N.D.C.C. § 16.1-05-07 without any adequate “fail-safe” provisions that had been provided to all voters in North Dakota prior to 2013. In the past, North Dakota allowed all citizens who were unable to provide acceptable ID’s to cast their vote under two types of “fail-safe” provisions which were repealed in 2013.

In response to the preliminary injunction issued August 1, 2016, the North Dakota Legislative Assembly amended and enacted a new election law (House Bill 1369). Effective July 1, 2017, North Dakota law now permits individuals who do not present a valid ID when appearing to vote to mark a ballot that is then set aside until the individual's qualifications as an elector can be verified. See N.D.C.C. § 16.1-01-04.1(5). The new law provides in relevant part as follows:

1. A qualified elector shall provide a valid form of identification to the proper election official before receiving a ballot for voting.

2. The identification must provide the following information regarding the elector:

- a. Legal name;

- b. Current residential street address in North Dakota; and

- c. Date of birth.

3. a. A valid form of identification is:

- (1) A driver's license or nondriver's identification card issued by the North Dakota department of transportation; or

- (2) An official form of identification issued by a tribal government to a tribal member residing in this state.

- b. If an individual's valid form of identification does not include all the information required under subsection 2 or the information on the identification is not current, the identification must be supplemented by presenting any of the following issued to the individual which provides the missing or outdated information:

- (1) A current utility bill;

- (2) A current bank statement;

- (3) A check issued by a federal, state, or local government;

(4) A paycheck; or

(5) A document issued by a federal, state, or local government.

5. If an individual is not able to show a valid form of identification but asserts qualifications as an elector in the precinct in which the individual desires to vote, the individual may mark a ballot that must be securely set aside in a sealed envelope designed by the secretary of state. After the ballot is set aside, the individual may show a valid form of identification to either a polling place election board member if the individual returns to the polling place before the polls close, or to an employee of the office of the election official responsible for the administration of the election before the meeting of the canvassing board occurring on the sixth day after the election. Each ballot set aside under this subsection must be presented to the members of the canvassing board for proper inclusion or exclusion from the tally.

6. The secretary of state shall develop uniform procedures for the requirements of subsection 5 which must be followed by the election official responsible for the administration of the election.

N.D.C.C. § 16.1-01-04.1 (2017).

The State of North Dakota seeks an “expedited review” and ruling on its motion to dissolve the earlier injunction because another statewide election will occur on June 12, 2018. See Docket No. 95. The Plaintiffs seek to enjoin the enforcement of the new law for the same reasons outlined in their original request for injunctive relief back in 2016. The new law was passed in April 2017, and became effective on July 1, 2017. No action was taken by the State until January 16, 2018, to seek to dissolve the preliminary injunction. Both parties were fully aware of the impact of the new law dating back to April 2017, but waited until mid January 2018, to take any legal action to address the impact of the new law. If the need for an immediate and expeditious ruling was critically necessary, both parties could have easily filed, and should have filed, motions to address the new law in the summer of 2017, and avoided these last minute heroics and demands for an expeditious ruling. The parties had more than nine (9) months to

take legal action on the new law. The Court has now carefully reviewed the entire record without the benefit of having nine (9) months to cerebrate on the matter as the parties have done. See Docket Nos. 81, 92, 94, and 98.

Suffice it to say, the new law passed by the Legislative Assembly (House Bill 1369) in April 2017, still requires voters to have one of the very same forms of a qualifying ID's in order to vote that was previously found to impose a discriminatory and burdensome impact on Native Americans.

In support of the Plaintiffs' request for a second preliminary injunction, the record has been supplemented with the following statistical data which has not been challenged by the State:

- a. Consistent with the findings from the first survey, conducted in 2015, Native American eligible voters in North Dakota are less likely to possess a qualifying voter ID under current North Dakota law, as compared to non-Native Americans. The difference is statistically significant at the 99 percent level, the most rigorous level of social science testing.
- b. In the present survey, 19 percent of Native American eligible voters in North Dakota do not possess a qualifying voter ID. In contrast, 11.6 percent of non-Native Americans in North Dakota do not possess a valid ID. In 2015 we found that 23.5 percent of Native American eligible voters lacked an appropriate ID, compared to 12 percent of non-Native eligible voters. The findings from the present survey comport with those from 2015.
- c. Native Americans in North Dakota are significantly less likely to possess the most common type of ID-a driver's license. Only 64.6 percent of Native Americans indicated they have a driver's license that meets all requirements to vote. In contrast, 86.1 percent of non-Native Americans in North Dakota indicated they have a driver's license which meets all requirements.
- d. Native Americans face burdens in obtaining a state-issued ID. Many Native Americans lack the required underlying documents: Among those without a valid ID, 28.9 percent do not have a birth certificate or other

proof of identity required by the state, such as a passport or naturalization card; 56.7 percent do not have two documents showing a residential street address; 16.7 percent lack a social security card or W2 showing a social security number. In total, 65.6 percent of Native Americans that currently do not have a valid voter ID do not have all three types of the underlying documents they would need to obtain a voter ID.

- e. The North Dakota voter identification law indicate certain documents bearing one's full name and full residential street address can be presented in the instance that one has an otherwise valid piece of identification, but lacks an appropriate residential street address. Native Americans are less likely to possess several of the accepted documents than are their non-Native counterparts. Among North Dakota residents who lack a valid piece of ID because of the address requirement, 48.7 percent of Native Americans, or an estimated 2,305 Native eligible voters, do not possess at least one of the supplemental address documents accepted under the law. Comparatively, only 26.2 percent of non-Natives who lack a valid piece of identification because of the residential address requirement do not possess at least one of the supplemental address documents accepted under the law. This amounts to 15,908 non-native eligible voters.
- f. Knowledge levels regarding the law are very low in North Dakota, especially among Native Americans. In fact, 23.0 percent of Native Americans are not aware that a voter ID law exists, and only 12.7 percent of Native Americans reported they had heard or seen an official announcement or advertisement by the State of North Dakota about the new voter ID law.
- g. Native Americans are less likely than non-Natives to know that a residential street address is required on an ID to be valid. Among people who have an ID, but it lacks a residential street address, just 24.7 percent of Native Americans know that an ID must contain residential street address compared to 49.5 percent of non-Native Americans.
- h. Native Americans are more likely than are non-Natives to report having used a failsafe measure to vote in the past. Among all eligible voters, 12.1 percent of Native Americans reported having signed an affidavit and 9.7 percent report that a poll worker vouched for them. Comparatively, only 9.1 and 7.4 percent of whites report signing an affidavit or having been vouched for when they tried to vote in a previous election. Among those who lack a valid ID, 14.4 percent of Native Americans reported having signed an affidavit, compared to 7.3 of non-Natives, and an 16.7 percent of Native Americans report that a poll worker vouched for them, compared to 6.4 percent of non-Natives for whom the same was true. This

comports with analysis of the use of affidavits at the county level. Between 2012 and 2016, among the three counties with the highest percentage of Native American voters the number of affidavits used increased from 51 in 2012 to 390 in 2016. By comparison, in the three counties with the lowest percentage of Native American voters the number decreased by four affidavit ballots, from 38 to 34.

See Docket No. 90-1, pp. 3-6.

In August of 2016, the Court issued a 29-page order that included a careful analysis of the *Dataphase* factors as required under Eighth Circuit Court of Appeals case law. The State never appealed the order of injunction, despite their recent criticisms of the order. Rather than re-invent the wheel and again restate the same analysis and legal arguments enumerated in the August 1, 2016, Order (Docket No. 50), the Court expressly incorporates by reference the entirety of the facts and legal analysis set forth in that earlier order, all of which continue to be directly relevant to the *Dataphase* analysis of the new law.

The Court has also carefully reviewed the decisions of the United States Supreme Court in Crawford v. Marion Cty. Election Bd., [553 U.S. 181](#) (2008) and the Fourth Circuit Court of Appeals in Lee v. Va. Bd. of Elections, [843 F.3d 592](#) (4th Cir. 2016).

In *Crawford*, the Supreme Court rejected a facial challenge to Indiana's photo identification law and upheld its constitutionality. The Indiana law required that registered voters present a government-issued photo ID's in order to vote, and voters who did not have such identification could obtain one only if they presented proof of residence and identity, such as a birth certificate. Crawford, [553 U.S. at 185-86](#). No ID is required to register to vote and Indiana offers free photo ID to qualified voters who establish their residence and identity. Id. at 186. Voters lacking an ID on election day are permitted to cast a provisional ballot which will be counted if the voter executes an affidavit or brings an ID to the circuit court clerk's office

within ten (10) days of the election. Id. The Supreme Court found that Indiana had a valid interest in adopting standards that aligned with federal election statutes, including the Help America Vote Act (“HAVA”) wherein Congress had indicated a belief that “photo identification is one effective method of establishing a voter's qualification to vote.” Id. at 193. The Supreme Court also found that Indiana had valid interests in preventing voter fraud, even though there was no evidence of any in-person voter impersonation having occurred in Indiana, and the state had an independent interest in protecting voter confidence in the integrity of its elections. Id. at 194–97. The Supreme Court concluded that these state interests justified the burdens imposed by the photo identification requirements in its election law. Id. at 202. For voters who lacked the required identification, the Supreme Court explained the ability to obtain a free photo identification meant that the burden was not substantial. The “inconvenience of making a trip to the BMV, gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote.” Id. at 198. While the Supreme Court recognized that for some voters, such as those who lacked a birth certificate or other documentation needed to obtain a free ID’s, the burden was greater, it nonetheless concluded this greater burden was not sufficiently substantial to render the statute unconstitutional. Id. at 199–202.

In *Lee*, the Fourth Circuit Court of Appeals rejected a challenge to Virginia’s photo ID law. The law in question required that all voters present a photo ID in order to cast a ballot. Lee, 843 F.3d at 594. Registered voters without an ID were allowed to cast a provisional ballot and cure their vote by presenting an ID in person, by fax, or by email within three days of the election. Id. Many types of ID were acceptable, and the Virginia Board of Elections provided free ID’s to voters without any documentation. Id. To obtain a free ID the voter need only

provide a name, address, birthdate, and the last four digits of their social security number. Id. at 595. The Fourth Circuit found the burdens imposed by Virginia were lighter than the Indiana law challenged in *Crawford*. Id. at 606. The Court explained that Virginia voters were not required to present any documentation to obtain a free ID and the justifications – preventing voter fraud, preserving voter confidence in election integrity, and alignment with federal statutes like HAVA – were the same as those advanced by Indiana. Id. at 607. The burdens imposed by the law were mitigated by the acceptance of a broad range of ID’s, providing for provisional ballots, and providing free ID’s without the need for documentation along with other assistance. Id. at 607-08.

Based on a careful review of *Crawford*, the updated Barreto/Sanchez statistical data, and a careful analysis of the *Dataphase* factors enumerated in detail in the Court’s earlier Order of August 1, 2016, - which are incorporated by reference - the following problems areas are identified:

- 1) At least 4,998 otherwise eligible Native Americans (and 64,618 non-Native voters) currently do not possess a qualifying voter ID under the new law. See Docket No. 90-1, ¶ 40. And 48.7% of Native Americans who lack a qualifying ID also lack the supplemental documentation needed - which means at least 2,305 Native Americans will not be able to vote in 2018 under the new law. Id. at ¶ 41.
- 2) The State has acknowledged that Native American communities often lack residential street addresses (See Docket No. 97, p. 6) or do not have clear residential addresses (Docket No. 90-9, at 3-8). Nevertheless, under current State law an individual who does not have a “current residential street address” will never be qualified to vote. This is a



clear “legal obstacle” inhibiting the opportunity to vote. The State can easily remedy this problem by simply eliminating the absolute need for a “current residential street address” and allowing for either a residential address, a mailing address (P.O. Box), or simply an address. Neither the National Registration Voting Act nor any other federal or state laws the Court is aware of require a “current residential street address” in order to be able to vote.

- 3) The “set aside” ballot process the State proclaims as a “fail-safe” measure will not help any voter who lacks the means to obtain a qualifying ID to cast a vote. When the Court issued the preliminary injunction on August 1, 2016, the undisputed evidence revealed that 23.5% Native Americans did not have a state qualifying ID. Today, the updated and unrefuted statistical data reveals that 19% of Native Americans still lack qualifying ID’s.
- 4) The new law provides that voters who show up at the polls without the required ID’s will be allowed to mark a ballot which is then set aside by poll workers. This ballot will only be counted if the voter can produce a satisfactory ID at the polling place before the polls close on election day, or at an undisclosed office within six (6) days of the election. The new law is vague and unclear as to where and to whom such a voter is to produce any documents because as the new law simply states:

After the ballot is set aside, the individual may show a valid form of identification to either a polling place election board member if the individual returns to the polling place before the polls close, or to an employee of the office of the election official responsible for the administration of the election before the meeting of the canvassing board occurring on the sixth day after the election. Each ballot set aside under this subsection must be presented to the members of the canvassing board for proper inclusion or exclusion from the tally.

N.D.C.C. § 16.1-01-04.1.

No reasonable person who reads this statute would have a clue as to where and to whom they need to report to present a valid ID. (emphasis added). Common sense requires more than stating the voter needs to return “to an employee of the office of the election official responsible for the administration of the election before the meeting of the canvassing board occurring on the sixth day after the election.” The statute is vague and unclear at best. Further, otherwise qualified voters who cannot produce the required voter ID (because they have no “current residential street address”) will obviously never be able to produce the required ID within six days after the election, and as a result will never be able to vote.

- 5) The State asserts that a tribal ID “need be nothing more than a document from tribal authorities setting forth the tribal member’s name, date of birth, and current residential street address.” See Docket No. 81, p. 19. The State relies upon the affidavit of Deputy Secretary of State James Silrum to support this new-found interpretation of the law. See Docket No. 81-55. The reality is that the text of HB 1369 mirrors the language in HB 1332 and HB 1333, which required “an official form of identification issued by a tribal government.” Compare N.D.C.C. § 16.1-01-04.1 with N.D.C.C. § 16.1-01-04, amended by H.B. 1333, 64th Leg. Assemb. Reg. Sess. § 5 (2015) and N.D.C.C. § 16.1-01-04, amended by H.B. 1369, 65th Leg. Assemb. Reg. Sess. § 5 (2017). The State has previously interpreted this to mean a tribally-issued ID card. The State’s own marketing materials only mention a “tribal ID card” and make no reference to a document or letter from the tribe being sufficient. See Docket Nos. 81-56 through 81-64. Further, it is unclear under the plain language of the statute that a document or letter would meet the

requirement of an “official form of identification.” The placement of the tribal ID requirement with other traditional forms of ID cards such as a driver’s license and a non-driver’s ID makes this interpretation unlikely. Because it is undisputed not all North Dakota tribal governments issue tribal ID cards, it is more likely that the plain language of the statute requires a tribal ID card and not simply a letter from tribal authorities.

Silrum also asserts in his affidavit that the Turtle Mountain Tribal Chairman has been informed of this letter option since May 2014. See Docket No. 81-55, ¶ 43. However, there is no explanation of the type of public education campaign conducted to disclose this letter option, and the Deputy Secretary of State does not indicate whether the Standing Rock Sioux, Spirit Lake Tribe, or Mandan, Hidatsa & Arikara Nation have ever been informed of this informal letter option as an alternative to a qualifying ID.

Simply stated, there is no official state administrative rule, regulation, policy, procedure, memorandum, or any other document or public pronouncement espousing the Secretary of State’s interpretation of what constitutes a letter option as an alternative to a qualifying ID. Because there is no official State authority espousing that a letter issued by a tribal authority would be an acceptable form of identification, and all of the State materials show an ID card as the acceptable form of tribal ID, it is dangerous for an elector to trust that poll workers would consistently accept such a letter from a tribe as a valid form of identification to comply with the new law.

Silrum also states — without any supporting authority — that the “State accepts Tribal IDs issued by a Tribe or by the Bureau of Indian Affairs as valid forms of ID as long as it includes the required information.” See Docket No. 81-55, ¶ 43. However, HB

1369's plain language requires that the identification be "issued by a tribal government" and makes no mention of the Bureau of Indian Affairs ("BIA") which is a federal agency. N.D.C.C. § 16.1-01-04.1(3)(a)(2). The Legislature was informed before the passage of the new law that the ID's of those living on the Standing Rock Reservation were issued by the BIA and not their tribal government. See Docket No. 50, p. 16. Despite these expressed concerns, the Legislature never changed the law's language. The plain language of the statute requires identification to be issued by a "tribal government" and not the BIA in order to be acceptable under HB 1369. N.D.C.C. § 16.1-01-04.1(3)(a)(2). The Secretary of State has now adopted a different interpretation of the new law, and the various types of identification and ID's that will be accepted at the polls, but no official announcement of this interpretation has been made to date.

- 6) Although the theoretical possibility of voter fraud exists with every election nationwide, the record before the Court has revealed no evidence of voter fraud in the past, and no evidence of voter fraud in 2016.
- 7) The parties have stated that North Dakota is the only State in the country without voter registration. Common sense and simplistic revisions to the existing law; the launching of a state-wide pre-election campaign informing all voters of the ID requirements, as now broadly interpreted by the Secretary of State; or a system of voter registration like that used in the other 49 states which allows for verification before the election rather than afterward would be an easy solution. North Dakota already maintains a Central Voter File in the Secretary of State's office.

- 8) The current law (N.D.C.C. § 16.1-01-04.1) completely disenfranchises anyone who does not have a “current residential street address.” This includes homeless persons as well as many persons living on Native American reservations. The “current residential street address” requirement is not required by the North Dakota Constitution, and is not required for registering or voting in other states. Under *Crawford*, this requirement is unquestionably a legal obstacle inhibiting the right to vote.
- 9) State non-driver ID cards still cost \$8, (See N.D.C.C. § 39-06-49(2)(a)) whereas most states provide such ID’s at no cost. There is no apparent reason North Dakota cannot provide free photo ID’s to all voters. For example, Virginia requires a photo ID for all voters in all elections. However, a free photo ID is available without requiring the voter to provide any documents. Voters can obtain free photo ID’s by simply providing his or her name, address, birthdate, and last four digits of their social security number.
- 10) Section 16.1-01-04.1(3)(a) does not permit the use of other tribal documents as a valid ID. More important, as previously noted the new law again fails to recognize that the BIA - rather than a tribal government - actually issues ID’s to many Native Americans. This was a problem previously identified by the Plaintiffs and the Court in August 2016, but was never addressed by the Legislature in the enactment of the new law. Further, Section 16.1-01-04.1(3)(b) does not permit the use of any other forms of tribal government documents (or letters from tribal authorities) or BIA-issued ID’s to be used to supplement an invalid ID.
- 11) Deputy Secretary of State James Silrum stated in his affidavit (Docket No. 81-55, ¶ 14) that State non-driver ID cards are issued at no charge but offers no authority for this

statement - and this fact is contradicted by the North Dakota DOT website which reveals a fee for the ID. Silrum also stated that the State will accept ID's issued by the BIA or a letter from a tribal official that lists the tribal members' name, residential street address (which often does not exist), and date of birth as an acceptable ID. See Docket No. 81-55, ¶ 43. However, as previously noted, the State fails to cite any authority permitting such rule making or demonstrating that any such rules have actually been promulgated by the Secretary of State.

After a review of the entire record, and careful consideration of all of the *Dataphase* factors, the Court finds the *Dataphase* factors, when viewed in their totality, weigh in favor of the issuance of a very limited preliminary injunction. There is no need to invalidate the entire new law passed by the Legislature in April 2017. However, the public interest in protecting the most cherished right to vote for thousands of Native Americans who currently lack a qualifying ID and cannot obtain one, outweighs the purported interest and arguments of the State. No eligible voter, regardless of their station in life, should be denied the opportunity to vote.

Accordingly, the Plaintiffs' Motion for a Second Preliminary Injunction (Docket No. 89) is **GRANTED** in limited part until further order of the Court. Specifically, the North Dakota Secretary of State is enjoined from enforcing only certain subsections of N.D.C.C. § 16.1-01-04.1 and only to the limited extent outlined below:

(1) The Secretary of State is enjoined from enforcing Section 16.1-01-04.1(2)(b) which mandates the need for a "current residential street address." The Court is unaware of any other state that imposes such a requirement to vote. Neither the North Dakota Constitution nor the National Registration Voting Act imposes such

a strict requirement. Instead, the Secretary of State shall allow a qualified voter to receive a ballot if they provide a valid form of ID as recognized in Section 16.1-01-04.1(3)(a) or another form of identification that includes either a “current residential street address” or a current mailing address (P.O. Box or other address) in North Dakota.

(2) The Secretary of State is enjoined from enforcing N.D.C.C. § 16.1-01-04.1(3)(a)(2) which mandates only certain valid forms of identification. Instead, the Secretary of State shall also allow and accept as a valid form of identification an official form of identification issued by a tribal government; the Bureau of Indian Affairs (BIA), any other tribal agency or entity, or any other document, letter, writing, enrollment card, or other form of tribal identification issued by a tribal authority so long as those other forms of identification, (documents, letters, writings) set forth the tribal members name, date of birth, and current residential street address or mailing address. As previously noted, the affidavit of James Silrum submitted by the State reveals that the Secretary of State has already interpreted the new law to allow for these other valid forms of identification.

(3) The Secretary of State is enjoined from enforcing N.D.C.C. § 16.1-01-04.1(3)(b)(5) which allows for supplemental documents from a federal, state, or local government. The Secretary of State shall also allow and accept any documents issued by a tribal government, the Bureau of Indian Affairs (BIA), other tribal agencies or authorities, or any other document, letter, writing, enrollment card, or other forms of tribal identification which provide the missing

or outdated information, i.e., name, current residential street address or mailing address, and date of birth. Again, the Secretary of State has already interpreted the new law to allow for those other forms of supplemental documents.

(4) The Secretary of State shall provide clarification as to the meaning of N.D.C.C. § 16.1-01-04.1(5). Specifically, voters need to know where, when, and to whom a voter needs to present a valid form of identification if their ballot was set aside. The Court notes that N.D.C.C. § 16.1-01-04.1(6) provides that the Secretary of State shall develop uniform procedures to implement subsection 5. As a result, all that is needed are plans, procedures, rules, regulations, or some public pronouncement to inform voters of what they need to do.

In summary, the implementation of only a few selected subsections of N.D.C.C. § 16.1-01-04.1 is enjoined, in limited part, and only to the extent that the Secretary of State develop uniform policies, procedures, rules and regulations that incorporate the above-identified requirements. There is no need to invalidate the entire law. Further, nearly all of the above-identified requirements are based on the Secretary of State's own interpretations of the new election laws as revealed in the affidavit of Deputy Secretary of State James Silrum. See Docket No. 81-55.

The State needs to launch a state-wide pre-election campaign to inform voters of the ID requirements. The State of Virginia had no problem educating its voters in 2016 when the state was faced with similar challenges to its voting laws. See Lee v. Virginia Board of Elections, 843 F.3d 592, 596 (4th Cir. 2016). The educational campaign in Virginia involved the public posting of 500,000 posters describing the law and sending 86,000 postcards to persons on the active



voter list who did not possess a DMV-issued ID. The State of Virginia, as well as many other states, provide free photo ID's for all voters without requiring any documentation. This Court is not suggesting the North Dakota Secretary of State implement the same educational measures used in Virginia. The need to educate the voting public is obvious, but the method of doing so is left to the discretion of the Secretary of State.

In summary, common sense and a sense of fairness can easily remedy the above-identified problems to ensure that all residents of North Dakota, including the homeless as well as those who live on the reservations, will have an equal and meaningful opportunity to vote. The Defendant's "Motion to Dissolve Preliminary Injunction" (Docket No. 80) which relates to the August 1, 2016, Order - and the now repealed N.D.C.C. 16.1-05-07, is **GRANTED** as the earlier order is now moot. The Defendant's "Motion for Expedited Review" (Docket No. 95) is also **GRANTED**.

**IT IS SO ORDERED.**

Dated this 3rd day of April, 2018.

/s/ Daniel L. Hovland  
Daniel L. Hovland, Chief Judge  
United States District Court

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

Richard Brakebill, Dorothy Herman,	)	
Della Merrick, Elvis Norquay,	)	
Ray Norquay, and Lucille Vivier,	)	<b>ORDER DENYING DEFENDANT’S</b>
on behalf of themselves,	)	<b>MOTION FOR STAY PENDING APPEAL</b>
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 1:16-cv-008
	)	
Alvin Jaeger, in his official capacity as the	)	
North Dakota Secretary of State,	)	
	)	
Defendants.	)	

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Before the Court is the Defendant’s “Motion for a Stay Pending Appeal.” See Docket No. 103. The Defendant seeks a stay of the Court’s preliminary injunction entered on April 3, 2018, pending the outcome of an interlocutory appeal filed on April 4, 2018. See Docket Nos. 99 and 101. The Defendant seeks a stay of portions of the preliminary injunction that: (1) enjoin the Defendant from enforcing the current residential street address requirement at N.D.C.C. § 16.1-01-04.1(2)(b); and (2) require the Defendant to launch a state-wide pre-election campaign to inform voters of the ID requirements. The Plaintiffs filed a response in opposition to the motion on April 24, 2018. See Docket No. 109. The Defendant filed a reply brief on April 26, 2018. See Docket No. 110. The Court denies the motion.

A stay of a ruling pending an appeal is an extraordinary remedy. The Defendant has the burden to justify the stay based on the following factors: (1) likelihood of success on the merits of the appeal; (2) likelihood of irreparable harm absent a stay; (3) potential for harm to other interested parties if the stay is granted; and (4) potential harm to the public interest if the stay is granted. Iowa

Utils. Bd. v. F.C.C., [109 F.3d 418, 423](#) (8th Cir. 1996); James River Flood Control Assoc. v. Watt, [680 F.2d 543, 544](#) (8th Cir. 1982)). The Court finds that the requested stay pending appeal is unwarranted.

The Court notes the preliminary injunction did not require the North Dakota Secretary of State to launch a state-wide pre-election campaign to inform voters of the ID requirements. To the contrary, the Court simply noted the State needs to educate, and should better educate, the voting public of the voter ID requirements. However, there was no Court order or mandate to do so. Common sense reveals the State needs to do far more than it has in the past. This Court clearly left it to the discretion of the Secretary of State as to how the office chooses to educate the public - there was never a mandate to do so in the order. Thus, the only issue on appeal is the “current residential street address” requirement.

As to the request for a stay of the “current residential street address” requirement at N.D.C.C. § 16.1-01-04(2)(b), the Court denies the Defendant’s request. The State has raised some legitimate concerns as to the Plaintiffs’ lack of standing to challenge the residential street address requirement. See Docket No. 104, pp. 2-5. However, the law favors the Plaintiffs. The burden of having to obtain and produce an ID itself has been found sufficient to confer standing, regardless of whether the Plaintiffs are able to obtain an ID. Common Cause/Ga. v. Billups, [554 F.3d 1340, 1351](#) (11th Cir. 2009) (the imposition of the burden to obtain photo identification is an injury sufficient to confer standing regardless of whether the plaintiffs are able to obtain a photo identification). “The inability of a voter to pay a poll tax, for example, is not required to challenge a statute that imposes a tax on voting, and the lack of an acceptable photo identification is not necessary to challenge a statute that requires photo identification to vote in person.” Id. at 1352. (internal citations omitted). In this case,

all of the Plaintiffs are burdened by the requirement to maintain a “current residential street address,” and thus an interest in real property, and the burden to maintain an ID or supplemental documents to prove he or she has a “current residential street address.” These burdens are sufficient injury to confer standing. See Lujan v. Defenders of Wildlife, [504 U.S. 555, 560-61](#) (1992). The declarations of Plaintiffs Lucille Vivier, Elvis Norquay, and Richard Brakebill demonstrate the difficulties imposed upon each of them in their attempts to comply with the “current residential street address” requirement. See Docket Nos. 90-11, 90-13, and 90-14. The Plaintiffs have standing to challenge the absolute need for a “current residential address” to vote.

Counsel for the State has raised a litany of embellished concerns about non-residents taking advantage of the injunction; creating their own ID’s with a North Dakota P.O. Box; presenting that ID to an election official; voting in precincts other than where he or she may reside; and unfairly influence the outcome of the entire election. See Docket No. 104, pp. 8-11.

The theoretical possibility of voter fraud exists in every election nationwide. The State argues non-residents can now easily influence an election in the community of Wilton, for example, by a vote for McLean County Commissioners, auditor, or sheriff because all that is needed is a P.O. Box. However, the same hyperbole holds true for those same persons without a P.O. Box in North Dakota. If those individuals really wanted to influence a local election in McLean County, they could simply establish a residential address in a quonset hut in rural Wilton for thirty (30) days and vote. The reality is that the State of North Dakota in this lawsuit has failed to demonstrate any evidence of voter fraud in the past or present.

In conclusion, the Court will deny the requested stay and allow the parties to address the *Dataphase* factors with the Eighth Circuit Court of Appeals as it relates to the “current residential

street address” requirement. This Court’s “Order Granting Plaintiffs’ Motion for Second Preliminary Injunction in Part” (Docket No. 99) identified a litany of problems with the new law passed by the North Dakota Legislative Assembly effective July 1, 2017. The parties to this lawsuit, and the Legislature, could have easily remedied those problems after the first injunction was issued on August 1, 2016. Thereafter, the parties were fully aware of the impact of the new law dating back to its passage in April 2017, yet nothing was done for more than nine (9) months. On the eve of the June 2018 election, the State then requested an “expedited review” on legal motions that could have easily been filed in April 2017.

The issues presented in this lawsuit are neither unique nor complex. The solutions can be achieved with little effort and minimal expense. There is no need to reinvent the wheel because most other states have long ago addressed the same issues. For example, why can’t the State of North Dakota provide a free photo ID to all voters who do not have a driver’s license and who are unable to acquire the other forms of valid ID required under the law? Voters in many states can obtain free photo ID’s to be used to vote by merely providing their name, address, birthdate, and last four digits of their social security numbers. And why can’t the State recognize all forms of ID’s issued by all tribal entities including those issued by the the Bureau of Indian Affairs (BIA)?

All attorneys in this lawsuit are experienced, intelligent, creative, and knowledgeable on election law issues. Why can’t all counsel, the Attorney General, the Secretary of State, and representatives from each of the Native American tribes, sit down for one day and create workable and reasonable solutions so that all homeless persons, and all persons who live on Native American reservations in North Dakota, can have a meaningful opportunity to vote? Why can’t the State, along with tribal officials, provide a location on each of the Native American reservations where persons

without a driver's license can easily obtain a non-driver's identification to vote by (1) calling a toll free number and providing certain relevant information; or (2) provide individuals with a simple application form to mail to the DOT and/or the Secretary of State to obtain an acceptable form of ID; or (3) provide access to a desktop or laptop computer at a specific location on each of the reservations so individuals can easily apply online for an ID? The Court is convinced the small group of persons identified above could easily create and implement a reasonable solution with little effort and minimal cost - and avoid all of the costs, attorney's fees, time, and resources associated with this litigation and the resulting appeals. The Court would provide a mediator to facilitate any such efforts.

The Court has carefully reviewed the parties' briefs and the relevant case law. In the exercise of its discretion, the Court finds the Defendant has failed to demonstrate that a stay pending appeal is warranted under the circumstances. Accordingly, the Defendant's motion for stay pending appeal (Docket No. 103) is **DENIED**.

**IT IS SO ORDERED.**

Dated this 30th day of April, 2018.

/s/Daniel L. Hovland  
Daniel L. Hovland, Chief Judge  
United States District Court

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION

Richard Brakebill, Deloris Baker, Dorothy  
Herman, Della Merrick, Elvis Norquay,  
Ray Norquay, and Lucille Vivier, on behalf of  
themselves,

Plaintiffs,

vs.

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

Defendant.

**AFFIDAVIT OF JOHN ARNOLD**

**Case No. 1:16-cv-00008**

STATE OF NORTH DAKOTA     }  
  } ss.  
COUNTY OF BURLEIGH     }

John Arnold, 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 State Elections Director (SED) for the North Dakota Secretary of State (SOS) and have held this position since August 1, 2015. My duties as SED include overseeing the statewide election management and campaign finance disclosure systems, as well as training, coordinating with, and overseeing the state of North Dakota's 53 county auditors to ensure proper and uniform administration of elections.

3. Prior to my employment as SED, I was the North Dakota Voting Facilitator (NDVF) for the North Dakota Association of Counties (NDACo) a position I held for five years and ten months. My duties as NDVF included training, coordinating with, and assisting the state of North Dakota's 53 county auditors in the administration of elections. Prior to my employment as NDVF, I worked as an election official in Grand Forks County during the 2008 election year.

**EXHIBIT**

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4. North Dakota is the only state in the nation without voter registration. Although North Dakota was one of the first states to adopt voter registration, it was abolished in 1951. North Dakota is a rural state and its communities maintain close ties and networks. In the past, if a voter did not have a valid form of identification, poll workers could vouch for them as poll workers generally knew the voters in their precinct. Voters who were not known to a poll worker and who could not produce a valid form of identification could complete a Voter's Affidavit to establish that they met the basic requirements to vote.

5. In 2013 the North Dakota Legislature passed legislation removing the Voter's Affidavit process from the election laws of North Dakota. Voters could no longer execute a Voter's Affidavit as a means of proving they met the basic requirements to vote if they did not have, or refused to present, valid identification. Individuals desiring to vote were required to provide valid identification which included: a driver's license, a non-driver's identification card, a Tribal government issued identification card, a student identification certificate (SIC) (provided by ND college or university), or a long-term care certificate (provided by ND care facility). The purpose of this requirement was not to deter individuals from voting, but to ensure that the voter was old enough to vote, a U.S. citizen, and a resident of the precinct in which the individual desired to vote. This process of identification was used in the 2014 Primary and the 2014 General Election. The option to provide a SIC as a means of identification was removed by the North Dakota legislature in 2015. The options as listed above, excluding the SIC, were a means of providing valid identification in the 2016 Primary Election.

6. On September 20, 2016, this Court entered an Order permitting electors to vote by means of a Voter's Affidavit in lieu of providing a form of valid identification when voting in North Dakota elections. In order to comply with the Order, the SOS's office had to reinstate the Voter's Affidavit process as it previously existed in state law before the 2013 legislative changes. In addition to developing forms to comply with the



Order, the SOS developed policies and procedures for the reinstated process and trained county auditors so that the auditors could in turn train poll workers so that individuals who could not or would not produce valid identification could use the Voter's Affidavit process to vote in the November 2016 General Election (November 2016 Election) held on November 8, 2016.

7. The SOS developed the Voter's Affidavit (Temporary) SFN 61108, a one page form for use at polls on the day of election. The form asked an individual who was completing the form to please print and provide the following: full legal name; date of birth; daytime telephone number; current residential address, including apartment number, city, state, and zip code; current mailing address (if different from residential address), including apartment number, city, state, and zip code; residential address where the individual last voted (if different from current address), including apartment number, city, state, and zip code; most recent previous residential address, including apartment number, city, state, and zip code; if an individual's name had changed, for any reason, since they last voted, they were to enter their previous full legal name(s); and the identification number of any state-issued identification regardless of the state where issued (if available). If any of the requested information was not applicable, the individual was to enter "n/a".

8. The SOS also developed the Absentee/Mail Ballot Application (Temporary) SFN 61107, for use by individuals who wanted to vote by absentee ballot. This form has two pages. The first page asks for information to obtain an absentee ballot and an individual must indicate what type of identification they are using, which included the Voter's Affidavit. If an individual chose to use the Voter's Affidavit, they were to complete and submit page 2 of the form with the application. Page 2 of the form asks the individual completing the form to please print and provide the following information: full legal name; date of birth; daytime telephone number; current residential address, including apartment number, city, state, and zip code; current mailing address

(if different from residential address), including apartment number, city, state, and zip code; residential address where the individual last voted (if different from current address), including apartment number, city, state, and zip code; most recent previous residential address, including apartment number, city, state, and zip code; if an individual's name had changed, for any reason, since they last voted, they were asked to enter their previous full legal name(s); and the identification number of any state-issued identification regardless of the state where issued (if available). If any of the requested information was not applicable, the individual was to enter "n/a".

9. The Voter's Affidavit (Temporary) SFN 61108 and the Absentee/Mail Ballot Application (Temporary) SFN 61107, (hereinafter Voter's Temporary Affidavits) were modeled after the Voter's Affidavits that were in use for voting in North Dakota prior to the changes passed by the legislature in 2013.

10. An individual completing the Voter's Temporary Affidavits was asked to complete all boxes of the Voter's Temporary Affidavit form. An answer of n/a was an acceptable answer for all fields of the form, with the exception of name, residential address, and date of birth. If an individual provided these three responses, a ballot was issued. The additional information provided by the voter would assist the county auditor's office in the post-election verification of the voter's qualifications to vote, but not all voters provided all of the information. This hampered the verification of the Voter's Temporary Affidavits.

11. Elections contain numerous contests for multiple political subdivisions of the state. In addition to the federal and statewide contests that are on every ballot in the state, North Dakota's ballots also contain numerous other contests, including legislative, judicial, county, city, park, school, vector control, soil conservation, and water authority races and measures for each jurisdictional area. These political subdivisions superimpose each other creating numerous areas that are called precincts and precinct parts. Residents of these precincts and precinct parts are uniquely

qualified to vote for a specific set of contests based on the individual's residential address. The boundary lines that divide precinct and precinct parts can and often will split in the middle of a street thereby causing the residents of each side of the street to be included in different election jurisdictions and eligible to vote on different sets of contests.

12. An example of the importance of a valid street address for a voter can be found using the Cass County Election District Overview map located at: <http://casscountynd.maps.arcgis.com/apps/webappviewer/index.html?id=db1a9d4d452c4ff492d290dd62c7c880>.

- In order to use the map, click on the link above, and click on the OK button on the message that pops up.
- The map as displayed shows all of the different precincts within the county and are differentiated via color changes and a number. The number code is as follows:
  - The 2 digits before the hyphen indicate the number of the legislative district
  - The 2 digits that follow the hyphen are the number for that precinct within the legislative district
- To see additional jurisdictional map layers, click the middle icon of the three in the top, right corner of the page. Each layer shows the boundaries for that particular jurisdiction. Looking at a combination of these layers shows how the various jurisdiction boundaries intersect, with each intersection being the cause for change in the ballots for those individuals living on each side of the boundary
- The layers for the East Central Judicial District, Garrison Diversion Conservancy District, Cass County Soil Conservation District, and Cass County all encompass the entire county. Therefore, the contests for the offices and measures associated with these jurisdictions are found on every ballot within the county.
- As you click in the check box for each of the other layers, the boundary lines for those jurisdictions are shown on the map.
- After clicking in all check boxes for each layer including the one for Parcels, it is possible to zoom in on the map and click on a section square of land or the representation of a home on a street within a city and see all of the jurisdictions that pertain to that address.
- Click through the carrot icon in the top, right of the information box to see the jurisdictions associated with that address.

13. Due to the number of various election jurisdictions of the state, 807 distinct optical scan ballot styles were necessary for the proper administration of the North

Dakota Primary Election held on June 14, 2016, with no county having less than two ballot styles. These optical scan ballots are scanned by voting machines to obtain a final tally of votes cast and results.

14. In addition to the optical scan ballots, County Auditors prepare paper ballots for certain smaller contests, such as vector control district board elections, library boards, or ambulance boards. In the June 2016 Primary Election there were 102 separate paper ballots prepared. These paper ballots are counted manually by hand rather than using a voting machine.

15. In an election, it is the voter's residence that determines which ballot they are eligible to receive. Delivery of the correct ballot to the voter not only guarantees that individuals are able to vote on every contest for which they are eligible, but also ensures that they are not incorrectly given the opportunity to cast votes in contests for which they are not eligible based on residential address.

16. Attached to this affidavit as Exhibits A1-A53 are true and correct copies of all the official optical scan ballots by county for the North Dakota Primary Election held June 14, 2016:

- A1. Adams County – 3 Ballots – Rural-No School District; Rural-Hettinger School District; Hettinger City/Hettinger School District.
- A2. Barnes County – 31 Ballots – Precinct 2401; Precinct 2402; Precinct 2403; Precinct 2404; Precinct 2405; Precinct 2406-Rural; Precinct 2406-City of Dazey; Precinct 2406-City of Pillsbury; Precinct 2406-Rogers; Precinct 2406-City of Sibley; Precinct 2407-Rural; Precinct 2407-City of Wimbledon; Precinct 2408-Rural; Precinct 2408-City of Leal; Precinct 2409-Rural; Precinct 2409-City of Sanborn; Precinct 2410; Precinct 2411-CCM 1; Precinct 2411-CCM 2; Precinct 2411-CCM 3; Precinct 2411-CCM 4; Precinct 2411-CCM 5; Precinct 2412-Rural; Precinct 2412-City of Oriska; Precinct 2413-Rural; Precinct 2413-City of Fingal; Precinct 2413-

City of Nome; Precinct 2414-Rural; Precinct 2414-City of Kathryn; Precinct 2415-Rural; Precinct 2415-City of Litchville.

- A3. Benson County – 4 Ballots – Precinct 1; Precinct 2; Precinct 3-Ft. Totten; Precinct 4-Warwick.
- A4. Billings County – 4 Ballots – Precinct 01-GV Con. Dist.; Precinct 01-West Con. Dist.; Precinct 02-Indian Springs; Precinct 03-Fryburg.
- A5. Bottineau County – 10 Ballots – Precinct 01-District 1-NoCity; Precinct 01-District 1-Bottineau; Precinct 02-District 2-No City; Precinct 02-District 2-Bottineau; Precinct 03-District 3-No City; Precinct 03-District 3-Bottineau; Precinct 04-District 4-Turtle; Precinct 04-District 4-Mouse; Precinct 04-District 4-Bottineau; Precinct 05-District 5;
- A6. Bowman County – 6 Ballots – Bowman City; Bowman Four Seasons-Rural; Bowman Four Seasons-Rural/No School; Rhame-Rural; Rhame-No School; Scranton.
- A7. Burke County – 7 Ballots – Flaxton; Bowbells Precinct 2-01; Bowbells Precinct 2-02; Powers Lake; Columbus; Lignite; Portal.
- A8. Burleigh County – 48 Ballots – City of Lincoln-WC; City of Lincoln-NC; Grace Point Church 7; Sunrise School; County 4-H Building 7; Evangel Assembly of God 7; Liberty School 7; Element; Legacy High School; Wilton County Shop-WC; Wilton County Shop-NC; Regan (Wilton County Shop)-WC; Regan (Wilton County Shop)-NC; Wing Fire Hall-WC; Wing Fire Hall-NC; County 4-H Building 8-WS; County 4-H Building 8-NS; Evangel Assembly of God 8-WS; Evangel Assembly of God 8-NS; Liberty School 8-WS; Liberty School 8-NS; Sterling School; Menoken School; County 4-H Building 28-WS; County 4-H Building 28-NS; United Tribes Tech College; Senior Center; Lord of Life Church; Solheim School-WC; Solheim School-NC; South Central High School; Roosevelt School;

Bismarck Civic Center; Myhre (Civic Center); Wachter (Civic Center); Moses (Civic Center); Riverwood (Civic Center); Highland Acres School; ND State Capitol Building; Northridge School; Pioneer School; Robert Miller School; Simle Middle School; Horizon (Century Baptist)-WC; Horizon (Century Baptist)-NC; Grace Point Church 47; Grimsrud School; Centennial (Century Baptist).

- A9. Cass County – 102 Ballots – Olivet Lutheran Church; Baymont Inn; Westside Elem School-W Fargo/w Fargo PSD; Westside Elem School-No City/W Fargo PSD; West Fargo City Hall; Cambria Suites; Meadowridge Bible Chapel-Fargo City/W Fargo PSD; Meadowridge Bible Chapel-W Fargo/W Fargo PSD; Lutheran Church of the Cross-Fargo City/W Fargo PSD; Lutheran Church of the Cross-W Fargo/W Fargo PSD; Scheels Arena-Fargo City/W Fargo PSD; Scheels Arena-W Fargo/W Fargo PSD; Scheels Arena-No City/W Fargo PSD; Journey In Faith Church-W Fargo/W Fargo PSD; Journey In Faith Church-No City/W Fargo PSD; Northern Cass School-No City/No School; Northern Cass School-Hunter/Northern Cass PSD; Northern Cass School-Grandin/Northern Cass PSD; Northern Cass School-No City/Northern Cass PSD; Northern Cass School-No City/May-Port CG PSD; Robert D. Johnson Rec Ctr; Fargo Public Library; Page Senior Center-No City/No School; Page Senior Center-Page/No School; Page Senior Center-No City/May-Port CG PSD; Arthur Community Hall-No City/No School; Arthur Community Hall-Amenia/Central Cass PSD; Arthur Community Hall-No City/Central Cass PSD; Arthur Community Hall-Arthur/Northern Cass PSD; Arthur Community Hall-No City/Northern Cass PSD; Buffalo Community Center-Buffalo/No School; Buffalo Community Center-Ayr City/No School; Buffalo Community Center-No City/No School; Buffalo Community Center-No

City/Central Cass PSD; Day's Inn Casselton-No City/No School; Day's Inn Casselton-No City/Central Cass PSD; Day's Inn Casselton-Casselton/Central Cass PSD; Day's Inn Casselton-No City/Mapleton PSD; Mapleton Community Ctr-Mapleton/Mapleton PSD; Mapleton Community Ctr-No City/Central Cass PSD; Mapleton Community Ctr-No City/W Fargo PSD; Mapleton Community Ctr-No City/Mapleton PSD; Shiloh Evangelical Church-Fargo City/W Fargo PSD; Shiloh Evangelical Church-W Fargo/W Fargo PSD; Davenport Community Center-Davenport/No School; Davenport Community Center-Leonard/No School; Davenport Community Center-No City/Central Cass PSD; Davenport Community Center-No City/No School; Horace Senior Center-Horace/W Fargo PSD; Horace Senior Center-Horace/No School; Horace Senior Center-Fargo City/W Fargo PSD; Horace Senior Center-No City/No School; Horace Senior Center-No City/W Fargo PSD; Horace Senior Center-W Fargo/W Fargo PSD; Horace Senior Center-No City/Mapleton PSD; Tower City Community Center-Tower City/No School; Tower City Community Center-No City/No School; NU Tech Offices-Alice/No School; NU Tech Offices-No City/No School; NU Tech Offices-No City/Central Cass PSD; Hickson Community Center-Oxbow/No School; Hickson Community Center-Horace/No School; Hickson Community Center-No City/Fargo PSD; Hickson Community Center-No City/No School; Kindred City Hall-Kindred/No School; Kindred City Hall-No City/No School; West Acres Shopping Center; Living Waters Lutheran Church-Fargo City/Fargo PSD; Calvary United Methodist-Fargo City/West Fargo PSD; Calvary United Methodist-Fargo City/Fargo PSD; Calvary United Methodist-Frontier/Fargo PSD; Calvary United Methodist-Briarwood/Fargo PSD; Calvary United Methodist-Horace/W Fargo PSD; Calvary United Methodist-No City/Fargo



PSD; Calvary United Methodist-No City/W Fargo PSD; Calvary United Methodist-No City/No School; Bethel Evangelical Church; First Assembly of God-Fargo City/Fargo PSD; First Assembly of God-Prairie Rose/Fargo PSD; El Zagal Shrine; Knollbrook Covenant Church; FargoDome-Fargo City/Fargo PSD; FargoDome-No City/Fargo PSD; Reiles Acres Community-W Fargo/W Fargo PSD; Reiles Acres Community-Fargo City/W Fargo PSD; Reiles Acres Community-Reiles Acres/W Fargo PSD; Reiles Acres Community-No City/W Fargo PSD; Harwood Community Center-Harwood City/W Fargo PSD; Harwood Community Center-No City/Central Cass PSD; Harwood Community Center-No City/W Fargo PSD; Harwood Community Center-No City/Northern Cass PSD; Harwood Community Center-North River/Fargo PSD; Harwood Community Center-No City/Fargo PSD; Harwood Community Center-Fargo City/Fargo PSD; Argusville Community Center-Argusville/Northern Cass PSD; Argusville Community Center-No City/Northern Cass PSD; Argusville Community Center-Gardner/Northern Cass PSD; The Bowler; Atonement Lutheran Church; Riverview Place-Fargo City/Fargo PSD; Riverview Place-No City/Fargo PSD.

- A10. Cavalier County – 2 Ballots – Precinct 1-City of Langdon; Precinct 1-Cavalier County-Rural.
- A11. Dickey County – 6 Ballots – Precinct 01-Rural; Precinct 01-Ellendale; Precinct 02-Rural; Precinct 02-Fullerton; Precinct 03-Rural; Precinct 03-Oakes.
- A12. Divide County – 4 Ballots – Precinct 1-City of Crosby; Precinct 2-Divide Rural; Precinct 3-Divide Rural; Precinct 4-Divide Rural.
- A13. Dunn County – 25 Ballots – Antelope-Twin Buttes; Collins/Halliday-Rural; Collins/Halliday-City; Dunn Center/Decorah-Halliday SD; Dunn



Center/Decorah-City; Dunn Center/Decorah-Killdeer SD; Dunn Center/Decorah-Richardton/Taylor SD; Dodge/Loring-Beulah SD; Dodge/Loring-Dodge City/Beulah SD; Dodge/Loring-Richardton/Taylor SD; Dodge/Loring-Halliday SD; North Fox; Killdeer City-36; Kyseth-Halliday SD; Kyseth-Richardton/Taylor SD; Kyseth-No School; Manning-Dickinson SD; Manning-Killdeer SD; Manning-Richardton/Taylor SD; Manning-South Heart SD; New Hradec-Dickinson SD; New Hradec-South Heart SD; Killdeer City-39; Killdeer Unorganized; Oakdale.

- A14. Eddy County – 2 Ballots – New Rockford City; Rural Eddy County.
- A15. Emmons County – 5 Ballots – Precinct 1; Precinct 2; Precinct 3; Precinct 4; Precinct 5.
- A16. Foster County – 11 Ballots – Glenfield Senior Center-City; Glenfield Senior Center-Rural; McHenry Fire Hall-City; McHenry Fire Hall-Rural; Grace City Schoolhouse-City; Grace City Schoolhouse-Rural; Foster County; Carrington 1<sup>st</sup> Ward-City; Carrington 1<sup>st</sup> Ward-Rural; Carrington 2<sup>nd</sup> Ward-City; Carrington 2<sup>nd</sup> Ward-Rural.
- A17. Golden Valley County – 3 Ballots – Precinct #1-Beach; Precinct #1-Beach SD; Precinct #1-Lone Tree SD.
- A18. Grand Forks County – 43 Ballots – Alerus 1-Grand Forks School; Alerus 1-No School; Holy Family; First Presbyterian; Icon Arena/Park Dist Offices; Alerus 5; Bible Baptist Church-GFS; Bible Baptist Church-No School; Wesley United; GF City Hall 08; GF City Hall 09; St. Paul's Episcopal Church 10; St. Paul's Episcopal Church 11; Hope Evangelical Church; Gilby Community Hall-Gilby City; Gilby Community Hall-Inkster City; Gilby Community Hall-No City; Larimore Senior Center-Larimore W1; Larimore Senior Center-Larimore W2; Larimore Senior Center-Larimore W3; Larimore Senior Center-Niagara City; Larimore Senior Center-No

City; Manvel Public School-Manvel City; Manvel Public School-No City; Northwood Community Center-Northwood W1; Northwood Community Center-Northwood W2; Northwood Community Center-Northwood W3; Northwood Community Center-No City; Emerado Community Hall-City; Emerado City Hall-No City; Thompson Community Center-Thompson City; Thompson Community Center-Reynolds City; Thompson Community Center-No City; Thompson Community Center-Grand Forks School; Public Works Facility; Gorecki Alumni Center; UND Wellness Center 21; UND Wellness Center 22; ICON Arena/Park District Offices 23; Alerus Center 24; Alerus Center 25; Alerus Center 26; Alerus Center 27.

- A19. Grant County – 4 Ballots – Rural Grant; Carson City; Elgin City; New Leipzig City.
- A20. Griggs County – 9 Ballots - Precinct 1-01.01; Precinct 1-01.02; Precinct 2-02.01; Precinct 2-02.02; Precinct 3-03.01; Precinct 4-04.01; Precinct 4-04.02; Precinct 5-05.01; Precinct 5-05.02.
- A21. Hettinger County – 4 Ballots – Mott #1; Regent #2; New England #3; Indian Creek #4.
- A22. Kidder County – 12 Ballots – Tuttle-Rural Tuttle; Tuttle-City of Tuttle; Robinson-Rural Robinson; Robinson-City of Robinson; Pettibone-Rural Pettibone; Pettibone-City of Pettibone; Steele-Rural Steele; Steele-City of Steele; Dawson-Rural Dawson; Dawson-City of Dawson; Tappen-Rural Tappen; Tappen-City of Tappen.
- A23. LaMoure County – 13 Ballots – Precinct 1-Adr,Litch,Rus,Glad,Wa,Wi; Precinct 1-City of Dickey; Precinct 1-City of Marion; Precinct 2-BL Hen Gr PL Gre B D R O; Precinct 2-City of Verona; Precinct 2-City of LaMoure; Precinct 2-City of Berlin; Precinct 3-Glen,Mik,Ken,Ran,Blu,GM; Precinct 3-

City of Jud; Precinct 4-Swede,Norden; Precinct 4-City of Kulm; Precinct 4-Ray,Nora,PV,Golden Glen; Precinct 4-City of Edgeley.

A24. Logan County – 5 Ballots – Precinct 01; Precinct 02; Precinct 03; Precinct 04; Precinct 05.

A25. McHenry County – 13 Ballots – Deering #16; Towner #18-Towner Rural CCM5; Towner #18-Towner City; Anamoose #27; Granville #41; Velva #47-Velva Rural CCM1; Velva #47-Velva Rural CCM4; Velva #47-Velva City W CCM1; Velva #47-Velva City E CCM4; Drake #55; Upham #58; Karlsruhe #62-Karlsruhe CCM2; Karlsruhe #62-Karlsruhe CCM5.

A26. McIntosh County – 6 Ballots – Precinct 1-City of Ashley; Precinct 2 - Rural Ashley; Precinct 3 - Lehr/Rural Lehr; Precinct 4 – City of Wishek; Precinct 5 – Rural Wishek; Precinct 6 – Zeeland/Rural.

A27. McKenzie County – 18 Ballots – Four Bears; Mandaree; Yellowstone; Sioux-SD #14; Sioux-No School; Alexander-City/Sch 2; Alexander-Rural Sch 2; Alexander-Rural Sch/1; Alexander Rural/No Sch; Arnegard-City; Arnegard-Rural; Bennie Pierre-SD #1; Bennie-Pierre-No School; Rhoades; Ideal/Schafer; Watford City; Blue Buttes-SD#1; Blue Buttes-No School.

A28. McLean County – 14 Ballots – White Shield/Ziegler Rural; Legislative 4-McLean Less 0402-Leg4-Rural; Legislative 4-McLean Less 0402-Max; Legislative 8-McLean-Leg 8-Rural; Legislative 8-McLean-Benedict; Legislative 8-McLean-Butte; Legislative 8-McLean-Coleharbor; Legislative 8-McLean-Garrison; Legislative 8-McLean-Mercer; Legislative 8-McLean-Riverdale; Legislative 8-McLean-Ruso; Legislative 8-McLean-Turtle Lake; Legislative 8-McLean-Washburn; Legislative 8-McLean-Wilton.

A29. Mercer County – 29 Ballots – Precinct 0401-Ft Berthold-Beulah SD; Precinct 0401-Ft Berthold-No School; Precinct 3301-Stanton-Ctr/Sten SD;

Precinct 3301-Stanton-Hazen SD; Precinct 3301-Stanton City-Ctr/Stan SD; Precinct 3303-Rural Hazen-Hazen SD; Precinct 3313-Rural 13-Beulah SD; Precinct 3313-Rural 13-Hazen SD; Precinct 3313-Rural 13-No School; Precinct 3313-Rural 13-Beulah School-Zap Fire; Precinct 3314-Zap-Beulah School; Precinct 3314-Zap-No School; Precinct 3314-Zap City-Beulah SD; Precinct 3314-Zap-Beulah School-Zap Fire; Precinct 3316-Pick City-Hazen SD; Precinct 3316-Pick City-Ctr/Stan SD; Precinct 3316-Pick City-No School; Precinct 3316-Pick City City-No School; Precinct 3320-Golden Valley-Beulah SD; Precinct 3320-Golden Valley No School; Precinct 3320-GValleyCity-Beulah School; Precinct 3320-GV-Beulah School-Zap Fire; Precinct 3321-Beulah Ward 1; Precinct 3322-Beulah Ward 2; Precinct 3323-Beulah Ward 3; Precinct 3324-Ward 4; Precinct 3381-Hazen #1; Precinct 3382-Hazen #2; Precinct 3383-Hazen #3.

A30. Morton County – 33 Ballots – Mandan 01-W/City; Mandan 01-No City; Mandan 02-W/City; Mandan 02-No City; Mandan 03; Mandan 04; Mandan 05; Mandan 06; Mandan 07; Mandan 08-W/City; Mandan 08-No City; Mandan 17-W/City; Mandan 17-No City; Mandan 17-No School; Mandan 18-W/City; Mandan 18-No City; Flasher 20-W/City; Flasher 20-No City; St Anthony 23-W/School; St Anthony 23-No School; Mandan Airport 24-W/City; Mandan Airport 24-No City; Mandan Airport 24-No School; Mandan 32-W/City; Mandan 32-No City; New Salem 33-W/City; New Salem 33-No City; Almont 34-W/City; Almont 34-No City; Glen Ullin 36-W/City; Glen Ullin 36-No City; Hebron 38-W/City; Hebron 38-No City.

A31. Mountrail County – 10 Ballots – Precinct 01-Stanley City; Precinct 02-New Town City; Precinct 03-Parshall City; Precinct 03-Parshall Twps.; Precinct 04-Palermo City/Twps.; Precinct 05-Twps. North; Precinct 06-White

Earth/Twps.; Precinct 07-Ross City/Twps.; Precinct 08-Twps. South; Precinct 09-Plaza City/Twps.

A32. Nelson County – 8 Ballots – Precinct 1 Nelson County-Lakota City; Precinct 1 Nelson County-Michigan City; Precinct 1 Nelson County-Aneta City; Precinct 1 Nelson County-Tolna City; Precinct 1 Nelson County-McVille City; Precinct 1 Nelson County-Pekin City; Precinct 1 Nelson County-Petersburg City; Precinct 1 Nelson County-Rural.

A33. Oliver County – 10 Ballots – Precinct 1; Precinct 2; Precinct 3-01; Precinct 3-02; Precinct 4; Precinct 5-01; Precinct 5-02; Precinct 6-01; Precinct 6-02; Precinct 7.

A34. Pembina County – 17 Ballots – Precinct 1-Townships; Precinct 1-Pembina City; Precinct 1-Neche Cty; Precinct 1-Hamilton Cty; Precinct 1-Bathgate Cty; Precinct 2-Townships; Precinct 2-Walhalla Cty; Precinct 3-Townships; Precinct 3-Mountain Cty; Precinct 3-Canton Cty; Precinct 3-Crystal Cty; Precinct 4-N Cavalier Township; Precinct 4-Cavalier Cty; Precinct 5-Townships; Precinct 5-St Thomas Cty; Precinct 6-Townships; Precinct 6-Drayton Cty.

A35. Pierce County – 11 Ballots – Precinct 01; Precinct 02; Precinct 03; Precinct 04-1<sup>st</sup> Ward 1<sup>st</sup>-1<sup>st</sup> Ward-A/Rural; Precinct 04-1<sup>st</sup> Ward 1<sup>st</sup>-1<sup>st</sup> Ward-B/City; Precinct 05-1<sup>st</sup> Ward 2<sup>nd</sup>; Precinct 06-2<sup>nd</sup> Ward-2<sup>nd</sup> Ward-A/Rural; Precinct 06-2<sup>nd</sup> Ward-2<sup>nd</sup> Ward-B/City; Precinct 07-3<sup>rd</sup> Ward; Precinct 08-4<sup>th</sup> Ward-4<sup>th</sup> Ward-A/Rural; Precinct 08-4<sup>th</sup> Ward-4<sup>th</sup> Ward-B/City.

A36. Ramsey County – 5 Ballots – Precinct 1; Precinct 2-No Park; Precinct 2-Devils Lake Park; Precinct 3; Precinct 4.

A37. Ransom County – 4 Ballots – Precinct 1; Precinct 2; Precinct 3; Precinct 4.

- A38. Renville County – 11 Ballots – Sherwood-0101; Sherwood-0102; Tolley-0201; Tolley-0202; Mohall-0301; Mohall-0304; Mohall-0305; Mohall-0306; White Ash; Glenburn-0501; Glenburn-0502.
- A39. Richland County – 31 Ballots – Walcott-Walcott City; Walcott-Township; Abercrombie-Abercrombie City; Abercrombie-Township; Mooreton-Mooreton City; Mooreton-Township; Fairmount-Fairmount City; Fairmount-Township; Hankinson-Hankinson City; Hankinson-Great Bend City; Hankinson-Township; Christine-Christine City; Christine-Township; Wahpeton Comm Center-Ward 1; Wahpeton Comm Center-Township; Wahpeton Richland LEC-Ward 2; Wahpeton Richland LEC-Township; Wahpeton City Hall-Ward 3; Wahpeton City Hall-Dwight City; Wahpeton City Hall-Township; Wahpeton Middle School; Barrie-Helendale; Colfax-Colfax City; Colfax-Township; Wyndmere-Wyndmere City; Wyndmere-Township; Wyndmere-Barney City; Lidgerwood-Lidgerwood City; Lidgerwood-Township; Brightwood-Elma-Belford-Township; Brightwood-Elma-Belford-Mantador City.
- A40. Rolette County – 10 Ballots – Rolla City Hall-Rural; Rolla City Hall-Rolla City; St John Senior Center-Rural; St John Senior Center-St. John City; Knights of Columbus; Dunseith City Hall-Rural; Dunseith City Hall-Dunseith City; WWI Memorial Building-Rural; WWI Memorial Building-Rolette City; WWI Memorial Building-Mylo City.
- A41. Sargent County – 12 Ballots – Milnor #1-Milnor Rural; Milnor #1-Milnor City; Gwinner #2-Gwinner Rural; Gwinner #2-Gwinner City; Cogswell #3-Cogswell Rural; Cogswell #3-Cogswell City; Forman-Havana #4-Forman/Havana Rural; Forman-Havana #4-Forman City; Forman-Havana #4-Havana City; Rutland-Cayuga #5-Rutland-Cayuga Rural; Rutland-Cayuga #5-Rutland City; Rutland-Cayuga #5-Cayuga City.

- A42. Sheridan County – 6 Ballots – Precinct 1-1.1; Precinct 1-1.2; Precinct 1-1.3; Precinct 1-1.4; Precinct 1-1.5; Precinct 1-1.6.
- A43. Sioux County – 9 Ballots – Cannonball; Solen-01; Solen-02; Fy East-01; Fy East-02; Fy West; Selfridge-01; Selfridge-02; Porcupine.
- A44. Slope County – 7 Ballots – Pierce Church-County; Pierce Church-Bowman School; Amidon Courthouse-County; Amidon Courthouse-Bowman School; Marmath Community Center-No School; Marmath Community Center-Marmath City; Marmath Community Center-Bowman School.
- A45. Stark County – 21 Ballots – BAC-City of Dickinson; Richardton-City of Richardton; Richardton-Richardton Rural; Richardton-Hebron School; Taylor-City of Taylor; Taylor-Taylor Rural; Gladstone-City of Gladstone; Gladstone-Gladstone Rural; Gladstone-Richardton/Taylor School; Gladstone-New England School; Range 95-96-Range 95-Dickinson Sch; Range 95-96-Range 96-Dickinson Sch; Range 95-96-Range 95-New England Sch; Range 95-96-Range 96-New England School; South Heart-City of South Heart; South Heart-South Heart Rural; South Heart-New England School; Belfield-City of Belfield; Belfield-Belfield Rural; Amory-City of Dickinson; Amory-Dickinson Rural.
- A46. Steele County – 6 Ballots – Precinct 1-23-01-00; Precinct 2-23-02-00; Precinct 3-23-03-00; Precinct 4-23-04-00; Precinct 5-23-05-01; Precinct 5-23-05-02.
- A47. Stutsman County – 17 Ballots – Precinct J1-91.01; Precinct J2-92.01; Precinct J2-92.02; Precinct J3-93.01; Precinct J4-94.01; Precinct J5-95.01; Precinct J6-96.01; Precinct 1-01.01; Precinct 2-02.01; Precinct 3-03.01; Precinct 3-03.02; Precinct 4-04.01; Precinct 4-04.02; Precinct 5-05.01; Precinct 5-05.02; Precinct 6-06.01; Precinct 6-06.02.

- A48. Towner County – 4 Ballots – Cando-City; Cando-Rural; Egeland; Rocklake.
- A49. Traill County – 28 Ballots – Precinct 1-Reynolds City; Precinct 1-Bel Stav Twp; Precinct 2-Buxton City; Precinct 2-Bing Erv Bux Wold Twp; Precinct 2-Ervin Twp Hills School; Precinct 2-Wold Twp/MPCG School; Precinct 3; Precinct 4-Blo Boh Kel Er Twp/Sch; Precinct 4-Blo Boh Kel Twp/NCS School; Precinct 5-Galesburg City; Precinct 5-Green Gales Twp MPCG School; Precinct 5-Green Gales Twp/NCS School; Precinct 6-Clifford City; Precinct 6-Nor Bla Twp; Precinct 6-Bla Twp Hills School; Precinct 7-May City #3; Precinct 7-Rose May Nor Twp/MPCG School; Precinct 7-Norway W/Hill School; Precinct 8-May City #2; Precinct 8-Lind Mor Twp/MPCG School; Precinct 8-Mor Twp; Precinct 9-Portland City; Precinct 9-Viking Twp-MPCG School; Precinct 9-Viking Twp; Precinct 10-Hatton City; Precinct 10-Gar Twp; Hillsboro City-20-11-00; Mayville City #1-20-12-00.
- A50. Walsh County – 20 Ballots – Precinct 1-District 19-01.01-Grafton Ward 1; Precinct 1-District 19-01.02-Grafton Ward 2; Precinct 1-District 19-01.03-Grafton Ward 3; Precinct 1-District 19-01.04-Grafton Ward 4; Precinct 1-District 19-01.06-Ardoch City; Precinct 1-District 19-01.07-Conway City; Precinct 1-District 19-01.08-Fordville City; Precinct 1-District 19-01.09-Forest River City; Precinct 1-District 19-01.10-Hoople City; Precinct 1-District 19-01.11-Minto City; Precinct 1-District 19-01.12-Pisek City; Precinct 1-District 19-01.13-District 19 Townships; Precinct 2-District 10-02.01-Park River Ward 1; Precinct 2-District 10-02.02-Park River Ward 2; Precinct 2-District 10-02.03-Park River Ward 3; Precinct 2-District 10-02.04-Adams City; Precinct 2-District 10-02.05-Edinburg City; Precinct 2-District 10-02.06-Fairdale City; Precinct 2-District 10-02.07-Lankin City; Precinct 2-District 10-02.08-District 10 Townships.



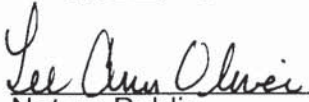
- A51. Ward County – 52 Ballots – All Seasons Arena-Nedrose Consolidated; All Seasons Arena-Nedrose Minot School; Sundre Bell School-Consolidated; Sundre Bell School-Minot School; Surrey City Hall; NE Minot Dist 3-Ward 1; NE Minot Dist 3-Ward 2; NE Minot Dist 3-2 Rural; SE Minot Dist 3-Minot SE Ward 1; SE Minot Dist 3-Minot SE Ward 2; SE Minot Dist 3-1 Nedrose; NW Minot Dist 3-Ward 2; SW Minot Dist 3-Ward 7; Berthold Senior Center; Kenmare Memorial Hall; Makoti Senior Center; Ryder Senior Center; Sawyer City Hall; South Prairie School-Consolidated; SE Minot Dist 5-Ward 7; SW Minot Dist 5-Ward 6 Minot Public School; SW Minot Dist 5-Ward 5; SW Minot Dist 5-Ward 4; SW Minot Dist 5-Ward 6-Rural; SW Minot Dist 5-Ward 7; NW Minot Dist 5-Ward 5; Afton Our Savior Lutheran-Consolidated; Afton Our Savior Lutheran-Minot School; Burlington City Hall; Des Lacs Community Hall; Harrison Court House-Consolidated; Harrison Court House-Minot School; North Central Lynch Immanuel Church-Consolidated; North Central Lynch Immanuel Church-Minot School; SE Minot Dist 38-Ward 7; SW Minot Dist 38-Ward 4; SW Minot Dist 38-Ward 7; SW Minot Dist 38-Ward 6-Minot School; SW Minot Dist 38-Ward 6-S. Prairie School; SW Minot Dist 38-Ward 7-S. Prairie School; NW Minot Dist 38-Ward 4; NW Minot Dist 38-Ward 5; Ruthville Lynch Immanuel Church-Consolidated; Ruthville Lynch Immanuel Church-Minot School; NE Minot Dist 40-Ward 3; NE Minot Dist 40-3 Rural Minot School; NE Minot Dist 40-3 Rural Ned. School; NE Minot Dist 40-Ward 2; NW Minot Dist 40-Ward 3; NW Minot Dist 40-Ward 3 Rural; NW Minot Dist 40-Ward 5; NW Minot Dist 40-Ward 2.
- A52. Wells County – 6 Ballots – 1 Harvey City Hall; 2 Fessenden-Bowdon HS; 3 Bowdon Community Center; 4 Sykeston City & Fire Hall; 5 Harvey City Hall; 6 Fessenden-Bowdon HS.

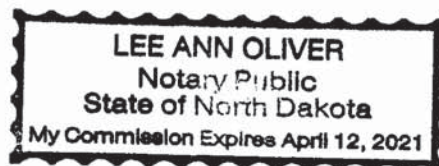
A53. Williams County – 26 Ballots – Williston Comm Library-59; Williston Comm Library-59A; National Guard Armory-60; National Guard Armory 60A; Williston State College-74; Williston State College-74A; Williston State College-74B; Raymond Center-Airport-75; Mountrail/Wms REC-43A; Mountrail/Wms REC-43B; West Prairie Luth Church-45; Ernie French Center-48; Ernie French Center-48A; Ernie French Center-48B; Ernie French Center-48C; Beaver Cr Luth Church-53; Trenton Twp Hall-55; Epping City Hall-62; Ray City Hall-63; Ray City Hall-63A; Tioga Senior Center-64; Tioga Senior Center-64A; Wildrose Golf-65; Grenora Senior Center-67; Grenora Senior Center-67A; Hagan School-76.

Dated this 5 day of January, 2018.

  
John Arnold  
North Dakota State Elections Director

Subscribed and sworn to before me  
this 5<sup>th</sup> day of January, 2018.

  
Notary Public



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION

Richard Brakebill, Deloris Baker, Dorothy  
Herman, Della Merrick, Elvis Norquay,  
Ray Norquay, and Lucille Vivier, on behalf of  
themselves,

Plaintiffs,

vs.

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

Defendant.

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

**Case No. 1:16-cv-00008**

STATE OF NORTH DAKOTA     }  
  } ss.  
COUNTY OF BURLEIGH     }

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 <http://sos.nd.gov/about-office/duties-secretary-state>.

3. My specific duties for the SOS in elections are to assist the Secretary who serves as the state of North Dakota's chief election officer, specifically: training county election officials; prescribing the form and content of statewide election ballots, receiving and filing petitions for initiated, constitutional, and referred measures; receiving candidate filings from individuals seeking statewide, legislative, or judicial

**EXHIBIT**

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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. In addition, my work as Deputy includes procuring and deploying Help America Vote Act (HAVA) compliant voting systems statewide and building a comprehensive election management system - North Dakota VOting Information and Centralized Election System (ND VOICES). ND VOICES is a project management tool for the administration of elections and is used by all election officials in the state of North Dakota. I am also involved on the national level serving as a member of the Standards Board of the United States Election Assistance Commission since its inception in June 2004. I served as vice-chair and chair of the 110-member board from 2009-2011 and have served on many committees relating to the Voluntary Voting System Guidelines and pilot projects to enhance access to voting for United States citizens living outside the country and those serving in the military.

5. North Dakota is the only state in the nation without voter registration. There is no requirement in North Dakota for voters to register prior to an election in order to vote in that election. In North Dakota, a voter can vote as long as the basic qualifications to vote are met – a citizen of the United States, at least eighteen years of age, and a North Dakota resident, having resided in the precinct for at least 30 days prior to an election.

6. North Dakota is a rural state and its communities maintain close ties and networks. In the past, if a voter did not have a valid form of identification (ID), poll workers could vouch for the individual's eligibility as poll workers generally knew the voters in the assigned precinct. Voters who were not known to a poll worker and who could not or would not produce a valid form of ID could complete a Voter's Affidavit to

establish citizenship, age, and residential status. According to law prior to the 2013 Legislative Assembly, the votes from the ballots cast by these voters were included in the tally and it was only after the election that local election officials were to verify these voters were qualified electors.

7. In 1960, a special election was held for the vacancy in the United States Senate due to William Langer's death. The margin of victory in this election was extremely slim, only 1,118 votes separated the winner from the loser. See "Official Abstract of Consolidated Ballot Votes Cast at the Special State Wide Election Held June 28, 1960" attached as Exhibit S1.

8. Since 2006, the SOS has maintained a Central Voter File (CVF) – a centralized poll book of individuals who voted in past elections. The CVF receives nightly updates from the North Dakota Department of Transportation (DOT) containing the names and addresses of individuals obtaining a driver's license or non-driver ID, along with name and address changes for those that have moved or changed names. The SOS also receives regular updates from the North Dakota Department of Health Division of Vital Records regarding those who have died and from the North Dakota courts regarding name changes. According to the data maintained in the CVF, ninety-seven and one-half percent (97.5%) of voters have a valid driver's license or non-driver's ID issued by the DOT.

9. North Dakota experienced unprecedented population growth starting in the late 2000s in connection with the exploration of oil and gas in the Bakken oilfield. The growth brought an influx of workers who lived in a number of different types of housing. Between April 1, 2010, and July 1, 2016, it is estimated that North Dakota gained 85,000 residents, which was equivalent to the population of the cities of Bismarck and Mandan in 2010. See Kevin Iverson, North Dakota Demographics Conference: Changing Demographics, attached as Exhibit S2 at 12.

10. There were 325,862 ballots cast in the November 6, 2012, General Election (November 2012 Election). Of this total 10,519 ballots were cast by affiants – individuals who were allowed to vote by executing the Voter's Affidavit as a means of providing ID - a self-certification of the individual's qualifications as an elector. In the race for United States Senator, 321,144 votes were cast. This race was hotly contested and had national implications as the winner of the race would be a deciding factor in which party would gain control of the US Senate. The margin of victory for this race was 2,936 votes. There were concerns about the validity of the race as there were numerous votes from affiants and the margin of victory was slim.

11. Responsibility for verification of the qualifications of the 10,519 votes cast by affiants who voted using the Voter's Affidavit in the November 2012 Election was the sole responsibility of county election officials – most often the County Auditor. As this was a county responsibility, the SOS was only able to provide guidance to the counties. Counties were encouraged to complete a process to verify the information provided in the Voter's Affidavits by following up with the individuals who executed the forms at the addresses provided on the form. Issues were identified with affiants who had moved to another address and had not left a forwarding address, did not include a unit number of the address provided, or did not reside at the address they listed. The SOS cannot confirm that verification work was completed for the November 2012 Election, or if it was, to what extent. It is still unknown how many affiant's qualifications could not be verified. Even if it had been possible to identify ineligible voters, it would have been impossible to extract the votes cast by these voters from the final tally.

12. When voter fraud is identified, the SOS has no prosecutorial authority to charge any voter suspected of committing the fraud. Suspected cases of voter fraud are referred to the respective County State's Attorney for further investigation and prosecution. Over the years, the SOS has been informed that State's Attorneys have cases of greater consequence upon which to focus. Most, if not all cases of suspected

voter fraud in North Dakota are not prosecuted. Prior to 2016, the SOS is not aware of any convictions for voter fraud being obtained in North Dakota.

13. In the November 2012 Election, there were nine suspected instances of voter fraud identified. These cases were referred to the respective State's Attorneys for investigation and prosecution as there was clear evidence of double voting. Action was taken by the counties in only one of the nine cases. In that case a Sheriff's Deputy interviewed an 18-year old college student suspected of voting by mail in Traill County at her parent's address and in person at the polling place for the address where she was living while attending college in Grand Forks County. The State's Attorney reported back to the SOS that this "scared-straight" approach was sufficient in dealing with the case and declined to prosecute further.

14. In 2013, the North Dakota legislature passed legislation that removed the Voter's Affidavit and the poll worker verification from law as acceptable forms of ID for voting purposes. Following the November 2012 Election, the SOS was able to determine that more than 97% of the voters listed in the CVF had a valid driver's license or non-driver's ID issued by the DOT. The legislative changes passed in 2013 were to address concerns regarding the unknown qualifications for all electors identified in the November 2012 Election and to address the requirement assigned to the legislative assembly in Section 1 of Article II of the North Dakota Constitution which says, "The legislative assembly shall provide by law for the determination of residence for voting eligibility, other than physical presence." Although this legislation required each prospective voter to provide a valid form of ID when voting, the 2013 legislative changes also included the issuance of a non-driver's ID by DOT at no cost to any resident who did not already have a driver's license or non-driver's ID and wanted an ID for voting purposes.

15. In order to educate voters in North Dakota of the changes passed by the 2013 Legislature, the SOS launched an advertising campaign on voter ID in North



Dakota – the “Voting in North Dakota – Easy as Pie” campaign. The campaign included print, radio, and digital media outreach across North Dakota. All forms of advertising included a list of the valid forms of ID required to vote in North Dakota - a driver’s license, a non-driver’s ID card, a Tribal ID card, a student ID certificate, or a long-term care certificate. The advertising further indicated that regardless of the valid form of ID used, the ID must include the name, North Dakota residential address, and date of birth of the voter. The ads were targeted to all segments of the population in North Dakota, including Caucasians, African Americans, Native Americans, students, oil field workers, and residents of long-term care. See attached Exhibits S3 – S9. The SOS also ran television and radio advertising across a wide variety of media outlets in North Dakota (including tribal radio and television outlets within the state) to further educate all voters. See attached Exhibits S10-S14. Additionally, the education campaign utilized extensive banner advertising on the web that, when clicked on, would open the voter ID education material page on Vote.ND.Gov and on the Facebook and Twitter accounts specifically created for this education. See attached Exhibit S15. The goal of the advertising was to ensure that all qualified electors were informed about voter ID changes that were now in place.

16. In the 2014 Primary and General Elections and the 2016 Primary Election, only one suspected case of voter fraud was identified. In that case, it was determined that a father fraudulently cast an absentee ballot on behalf of his daughter in his precinct where they resided. His daughter also voted in person in the city where she was attending college. To my knowledge this case was never prosecuted. The low number of suspected cases of voter fraud in these elections was partly due to the removal of the Voter’s Affidavit as a form of ID and the extensive advertising campaign educating individuals in North Dakota of the requirement to provide a valid ID and the forms of ID that the law outlined as acceptable.



17. Removal of the Voter's Affidavit as a valid form of ID was challenged by the above-named defendants. On September 20, 2016, this Court entered an Order permitting electors to vote by means of a Voter's Affidavit in lieu of providing a form of valid ID when voting in North Dakota elections.

18. In order to comply with the Order, the SOS had to reinstate the Voter's Affidavit and the associated processes as previously existed in state law before the 2013 legislative changes, as a "fail-safe" provision. In addition to developing forms to comply with the Order, the SOS developed policies and procedures for the reinstated processes and trained county auditors so that the auditors could in turn train poll workers so that individuals who could not or would not produce valid ID could use the Voter's Affidavit to vote in the November 2016 General Election (November 2016 Election) held on November 8, 2016. Poll workers were instructed that the bare minimum amount of information an individual could be required to provide on the Voter's Affidavit was name, residential address, and date of birth. If these were provided, the individual was provided with a ballot to vote and cast.

19. The SOS developed the Voter's Affidavit (Temporary) SFN 61108, attached as Exhibit S16, for use at polls and an Absentee/Mail Ballot Application (Temporary) SFN 61107, attached as Exhibit S17, for voters who chose to vote by absentee ballot. The Voter's Affidavit and Absentee/Mail Ballot Application (Voter's Temporary Affidavits) were used in the November 2016 Election held on November 8, 2016.

20. In the November 2016 Election, 311 individuals living in the four largest counties by population in North Dakota (Burleigh, Cass, Grand Forks, and Ward) were discovered to have listed a United Parcel Service (UPS) store as their residential street address. See attached Exhibit S18. Some of these individuals utilized the Voter's Temporary Affidavit as a means of providing a valid form of ID in order to vote. See attached Exhibit S19.

21. In the November 2016 Election, there were 349,862 ballots cast. Of this total, 16,215 ballots were cast by voters using the Voter's Temporary Affidavit as a form of ID. The votes from these affiants were included in the final tally of votes cast prior to any attempt to verify the qualifications of the voters who cast them.

22. In order to verify the qualifications of the affiants, a prepaid verification post card, (VPC) attached as Exhibit S20, was sent to the address provided by the affiant on the executed Voter's Temporary Affidavit. The VPC asked basic questions of affiants to assist in verifying that they did, in fact, execute the Voter's Temporary Affidavit. Affiants were asked to complete and return the VPC by December 9, 2016. The VPC further stated that if a response was not received by that date, the county auditor in the county where the affiant executed the Voter's Temporary Affidavit and voted would attempt to verify (e.g., by phone call or letter to an updated address) why no response was received. If unable to determine the lack of response, the county auditor would notify the county state's attorney who would assist in the investigation of the affiant's eligibility to vote in the election. The VPC also included language that the state's attorney had the authority to prosecute an individual who falsely swore (or affirmed) to information provided in the Voter's Temporary Affidavit and the individual would be guilty of a Class A misdemeanor, which, at that time, carried a maximum penalty of one year's imprisonment, a fine of \$3,000, or both.

23. Once the county received a response on the VPC, a county staff member was to document the response in a matrix provided by the SOS. If an affiant failed to return the VPC, the county attempted to contact the affiant by phone or other means. Documentation of the attempts and response (or lack thereof) was to be documented in the matrix. Information on affiants who could not be contacted was then to be forwarded by the county election staff member to the State's Attorney for investigation as it was suspected, based on the lack of proof from the affiant, the individual was not qualified to vote.

24. Election officials have faced difficulty in verifying the qualifications of the affiants who completed the Voter's Temporary Affidavits in the November 2016 Election. There is not enough time between Election Day and the date by which election results must be certified. On the sixth day after an election, the canvassing board for the jurisdiction that administered the election must meet to certify the results. Also during this time, election officials must conduct post-election audits of the voting machines, post voting credit within the CVF from the poll books used, prepare all the reports necessary for the meeting of the canvassing board, continue to receive and process late arriving absentee ballots that are to be tabulated by the canvassing board, and begin the post-election verification process. All this work must be done in addition to the other duties of the office.

25. It is important to note that post-election verification is only begun during this six-day window but the verification of an affiant's eligibility to vote cannot be completed during this short timeframe. As noted, election officials send the VPC by US mail to the affiant at the address entered by the affiant on the Voter's Temporary Affidavit. Once the affiant receives the VPC, they must complete it and send it back to the election officials by US mail. The United State Post Service (USPS) does its best to deliver first class mail in one to three days, but this is not a guarantee. In discussions between the SOS and the USPS, the SOS was encouraged to think of delivery times between three and five days as being more realistic. Even if the VPC was sent to the affiant on the day after the election, the affiant would not receive it, in many cases, until the day of the meeting of the canvassing board. Regardless if an affiant was an eligible voter or not, the individual's response to the VPC cannot reasonably be expected until after the election results have been certified.

26. There are issues concerning where mail can be delivered by the USPS. In many communities in North Dakota, mail is only delivered to a Post Office (PO) box rather than directly to the residential street address. Therefore, receipt of a piece of

mail at a PO box in the local Post Office only indicates an affiant has rented a PO box. If an affiant living in one of these communities only enters their residential street address when completing the Voter's Temporary Affidavit, the USPS will not deliver the VPC to the residence, as per USPS protocol, mail is only delivered to the PO boxes in that community. If an affiant resides in an apartment building or mobile home park, but fails to include his or her apartment number or lot number, the USPS is unable to deliver the VPC. If an affiant moves prior to receipt of the VPC, the USPS cannot forward the VPC as election mail is not to be forwarded (for obvious reasons).

27. The current process for verification of eligibility of affiants who used the Voter's Temporary Affidavit as a means of providing ID under the preliminary injunction entered by this court neither proves nor disproves the affiant's eligibility as an elector and the information learned from the VPC process comes too late to have any impact on the outcome of the election. The affiants that were unable to be verified after the election may or may not have been qualified to vote in the election. It is impossible to remove the ballot cast by an affiant using the Voter's Temporary Affidavit to vote and who is later found to be ineligible under the current use of the Voter's Temporary Affidavit process. The votes from the ballots cast by affiants using the Voter's Temporary Affidavits as a form of ID are already included in the tally of votes prior to any attempts to verify the qualifications of the voters who cast them.

28. All counties were to return the completed matrices and copies of all executed Voter's Temporary Affidavits to the SOS office by January 6, 2017. Once the SOS received the matrices and Voter's Temporary Affidavits from the county, the SOS made digital copies of the Voter's Temporary Affidavits not already in this format and the information listed on the Voter's Temporary Affidavits was crosschecked with information maintained in the DOT mainframe database to determine if the affiant had a state-issued ID.

29. Some counties failed to complete the matrices for the verification process. For the three counties that did not provide a response or provided an incomplete response, the SOS contacted the county auditor to ascertain the reason for non-compliance. All three county auditors stated that there was just not enough time available to complete the process and provide a response within the allotted timeframe.

30. The SOS hired two temporary staff, in addition to the regular staff to assist in the SOS portion of the verification process of the Voter's Temporary Affidavits. Costs for SOS staff and temporary staff to complete the verification process is estimated to be in excess of \$36,000. The SOS incurred costs of \$420.00 for software development to process the VPC cards and verify affiant information. The SOS also incurred costs for printing and mailing of the VPC. The SOS asked each county to bill the SOS for their costs for mailing and return postage for the VPCs. Only three (3) counties sent bills to the SOS. The SOS's printing and mailing costs, including the bills sent by just three (3) counties, totaled \$9,384.64. The total SOS costs were in excess of \$46,000.

31. County election staff in all fifty-three (53) North Dakota counties incurred the bulk of the costs for the verification work that was completed from November 16, 2016, through January 17, 2017. This would have included the costs for mailing and return postage for the fifty (50) counties that did not bill the SOS for those expenses. Costs would have also included the time spent by county staff members, which the SOS estimates would have been at least two staff members each working a minimum of forty (40) hours during the verification period, for a total of four thousand two hundred forty (4,240) hours. Even with an hourly wage average for these staff members at \$10 per hour, which is well below the actual, the 53 counties spent at least \$42,400 on the work of verification of the eligibility of the affiants.

32. Of the 16,215 ballots cast by affiants using the Voter's Temporary Affidavit as a means of providing ID, counties began the verification process on 16,204 of the Voter's Temporary Affidavits. Of this number, counties reported that they were able to

verify in some manner 12,485 of the Voter's Temporary Affidavits, leaving 3,719 votes cast by a Voter's Temporary Affidavit unverified. In addition, the verification process of a postcard or a phone call only verifies that someone received the mail or phone call and provided an affirmative response. It does not guarantee that the responding individual was actually qualified to vote.

33. The remaining 3,719 Voter's Temporary Affidavits should have been turned over to the State's Attorneys for additional investigation and possible prosecution of voter fraud. The total number of Voter's Temporary Affidavits turned over to the states attorneys that the SOS is aware of was 348. Of those 348, the SOS is aware that the State's Attorney were able to verify the qualifications of 37 of those affiants. Counties reported no information or verification to the SOS regarding the remaining 311 affiants turned over to the State's Attorneys or the other 3,371 unverified Voter's Temporary Affidavits that should have been referred to the State's Attorneys, for a total of 3,682 ballots cast by affiants whose qualifications as electors remain unverified still to this date.

34. The SOS also completed additional verification work on the 16,215 affiants to determine the number of those who also had an ID issued by the ND DOT. Of the total, 63 percent (63%) of the affiants had a driver's license or non-driver ID record with the DOT and only voted once in the election as far as the SOS was able to determine. The fact that these affiants (more than 10,000) already possessed a state-issued ID means that they really had no reason to utilize the Voter's Temporary Affidavit as their form of ID. The remaining 37 percent (37%) had no record with the DOT – no information could be found in DOT records or the affiant indicated on the Voter's Temporary Affidavit that he or she last resided in another state.

35. The use of the Voter's Temporary Affidavit also causes issues with individuals who are residents in other states, but temporarily reside in North Dakota to attend school. On November 9, 2016, the day after the November 2016 Election, the

Cass County Auditor's Office received a voicemail message from an affiant stating in part, "My name is...and I'm a Minnesota resident and I voted yesterday and signed the affidavit stating that I was a North Dakota resident because I go to school up here. I was wondering if or if I am even able to push it back to being a Minnesota resident?" Did she make a mistake by voting in North Dakota when she wasn't supposed to, were her actions intentional, accidental, or a choice of convenience, was she ignorant of the voting requirements or was she pressured by her peers or others to vote in North Dakota rather than by absentee from her residential address in Minnesota? The ballot she cast along with the votes she marked were included in the tally of votes for Cass County and there was no way to invalidate or pull this ballot out from all the others that were cast. The case was forwarded to the Cass County State's Attorney for investigation, but there was no desire to investigate further by that office.

36. In the November 2016 Election, several contests were decided by fewer votes than the number of individuals who were allowed to vote for those contests by using the Voter's Temporary Affidavit. The table below summarizes the contest, the number of Voter's Temporary Affidavits executed and the margin of victory:

2016 General Election - November 8, 2016			
Legislative District #	Voter's Temporary Affidavits Executed	Senate Contests Margin of Victory-Winning Party (vote for one contest)	House Contests Margin of Victory-Winning Party (vote for two contest)
District 4	314		277 – GOP
District 4	314		277 - GOP
District 12	519		231 – GOP
District 12	519		231 – GOP
District 16	608		113 – GOP
District 16	608		113 - GOP
District 18	317		188 – GOP

District 18	317		188 – DEM-NPL
District 24	433	160 – DEM-NPL	
District 24	433		347 – GOP
District 24	433		347 – GOP
District 42	1,478	208 – GOP	
District 42	1,478		140 - GOP
District 42	1,478		140 - GOP
District 44	461	143 – Dem-NPL	
District 44	461		292 – DEM – NPL
District 44	461		292- DEM – NPL
District 46	216	37 – GOP	

37. Questions remain if all the voters who were allowed to vote by executing Voter's Temporary Affidavits in the November 2016 Election were truly eligible to vote as there was no way to verify the information supplied by the affiants on the forms prior to the certification of the results, nor by the time allowed for a contest of an election. Verification of some of the Voter's Temporary Affidavits has still not been completed. The impact of those individuals being allowed to vote by Voter's Temporary Affidavit is not a partisan issue. Eighteen candidates from eleven of the state legislative contests were elected by a margin of votes that was less than the number of affiants allowed to vote for the contest or contests in question. Of the four state Senate contests in which this occurred, two candidates were elected from the Republican Party and two from the Democratic-NPL Party. Of the seven state House of Representatives contests in which this occurred, eleven candidates were elected from the Republican Party and three from the Democratic-NPL Party.

38. Questions also remain regarding the 4,849 affiants who executed a Voter's Temporary Affidavit indicating a prior state of residence. Did these affiants also



vote in the listed prior state of residence? Of the total number of Voter's Temporary Affidavits received, 4,620 listed a previous address and a driver's license number from another state. All forty-nine (49) states and the District of Columbia were listed as states of prior residence by these affiants. An additional 2,784 affiants did not list a former residence on the executed Voter's Temporary Affidavits, leaving open the possibility that some of them had just recently moved to North Dakota from another state or were still residents of that former state. Each state and the District of Columbia were provided with a list of the affiants who voted in the November 2016 Election and listed that state as the affiant's last state of residence. Investigations are still ongoing as to whether or not double voting occurred. If it has, the proper authorities will be notified and it is hoped the state will seek prosecution. However, even if prosecution occurs, the results of the November 2016 Election will stand as the ballots from those found to be unqualified and have been prosecuted cannot be identified from the other ballots cast by eligible voters.

39. The state with the greatest number of former residents who voted in the November 2016 Election was Minnesota with 2,836. The SOS sent a letter along with a spreadsheet of affiants who voted using the Voter's Temporary Affidavit as a valid form of ID to the Minnesota Secretary of State's office asking that office to determine if any of the listed voters had also voted in the state of Minnesota for the November 2016 Election. The contents of the reply email received by the SOS stated:

I have received your list of North Dakota November 6, 2016 voters with previous Minnesota addresses. We will forward the names onto the appropriate counties for them to inactivate the records. In the State of Minnesota, when a county office makes a change to a record based on the information you have presented, they will review the record and determine if a voting violation has occurred (voting in two different states for the same election). If they believe a violation has occurred, they are required to pass that information onto the county attorney's office along with supporting documentation for further investigation.

The county attorney's office might contact the State of North Dakota and/or local North Dakota election offices/law enforcement as a part of an investigation if they believe a violation has occurred.

Currently, there is not a Minnesota statute that allows for the “return notification” to let you know if a person listed voted in a particular election. M.S. 201.091, subd. 4 <<https://www.revisor.leg.state.mn.us/statutes/?id=201.091>> only allows the sharing of a person’s voter registration record and voting history if that voter is active in our system and it can only be shared with someone who is a currently registered voter in the State of Minnesota for the purposes allowed under the law.”

40. Out of the 2,836 names sent to the Minnesota Secretary of State’s office, the SOS has been informed of one probable case of double voting. An individual appears to have voted both in Cass County, North Dakota and in Scott County, Minnesota. The state’s attorneys from both counties are discussing the next steps forward with regard to prosecution in the case. It is unknown what the results of this case are. The SOS has received no information regarding the other 2,835 names that were sent to the Minnesota Secretary of State’s office.

41. The SOS is aware of two additional cases of double voting that occurred in the November 2016 Election. The first instance involved an individual who was charged with voter fraud, a Class A misdemeanor (at that time) for voting in Burke and Ward counties. The Burke County State’s Attorney prosecuted the case and a diversion agreement was entered on September 12, 2017. The diversion agreement calls for the individual’s prosecution to be suspended for six months as long as he does not commit a crime or infraction and follows through with neuropsychological testing. The agreement also states that there is a “substantial likelihood that a conviction can be obtained,” but the “benefits to society from rehabilitation far outweigh any harm to society from suspending criminal prosecution.” The second instance involved an individual who cast an absentee ballot in Burleigh County and voted in person in Idaho. Since this case crossed state lines, information regarding the case was provided to the local United States Attorney through an Immigration and Customs Enforcement (ICE) Agent who also works with the Federal Bureau of Investigation (FBI) in the area. After

several weeks, the state was notified that since this was a single instance of double voting and there was no evidence of conspiracy, the individual would not be prosecuted.

42. The SOS also provided information to the ICE Agent regarding seven affiants who were suspected to be non-US citizens, based on the information provided in the Voter's Temporary Affidavits completed by each, and were suspected of voting illegally. After further investigation, it was determined that six of the seven affiants were identified as naturalized US citizens and voted legally. The seventh affiant's information did not exist in any immigration database. This raises suspicion as to whether this affiant was residing in the county illegally and voted. Federal law enforcement has not indicated if this matter will be pursued further.

43. The State does not regulate the Tribal ID or what is included on it. The State can only mandate what must be included on a Tribal ID in order for it to be considered a valid form of ID for voting purposes. As long as a Tribal ID contains the Tribal member's name, current residential address, and date of birth, it would be considered a valid form of ID for voting purposes. The State accepts Tribal IDs issued by a Tribe or by the Bureau of Indian Affairs as valid forms of ID as long as it includes the required information. On July 21, 2017, the SOS office met with Turtle Mountain Tribal officials and were informed that the cost for an initial Tribal ID from the Turtle Mountain Band of Chippewa is \$10.00. If the ID is lost, the cost increases by \$5.00 for each replacement card issued. An acceptable form of Tribal ID for voting purposes only could include a letter from a Tribal official that lists the Tribal members name, residential street address and date of birth. This Tribe has been informed of this option through its Tribal Chairman since May 1, 2014.

44. The SOS is still conducting efforts to confirm the qualifications of some of the affiants who completed the Voter's Temporary Affidavits in the November 2016 Election and cast ballots. Although no contests of elections were filed with a court, the

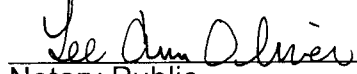
inability to verify the qualifications of all affiants before the votes were counted raises questions about the election that cannot be answered.

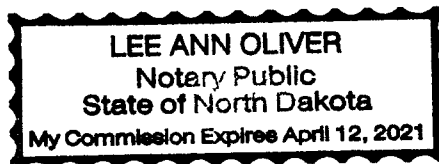
45. It is important to remember that each vote is important and that even a single fraudulent vote can impact the results of an election. This is especially true when considering how many contests are decided by small differences in votes between those elected and those who were not. The integrity of elections is improved when the qualifications of voters is verified prior to voting.

Dated this 11 day of January, 2018.

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

Subscribed and sworn to before me  
this 11<sup>th</sup> day of January, 2018.

  
Notary Public



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

**RICHARD BRAKEBILL, DELORIS )  
BAKER, DOROTHY HERMAN, )  
DELLA MERRICK, ELVIS )  
NORQUAY, RAY NORQUAY, and )  
LUCILLE VIVIER, on behalf of )  
themselves, )**

**Plaintiffs, )**

**v. )**

**ALVIN JAEGER, in his official capacity )  
as the North Dakota Secretary of State, )**

**Defendant. )**

**CIV No.: 1:16-cv-08**

**COMPLAINT FOR  
DECLARATORY  
AND INJUNCTIVE  
RELIEF**

Plaintiffs, by and through their undersigned attorneys, allege on information and belief as follows:

**INTRODUCTION**

1. This action is brought under the Voting Rights Act, 52 U.S.C. § 10301, and the Declaratory Judgment Act, 28 U.S.C. § 2201, by qualified Native American voters (or electors) in North Dakota who have been denied the right to vote and/or will be denied the right to vote through enforcement of North Dakota's recently enacted voter identification ("ID") laws. Plaintiffs seek to protect their right to vote under the United States Constitution, the North Dakota Constitution, and the Voting Rights Act.

2. North Dakota House Bill 1332 (“HB 1332”) was enacted April 19, 2013, and made North Dakota’s voter ID requirements significantly more restrictive. North Dakota House Bill 1333 (“HB 1333”) was enacted April 23, 2015, and made the voter ID requirements even more restrictive. The voter ID portions of HB 1332 and 1333 are codified at N.D. CENT. CODE § 16.1-05-07. Plaintiffs seek a determination that the voter ID requirements in HB 1332 and HB 1333 disproportionately burden and disenfranchise Native Americans and: (a) have a discriminatory result in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301 (“Section 2”) in two distinct ways; (b) impose substantial and unjustified burdens on the fundamental right to vote in violation of the Fourteenth Amendment; (c) deny qualified voters equal protection under the law in violation of the North Dakota Constitution; and (d) make ownership of a voter ID a pre-condition and qualification to vote in violation of the North Dakota Constitution. For these and other reasons, these laws should be declared unlawful and enjoined.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1343, 1367, and 52 U.S.C. § 10308(f). This Court has jurisdiction to grant both declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

4. Venue is proper in this court under 28 U.S.C. § 1391(b).

### **PARTIES**

5. All of the plaintiffs named in this Complaint are citizens of the United States, residents of North Dakota, Native Americans, and duly qualified electors eligible to vote in local, state, and federal elections in North Dakota. All plaintiffs have a direct, substantial, and legally protectable interest in the subject matter of this litigation.

6. Plaintiff Richard Brakebill is an enrolled member of the Turtle Mountain Band of Chippewa Indians and a United States Navy veteran. Mr. Brakebill is over the age of 18 and has lived in Rolla, North Dakota for at least ten years. Mr. Brakebill is therefore a qualified elector in North Dakota. Mr. Brakebill was denied the right to vote in the general election on November 4, 2014, because he did not possess a qualifying ID under HB 1332. He had a tribal ID without an address and an expired state of North Dakota ID with an old address. Mr. Brakebill presented these IDs to the poll workers on November 4, 2014, when attempting to vote, but was refused the right to vote because the IDs did not have a current residential address. Prior to the election, Mr. Brakebill attempted to obtain a qualifying ID numerous times, but he was unsuccessful because he does not have a copy of his Arkansas birth certificate. Mr. Brakebill lives on a fixed income and currently does not have a job, further constraining his ability to secure the documentation necessary to obtain a qualifying ID. As a result, he is unable to obtain an ID currently required under North Dakota law in order to vote.

7. Plaintiff Elvis Norquay is an enrolled member of the Turtle Mountain Band of Chippewa Indians. He is over 18 years of age, a citizen of the United States, and a citizen of North Dakota. Mr. Norquay has lived in Belcourt, North Dakota for around 25 years, and is therefore a qualified North Dakota elector. Mr. Norquay is a veteran of the U.S. Marine Corps and was denied the right to vote in the November 4, 2014 general election. When Mr. Norquay went to vote in November 2014, he presented his tribal ID, but was denied the right to vote because his tribal ID lists no address. Mr. Norquay does not have a state driver's license or ID, and does not have a birth certificate. Mr. Norquay cannot afford the documentation he needs to obtain a state ID nor the transportation to travel to a state drivers' license site ("DLS"). Likewise, he cannot

afford a new tribal ID. As a result, he is unable to obtain an ID currently required under North Dakota law in order to vote and does not need one for his everyday life.

8. Plaintiff Ray Norquay is a member of the Turtle Mountain Band of Chippewa Indians. Mr. Norquay has lived in Belcourt, North Dakota for most of his life, and consistently for about the last six years. He is over eighteen years of age and a citizen of the United States, and is therefore a qualified North Dakota elector. Mr. Norquay attempted to vote in the November 4, 2014 general election, but he was denied the right to vote because he only had a tribal ID that did not list his residential address. As a result of being denied the right to vote, he went to the tribal offices that same day and had to purchase a new tribal ID with his residential address on it. After purchasing the new ID, Mr. Norquay went back and was permitted to vote. Thus, Mr. Norquay had to pay to vote.

9. Plaintiff Della Merrick is a member of the Turtle Mountain Band of Chippewa Indians. Ms. Merrick has lived in Belcourt, North Dakota for about six years. She is over eighteen years of age and a citizen of the United States, and is therefore a qualified North Dakota elector. Ms. Merrick attempted to vote in the November 4, 2014 general election, but she was denied the right to vote because she only had a tribal ID that did not list her residential address. As a result of being denied the right to vote, she went to the tribal offices that same day and had to purchase a new tribal ID with her residential address on it. After purchasing the new ID, Ms. Merrick went back and was permitted to vote. Thus, Ms. Merrick had to pay to vote.

10. Plaintiff Lucille Vivier is a member of the Turtle Mountain Band of Chippewa Indians. Ms. Vivier has lived in Dunseith, North Dakota for about 11 years, and before that she lived in Belcourt, North Dakota her whole life. She is over eighteen years of age, a citizen of the United States, a citizen of North Dakota, and is therefore a qualified North Dakota elector. Ms. Vivier



attempted to vote in Dunseith for the November 4, 2014 general election, but she was denied the right to vote because she only had a tribal ID that did not list her residential address. Ms. Vivier does not have a social security card or a birth certificate. Ms. Vivier is unable to afford a tribal ID, the documentation necessary to obtain a state ID, or the transportation to travel to a DLS because she only receives disability income and must pay for the needs of the five children she cares for and her elderly mother. Three of the children she cares for have special needs, and thus Ms. Vivier has additional costs that are required for their care. Thus, Ms. Vivier cannot afford to obtain a state ID or a tribal ID with a residential address on it. Additionally, Ms. Vivier does not have a consistent residential address as the police department, emergency services, and post office have each given her a different address for her home. For all these reasons, she is unable to obtain an ID currently required under North Dakota law in order to vote.

11. Plaintiff Deloris Baker is an enrolled member of the Turtle Mountain Band of Chippewa Indians, and has lived in Dunseith, North Dakota all of her life. She is over eighteen years of age, a citizen of the United States, and a citizen of North Dakota. Ms. Baker is therefore a qualified North Dakota elector. Ms. Baker attempted to vote in the November 4, 2014 general election in Dunseith, but was denied the right to vote because she only had her tribal ID, and it did not list a residential address. Ms. Baker cannot afford to obtain a state ID. Her son supports her with his limited income, and she cares for two children, ages 12 and 13. Ms. Baker does not have a car, nor does she drive, and she cannot afford to pay someone to take her to a DLS or take her to the bus to get to a DLS to obtain a state ID. She likewise cannot afford a tribal ID. Thus, Ms. Baker is unable to obtain an ID currently required under North Dakota law in order to vote.

12. Plaintiff Dorothy Herman is an enrolled member of the Turtle Mountain Band of Chippewa Indians and a retired teacher. She is 75 years old, has lived in North Dakota for about

43 years, and has voted throughout that time. Ms. Herman lives in Rolla, North Dakota and has lived there for about ten years. She is over eighteen years of age, a citizen of the United States and a citizen of North Dakota, and is therefore a qualified North Dakota elector. Prior to the election, Ms. Herman had in her possession an expired state ID with the correct residential address and a tribal ID without an address. Because her state ID was expired, Ms. Herman attempted to obtain a new state ID at the DLS in Rolla, North Dakota during its advertised operating hours prior to the election. The DLS, however, was closed. When she attempted to get a new ID a second time prior to the election, the DLS informed her that they would not issue a new ID to her—her expired state ID was insufficient documentation of her identity, and she needed a birth certificate. To obtain an ID, they told her she would have to make a third trip to the DLS and pay \$8 after she located all of her documentation. Ms. Herman saw an advertisement about the new voter ID law prior to the 2014 general election, and based on that advertisement she thought she had a qualifying voter ID – her tribal ID. Thus, Ms. Herman did not make a third trip to the DLS prior to the election. When Ms. Herman attempted to vote in Rolla in the 2014 general election with her tribal ID and expired state ID, she was denied the right to vote because her tribal ID did not have an address and her state ID was expired. When she was turned away on the day of the election, she attempted to pay to get a tribal ID with an address, but the tribal office was closed. She returned to the DLS a third time after the election and paid the \$8 to obtain a new state identification card. Ms. Herman survives on her school teacher's retirement income and her husband's social security. For Ms. Herman, the expense and difficulty to obtain an ID ultimately prevented her from voting.

13. Defendant Alvin Jaeger is the North Dakota Secretary of State and is sued in his official capacity. The North Dakota Secretary of State is the State's chief election officer. The Office of

the North Dakota Secretary of State is responsible for coordinating the implementation of HB 1332 and HB 1333.

### **STATEMENT OF FACTS**

#### **NORTH DAKOTA'S VOTER ID RULES BEFORE HB 1332 AND 1333**

14. North Dakota is the only state in the United States that does not have voter registration. N.D. CENT. CODE § 16.1-01-5.1. It was one of the first states to adopt voter registration in the 1800s, but was the first state to abolish it in 1951. Instead, North Dakota established numerous small voting precincts, which ensured that election boards knew the voters who came to the polls to vote on Election Day and could detect people who should not be voting in the precinct.

15. The North Dakota Constitution provides that there are only three qualifications to be an elector: “[e]very Citizen of the United States, who has attained the age of eighteen years and who is a North Dakota resident, shall be a qualified elector.” N.D. CONST. art. II, § 1. The North Dakota Constitution further provides: “When an elector moves within the state, he shall be entitled to vote in the precinct from which he moves until he establishes voting residence in another precinct. The legislative assembly shall provide by law for the determination of residence for voting eligibility, other than physical presence.” *Id.*

16. Similarly, North Dakota statutes provide that “every citizen of the United States who is eighteen years or older; a resident of this state; and has resided in the precinct at least thirty days next preceding any election, except as otherwise provided in regard to residency in chapter 16.1-14, is a qualified elector.” N.D. CENT. CODE § 16.1-01-04(1).

17. For the purpose of elections, “every qualified elector may have only one residence, shown by an actual fixed permanent dwelling, establishment, or any other abode.” N.D. CENT. CODE § 16.1-01-04(2).

18. Prior to passage of HB 1332 and 1333, North Dakota elections were rated first in the nation for election performance by the Pew Charitable trust in 2008, 2010, and 2012. *Elections*

*Performance Index*, PEW CHARITABLE TRUST, (April 8, 2014),

<http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/elections-performance-index#indicator>. This rating is based on the Elections Performance Index, or EPI, which tracks 17 distinct indicators of election administration effectiveness. A state's overall average is calculated from its performance on all 17 indicators, relative to all states across comparable federal election cycles—either presidential or midterm. *Id.* at *EPI 101*. Some of the indicators include data completeness, voting wait time, provisional ballots cast, provisional ballots rejected, and registration or absentee ballot problems. *Id.*

19. Prior to passage of HB 1332 and 1333, a poll clerk in North Dakota was merely required to “request” that a qualified voter show identification that included the individual’s residential address and date of birth to prove they were qualified. N.D. CENT. CODE § 16.1-05-07(1), *amended by* H.B. 1332, 63rd Leg. Assemb., Reg. Sess. § 5 (2013). If one form of ID did not have both the residential address and birthdate, the voter could utilize two forms of ID in combination. *Id.*

20. Valid forms of ID included: a North Dakota driver’s license or non-driver’s ID card; a U.S. passport; an ID card from a federal agency; an out of state driver’s license or non-driver’s ID card; an ID card issued by a tribal government; a valid student ID; a military ID card; a utility bill dated thirty days prior to Election Day, including cell phone bills and student housing bills (online printouts were acceptable); and a change of address verification letter from the U.S. Postal Service.

21. Alternatively, if the voter could not provide those forms of ID, there were two other fail-safe methods that would allow them to prove they were qualified. First, a member of the election board or a poll clerk who knew the voter could personally vouch that the individual was a qualified elector in the precinct, and the person was then allowed to vote. N.D. CENT. CODE § 16.1-05-07(2), *amended by* H.B. 1332, 63rd Leg. Assemb., Reg. Sess. § 5 (2013). Second, if no one could vouch for him or her, the election board challenged the person’s right to vote, but the

person could then execute a voter affidavit swearing to the fact that he or she was a qualified elector who could vote in the precinct. N.D. CENT. CODE § 16.1-05-07(3), *amended by* H.B. 1332, 63rd Leg. Assemb., Reg. Sess. § 5 (2013). If the voter agreed to sign the affidavit, the election board and poll clerks were required to allow the voter to vote. *Id.*

#### **ENACTMENT OF HB 1332 AND 1333**

22. HB 1332 was enacted on April 19, 2013, and significantly altered the voter ID requirements in North Dakota. HB 1333 was enacted on April 24, 2015, and made the voter ID requirements even more restrictive and burdensome.

23. The legislative procedure utilized to pass HB 1332 was unusual.

24. A “hoghouse” amendment was used to pass HB 1332.

25. Public hearings are held on every bill in legislative standing committees. *See Legislative Branch Function and Process*, NORTH DAKOTA LEGISLATIVE PORTAL, <http://www.legis.nd.gov/research-center/library/legislative-branch-function-and-process> (last visited Jan. 10, 2016).

26. However, after the public hearings, these committees may choose to modify the contents of an original bill before they send it back to the house or senate for a vote. *See id.*

27. A hoghouse amendment replaces the entire text of a bill with new text. *North Dakota Legislative Council*, NORTH DAKOTA LEGISLATIVE DRAFTING MANUAL 63 (2015), <http://www.legis.nd.gov/files/general/2015draftingmanual.pdf?20160111162015>. Because committee amendments are made after the public hearings take place, hoghouse amendments are not subject to public hearing.

28. Hoghouse amendments are disfavored. *Id.*

29. HB 1332 limited the forms of ID voters could use at the polls. First, it required that the ID used must contain the voter’s residential address and date of birth. A P.O. Box number is not an acceptable type of address. Second, HB 1332 restricted the acceptable forms of ID to: (1) a

North Dakota driver's license; (2) a North Dakota non-driver's identification card; (3) a tribal government issued identification card; or (4) an alternative form of identification prescribed by the Secretary of State if a qualified voter did not possess one of the other official forms of identification. H.B. 1332, 63rd Leg. Assemb., Reg. Sess. § 5; *see* N.D. CENT. CODE § 16.1-05-07. The Secretary of State only prescribed two additional forms of ID prior to the passage of HB 1333: (1) a student identification certificate, and (2) a long-term care identification certificate.

30. HB 1332 also prevented voters from using a driver's license or ID from another state in combination with other ID in order to vote.

31. HB 1332 limited a qualified elector's ability to vote in other ways as well.

32. The new law eliminated the voucher and affidavit fail-safe that previously could be utilized by qualified voters who did not produce an ID when requested by the poll clerk.

33. North Dakota became the only state in the country with a strict voter identification law that does not provide voters that lack ID with a fail-safe provision.

34. After passage of HB 1332, which was essentially on a party-line vote, qualified voters that showed up to the polls but did not have a qualifying ID were completely denied their right to vote.

35. As mentioned above, the legislature made the voter ID law even more restrictive with the passage of HB 1333, utilizing another amendment.

36. When HB 1333 was first introduced in the North Dakota House, it would have alleviated some of the stringent requirements of HB 1332.

37. The original version would have permitted electors to use an expired driver's license plus a U.S. Postal Service change of address form or bill and bank statement with identification that had a non-current address in order to prove current residency within the precinct.

38. The Senate, however, removed these provisions and amended the bill to make the voter ID requirements even more restrictive.

39. The amendment that became HB 1333 also removed the ability of the Secretary of State to prescribe new forms of qualifying ID, and took away the option for students to use college identification certificates that the Secretary had previously recognized as an acceptable voter ID. It did, however, statutorily keep the long-term care certificate as a valid form of ID.

40. As a result, North Dakota now permits citizens to use only four forms of qualifying ID in order to vote.

41. Additionally, HB 1333 made clear that driver's licenses and non-driver ID cards must be current and not expired to be accepted at the polls. Under HB 1333, military identification is not an acceptable form of ID, except for service members stationed away from their North Dakota residence.

42. HB 1333 also restricted absentee voting.

43. Prior to passage of HB 1333, absentee voters without a qualifying ID could submit an absentee ballot if another qualified elector vouched for his or her qualifications.

44. HB 1333 removed this provision for everyone except disabled voters, thus also severely restricting absentee voting.

45. Enactment of HB 1332 disenfranchised and imposed significant barriers for qualified Native American voters by establishing strict voter ID and residence requirements. Those requirements had the result of denying Native Americans, including Plaintiffs, an equal opportunity to participate in the political process.

46. The strict voter ID requirements of HB 1332 and 1333 interact with social and historical conditions to cause an inequality in the opportunities enjoyed by Native American and White voters to participate in the political process and elect their preferred representatives.

### **HB 1332'S AND 1333'S BURDEN ON NATIVE AMERICANS**

#### **GENERAL NATIVE AMERICAN DEMOGRAPHICS IN NORTH DAKOTA**

47. According to the 2010 Census, North Dakota had a total population of 672,591.

48. According to the 2010 Census, North Dakota had a Native American population, alone, of 36,591(5.4%). The total number of individuals identifying either as Native American, or as Native American and at least one other race, was 42,996 (6.4%).

49. According to the 2010 Census, 8,320 Native Americans lived on the Turtle Mountain Reservation – home of the Turtle Mountain Band of Chippewa Indians. *Statistics*, NORTH DAKOTA INDIAN AFFAIRS COMMISSION, [www.nd.gov/indianaffairs/?id=76](http://www.nd.gov/indianaffairs/?id=76) (last accessed Jan. 11, 2016). The Turtle Mountain Reservation is located in Rolette County, North Dakota. It is approximately 72 square miles in area.

50. The Fort Berthold Indian Reservation, home of the Three Affiliated Tribes (Mandan, Hidatsa, and Arikara), has 4,556 Native Americans living on the reservation according to the 2010 Census. *Id.* The Fort Berthold Indian Reservation occupies sections of six counties in North Dakota: Mountrail, McLean, Dunn, McKenzie, Mercer, and Ward. The Fort Berthold Indian Reservation covers approximately 980,000 acres.

51. The Spirit Lake Reservation, home of the Spirit Lake Tribe, has 3,587 Native Americans living on the reservation according to the 2010 Census. *Id.* The Spirit Lake Reservation occupies sections of four counties in North Dakota: Benson, Eddy, Nelson, and Ramsey. The Spirit Lake Reservation covers approximately 245,120 acres.

52. The Lake Traverse Reservation is the home of the Sisseton Wahpeton Oyate, and has only eight Native Americans living on the North Dakota side of the reservation according to the



2010 Census. According to the 2013 American Indian Population and Labor Force Report by the Bureau of Indian Affairs, there were 448 tribal members living on the North Dakota portion of the Lake Traverse Reservation. *2013 American Indian Population and Labor Force Report*, U.S. DEPARTMENT OF THE INTERIOR (2014), <http://www.bia.gov/cs/groups/public/documents/text/idc1-024782.pdf>. The Lake Traverse Reservation covers approximately 250,000 acres. The northern portion of the Reservation is located in Sargent and Richland counties in southeastern North Dakota.

53. The Standing Rock Reservation, home of the Standing Rock Sioux Tribe, has 3,492 Native Americans living on the reservation according to the 2010 Census. The Standing Rock Reservation is located in Sioux County, North Dakota. The reservation covers approximately 2.3 million acres.

54. Chart 1 below provides the number of Native American people living in each of the fourteen North Dakota counties whose territory is wholly or partly on Indian reservations, according to the 2010 U.S. Census.

*Chart 1*

North Dakota County	Reservation and Tribe(s)	Number of County Residents That are Native American; Percentage of the County Population (U.S. Census 2010)
Rolette	Turtle Mountain Reservation: Turtle Mountain Band of Chippewa Indians	10,763; 77.2%
Mountrail	Fort Berthold: Three Affiliated Tribes	2,348; 30.6%
McLean	Fort Berthold: Three Affiliated Tribes	625; 7%

Dunn	Fort Berthold: Three Affiliated Tribes	449; 12.7%
McKenzie	Fort Berthold: Three Affiliated Tribes	1,412; 22.2%
Mercer	Fort Berthold: Three Affiliated Tribes	196; 2.3%
Ward	Fort Berthold: Three Affiliated Tribes	1,630; 2.6%
Sargent	Lake Traverse: Sisseton Wahpeton Oyate	20; 0.5%
Richland	Lake Traverse: Sisseton Wahpeton Oyate	330; 2%
Benson	Spirit Lake Reservation: Spirit Lake Tribe	3,663; 55%
Eddy	Spirit Lake Reservation: Spirit Lake Tribe	58; 2.4%
Nelson	Spirit Lake Reservation; Spirit Lake Tribe	30; 1%
Ramsey	Spirit Lake Reservation; Spirit Lake Tribe	994; 8.7%
Sioux	Standing Rock Reservation; Standing Rock Sioux Tribe	3,492; 84.1%

*Profile of General Population and Housing Statistics: 2010 Demographic Profile Data, U.S.*

CENSUS BUREAU, Table DP-1 (2010),

<http://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (set to decennial census and modified for state and county data sets).

#### UNEMPLOYMENT IS GREATER FOR NATIVE AMERICANS IN NORTH DAKOTA

55. According to the 2009-2013 American Community Survey 5-Year Estimates, North Dakota as a whole has an unemployment rate of 3.3%, and a not in labor force rate of 29.5%.

56. According to the same survey, the unemployment rate for the White population in North Dakota is 2.8%, while the unemployment rate for the Native American population in North Dakota is 10.3%. The percentage of White people not in the labor force in North Dakota is 29%, while the percentage of Native Americans not in the labor force in North Dakota is 42.8%.

57. Chart 2 below displays the estimated percentage of employed American Indians and Alaska Natives in civilian jobs for each tribe in North Dakota, according to the federal Bureau of Indian Affairs (“BIA”).

*Chart 2*

<b>Tribe</b>	<b>Estimated percentage of American Indian/Alaska Native Population Employed in Civilian Jobs in the Tribal Statistical Area</b>	<b>Estimated percentage of American Indian/Alaska Native Population Employed in Civilian Jobs in the Tribal Statistical Area and Nearby Counties</b>
<b>Three Affiliated Tribes</b>	50.9-61%	<i>Unavailable</i>
<b>Turtle Mountain Band of Chippewa Indians</b>	35.4-44.1%	<i>Unavailable</i>
<b>Standing Rock Sioux Tribe</b>	<i>Unavailable</i>	44.5-53.1% (North Dakota only)
<b>Spirit Lake Tribe</b>	39.9-47.2%	40.2-50.6%
<b>Sisseton-Wahpeton Oyate</b>	48.7-57.9% (North and South Dakota)	

*2013 American Indian Population and Labor Force Report*, U.S. DEPT. OF THE INTERIOR, 50-51 (2014), <http://www.bia.gov/cs/groups/public/documents/text/idc1-024782.pdf>.

#### **POVERTY IS GREATER FOR NATIVE AMERICANS IN NORTH DAKOTA**

58. According to the 2009-2013 American Community Survey 5-Year Estimates, North Dakota as a whole has a family poverty rate of 7.1%. This statistic represents the number of families whose income in the past 12 months was below the poverty level. The state has an

individual poverty rate of 11.9%, which includes individuals whose income in the past 12 months was below the poverty level. *Poverty Status in Past 12 Months, 2009-2013 American Community Survey 5-Year Estimates*, U.S. CENSUS BUREAU, Tables S1701 and S1702

<http://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (modified for state data sets).

59. According to the 2009-2013 American Community Survey, the Fort Berthold Reservation has a family poverty rate of 18.6%. Families with at least one Native American household member have a poverty rate of 27.3%. Native American individuals have a poverty rate of 29.2%. *Id.* (modified for reservation data sets).

60. The Lake Traverse Reservation has a family poverty rate of 15%. Families with at least one Native American household member have a poverty rate of 36.9%. Native American individuals have a poverty rate of 40.8%. *Id.*

61. The Spirit Lake Reservation has a family poverty rate of 41.3%. Families with at least one Native American household member have a poverty rate of 49.9%. Native American individuals have a poverty rate of 53.5%. *Id.*

62. The Standing Rock Reservation has a family poverty rate of 33.6%. Families with at least one Native American household member have a poverty rate of 46%. Native American individuals have a poverty rate of 51.3%. *Id.*

63. The Turtle Mountain Reservation has a family poverty rate of 36.9%. Families with at least one Native American household member also have a poverty rate of 36.9%. Native American individuals have a poverty rate of 40.1%. *Id.*

64. As Chart 3 below reveals, the 2009-2013 American Community Survey 5-Year Estimates also shows that a disproportionately large percentage of individual Native Americans live below the poverty line when compared with White North Dakotans when broken down by county.

Chart 3

	<b>Percentage of all Citizens Living Below Poverty Line</b>	<b>Native Americans Living Below Poverty Line</b>	<b>White North Dakotans Living Below Poverty Line</b>
<b>North Dakota</b>	11.9%	39.6%	9.6%
<b>Sioux County</b>	40.5%	45%	10.6%
<b>Rolette County</b>	36%	41.4%	13.5%
<b>Benson County</b>	35.8%	53.2%	13.8%
<b>Mountrail County</b>	12.3%	21.9%	7.8%
<b>McKenzie County</b>	13.8%	47.2%	6%
<b>Dunn County</b>	10.1%	21.1%	9.1%
<b>Ramsey County</b>	12.1%	47.1%	7.7%
<b>McLean County</b>	10.9%	18.5%	10.4%
<b>Sargent County</b>	7.4%	31.6%	7%
<b>Ward County</b>	9.1%	29%	8.5%
<b>Mercer County</b>	7.3%	29.8%	6.8%
<b>Richland County</b>	11.8%	22.9%	11.1%

*Poverty Status in Past 12 Months, 2009-2013 American Community Survey 5-Year Estimates*, U.S. CENSUS BUREAU, Table S1701, <http://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (last visited Jan. 11, 2016) (modified for county and state data sets).

#### **NATIVE AMERICANS ARE DISPROPORTIONATELY HOMELESS**

65. Additionally, Native American people make up a disproportionate part of the state's homeless population. According to a 2014 point-in-time survey of homeless persons conducted for the U.S. Department of Housing and Development by the North Dakota Coalition for Homeless People, the total homeless population in North Dakota was 1,258. Of the total number of homeless people, 213 were American Indian or Alaska Native, making up 16.9% of the total, despite the fact that Native Americans make up only about 5% of the total state population. The point in time survey for 2015 had similar results.

#### **NATIVE AMERICANS FACE GREATER HEALTH THREATS IN NORTH DAKOTA**

66. The North Dakota Department of Health has released data from the 2010 census showing that among ten leading causes of death, the rate of death for Native American North Dakotans is higher than for the state's general population. North Dakota Dept. of Health, *North Dakota American Indian Health Profile* (2014), <http://www.ndhealth.gov/healthdata/communityhealthprofiles/American%20Indian%20Community%20Profile.pdf>.

67. The rate of infant and child deaths is also much higher among Native Americans in North Dakota than among the general population. *Id.*

68. Greater numbers of Native Americans in North Dakota are living with a disability than in the general North Dakotan population. While 8.6% of North Dakotans 18-65 live with a disability, 17.5% of Native Americans in the state do. *Id.*

**NATIVE AMERICANS ARE LESS LIKELY TO HAVE ACCESS TO TRANSPORTATION IN NORTH DAKOTA**

69. The 2006-2010 American Community Survey shows that 4.8% of White households in North Dakota lacked access to a vehicle, while 10.5% of Native American households did not have access to a vehicle. Native American households are twice as likely to be unable to access a motor vehicle.

70. In four counties in North Dakota, 8% or more of households lack access to a motor vehicle. Those counties include Sioux (12.5%); Benson (8.4%); Pierce (8.3%); and Rolette (8.2%.) Sioux, Benson, and Rolette counties have the largest percentages of Native American residents of North Dakotan counties.

**OBTAINING A QUALIFYING STATE ID IN NORTH DAKOTA**

71. The Secretary of State estimated that approximately 10% of North Dakota's voting age population lack qualifying ID to vote.

72. As the statistics above show, qualified Native American voters face substantial obstacles to obtaining an acceptable form of voter ID.

73. According to a nationwide study, citizens earning less than \$25,000 a year are twice as likely to lack documentation necessary to obtain qualifying forms of ID. Brennan Ctr. For Justice, *Citizens Without Proof* (2006), [http://www.brennancenter.org/sites/default/files/legacy/d/download\\_file\\_39242.pdf](http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf). The same report found that citizens earning less than \$35,000 a year are more than twice as likely to lack current government-issued photo identification. *Id.*

74. Poverty is much higher for Native Americans in North Dakota, and as a result Native Americans in North Dakota disproportionately lack underlying documentation for, possession of, and access to qualifying forms of ID required by HB 1332 and 1333.

75. Although North Dakota law allows for use of an “official form of ID issued by a Tribal government,” Plaintiffs, as well as many other Native Americans in North Dakota, do not possess tribal government IDs containing a residential address, which is required by HB 1332 and 1333.

76. Further, some tribal IDs are issued by the BIA.

77. Residential or “911” addresses have only recently arrived on the reservations in North Dakota.

78. As a result, many tribal members do not know their residential address. Some tribal members have been told they have more than one residential address, and many either may not have one, or believe they do not.

79. Many tribal IDs do not include any address, and most tribes and the BIA do not require that tribal citizens put a “residential address” on tribal IDs.

80. Even among tribal IDs that include a form of address, due to lack of residential mail delivery and the relatively recent issuance of residential (911) addresses, many tribal citizens only list a P.O. Box address on their tribal IDs because that is the address they utilize for conducting their affairs or the address that they know.

81. Native Americans disproportionately lack unexpired qualifying forms of ID that contain a current residential address when compared with non-Native Americans in North Dakota.

**LIMITED HOURS OF, AND DISTANCE TO, NORTH DAKOTA DLS SITES**

82. In order to obtain a North Dakota driver’s license or a nondriver ID card, a qualified voter in North Dakota must go to one of North Dakota’s 27 DLSs.

83. There is not a single DLS on an Indian reservation in North Dakota.



84. Moreover, the DLSs closest to North Dakota Indian reservations typically have very limited hours and are often located in places that are difficult for Native Americans to access.

85. For instance, the closest DLS to the Standing Rock Reservation is in either Carson or Bismarck. The Carson site is only open the first Wednesday of every month from 9:00 a.m. to 3:20 p.m. Otherwise, an individual living on the Standing Rock Reservation would have to travel to Bismarck to obtain a state ID. The mean travel distance for voting age Native Americans from the Standing Rock Reservation to a DLS is 60.8 miles, and the mean travel time is 106.6 minutes.

86. The closest DLS to the Turtle Mountain Reservation, located in Rolla, is only open on the second and fourth Tuesday of every month and only from 9:40 a.m. to 3:20 p.m. The next closest site to the Turtle Mountain Reservation, located in Bottineau, is only open the first and third Tuesday of every month and only from 9:30 a.m. to 3:30 p.m. The mean travel distance for voting age Native Americans from Turtle Mountain Reservation to a DLS is eleven miles, and the mean travel time is 17.4 minutes.

87. The closest DLS to the Fort Berthold Reservation is either in Watford City or Beulah. The Watford City site is only open on the first and third Wednesday of each month from 9:40 a.m. to 3:40 p.m. The Beulah site is only open on the second and fourth Wednesday of each month from 9:40 a.m. to 3:20 p.m. Otherwise, a tribal member on the Fort Berthold Reservation would have to travel farther to Williston or Minot. The mean travel distance for voting age Native Americans from Fort Berthold Reservation to a DLS is 49.6 miles. The mean travel time is 84.6 minutes.

88. The closest DLS to the Lake Traverse Reservation is either the Oakes site or the Wahpeton site. The Oakes DLS is only open on the second Wednesday of each month from 9:20

a.m. to 3:40 p.m. The Wahpeton site is only open on the first and third Thursday of each month from 8:20 a.m. to 4:40 p.m. The mean travel distance for voting age Native Americans from Lake Traverse Reservation to a DLS is 40.1 miles, and the mean travel time is 64.3 minutes.

89. The closest DLS to the Spirit Lake Reservation is in Devil's Lake. That site is open every weekday from 8:00 a.m. to 4:45 p.m., except Wednesdays. The mean travel distance for voting age Native Americans from Spirit Lake Reservation to a DLS is 14 miles. The mean travel time is 25.3 minutes.

90. There are no DLS sites open on Saturday or Sunday in North Dakota, and the times and hours that the DLS sites are open change periodically.

91. For some Native Americans, traveling these distances would be unduly burdensome and costly given their lack of access to transportation and the time needed during working hours.

92. Charts 4 and 5 below illustrate the limited hours of, and average travel distances and times to, a DLS from each North Dakota reservation.

*Chart 4*

<b><i>Reservation</i></b>	<b><i>Mean Travel Distance to a DLS for Voting Age Native Americans</i></b>	<b><i>Mean Travel Time to a DLS for Voting Age Native Americans</i></b>
Ft. Berthold	<b>49.6 miles</b>	<b>84.6 minutes</b>
Turtle Mountain	11.0 miles	17.4 minutes
Spirit Lake	<b>14.0 miles</b>	<b>25.3 minutes</b>
Standing Rock	60.8 miles	106.62 minutes
Lake Traverse	<b>40.1 miles</b>	<b>64.3 minutes</b>
All Reservations	29.4 miles	50.3 minutes

Chart 5

<b>Reservation</b>	<b>Closest Driver's Licensing Site(s)</b>	<b>Hours of Operation*</b>
Standing Rock	Carson	1 <sup>st</sup> Wed. of the month, 9:00 AM-3:20 PM
Standing Rock	Bismarck	Mon.-Fri., 7:30 AM-4:45 PM
Turtle Mountain	Rolla	2 <sup>nd</sup> and 4 <sup>th</sup> Tues., 9:40 AM-3:20 PM
Turtle Mountain	Bottineau	1 <sup>st</sup> and 3 <sup>rd</sup> Tues., 9:30 AM-3:30 PM
Fort Berthold	Watford City	1 <sup>st</sup> and 3 <sup>rd</sup> Wed., 9:40 AM-3:40 PM
Fort Berthold	Beulah	2 <sup>nd</sup> and 4 <sup>th</sup> Wed., 9:40 AM-3:20 PM
Lake Traverse	Oakes	2 <sup>nd</sup> Wed., 9:20 AM-3:40 PM
Lake Traverse	Wahpeton	1 <sup>st</sup> and 3 <sup>rd</sup> Thurs., 8:20 AM-4:40 PM
Spirit Lake	Devil's Lake	Mon., Tues, Thurs, Fri., 8:00 AM-4:45 PM

\*Hours of operation are based on a North Dakota Department of Transportation document revised September 2015. N.D. Dep't. of Transp., *Drivers License Sites* (2015), <https://www.dot.nd.gov/divisions/driverslicense/docs/Drivers%20Lic%20Sites.pdf>.

#### ACCESS TO TRANSPORTATION

93. As discussed above, when compared to White voters, Native American voters disproportionately lack access to transportation necessary to access driver's license locations.

Likewise, taking public transit requires much more time, making it difficult to do so when an individual is working.

94. It will be severely burdensome or impossible for many Native Americans without vehicles to access a DLS.

#### **COSTS**

95. High rates of poverty and unemployment among Native Americans in North Dakota prevent, and will continue to prevent, many Native Americans from travelling to a DLS and obtaining a requisite ID for voting.

96. The lack of a nearby DLS with wide-ranging operating hours places a substantial cost burden on Native Americans when attempting to exercise their right to vote in North Dakota.

97. For those that do have to work, they will likely be required to take work off to make it to the DLS due to the very limited hours.

98. The distance to state DLSs, lack of access to transportation, low incomes of Native Americans, and limited hours of DLS operation requiring time off from work combine with social and historical conditions to make access to these locations an unduly burdensome expense for Native American voters. This excessive burden and expense falls disproportionately on Native Americans.

99. The cost and lack of access to documents necessary to obtain the required voter ID is also disproportionately burdensome for Native Americans in North Dakota.

100. HB 1332 waived the fee associated with the issuance or renewal of a non-driver ID card for eligible applicants that do not already have a North Dakota Driver's license. If, however, an eligible applicant for a non-driver ID already has a driver's license, or is seeking a replacement for an unexpired non-driver ID, there is an \$8 fee.

101. Additionally, the North Dakota DLSs apply the non-driver fee waiver inconsistently.

102. Accordingly, for Native Americans that need a duplicate ID, they will have to pay \$8 to obtain a state ID in order to exercise their right to vote, in addition to any transportation costs, the costs for any supporting documentation, and any costs due to loss of work because the offices have such limited hours.

103. A renewal for a non-commercial driver's license is \$15.

104. Assuming a person can obtain a ride or other transportation to a DLS during its limited hours, that person must show proof of identity (name, date of birth, and legal presence in the U.S.) in order to get an ID.

105. Obtaining the required documentation to prove identity costs time and money.

106. The least expensive document to prove identity is a North Dakota birth certificate, which costs \$7.

107. If a voter is born out of state, however, the cost is likely more.

108. Also, Native Americans disproportionately lack birth certificates.

109. Additional documentation – and additional costs – are required if the person's name has changed, for example due to marriage.

110. For those having to produce U.S. citizenship and naturalization papers, the cost for those papers is \$345.

111. Obtaining a North Dakota birth certificate and driver's license or non-driver ID presents a conundrum for many Native American voters: the North Dakota Department of Health ("DOH") requires an ID to obtain a certified copy of a birth certificate, but the applicant needs the birth certificate to procure the state ID necessary to obtain the birth certificate; other forms of ID accepted by DOH are either expensive or have limited availability.

112. For someone seeking a license or non-driver ID, proof of a physical residential address is required.

113. The Department of Transportation does not accept a P.O. Box as proof of a residential address.

114. Many qualified Native American voters will have a hard time furnishing one or more of the limited, acceptable forms of proof of residential address in order to obtain a qualifying ID in North Dakota.

115. Individuals without a physical residential address will not be able to obtain a free non-driver ID.

116. Neither HB 1332 nor HB 1333 provided waivers or exemptions from the underlying documentation required for an applicant to obtain a non-driver ID card, or from the costs and fees associated with obtaining this underlying documentation. Nor do these laws address any fees that will be imposed on voters who must obtain the requisite underlying documentation from out-of-state agencies.

117. Similarly, North Dakota has not provided any funding to offset the cost faced by prospective voters purchasing new tribal ID cards that have residential addresses.

118. For example, a new Turtle Mountain tribal ID card is \$10.

119. Even though the state advertises the non-driver IDs as “free,” there is a disproportionate cost to obtain the ID for some voters.

120. Moreover, there is the burden of time, transportation, and cost to obtain an ID and the documentation needed to get one, and many Native American voters will find it impossible to overcome all these hurdles to obtain the required ID and documentation due to social and historical conditions that lead to their economic circumstances.

121. Due to the costs involved in obtaining a qualifying ID, many Native American voters have been, and will continue to be disenfranchised.

122. Other states with strict voter ID laws have provisions that protect indigent voters from the prohibitive costs of obtaining this underlying documentation.

123. Wisconsin, for example, provides that applicants can still obtain a free ID for voting purposes if the “applicant is unable to provide documents for proof of name and date of birth [or United States citizenship] required by [Wisconsin law] which require a fee to a government agency to obtain.” An indigent voter must fill out a form in lieu of providing the documents. *Obtaining an Identification (ID) Card*, WIS. DEP’T. OF TRANSP., <http://wisconsindot.gov/Pages/dmv/license-drvs/how-to-apply/id-card.aspx> (last visited Jan. 10, 2016).

124. Social and historical conditions lead to high rates of poverty and unemployment among Native Americans in North Dakota, which prevent and will continue to prevent many Native Americans from obtaining the requisite underlying documentation necessary to obtain an ID required for voting.

125. The passage of HB 1332 and 1333 caused this disproportionate impact to Native Americans.

**THE SECRETARY OF STATE’S CAMPAIGN**

126. In March of 2014, the Secretary of State announced a statewide advertising campaign, utilizing federal funds, to educate the North Dakota public on the requirements of HB 1332 - then the new voter ID law.

127. The Secretary of State’s campaign to educate qualified electors about HB 1332 and 1333’s requirements has been insufficient. Not all qualified electors heard or saw the education

materials, and electors who did hear or see the materials found them misleading. The State's education materials left qualified electors believing that their tribal ID was a qualifying form of ID, when many tribal IDs do not contain a residential address as required under HB 1332 and 1333. Because electors believed they had qualifying ID, they did not attempt to obtain a new ID before attempting to vote and were ultimately denied the right to vote due to lack of a qualifying ID.

#### **VOUCHER AND AFFIDAVIT**

128. The Secretary of State stated that the total number of individuals who utilized the affidavit provision in the election before the adoption of HB 1332 was 10,517.

129. Native Americans disproportionately relied on the affidavit and voucher fail-safe provisions that were removed by HB 1332 and were therefore disproportionately burdened by the elimination of those provisions.

#### **VOTER DISENFRANCHISEMENT**

130. The Secretary of State's office and North Dakota Association of Counties endeavored to track the number of people that attempted to vote in the June 2014 primaries and were disenfranchised. Chart 6 below provides the number of people denied the right to vote in North Dakota counties where reservations are located, and the number of those that returned to vote with qualifying ID in the 2014 primary election.

*Chart 6*

<b>COUNTY</b>	<b>Number with ID, But Not Updated</b>	<b>Number with No ID</b>	<b>Number that Returned to Vote</b>	<b>Comments</b>
<b>Benson</b>	0	6	1	One returned with ID and voted – several attempted to use a Tribal ID with no physical address listed



<b>Dunn</b>	No Response			
<b>McKenzie</b>	No Response			
<b>McLean</b>	No Response			
<b>Mercer</b>	0	0	0	
<b>Mountrail</b>	No Response			
<b>Ramsey</b>	0	0	0	There were a few tribal members who had tribal IDs with no residential address, but they all had driver's licenses, so they were able to vote successfully. The local media did a great job of helping get the word out.
<b>Richland</b>	0	1	0	
<b>Rolette</b>	20	35	0	30-35 of the people turned away only had tribal IDs that did not have their residential address on it. The remaining 15-20 had drivers' licenses but their records did not place them in the precinct in Rolette County.
<b>Sargent</b>	0	2	0	One individual claimed not to have an ID. The other attempted to use their passport to vote in person.
<b>Sioux</b>	0	4	4	All returned with ID and voted.
<b>Ward</b>	0	2	0	Long term residents had not yet obtained ND IDs.

131. After the 2014 primary election, the Secretary of State noted that the number of problems were higher with tribal IDs during that election.

132. Additionally, during the 2014 general election, a significant number of voters were turned away from polling locations because they did not meet the requirements set forth by the voter ID law and the Secretary of State's office.

133. Following the general election, the North Dakota Association of Counties surveyed all 53 county auditors, 25 of which responded.

134. According to the feedback from the 25 county auditors - less than half of all of the county auditors - around 1200 voters were disenfranchised due to improper voter ID.

135. The passage of HB 1333 made the voter ID requirements even more stringent. It is likely that it will only further contribute to the disenfranchisement of Native American and other North Dakotan voters.

136. In the absence of relief under Section 3(a) of the Voting Rights Act, 52 U.S.C. § 10302(a), there is a danger that North Dakota will continue to violate the Voting Rights Act and the voting guarantees of the Fourteenth and Fifteenth Amendments in the future.

**NORTH DAKOTA'S INTERESTS AND THE LACK OF EVIDENCE OF VOTER FRAUD**

137. The state has identified four reasons why the voter ID law was purportedly necessary despite its sound election administration: 1) to prevent and cut down on voter fraud; 2) to streamline the voting process; 3) to cut down on the perception that the affidavit ballots get mixed in with the other ballots and they cannot be retrieved; and 4) to make the election process fair, open, and honest.

138. Voter ID laws only address one type of fraud: in person voter fraud. The legislative record is devoid of any evidence of in person voter fraud in North Dakota.

139. Even if the law were drawn to address this type of fraud, the very strict approach that North Dakota took results in disenfranchisement of significant numbers of qualified Native American and other voters.

140. An election where a large percentage of voters cannot vote because of obstacles created by the state, which are arbitrarily restrictive and not necessary, is not free, fair, and open.

141. The overly-restrictive nature of North Dakota's voter ID law is further illustrated by the fact that all states with strict voter ID laws provide a fail-safe option as well as exceptions for indigent voters, which North Dakota does not.

#### **HISTORY OF DISCRIMINATION IN NORTH DAKOTA**

142. North Dakota has a long history of discrimination against Native Americans generally, and with voting in particular.

#### **DISCRIMINATION IN VOTING**

143. This Court has previously recognized the history of discrimination in North Dakota against Native Americans with regard to voting. *See Spirit Lake Tribe v. Benson Cty., N.D.*, No. 2:10-cv-095, 2010 WL 4226614, at \*3 (D.N.D. 2010) (citing *State ex rel. Tompton v. Denoyer*, 72 N.W. 1014, 1019 (N.D. 1897); *United States v. Benson Cty., N.D.*, No. 2:00-cv-30, ECF No. 2 (D.N.D. 2000) (Consent Judgment and Decree) *available at* [http://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/benson\\_cd.pdf](http://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/benson_cd.pdf).

144. An Amendment to North Dakota's initial Constitution, adopted and ratified in 1898, specifically addressed whether Native Americans were eligible voters. N.D. CONST. of 1898, art. v, § 121. Article V, Section 121 provided that only "[c]ivilized persons of Indian descent" who "severed their tribal relations two years next preceding such election" were eligible to vote. *Id.* Thus, in order to vote, Native Americans had to be "civilized" and had to have explicitly "severed their tribal relations." *Id.* This insidious classification only applied to Native Americans and was not removed until 1922.

145. The North Dakota Constitution also established an educational test requirement as a precondition for voting. The requirement stated "the legislature shall by law establish an educational test as a qualification, and may prescribe penalties for failing, neglecting, or refusing to vote at any general election." *Id.* Literacy tests were a common method used to disenfranchise minority voters, and were addressed by the Voting Rights Act. *See South Carolina*

v. *Katzenbach*, 383 U.S. 301, 312, 316 (1966) (discussing the discriminatory use of literacy tests and the Voting Rights Act's ban of such tests).

146. Further, the North Dakota Code had, under “section 480, Rev. Codes,” a provision that did not allow Native Americans to be voters “unless they had entirely abandoned their tribal relations, and were in no manner subject to the authority of any Indian chief or Indian agent.” *Denoyer*, 72 N.W. at 1019.

147. In *Denoyer*, Native American voters in North Dakota had to take their quest to get a voting precinct on the Spirit Lake Reservation to the North Dakota Supreme Court because the County had denied them the right to have a precinct on the reservation. *Id.* at 1015.

148. In 1920 in *Swift v. Leach*, 178 N.W. 437 (N.D. 1920), the North Dakota Supreme Court was asked to apply the “civilized persons” constitutional provision to Native American voters. While the Court found that the Native American plaintiffs were eligible voters in that case, it required the local Superintendent of the Bureau of Indian Affairs, as well as other witnesses, to testify that the Natives “live just the same as white people” to show that they were “civilized” and had “severed” their tribal relationship. *Id.* at 438-40. This was despite the Appellant’s argument that the Native Americans, by being dependent on the federal government, could not be “civilized persons.” *Id.* at 441.

149. Discrimination against Native American voters in North Dakota is not a relic of the 19th and early 20th century. In 2000, the Justice Department filed an action against Benson County, North Dakota in this Court to enforce Section 2 of the Voting Rights Act for conducting at large elections that gave Native Americans less opportunity to participate in the political process. The parties entered into a consent decree and Benson County agreed to change the way it conducted elections from one at-large district to five separate districts, with two majority Native American districts. *United States v. Benson Cty.*, N.D., No. 2:00-cv-30, ECF No. 2 (D.N.D. 2000) (Consent

Judgment and Decree) *available at*

[http://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/benson\\_cd.pdf](http://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/benson_cd.pdf).

150. In 2010, Spirit Lake again had to file suit to keep a polling place on its reservation, and this Court found that the removal of that polling place was likely a violation of Section 2. *Spirit Lake Tribe v. Benson Cty., N.D.*, No. 2:10-cv-095, 2010 WL 4226614, at \*3 (D.N.D. 2010). After a preliminary injunction hearing, the polling place was reestablished on the reservation. *Id.* at \*6.

#### **DISCRIMINATION IN OTHER AREAS**

151. Native Americans bear the effects of discrimination in other areas in North Dakota as well, which hinders their ability to participate effectively in the political process.

##### **Education**

152. The “past federal policy was to assimilate American Indians into United States culture, in part by deliberately suppressing, and even destroying, traditional tribal religions and culture in the 19th and early 20th centuries.” *Bear Lodge Multiple Use Ass’n v. Babbitt*, 175 F.3d 814, 817 (10th Cir. 1999). “By the late 19th Century federal attempts to replace traditional Indian religions with Christianity grew violent. In 1890 for example, the United States Cavalry shot and killed 300 unarmed Sioux men, women and children en route to an Indian religious ceremony called the Ghost Dance[.]” *Id.*

153. Indeed, the government administered Indian trust funds to pay Christian denominations to educate the Indians about Christianity – a policy upheld by the Supreme Court. *Reuben Quick Bear v. Leupp*, 210 U.S. 50, 81-82 (1908).

154. Native Americans in North Dakota were not exempt from this overt discrimination and cultural assimilation.

155. Christian and government boarding schools were set up all over in North Dakota to indoctrinate the Native Americans into Christianity, or “civilization.” *See e.g.* UNITED STATES

OFFICE OF INDIAN AFFAIRS, EXTRACTS FROM THE ANNUAL REPORT OF THE SECRETARY OF THE INTERIOR, 45 (1927).

156. There were at least 19 boarding or day schools in North Dakota for Native Americans. COMMISSIONER OF INDIAN AFFAIRS, ANNUAL REPORTS OF THE DEPARTMENT OF THE INTERIOR FOR THE FISCAL YEAR ENDED JUNE 30, 1903 18, 20, 23 (1904).

157. In 1921, the federal government recognized the disparity in Native American education in the *Meriam Report: The Problem of Indian Administration* (“Meriam Report”). The Meriam Report showed that the theory of removing Native children “as far as possible” from their home environment did not work, and that Native schools in general were “distinctly below the accepted social and educational standards of school systems in most cities and the better rural communities.” INST. FOR GOV’T RESEARCH, THE PROBLEM OF INDIAN ADMIN. 346 (1928). For instance, in 1920 in North Dakota the rural illiteracy rate was only 2.2%, but the Native Americans showed an illiteracy rate of 29.6%. *Id.* at 357.

158. While many Native Americans attended federal schools, the effects of discrimination were still felt even after Native Americans began attending public schools.

159. The 1969 Report by the Senate Committee on Labor and Public Welfare, entitled *Indian Education: A National Tragedy – A National Challenge*, otherwise known as the “Kennedy Report,” highlighted the failure of public schools. COMMITTEE ON LABOR PUBLIC WELFARE, SPECIAL SUBCOMMITTEE ON INDIAN EDUCATION, INDIAN EDUCATION: A NATIONAL TRAGEDY – A NATIONAL CHALLENGE, S. REP. NO. 91-501 (1969) [hereinafter *Kennedy Report*]. The report found that Indian children were subjected to humiliating stereotypes in the public school setting, faced language discrimination, felt a sense of powerlessness and experienced depression, and generally did not receive education relevant to their cultures. Evidence showed that dropout rates were higher and reading levels lower among Indian children. *Id.* at 23-31. The report also found that Indian people were generally prevented from serving on school boards. *Id.*

160. The effects of discrimination in the educational setting are still felt by Native Americans in North Dakota.

161. The North Dakota Native Education Division in the North Dakota Department of Public Instruction has noted that Native American students constitute approximately 8.9% of the total North Dakota enrolled student population.

162. The North Dakota Native Education Division found that for many Native students, “the dominant culture of the public school is incompatible with their own cultures and languages. There are differences in distinct and various ways of acquiring knowledge, forms of communication, familial structures, and sociological, cultural, and linguistic modes [of] learning of Native learners, which can cause problems for Native American students in the school environment. Socio-economic issues also complicate the learning environment as well. The consequences of these issues are realized by low achievement scores, [and] high dropout and transfer rates. For example, the 1999 dropout rate for Native American students [in North Dakota] was 42.2 percent. The economic conditions of many Native communities reveal high incidences of poverty, unemployment, and health problems for Native children and their families.” N.D. Dep’t of Pub. Transp., *Educational Condition*, nd.gov, [https://www.nd.gov/dpi/SchoolStaff/IME/Programs\\_Initiatives/IndianEd/resources/EducationalCondition/](https://www.nd.gov/dpi/SchoolStaff/IME/Programs_Initiatives/IndianEd/resources/EducationalCondition/) (last visited Jan. 12, 2016).

163. According to the 2009-2013 American Community Survey 5-Year Estimates, Native American residents in North Dakota are far more likely to lack a high school diploma than other groups in the state as a whole—18.6% of Native American residents over the age of 25 lack a high school diploma compared to 9.1% of the state as a whole. Only 8.4% of White residents over the age of 25 have less education than a high school diploma.

164. According to the Department of Education Office of Civil Rights, Native American students receive out of school suspensions at much higher rates than their White counterparts.

165. From 2011-2012, 9% of male Native Americans were given out of school suspensions in North Dakota, while only 2% of White male students were given out of school suspension. Likewise, 6% of female Native American students were given out of school suspensions in 2011-2012, while only 1% of White female students were given out of school suspensions.

166. The kindergarten retention rate in North Dakota shows similar disparity. According to the Department of Education Office of Civil Rights, between 2011-2012, 8% of Native American kindergarten students were retained an extra year in North Dakota compared to 4% of their White counterparts.

167. Thus, as the North Dakota Native American Education division documented, the effects of historical discrimination in North Dakota continue to have a negative impact on Native Americans.

#### **Loss of Land**

168. The loss of Native American land through the discriminatory allotment policies also still plagues Native Americans. As was stated in the 1948 Hoover Commission's evaluation of the allotment policy: "Two-thirds of Indian-owned land, including much of the best land, was alienated before the Allotment policy was abandoned. If the 90 million acres lost through the process had remained in Indian ownership, the problem of poverty among most tribes could be solved with less difficulty and with more certainty today." Kennedy Report at Appendix I, 149-150.

169. Likewise, Senator Robert Kennedy recognized in 1968 that the "Allotment Act succeeded in the period of the next 40 years in diminishing the Indian tribal economic base from 140 million acres to approximately 50 million acres of the least desirable land. Greed for Indian resources and intolerance of Indian cultures combined in one act to drive the American Indian into the depths of a poverty from which he has never recovered." *Id.* at 150.



170. For instance, In 1882 the Turtle Mountain Reservation constituted 22 townships in North Dakota, but by 1884 it was reduced to two townships and the remainder was opened up to the public domain.

171. Likewise, the Great Sioux Reservation, which covered Wyoming, Montana, Nebraska, Colorado, North Dakota, and South Dakota, was diminished greatly by 1890. Nine million acres of land were lost.

### **North Dakota Indian Affairs Commission**

172. Another formal area of discrimination in North Dakota was the North Dakota Indian Affairs Commission, which had several recommendations from its inception to “assimilate” Native Americans into mainstream culture. That was despite the fact that the Commission was established to facilitate relationships with North Dakota Tribes. As the North Dakota Indian Affairs Commission has recognized, it has encompassed the negative rhetoric of termination, assimilation, and relocation for Indian tribes. It was not until 1959 and the roots of self-determination that the tribes within North Dakota acquired representation on the Commission.

### **Lending Discrimination**

173. Federal judicial intervention has been necessary to eliminate numerous other devices intentionally used to discriminate against Native Americans in North Dakota. One notable example includes lending discrimination directed at Native Americans. In 2010, Native American farmers settled a class-action lawsuit for denying them farm loans. The lead plaintiff, Marilyn Keepseagle is from the Standing Rock Sioux Reservation. Evidence in the lawsuit showed that farm agents discriminated against Native farmers systematically.

174. In 2014, the Department of Housing and Urban Development settled a suit on behalf of a Native American couple from North Dakota who was refused a loan because their property was located on the reservation.

175. As the unemployment, poverty, education and other statistics above show, Native Americans in North Dakota have been subject to social and historical discrimination that still impacts them to this day.

176. This social and historical discrimination hinders North Dakota Native Americans' ability to participate effectively in the political process because they are now less able, and often unable, to obtain the necessary documentation and qualifying ID that is now required to vote.

### **CAUSES OF ACTION**

#### **COUNT ONE: HB 1332 AND 1333'S VOTER ID REQUIREMENT VIOLATES SECTION 2 OF THE VOTING RIGHTS ACT.**

177. The Plaintiffs re-allege and incorporate by reference the allegations set forth in all other paragraphs of this complaint.

178. Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, prohibits the enforcement of any voting qualification or prerequisite to voting or any standard, practice, or procedure that has either the purpose or the result of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

179. Due to social and economic conditions caused by and linked to historical and ongoing discrimination, including poverty, unemployment, lower educational attainment, higher rates of disability, and lack of access to transportation, Native American voters are disproportionately burdened by HB 1332 and 1333.

180. Native Americans disproportionately lack the requisite voter ID, due to the effects of historical and ongoing discrimination and are disproportionately burdened by HB 1332 and 1333's strict voter ID requirements, resulting in an adverse discriminatory impact on Native American voters.

181. HB 1332 and 1333 eliminated the voucher and affidavit processes that a qualified elector could previously use to prove his or her qualifications without having a qualifying ID.

182. Viewed in the totality of circumstances, North Dakota's implementation and enforcement of HB 1332 and 1333 has and will continue to individually and collectively interact with economic, historical, and ongoing social conditions in North Dakota – including, but not limited to, poverty, unemployment, lower educational attainment, and lack of access to transportation – and result in a denial or abridgement of equal opportunities for Native American voters to participate in the political process, in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

183. Without an order enjoining the implementation and enforcement of HB 1332 and 1333, Defendants will continue to violate Section 2, resulting in the denial of the right of qualified Native American electors in North Dakota to vote.

**COUNT TWO: HB 1332 AND HB 1333'S ELIMINATION OF THE VOUCHER AND AFFIDAVIT FAIL-SAFE PROVISIONS VIOLATES SECTION 2 OF THE VOTING RIGHTS ACT.**

184. The Plaintiffs re-allege and incorporate by reference the allegations set forth in all other paragraphs of this complaint.

185. Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, prohibits the enforcement of any voting qualification or prerequisite to voting or any standard, practice, or procedure that has either the purpose or the result of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

186. Due to social and economic conditions caused by historical and ongoing discrimination, including poverty, unemployment, lower educational attainment, higher rates of disability, and

lack of access to transportation, Native American voters are disproportionately burdened by HB 1332 and 1333.

187. Native Americans disproportionately lack the requisite voter ID, due to the effects of historical and ongoing discrimination and are disproportionately burdened by the North Dakota Election Code's requirement that voters possess, and prove possession of, a residential address.

188. Native Americans disproportionately relied on the voucher and affidavit process to vote in North Dakota.

189. HB 1332 and 1333 eliminated the voucher and affidavit processes that a qualified elector could previously use to prove the qualifications necessary to vote.

190. Viewed in the totality of circumstances, North Dakota's implementation and enforcement of HB 1332 and 1333 has and will continue to individually and collectively interact with economic, historical, and on-going social conditions in North Dakota – including, but not limited to, poverty, unemployment, lower educational attainment, and lack of access to transportation – and result in a denial or abridgement of equal opportunities for Native American voters to participate in the political process, in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

191. Without an order enjoining the implementation and enforcement of HB 1332 and 1333, Defendants will continue to violate Section 2, resulting in the denial of the right of qualified Native American electors in North Dakota to vote.

**COUNT THREE: HB 1332 AND HB 1333 PLACE UNCONSTITUTIONAL BURDENS ON QUALIFIED ELECTORS IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.**

192. The Plaintiffs re-allege and incorporate by reference the allegations set forth in all other paragraphs of this complaint.

193. The Fourteenth Amendment to the U.S. Constitution provides in relevant part: “[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” It prohibits the imposition of severe burdens on the fundamental right to vote unless they are narrowly drawn to advance a compelling state interest. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992).

194. The burdens of HB 1332 and 1333 on qualified North Dakota electors are severe.

195. Here, Plaintiffs’ right to vote is burdened by the arbitrary and unjustified imposition of a strict voter ID law with no fail-safe provision and no provision to protect the right of indigent qualified electors to vote. Plaintiffs, as well as many other qualified electors do not possess a qualifying ID and face significant obstacles to procuring one. This has resulted, and will continue to result in, disenfranchisement of Plaintiffs and other qualified voters. After observing and documenting evidence of disenfranchisement, the state did not attempt to protect the rights of these voters but rather tightened the restrictions on qualified electors.

196. The state’s interest is not compelling, and the law is not narrowly tailored to advance the state’s asserted interest.

197. HB 1332 and 1333 do not actually further a compelling state interest.

198. Additionally, HB 1332 and 1333 are not reasonable restrictions on the right to vote.

199. Without an order enjoining the implementation and enforcement of HB 1332 and 1333, Defendants will continue to violate the Equal Protection Clause, resulting in the denial of the right of qualified Native American electors in North Dakota to vote.

**COUNT FOUR: HB 1332 AND 1333 VIOLATE THE NORTH DAKOTA EQUAL PROTECTION CLAUSE.**

200. The Plaintiffs re-allege and incorporate by reference the allegations set forth in all other paragraphs of this complaint.

201. North Dakota Constitution Article I, §§ 21 and 22 provide the state's guarantee of equal protection to its citizens. Section 21 states: "No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens." In North Dakota, strict scrutiny is applied to "an inherently suspect classification or infringement of a fundamental right." A law that significantly interferes with such a right must promote a compelling state interest, and its distinctions must be necessary to further its purpose. *Hector v. City of Fargo*, 844 N.W. 2d 542, 554 (N.D. 2014) (citing *Gange v. Clerk of Burleigh Cty. Dist. Court*, 429 N.W.2d 429, 433 (N.D. 1988)).

202. Article II, Section 1 of the North Dakota Constitution provides that "every citizen of the United States, who has attained the age of eighteen years and who is a North Dakota resident shall be a qualified elector."

203. The right to vote is a fundamental right and the most essential part of a functional democratic system. North Dakota's "whole election system . . . is built up and founded on the fundamental principle that every elector shall be given the opportunity to vote for or against any candidate." *Stern v. City of Fargo*, 122 N.W. 403, 408 (N.D. 1909).

204. HB 1332 and 1333 severely burdens and significantly interferes with the fundamental right of qualified Native American and other North Dakota electors to vote. These provisions do

not actually further a compelling interest, are not narrowly tailored to a compelling interest, and are not carried out by the least restrictive means.

205. Without an order enjoining the implementation and enforcement of HB 1332 and 1333, Defendants will continue to violate the North Dakota Equal Protection Clause, resulting in the denial of the right of qualified Native American electors in North Dakota to vote.

**COUNT FIVE: HB 1332 AND 1333 ESTABLISH NEW VOTER QUALIFICATIONS IN VIOLATION OF THE NORTH DAKOTA CONSTITUTION.**

206. The Plaintiffs re-allege and incorporate by reference the allegations set forth in all other paragraphs of this complaint.

207. Under the North Dakota Constitution, “[e]very citizen of the United States, who has attained the age of eighteen years and who is a North Dakota resident, shall be a qualified elector.” N.D. CONST., art. II, § 1.

208. The North Dakota Supreme Court has stated that “where the Constitution prescribes the qualifications of electors the Legislature is powerless to add or subtract from those qualifications.” *Spatgen v. O’Neil*, 169 N.W. 491, 494 (N.D. 1918); *see also Johnson v. Grand Forks Cty*, 113 N.W. 1071, 1072-74 (N.D. 1907) (holding that the payment of a fee to run for office was an unconstitutional qualification).

209. The requirements in HB 1332 and 1333 mandating ownership of a specific form of state or tribally issued ID in order to vote is an elector qualification added by the legislature that is not in the North Dakota constitution.

210. Because the legislature cannot add additional qualifications to those contained in the North Dakota Constitution, the additional qualification is unconstitutional.

211. Without an order enjoining the implementation and enforcement of HB 1332 and 1333, Defendants will continue to violate the North Dakota Constitution, resulting in the denial of the right of qualified Native American electors in North Dakota to vote.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that this Court enter an order:

212. Declaring HB 1332 and HB 1333 unconstitutional under the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the United States Constitution and enjoining Defendants from enforcing the requirements of those provisions;

213. Declaring that HB 1332 and HB 1333 violate Section 2 of the Voting Rights Act, and

- a. enjoining Defendants from enforcing the requirements of HB 1332 and 1333; and
- b. authorizing the appointment of Federal observers by the Director of the Office of Personnel Management in accordance with section 8 of the Voting Rights Act to serve for such period of time as the Court shall determine is appropriate to enforce the guarantees of the Fifteenth Amendment to the United States Constitution, as provided by 52 U.S.C. § 10302(a);

214. Declaring HB 1332 and HB 1333 unconstitutional under the Equal Protection Clause of the North Dakota Constitution;

215. Declaring HB 1332 and HB 1333 unconstitutional under Article II, § I of the North Dakota Constitution;

216. Awarding Plaintiffs' attorney fees and costs as allowed and required by law, including, but not limited to, 42 U.S.C. § 1988, 52 U.S.C. § 10310, and the Private Attorney General Doctrine; and

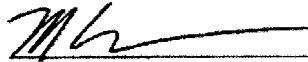


217. Ordering such additional relief as the interests of justice may require, together with the costs and disbursements in maintaining this action.

Respectfully submitted this 20th day of January, 2016,



Tom Dickson, ND Bar No. 03800  
[tdickson@dicksonlaw.com](mailto:tdickson@dicksonlaw.com)  
Dickson Law Office  
P.O. Box 1896  
Bismarck, North Dakota 58502  
P: (701) 222-4400  
F: (701) 258-4684



Matthew Campbell, NM Bar No. 138207, CO Bar No. 40808  
[mcampbell@narf.org](mailto:mcampbell@narf.org)  
NATIVE AMERICAN RIGHTS FUND  
1506 Broadway  
Boulder, Colorado 80302  
Telephone: (303) 447-8760

Joel West Williams, PA Bar No. 91691  
[williams@narf.org](mailto:williams@narf.org)  
NATIVE AMERICAN RIGHTS FUND  
1514 P Street NW (Rear), Suite D  
Washington, D.C. 20005  
Telephone: (202) 785-4166

Richard de Bodo, CA Bar No. 128199  
[rich.debodo@morganlewis.com](mailto:rich.debodo@morganlewis.com)  
Morgan, Lewis & Bockius LLP  
1601 Cloverfield Blvd., Ste. 2050 North  
Santa Monica, CA 90404-4082  
Phone 1.310.255.9055  
Fax 1.310.907.2000

JS 44 (Rev. 11/15)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Richard Brakebill, Deloris Baker, Dorothy Herman, Della Merrick, Elvis Norquay, Ray Norquay, and Lucille Vivier, on behalf of themselves.

(b) County of Residence of First Listed Plaintiff Rolette County

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See attachment.

**DEFENDANTS**

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

County of Residence of First Listed Defendant Burleigh County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
52 U.S.C. 10301; 52 U.S.C. 10308(f).

Brief description of cause:

North Dakota's voter ID law violates the Voting Rights Act, U.S. Constitution, and North Dakota Constitution.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE  
01/20/2016

SIGNATURE OF ATTORNEY OF RECORD  
Matthew Campbell; Tom Dickson

FOR OFFICE USE ONLY:

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

146 of 270

**CIVIL COVER SHEET ATTACHMENT**

Tom Dickson, ND Bar No. 03800

[tdickson@dicksonlaw.com](mailto:tdickson@dicksonlaw.com)

Dickson Law Office

P.O. Box 1896

Bismarck, North Dakota 58502

P: (701) 222-4400

F: (701) 258-4684

Matthew Campbell, NM Bar No. 138207, CO Bar No. 40808

[mcampbell@narf.org](mailto:mcampbell@narf.org)

NATIVE AMERICAN RIGHTS FUND

1506 Broadway

Boulder, Colorado 80302

Telephone: (303) 447-8760

Joel West Williams, PA Bar No. 91691

[williams@narf.org](mailto:williams@narf.org)

NATIVE AMERICAN RIGHTS FUND

1514 P Street NW (Rear), Suite D

Washington, D.C. 20005

Telephone: (202) 785-4166

Richard de Bodo, CA Bar No. 128199

[rich.debodo@morganlewis.com](mailto:rich.debodo@morganlewis.com)

Morgan, Lewis & Bockius LLP

1601 Cloverfield Blvd., Ste. 2050 North

Santa Monica, California 90404-4082

P: (310) 255-9055

F: (310) 907-2000

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

Richard Brakebill, Deloris Baker, Dorothy  
Herman, Della Merrick, Elvis Norquay, Ray  
Norquay, and Lucille Vivier, on behalf of  
themselves,

Plaintiffs,

vs.

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

Defendant.

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

Civil No. 1:16-cv-8

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Plaintiffs, by and through their undersigned attorneys, allege on information and belief as follows:

### **INTRODUCTION**

1. This action is brought under the Voting Rights Act, [52 U.S.C. § 10301](#), and the Declaratory Judgment Act, [28 U.S.C. § 2201](#), by qualified Native American voters (or electors) in North Dakota who have been denied the right to vote and/or will be denied the right to vote through enforcement of North Dakota's recently enacted voter identification ("ID") laws. Plaintiffs seek to protect their right to vote under the United States Constitution, the North Dakota Constitution, and the Voting Rights Act.

2. During the course of these proceedings, North Dakota House Bill 1369 ("HB 1369") was enacted on April 24, 2017, which preserved strict voter ID requirements that restricted access to voting and excluded a "fail-safe" mechanism. 65th Leg. Assemb., Reg. Sess. (N.D. 2017) (codified at N.D. Cent. Code § 16.1-01-04.1). The failure to provide a fail-safe mechanism is "unacceptable and violative of the Equal Protection Clause of the 14th Amendment" as well as the 15th Amendment, the Voting Rights Act, and the North Dakota Constitution. Order Granting Pls.' Mot. for Prelim. Inj, Doc. 50 at 22; *see also* Doc. 50 at 1 (noting that the lack of a fail-safe mechanism is "dispositive"). The newest iteration of North Dakota's strict voter ID law is codified at N.D. Cent. Code 16.1-01-04, 16.1-01-04.1, and 16.1-01-04.2 among other places.

3. Prior to HB 1369, this litigation involved two statutes that made North Dakota's voting system the most restrictive in the nation - North Dakota House Bill 1332, 63rd Leg. Assemb., Reg. Sess. § 5 (N.D. 2013) (formerly codified at N.D. Cent. Code § 16.1-05-07) ("HB

1332”), and North Dakota House Bill 1333 (“HB 1333”), 64th Leg. Assemb., Reg. Sess. (N.D. 2015).

4. HB 1369 maintains North Dakota’s restrictive voter ID requirements with no fail-safe mechanism. Additionally, HB 1369 imposes a property requirement on electors. Plaintiffs seek a determination that HB 1369 disproportionately burdens and disenfranchises Native Americans and: (a) has a discriminatory purpose in violation of Section 2 of the Voting Rights Act, [52 U.S.C. § 10301](#) (“Section 2”); (b) has a discriminatory effect in violation of Section 2 through its voter ID requirements; (c) has a discriminatory effect in violation of Section 2 through its lack of a “fail-safe” voting mechanism; (d) imposes substantial and unjustified burdens on the fundamental right to vote in violation of the Equal Protection Clause of the Fourteenth Amendment; (e) excludes non-property holders from voting in elections in violation of the Equal Protection Clause of the Fourteenth Amendment; (f) imposes unjustified burdens on the fundamental right to vote because of Plaintiffs’ race in violation of the Fifteenth Amendment; (g) denies qualified voters equal protection under the law in violation of the North Dakota Constitution because of its burdensome voter ID requirements and lack of fail-safe voting mechanism; and (h) denies qualified voters equal protection under the law in violation of the North Dakota Constitution because it excludes non-property holders from voting; (i) improperly makes ownership of a voter ID and possession of a street address a pre-condition and qualification to vote in violation of the North Dakota Constitution. For these and other reasons, this law should be declared unlawful and enjoined.



### **JURISDICTION AND VENUE**

5. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1343, 1367, and 52 U.S.C. § 10308(f).

6. Venue is proper in this court under 28 U.S.C. § 1391(b).

### **PARTIES**

7. All of the Plaintiffs named in this Complaint are citizens of the United States, residents of North Dakota, Native Americans, and duly qualified electors eligible to vote in local, state, and federal elections in North Dakota. “The record reveals these Plaintiffs and others were denied the right to vote in November 2014 (even though the poll workers knew them personally and knew they were qualified to vote) because they had invalid ID’s under the new laws.” Doc. 50 at 17.

8. Under the new law, HB 1369, Plaintiffs likewise would have been disenfranchised or severely burdened despite being duly qualified electors. Therefore, all Plaintiffs have a direct, substantial, and legally protectable interest in the subject matter of this litigation.

9. Plaintiff Richard Brakebill is an enrolled member of the Turtle Mountain Band of Chippewa Indians and a United States Navy veteran. Mr. Brakebill is over the age of 18 and has lived in Rolla, North Dakota for at least ten years. Mr. Brakebill is therefore a qualified elector in North Dakota. “Plaintiff Richard Brakebill was denied the right to vote in November 2014 because he had an expired driver’s license. When he sought to remedy this problem at a North Dakota Driver’s License Site, he was denied a new form of ID because he did not have a copy of his Arkansas birth certificate.” Doc. 50 at 17. He had a tribal ID without an address and an expired state of North Dakota ID with an old address. Mr.

Brakebill lives on a fixed income and currently works a seasonal, inconsistent job, further constraining his ability to secure the documentation necessary to obtain a qualifying ID or supplement his existing ID. “Nevertheless, Mr. Brakebill attempted to vote on election day in 2014 and presented his expired driver’s license and his tribal ID. He was denied a ballot because his license had expired and his tribal ID did not reveal a current residential address.” *Id.* Mr. Brakebill currently possesses a tribal ID that lists his street address but the ID expires August 2018, three months before the November 2018 election. Mr. Brakebill had to pay \$10 for his tribal ID, and will have to pay again next year for an updated tribal ID. Mr. Brakebill recently suffered a house fire and lost most of his possessions and is unsure whether he will be able to obtain another ID prior to the election due to the strain on his financial resources. Mr. Brakebill has also been unable to secure a state ID due to the logistical difficulty of getting to a North Dakota Driver’s License Site (“DLS”). Mr. Brakebill believes he has to travel to the Devil’s Lake DLS to obtain an ID – an approximately 1 hour and 15 minute drive – because the DLS nearest to him in Rolla is open so infrequently that attempting to go there is, practically speaking, impossible. The DLS in Rolla is open the second Wednesday of every month from 10:20 a.m. to 2:35 p.m.

10. Plaintiff Elvis Norquay is an enrolled member of the Turtle Mountain Band of Chippewa Indians and U.S. Marine Corps veteran. He is over 18 years of age, a citizen of the United States, and a citizen of North Dakota. Mr. E. Norquay has lived in Belcourt, North Dakota for around 25 years, and is therefore a qualified North Dakota elector. Mr. E. Norquay was denied the right to vote in the November 4, 2014 general election. When Mr. E. Norquay went to vote in November 2014, he presented his tribal ID, but was denied the

right to vote because his tribal ID listed no address. Mr. E. Norquay does not have a state driver's license or ID, and does not have a birth certificate. Mr. E. Norquay cannot afford the documentation he needs to obtain a state ID or the transportation to travel to a DLS. Mr. E. Norquay obtained a tribal ID for \$10 in the last year, but following the theft of his wallet, lost that ID. Mr. E. Norquay again replaced his tribal ID for a cost of \$15. Mr. E. Norquay, however, has since become homeless and is residing at the Fayer Albert building, a community homeless shelter. The address on his tribal ID is of his previous residence and is now therefore incorrect. He does not currently pay for his own utilities. He receives Social Security and disability which is directly deposited into his debit card. He has no written confirmation of his current residence at the Fayer Albert building. Mr. E. Norquay would prefer to pay for food rather than update the address on his tribal ID. Mr. E. Norquay is trying to secure other housing and does not view the shelter as permanent housing.

11. Plaintiff Ray Norquay is a member of the Turtle Mountain Band of Chippewa Indians. Mr. R. Norquay has lived in Belcourt, North Dakota for most of his life, and consistently for about the last six years. He is over eighteen years of age and a citizen of the United States, and is therefore a qualified North Dakota elector. Mr. R. Norquay attempted to vote in the November 4, 2014 general election, but he was denied the right to vote because he only had a tribal ID that did not list his street address. As a result of being denied the right to vote, he went to the tribal offices that same day and had to purchase a new ID with his street address on it. After purchasing the new ID, Mr. R. Norquay went back and was permitted to vote. Thus, Mr. R. Norquay had to pay to vote.

12. Plaintiff Della Merrick is a member of the Turtle Mountain Band of Chippewa Indians. Ms. Merrick has lived in Belcourt, North Dakota for about six years. She is over eighteen years of age and a citizen of the United States, and is therefore a qualified North Dakota elector. Ms. Merrick attempted to vote in the November 4, 2014 general election, but she was denied the right to vote because she only had a tribal ID that did not list her street address. As a result of being denied the right to vote, she went to the tribal offices that same day and had to purchase a new ID with her street address on it. After purchasing the new ID, Ms. Merrick went back and was permitted to vote. Thus, Ms. Merrick had to pay to vote.

13. Plaintiff Lucille Vivier is a member of the Turtle Mountain Band of Chippewa Indians. Ms. Vivier has lived in Dunseith, North Dakota for about 11 years, and before that she lived in Belcourt, North Dakota her whole life. She is over eighteen years of age, a citizen of the United States, a citizen of North Dakota, and is therefore a qualified North Dakota elector. Ms. Vivier attempted to vote in Dunseith for the November 4, 2014 general election, but she was denied the right to vote because she only had a tribal ID that did not list her street address. Ms. Vivier knew and grew up with the poll worker who rejected her ID since she was 5 years old. Ms. Vivier does not have a Social Security card or a birth certificate. Ms. Vivier only receives disability income and must pay for the needs of the five children she cares for. Three of the children she cares for have special needs, and thus Ms. Vivier has additional costs that are required for their care. "Impoverished Native Americans, such as Plaintiff Lucille Vivier, lack the disposable income necessary to obtain a birth certificate, and make the difficult decision not to spend their limited resources on a

birth certificate.” Doc. 50 at 10. At significant cost, Ms. Vivier recently attempted to obtain a social security card, which she believed she needed in order to obtain a state ID. Because she does not own a car she paid \$120 for a friend to drive her to the Social Security office in Minot, which is approximately 100 miles away and takes over an hour. The cost included payment to the driver, gas, and a meal for the driver. She also paid another \$40 to have another friend watch the five children she usually cares for so she could make the trip during business hours. She believed (because she was told either by social security staff or a social security form) that she could utilize her Turtle Mountain tribal ID to obtain a Social Security card. When she arrived she was told the office would accept Standing Rock and Spirit Lake tribal IDs but not Turtle Mountain IDs and she was therefore denied a Social Security card. Ms. Vivier has since been unable to obtain a Social Security card or state ID. Ms. Vivier obtained a tribal ID at a cost of \$10. Since obtaining her ID she has moved from her mother’s home to her boyfriend’s home, which also is located in Dunseith. Her tribal ID contains her mother’s address where she used to reside and not her current address.

14. Plaintiff Dorothy Herman is an enrolled member of the Turtle Mountain Band of Chippewa Indians and a retired teacher. She is 77 years old, has lived in North Dakota for about 45 years, and has voted throughout that time. Ms. Herman lives in Rolla, North Dakota and has lived there for about ten years. She is over eighteen years of age, a citizen of the United States and a citizen of North Dakota, and is therefore a qualified North Dakota elector. Prior to the election, Ms. Herman had in her possession an expired state ID with the correct residential address and a tribal ID without an address. Because her state ID was expired, Ms. Herman attempted to obtain a new state ID twice at the DLS in Rolla, North

Dakota during its advertised operating hours prior to the election. “Her first trip was unsuccessful because the Driver's License Site was closed, and her second trip was unsuccessful because her expired state card, with her current residential address, was insufficient to obtain a new state ID without a birth certificate.” Doc. 50 at 17. To obtain an ID, they told her she would have to make a third trip to the DLS and pay \$8 after she located all of her documentation. Ms. Herman saw an advertisement about the new voter ID law prior to the 2014 general election, and based on that advertisement, she thought her tribal ID was a qualifying voter ID. Thus, Ms. Herman did not make a third trip to the DLS prior to the election. When Ms. Herman attempted to vote in Rolla in the 2014 general election with her tribal ID and expired state ID, she was denied the right to vote because her tribal ID did not have an address and her state ID was expired. “Herman presumed her tribal ID would be sufficient to vote in 2014, but she was ultimately denied a ballot because her tribal ID did not contain a current residential address.” *Id.* When she was turned away on the day of the election, she attempted to pay to get a tribal ID with an address, but the tribal office was closed due to the elections. She returned to the DLS a third time after the election and paid the \$8 to obtain a new state identification card. Ms. Herman survives on her school teacher's retirement income and her husband's Social Security. For Ms. Herman, the expense and difficulty to obtain an ID ultimately prevented her from voting.

15. Defendant Alvin Jaeger is the North Dakota Secretary of State and is sued in his official capacity. The North Dakota Secretary of State is the State's chief election officer. The Office of the North Dakota Secretary of State is responsible for coordinating the implementation of HB 1369.

## **STATEMENT OF FACTS**

### **I. NORTH DAKOTA'S VOTER ID RULES BEFORE HB 1332, 1333, AND 1369**

16. North Dakota is the only state in the United States that does not have voter registration. N.D. Cent. Code § 16.1-01-5.1. It was one of the first states to adopt voter registration in the 1800s, but was the first state to abolish it in 1951. Instead, North Dakota established numerous small voting precincts, which ensured that election boards knew the voters who came to the polls to vote on Election Day and could detect people who should not be voting in the precinct.

17. North Dakota elections have been ranked first in the nation for election performance by the Pew Charitable Trust in 2008, 2010, 2012, and 2014, indicating North Dakota has consistently administered effective elections without voter registration even before implementation of its voter ID laws. *Data Visualization: Elections Performance Index - EPI Rank*, The Pew Charitable Trust (Aug. 9, 2016), <http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/elections-performance-index#indicator>.

18. This rating is based on the Elections Performance Index, or EPI, which “tracks 17 distinct indicators of election administration effectiveness. A state’s overall average is calculated from its performance on all 17 indicators, relative to all states across comparable federal election cycles—either presidential or midterm.” *Elections Performance Index - EPI 101*, *supra*. Some of the indicators include data completeness, voting wait time, provisional ballots cast, provisional ballots rejected, and registration or absentee ballot problems. *Elections Performance Index - Indicators*, *supra*.

19. Indeed, voter fraud in North Dakota “has been virtually non-existent.” Doc. 50 at 25.

20. The North Dakota Constitution provides that there are only three qualifications to be an elector: “[e]very Citizen of the United States, who has attained the age of eighteen years and who is a North Dakota resident, shall be a qualified elector.” N.D. Const. art. II, § 1. The North Dakota Constitution further provides: “When an elector moves within the state, he shall be entitled to vote in the precinct from which he moves until he establishes voting residence in another precinct. The legislative assembly shall provide by law for the determination of residence for voting eligibility, other than physical presence.” *Id.* Prior to passage of North Dakota’s strict voter ID laws, a poll clerk in North Dakota was merely required to “request” that a qualified voter show identification that included the individual’s residential address and date of birth to verify eligibility. N.D. Cent. Code § 16.1-05-07(1), *amended by* HB 1332 § 5. If one form of ID did not have both the residential address and birthdate, the voter could utilize two forms of ID in combination. N.D. Cent. Code § 16.1-05-07(1)(d); *see also* Doc. 50 at 2.

21. Valid forms of ID previously included: a North Dakota driver’s license or non-driver’s ID card; a U.S. passport; an ID card from a federal agency; an out of state driver’s license or non-driver’s ID card; an ID card issued by a tribal government; a valid student ID; a military ID card; a utility bill dated thirty days prior to Election Day, including cell phone bills and student housing bills (online printouts were acceptable); and a change of address verification letter from the U.S. Postal Service. Doc. 50 at 2.

22. Alternatively, if the voter could not provide those forms of ID, there were two other fail-safe methods that would allow them to prove they were qualified. First, a member of



the election board or a poll clerk who knew the voter could personally vouch that the individual was a qualified elector in the precinct, and the person was then allowed to vote. N.D. Cent. Code § 16.1-05-07(2), *amended by* HB 1332 § 5; *see also* Doc. 50 at 2. Second, if no one could vouch for him or her, the election board challenged the person's right to vote, but the person could then execute a voter affidavit swearing to the fact that he or she was a qualified elector who could vote in the precinct. N.D. Cent. Code § 16.1-05-07(3), *amended by* HB 1332 § 5; *see also* Doc. 50 at 2. If the voter agreed to sign the affidavit, the election board and poll clerks were required to allow the voter to vote. Doc. 50 at 2.

## **II. DEFEAT OF HB 1447 IN 2011**

23. In January of 2011 the North Dakota legislature introduced a bill, House Bill 1447 ("HB 1447"), relating to the canvassing of ballots of voters who were challenged at the polls. In response to concerns that North Dakota's open registration system would lead to fraudulent voters, the State Senate weighed an amendment to HB 1447.

24. The Amendment would have instilled stricter voter ID requirements that would have narrowed the set of acceptable IDs to a driver's license, tribal ID card, or form of identification prescribed by the secretary of state. S. Journal, 62-1447, Reg. Sess., at 1642 (N.D. 2011).

25. The Amendment initially would have modified the voter affidavit system to allow a voter to vote via affidavit at the poll but then set aside that voter's ballot. The voter then would have had to return within a specified period to provide an acceptable form of ID in order for the vote to be counted. If the voter did not return and show an acceptable form of ID, the ballot would not be counted. *See Hearing Minutes on H.B. 1447 Before H. Political*

*Subdivision Comm.*, 62nd Leg. Assemb. 1 (N.D. Feb. 3, 2011) (statement of Rep. Koppelman, H. Comm. On Political Sub.) .

26. Senator Sorvaag (R) explained the purpose of the deliberations: “[w]e don’t want people voting if they are not suppose [sic] to vote but we don’t want to disenfranchise people either by making the process to [sic] cumbersome.” *Hearing Minutes on H.B. 1447 Before H. Political Subdivision Comm.*, 62nd Leg. Assemb. 1 (N.D. Apr. 12, 2011) (statement of Sen. Ronald Sorvaag, S. Comm. On Political Sub.).

27. Senator Cook (R), noted the importance of a measured approach to modifying election laws: “[w]hen we do put a law in effect that is going to change how people are able to vote; we should make sure . . . we fully realize it; we discuss it; and we determine ourselves that is what we intend to do and justify it and I would hope that we give those people the opportunity to stick to the wisdom of that policy change. That is one of my concerns that kept me from embracing the bill that you brought before us. This is a very important issue; how people vote and they all look at it a little differently and we want to make sure we know all the consequences of it. That we fully vest the discussions and I think that leant a lot to the committee to put this into a study so we truly know what it is we are doing and what all the consequences are and we say this is the consequences we want.” *Id.* at 4 (statement of Sen. Dwight Cook, H. Political Subdivisions Comm.).

28. Senator Cook also noted the importance of voting rights and expressed that he was unsure if voter fraud was even an issue in North Dakota, stating: “The whole voting process is the basic core of the democratic process and we certainly don’t want to see somebody

win an election because of voter fraud but to what degree we have any of that I am not sure if we have a great degree.” *Id.*

29. One of the sponsors of the bill, Chairman Koppelman, acknowledged that while he wanted to preserve the work already done, he thought “a study going forward to deal with some of the issues that have been discussed that aren’t addressed in this bill might make some sense or to revisit this issue and see if it can be improved[.]” *Id.* at 6 (statement of Chairman Koppelman, H. Political Subdivisions Comm.).

30. During deliberations the Legislature modified the proposed amendment via hoghouse amendment to “do away with the affidavits” and “eliminat[ed] the issue of coming back with identification” since it “raised a lot of questions.” *Hearing Minutes on H.B. 1447 Before H. Political Subdivision Comm.*, 62nd Leg. Assemb. 1 (N.D. Apr. 15, 2011) (statement of Chairman Koppelman, H. Political Subdivisions Comm.).

31. The modification to the amendment kept the ID requirements but removed the affidavit system entirely and instead devised a voucher system that allowed for either: a poll worker to vouch for the voter, another voter to vouch for one additional person, or a housemate to vouch for up to four people who lived at the same address. The Legislature used a hoghouse amendment to implement these modifications. *Id.* at 1-2.

32. Even under this amended version, members continued to raise concerns about accessibility for voters.

33. Rep. Zaiser (D) worried that under this system “[a]ssuming there is someone not well known in the district and they don’t have their ID they are pretty much out of luck.”

*Hearing Minutes on H.B. 1447 Before H. Political Subdivision Comm.*, 62nd Leg. Assemb. 2 (N.D. Apr. 20, 2011) (statement of Rep. Zaiser, H. Political Subdivisions Comm.).

34. Senator Nelson (D) expressed concerns “with some of the folks that live in the downtown areas of major cities that have post office boxes . . . Many of them are venerable people so I am worried about them being left out of the system.” *Id.* at 2 (statement of Sen. Nelson, H. Political Subdivisions Comm.).

35. And, in response to Senator Nelson’s concern, the Legislature was notified that some Native Americans would have a difficult or impossible time obtaining an ID that required a street address.

36. Jim Silrum, Deputy Secretary of State, confirmed that P.O. boxes were widely used and that Native Americans in particular utilized the P.O. box system: “This is very much the case also in small town North Dakota where if you sent something to their street address the post office will return it because it needs to go to their post office box . . . We are also going to need to work with the tribal governments to make sure because a couple of our counties that have reservations in the state have not completed their 911 addressing. Even if they have the residence of those counties [they] don’t know what their 911 address is.” *Id.* at 2-3 (statement of Jim Silrum, H. Political Subdivisions Comm.).

37. On April 25, 2011, the Senate on a bipartisan basis voted 38-8 to reject the proposed amendment and declined to change the voter ID requirements or modify the affidavit or voucher systems.

38. 8 Republicans voted for the Amendment. 27 Republicans joined 11 Democrats to vote against the amendment.

39. Rep. Cook (R), who expressed that he did not believe fraud was a substantial concern and who worried openly about the bill's effect on accessibility to the polls, voted against the amendment.

### III. ELECTION OF SENATOR HEIDI HEITKAMP

40. On November 6, 2012, Heidi Heitkamp (D), was elected to North Dakota's United States Senate seat in what was described by national media outlets as an "upset win." *See* Kate Nocera, *Heitkamp Scores Upset Win*, Politico (Nov. 7, 2012), <http://www.politico.com/story/2012/11/heitkamp-on-brink-of-upset-win-083466>.

41. Senator Heitkamp prevailed by a margin of 50.2% over her opponent Rick Berg (R) who received 49.3% of the vote. *See* Official Results General Election – November 6, 2012, ND Voices, <http://results.sos.nd.gov/resultsSW.aspx?eid=35&text=Race&type=SW&map=CTY> (last updated Nov. 15, 2012).

42. Senator Heitkamp won by nearly 3,000 votes, or one percentage point. *Id.*

43. Native Americans in North Dakota vote in a racially polarized manner and are generally Democrats. *See* Dr. Herron Decl., Doc. 44-7 at 3 ("my evidence implies that Native Americans in North Dakota vote for Democratic candidates at greater rates than do whites in the state"); *see also* Barreto Decl., Doc. 44-1 ¶ 51 ("[o]ur survey findings regarding the political preferences of Native Americans and non-Natives in North Dakota indicates a political environment characterized by racially divergent voting interests . . . Native Americans are much more likely to identify as Democrats than non-Native Americans . . . . There are dozens and dozens of similar election result patterns that show a very high

degree of correlation between the race and ethnicity of the voters within a precinct and their candidates of choice. Across almost any election in North Dakota, it is clear that Native American and non-Native American voters have different candidate preferences which amount to racially polarized voting.”)

44. Accordingly, Sen. Heitkamp, a Democrat, had worked to secure the Native vote, making frequent trips to North Dakota reservations. See Vonnie Lone Chief, *How the Indian Vote Boosted Heidi Heitkamp* (Nov. 8, 2012), <http://www.indianz.com/News/2012/007665.asp>.

45. In the days immediately following her election, local blogs identified the Native American vote as critical to Senator Heitkamp’s success. See Jim Fuglie, *United States Senator Mary Kathryn (Heidi) Heitkamp. How About That?*, The Prairie Blog (Nov. 9, 2012), <http://theprairieblog.areavoices.com/2012/11/09/united-states-senator-mary-kathryn-heidi-heitkamp-how-about-that/>; AnnMaria De Mars, *Native Americans: Why Heidi Heitkamp Won & Nate Silver Was Wrong?*, AnnMaria’s Blog (Nov. 19, 2012), <http://www.thejuliagroup.com/blog/?p=2808>.

46. National news outlets carried the story as well. See Meteor Blades, *American Indian Voters and Indian Organizers Gave N.D. Senate Edge to Democrat Heidi Heitkamp* (Nov. 8, 2012), <https://www.dailykos.com/stories/2012/11/8/1158417/-American-Indian-voters-and-Indian-organizers-gave-N-D-Senate-edge-to-Democrat-Heidi-Heitkamp>.

47. Today, it is widely recognized that the Native American vote was critical to Senator Heitkamp’s 2012 victory. Ari Natter, *Heitkamp Caught Between Constituencies in Pipeline Fight*, Bloomberg BNA (Sept. 19, 2012), <https://www.bna.com/heitkamp-caught->

constituencies-n57982077265/); see also Paula McClain & Jessica Johnson Carew, *Can We All Get Along?: Racial and Ethnic Minorities in American Politics* (7th ed. 2017); see also Doc. 44-1 ¶ 53 (“[w]hile Heitkamp won 50.2 percent of the statewide vote, she dominated in counties heavily populated by Native Americans.”).

#### **IV. ENACTMENT OF HB 1332 AND 1333**

48. In the legislative session immediately following Senator Heitkamp’s victory, HB 1332 was enacted on April 19, 2013.

49. HB 1332 significantly altered the voter ID requirements and eliminated the “fail safe” voucher and affidavit provisions in North Dakota.

50. Despite bipartisan concerns in the preceding legislative session in 2011 that modifying North Dakota’s affidavit system would disenfranchise voters and that a study should be done to analyze the issue, no additional study measuring the impacts of changing voter ID requirements or eliminating the fail-safe provisions was conducted between the 2011 and 2013 legislative sessions.

51. Nor was any additional evidence presented proving fraud in North Dakota elections.

52. There were no prosecuted instances of voter fraud arising out of the 2012 election.

53. There were nine suspected instances of double voting that prosecutors declined to prosecute. In one of those instances, a stern talking to was deemed a sufficient deterrent. See Mem. from Alvin Jaeger, N.D. Secretary of State, on North Dakota – views and recommendations to The Presidential Advisory Commission on Election Integrity (Sept. 5, 2017), <https://www.scribd.com/document/358292085/Sos-00435420170907141608>.

54. Moreover, the legislative procedure utilized to pass HB 1332 was unusual. A “hoghouse” amendment was used to pass HB 1332. A hoghouse amendment replaces the entire text of a bill with new text. *North Dakota Legislative Council*, North Dakota Legislative Drafting Manual 63 (2015), <http://www.legis.nd.gov/files/general/2015draftingmanual.pdf?20160111162015>.

55. Public hearings are held on every bill in legislative standing committees. *See Legislative Branch Function and Process*, North Dakota Legislative Branch, <http://www.legis.nd.gov/research-center/library/legislative-branch-function-and-process> (last visited Nov. 30, 2017).

56. However, after the public hearings, these committees may choose to modify the contents of an original bill before they send it back to the house or senate for a vote. *See id.*

57. Because committee amendments are made after the public hearings take place, hoghouse amendments are not subject to public hearing.

58. Hoghouse amendments are disfavored. *Id.*

59. At the time of the bill’s passage through the House, Rep. Mock, (D) strenuously objected to the use of a hoghouse amendment for HB 1332 since it would “completely change the way we handle voters” and using a hoghouse would circumvent input from the public and agencies impacted by the bill. *House Floor Session: Hearing on H.B. 1332*, 63rd Leg. Assemb. (N.D. Feb. 12, 2013) (statement of Rep. Corey Mock).

60. Rep. Marie Strinden (D) also protested the process used to pass HB 1332 stating: “I take a lot of pride in the fact that this committee thinks very long and hard about all of our bills. . . . I can’t be proud of a bill that we all know has problems because no other bill that



we passed out of here have we done it with such stealth without addressing those problems.” *Hearing Minutes on H.B. 1332 Before H. Gov’t and Veterans Affairs Comm.*, 63rd Leg. Assemb. (N.D. Feb. 8, 2013) (statement of Rep. Marie Strinden, H. Gov’t and Veterans Affairs Comm.) [hereinafter *Hearing Minutes on HB 1332*].

61. Unlike the hoghouse amendment used for HB 1447, which arose in order to address the specific concerns raised by the legislature during deliberations, the hoghouse amendment here was not a consequence of the legislature’s deliberations. Instead, it replaced a bill that was intended to change the deadline for requesting absentee ballots and had nothing to do with in-person voting.

62. Indeed, instead of modifying absentee voting, HB 1332 limited the forms of ID *all* voters could use at the polls.

63. First, it required that the ID used must contain the voter’s residential address and date of birth. P.O. Box numbers were excluded as an acceptable type of address.

64. The Legislature required residential addresses despite being warned in the previous Legislative session by Deputy Secretary of State Jim Silirum that Native Americans in particular would be disproportionately impacted by such a change. *See* discussion above at ¶ 36.

65. Second, HB 1332 restricted the acceptable forms of ID to: (1) a North Dakota driver’s license; (2) a North Dakota non-driver’s identification card; (3) a tribal government issued identification card; or (4) an alternative form of identification prescribed by the Secretary of State if a qualified voter did not possess one of the other official forms of identification. HB 1332 § 5; *see* N.D. Cent. Code § 16.1-05-07(1)(a)-(c). The

Secretary of State only prescribed two additional forms of ID prior to the passage of HB 1333: (1) a student identification certificate, and (2) a long-term care identification certificate.

66. HB 1332 also prevented voters from using a driver's license or ID from another state in combination with other ID in order to vote.

67. HB 1332 limited a qualified elector's ability to vote in other ways as well.

68. Again, despite prior bipartisan concerns in the previous legislative session that removing the affidavit system and modifying the voucher system would disenfranchise too many voters, HB 1332 eliminated both the voucher and affidavit fail-safe provisions that previously could be utilized by qualified voters who could not produce an ID when requested by the poll clerk.

69. And, at the same time as passage of HB 1332, the Legislature rejected HB 1418, which would have allowed poll workers to vouch for eligible voters in their precincts that lacked ID.

70. This fail-safe would be as effective as an ID for addressing concerns of in-person voter fraud.

71. At the time of HB 1332's passage, Senators objected to HB 1332's harsh affects.

72. Sen. Warner (D) explained the bill's negative impacts on his rural district, which is 1/3 Native American, stating:

My district covers about 5000 square miles . . . there are a lot places in my district where you will have a 90 minute to a two hour drive to the closest DMV which may be open only one day a week, or one day a month, during business hours during the working week, never on Saturdays. I would guess half of the urban residences . . . [indecipherable] . . . in my towns are very small. Very few of my towns

actually have street names. Almost everybody receives their mail in a post office box. In huge swaths of my area, entire counties within my district I don't think there would be a single street name. I can't imagine how you start overcoming all of these obstacles. We have some pockets of extreme poverty in my district. I would guess no more than one in four or five adults has a car or a driver's license. If you need to get somewhere you have to find someone that will drive you there for that occasion. And I don't really think we need to be creating more impediments to voting in North Dakota. This is part of a national movement there may be a problem in other parts. We are very proud of our people in North Dakota and we don't need to be passing laws that we don't need.

*Senate Floor Session: Hearing on H.B. 1332, 63rd Leg. Assemb. (N.D. Apr. 3, 2013)*

(statement of Sen. John M. Warner).

73. Sen. Schneider likewise stated that the legislature was passing a bill to deal with a nonexistent problem resulting in a "human cost to some of our most vulnerable populations here in the state." *Id.* (statement of Sen. Mac Schneider)).

74. HB 1332 passed on essentially a party-line vote, 30-16 with only 1 Democrat in favor and only 3 Republicans opposed.

75. Of the Senators that remained in the Senate from the 2011 legislative session and that voted on HB 1447, 19 Senators switched their votes from Nay to Yay.

76. Senator Cook, who had previously expressed doubt over the need for a change of law, and who had called for additional study into the effects of the law, changed his vote from Nay to Yay.

77. After passage of HB 1332, qualified voters that showed up to the polls but did not have a qualifying ID were completely denied their right to vote.

78. During the next legislative session, the legislature again made the voter ID law more restrictive with the passage of HB 1333. HB 1333 was enacted on April 24, 2015.

79. During this 2015 Legislative Session the Legislature authorized studies related to voting, but rejected additional research into the impact of HB 1332 or into the potential impacts of HB 1333.

80. For example, H.B. 1389 “Management Study Related to Verification of Citizenship Status for Voting and For Obtaining Driver’s License and Non-photo ID cards,” passed. 64th Leg. Assemb., Reg. Session (N.D. 2015).

81. Another bill, HB 1302, initially would have allowed for a voter without an ID to fill out an affidavit attesting to their qualifications in order to vote, but was changed entirely via hoghouse to a study of voter registration systems, which passed. 64th Leg. Assemb., Reg. Session (N.D. 2015).

82. Meanwhile, that same year, House Concurrent Resolution 3057, “Election Administration Study,” which in relevant part sought to study “concerns that have arisen during recent elections regarding proof of eligibility to vote,” did not pass. H. Con. Res. 3057, 64th Leg. Assembly (N.D. 2015).

83. In the 2015 Legislative session, the Legislature also rejected attempts to make the voter ID requirements more accessible. SB 2330 would have required higher education institutions to include date of birth and residential addresses of students on student photo identification and inform students of voting eligibility requirements.

84. The bill was intended to give students a way of identifying themselves instead of HB 1332’s system of a student certificate prescribed by the Secretary of State.

85. It would have allowed student identification to be an acceptable form of ID to vote, but failed to pass.

86. The Legislature also rejected SB 2353, which would have allowed a voter to cast a provisional ballot if they provided their mailing address. The county auditor would have mailed a postcard to the provisional voter at the provided address that the voter would have had to return. The mailed form would include an oath that the voter had resided in the precinct for 30 days.

87. The Senate also made HB 1333 more stringent. When HB 1333 was first introduced in the North Dakota House, it would have alleviated some of the stringent requirements of HB 1332.

88. For instance, it would have permitted electors to use identification in combination in order to provide all of the required information. For example, an elector could present an expired driver's license plus a U.S. Postal Service change of address form, or bill and bank statement with an updated address plus identification with an incorrect address in order to prove current residency within the precinct.

89. The Senate, however, removed these provisions and amended the bill to make the voter ID requirements even more restrictive.

90. The amendment that became HB 1333 also removed the ability of the Secretary of State to prescribe new forms of qualifying ID, and took away the option for students to use college identification certificates that the Secretary had previously recognized as an acceptable voter ID. It did, however, statutorily keep the long-term care certificate as a valid form of ID.

91. Pursuant to HB 1333, North Dakota only permitted citizens to use four forms of qualifying ID in order to vote.

92. Additionally, HB 1333 mandated that driver's licenses and non-driver ID cards must be current to be accepted at the polls.

93. Under HB 1333, military identification was not an acceptable form of ID, except for service members stationed away from their North Dakota residence.

94. HB 1333 also restricted absentee voting.

95. Prior to passage of HB 1333, absentee voters without a qualifying ID could submit an absentee ballot if another qualified elector vouched for his or her qualifications.

96. HB 1333 removed this provision for everyone except disabled voters. Under HB 1333, disabled voters could still utilize a voucher fail-safe mechanism.

97. HB 1333 also added to the Section entitled "Qualification of electors – Voting requirements" a requirement that "[f]or the purposes of this title, an elector seeking to vote in an election must meet the identification requirements specified in sections 16.1-05-07 and 16.1-07-06." HB 1333 § 1(9).

98. The strict voter ID laws adopted by HB 1332 and 1333 were "arguably some of the most restrictive voter ID laws in the nation." Doc. 50 at 4.

99. Following HB 1333's passage, on January 23, 2016, Rep. Nelson, whose district is majority Native American, explained in an op-ed in the Grand Forks Herald that as a Legislator he was well aware of how "[i]t's not a question of ID. Tribal members have IDs, but they happen to be IDs that North Dakota decided weren't good enough" since "tribal IDs in North Dakota do not . . . list the person's address." The reasons for this are "many" but most notably because "[t]here still are rural residents who cannot count on their 911 address being correct. So a great many tribal IDs do not have a 911 address that can be

counted.” Marvin Nelson, *N.D.’s Voter ID Laws Hurt Minorities’ Voting Rights*, Grand Forks Herald (Jan. 30, 2016), <http://www.grandforksherald.com/opinion/columns/3936274-marvin-nelson-nds-voter-id-laws-hurt-minorities-voting-rights>.

100. Enactment of HB 1332 and HB 1333 disenfranchised and imposed significant barriers for qualified Native American voters by establishing strict voter ID and residence requirements.

101. Those requirements had the result of denying Native Americans, including Plaintiffs, an equal opportunity to participate in the political process. *See generally* Doc. 50.

102. The strict voter ID requirements of HB 1332 and 1333 interacted with social and historical conditions to cause an inequality in the opportunities enjoyed by Native American and White voters to participate in the political process and elect their preferred representatives.

## **V. THIS COURT ENJOINS ENFORCEMENT OF HB 1332 AND 1333**

103. This Court granted the Plaintiffs’ motion for preliminary injunction on August 1, 2016, and enjoined the Defendant from enforcing HB 1332 and 1333 “without any adequate ‘fail-safe’ provisions as had previously been provided to all voters in North Dakota prior to 2013.” Doc. 50 at 28.

104. This Court found that, “given the disparities in living conditions, it is not surprising that North Dakota’s new voter ID laws,” meaning HB 1332 and HB 1333, “are having and will continue to have a disproportionately negative impact on Native American voting-eligible citizens.” *Id.* at 18.

105. “It is undisputed that the more severe conditions in which Native Americans live translates to disproportionate burdens when it comes to complying with the new voter ID laws.” *Id.* at 7.

106. “Native Americans face substantial and disproportionate burdens in obtaining each form of ID deemed acceptable under [HB 1332 and HB 1333] . . . obtaining any one of the approved forms of ID almost always involves a fee or charge, and in nearly all cases requires travel.” *Id.* at 9.

107. “It also helps to have a computer with Internet access, a credit card, a car, the ability to take time off work, and familiarity with the government and its bureaucracy.” *Id.*

108. “The declarations from the Plaintiffs’ expert witnesses show that the typical Native American voter living in North Dakota who lacks qualifying ID simply does not have these assets.” *Id.* at 10.

109. “Thus, obtaining a qualifying voter ID is much easier to accomplish for people who live in urban areas, have a good income, are computer-literate, have a computer and printer, have a good car and gas money, have a flexible schedule, and understand how to navigate the state’s administrative procedures.” *Id.* at 9-10.

110. “In the past, North Dakota allowed all citizens who were unable to provide acceptable ID’s to cast their vote under two types of ‘fail-safe’ provisions—which were repealed in 2013.” *Id.* at 28.

111. “The new voter ID laws,” HB 1332 and HB 1333, “totally eliminated the previous ‘fail-safe’ provisions that existed in the past in North Dakota.” *Id.* at 22.



112. “Although the majority of voters in North Dakota either possess a qualifying voter ID or can easily obtain one, it is clear that a safety net is needed for those voters who simply cannot obtain a qualifying voter ID with reasonable effort.” *Id.*

113. This Court could not “envision a compelling reason or a governmental interest which supports not providing such an avenue of relief for potentially disenfranchised voters.” *Id.*

114. Thus, “[t]he ill-advised repeal of all such ‘fail-safe’ provisions has resulted in an undue burden on Native American voters and others who attempt to exercise their right to vote. There are a multitude of easy remedies that most states have adopted in some form to alleviate this burden.” *Id.* at 28-29.

115. This Court, therefore, enjoined HB 1332 and HB 1333 until the State implemented a “fail-safe” provision. *Id.* at 28.

116. To comply with the Court’s order, North Dakota elected an affidavit system as its “fail-safe” provision to remedy the undue burden that Native Americans faced in the 2016 General Election.

## **VI. IMPLEMENTATION OF THE 2016 “FAIL-SAFE” AFFIDAVIT SYSTEM**

117. The 2016 election was the first election that featured both the strict ID requirements outlined by HB 1332 and HB 1333 and also allowed for the “fail-safe” affidavit system. In contrast, the 2014 election required certain types of ID under HB 1332 but did not allow for the “fail-safe” affidavit option.

118. In the 2016 election, the “fail-safe” affidavit system was widely utilized.

119. The State reported that 16,180 affidavits were executed, which is 5,661 more affidavits executed than the last measured election that had the affidavit option in 2012 prior to the Legislature's implementation of strict voter ID requirements.

120. Across the 53 counties in North Dakota, counties with larger shares of Native American populations experienced higher usage rates of affidavits in 2016, as compared to counties with the lowest share of Native Americans.

121. In Sioux County, which is 83% Native American, 10.7% of all ballots cast in the 2016 general election used affidavits.

122. In 2012, IDs were not required and vouchers and affidavits acted as available fail-safes. Under the 2012 system, the fail-safe affidavit method only accounted for 2.3% of all ballots cast in Sioux County.

123. Rolette County, which is 77% Native American, had 12 affidavits utilized in 2012.

124. In 2016 that number grew to 209 - an increase of 1642%.

125. In 2012, just one fourth of one percent of ballots in Rolette were by affidavit and in 2016 they had accounted for over 5 percent of all ballots - a 20-fold increase.

126. Overall, the top three most heavily Native American counties (Sioux, Rolette, and Benson counties), which are all majority-Native American, experienced a 750% increase in the rate of affidavit usage, as compared to a statewide average of a 43% increase from 2012 to 2016.

127. In contrast, the three counties with the smallest share of Native Americans (Billings, Slope, and Steele counties) experienced a decrease in affidavit usage by 4 less affidavit votes in 2016, or an 11% decline.

128. According to the Secretary of State Alvin Jaeger, there were two cases of probable double voting arising out of the 2016 election.

129. One involved an elector voting absentee and again in person. The Burke County prosecutor reached a pretrial diversion agreement with the elector in that case.

130. Another involved an elector voting in state and out of state. The state declined to prosecute that case. *See* Mem. from Alvin Jaeger, N.D. Secretary of State on N.D. – Views and Recommendations to the Presidential Advisory Commission on Election Integrity 4 (Sept. 5, 2017), <https://www.scribd.com/document/358292085/Sos-00435420170907141608>; John Hageman, *Diversion Agreement Reached In Rare North Dakota Voter Fraud Case*, The Bismarck Tribune (Sept. 15, 2017), [http://bismarcktribune.com/news/state-and-regional/diversion-agreement-reached-in-rare-north-dakota-voter-fraud-case/article\\_9d3da36d-f4d2-58d9-9471-697249e1359c.html](http://bismarcktribune.com/news/state-and-regional/diversion-agreement-reached-in-rare-north-dakota-voter-fraud-case/article_9d3da36d-f4d2-58d9-9471-697249e1359c.html).

131. Following the 2016 election, the state investigated voters it suspected to be non-citizens.

132. All but one were determined to in fact be citizens and the remaining voter was not identified in an immigration database. It is unknown if citizenship was proven through other means or if federal law enforcement intends to further pursue the issue. *See generally* Rob Port, *We Have No Idea If Voter Fraud Changed the Outcome of Some North Dakota Elections*, SayAnythingBlog (Sept. 12, 2017), <https://www.sayanythingblog.com/entry/no-idea-voter-fraud-changed-outcome-north-dakota-elections/>.

133. According to local news sources, twelve voters may have used a post office or UPS location as their address in the 2016 election. It is unknown if these voters lacked street addresses, believed their P.O. boxes counted as a street address, did not wish to reveal their residential address to voting officials, or intentionally falsified their address. *See* Max Grossfeld, *Dozens of People Voted With False Addresses Committing Voter Fraud*, West Dakota Fox (July 20, 2017), <http://www.kfyrtv.com/content/news/Dozens-of-people-voted-with-false-addresses-committing-voter-fraud-435701893.html>.

## VII. DELIBERATION OF HB 1369

134. On January 18, 2017, Jim Silrum, Deputy Secretary of State, emailed Cass County Auditor Michael Monsplaisir to discuss the bill he had drafted (HB 1369) that was based on “specific requests . . . from certain legislators.” E-mail from Jim Silrum, Deputy Secretary of State (Jan. 18, 2017) [hereinafter “Jan. 18th Communication”]

135. In a February 3, 2017 email to Hons von Spakovsky and Don Palmer, entitled *Re: Agenda & Info: Heritage Foundation Election Briefing for Secretaries of State – February 14-15, 2017*, Silrum stated the draft bill was “an attempt to keep our strong voter ID requirements” as well as provide a different form of “‘fail safe’ option for those who want to vote, but don’t have an ID at the time of voting.” E-Mail from Jim Silrum, Deputy Secretary of State (Feb. 3, 2017) [hereinafter “Feb. 3rd Communication”].

136. Silrum’s proposed “fail-safe” option still required that every voter possess an ID and therefore is not, in fact, a “fail-safe” option for those that lack an ID.

137. The proposal was similar to the reformation of the affidavit system proposed and rejected by the Legislature in 2011 under HB 1447. There, the Legislature debated an

affidavit system where a voter would have to return to show an ID after casting a provisional ballot. *See* discussion above at ¶ 25.

138. Silrum's draft HB 1369 similarly proposed that a voter without a valid ID must cast a "set-aside" ballot. The voter would then have to return to the county auditor's office in the days following the election and show a valid form of ID in order for the set-aside ballot to be counted.

139. Silrum explained that he believed that this set-aside system, which still required a voter possess an ID, would be an adequate "fail-safe" option because he was "convinced [the Court] incorrectly applied to ND the federal law requiring states to provide a fail-safe option for people to register to vote." Feb. 3rd Communication (emphasis in original).

140. Silrum then explained that by circumventing the registration system, his "set-aside" ballot option could impose more stringent requirements on voters than the requirements for registration to vote in most states. *See* Voter Registration Rules, available at: <https://www.vote.org/voter-registration-rules/> (last visited September 20, 2017).

141. He explained: "this type of voter ID system is much better than voter registration since the use of [voter registration] would simply push the determination of qualifications to the point at which an individual registers. From what I have seen, many state's laws don't allow them to do much vetting of the qualifications of electors at the time of registration, so what good is it to register someone if there is no way to determine if they meet the qualifications to be registered for that precinct." Feb. 3rd Communication.

142. In a January 18, 2017 email, Silrum also went on to explain that he believed the “set-aside” option would result in fewer affidavit votes being counted. Jan. 18th Communication.

143. In response to Cass County Auditor, Michael Montplaisir’s questions over the process for “dealing with provisional ballots,” Silrum predicted that the “set-aside” affidavit process would end up with many fewer affidavits being counted. *Id.*

144. Silrum explained that in other states, the affidavit systems that require a voter to return to verify registration act as an effective deterrent and result in fewer affidavits being counted: “From the conversation I have had with my colleagues in other states, they have poll workers give provisional ballots to nearly everyone they can’t verify as a registered voter since this removes the reasons for any arguments within the polling place as is the case when the poll worker is forced to tell that voter that they are not allowed to vote.” *Id.*

145. Silrum went on: “My colleagues say that since these voters don’t return to verify their registration status, the cost for a ballot and an envelope is a small price to pay to remove the conflict from the polling place while also keeping those voters who should not vote from casting a ballot.” *Id.*

146. On that same day in another email to Cass County Auditor Michael Montplaisir, Silrum again emphasized that his “set-aside” system would result in fewer votes being counted stating: “As for the set-aside ballots, I hope the fact that many individuals who cast them will not likely come into your office later to verify their qualifications will put some of the fears to rest about long lines outside your office in the six days after the election.” *Id.*

147. Silrum drafted HB 1369 with the intention of maintaining the requirement of an ID for every voter.

148. Silrum knew that the proposed system would likely result in fewer votes being counted.

149. Silrum also knew that the ID requirement coupled with a requirement of a verifiable street address placed a disproportionate and undue burden on Native American voters who attempt to exercise their right to vote. *See generally* Doc. 50; *see also* *Hearing Minutes on H.B. 1447 Before H. Political Subdivision Comm., 62nd Leg. Assemb.* 3 (N.D. Apr. 20, 2011) (statement of Jim Silrum, H. Political Subdivisions Comm.) (“We are also going to need to work with the tribal governments to make sure because a couple of our counties that have reservations in the state have not completed their 911 addressing. Even if they have the residence of those counties [they] don’t know what their 911 address is.”).

150. Prior to enactment of HB 1369, the Native American Rights Fund (“NARF”) provided testimony to both houses of the North Dakota Legislature. NARF explained that the “set-aside” system did not cure the disproportionate burden placed on Native American voters to obtain an ID in the first place and therefore would not adequately provide a “fail-safe” option for Native American voters that do not have an ID. *See Written Testimony of the Native American Rights Fund Regarding H.B. 1369*, Native American Rights Fund (Jan. 27, 2017), [http://www.narf.org/wordpress/wp-content/uploads/2017/02/NARF\\_HB\\_1369\\_Testimony-1.pdf](http://www.narf.org/wordpress/wp-content/uploads/2017/02/NARF_HB_1369_Testimony-1.pdf).

151. During the House floor session considering HB 1369, Rep. Johnson, (R), stated plainly “Judge Hovland spent a whole bunch of time in his order enjoining the 2015 bill

regarding the burden placed on Native Americans in obtaining what is a valid ID as provided in the bill. And there it is again. Despite that you provide a provisional ballot you are still requiring the same valid ID and that is not truly a fail-safe option like an affidavit is. . . . I would be remissed to substitute Judge Hovland's opinion for mine but I don't believe this will pass constitutional muster again and I do hope to see some red votes." *House Floor Session: Hearing on H.B. 1369*, 65th Leg. Assemb. (N.D. Apr. 17, 2017) (statement of Rep. Mary C. Johnson).

152. Despite being repeatedly warned of the disproportionate and burdensome impact that obtaining an ID with a permanent physical address has on Native Americans, *see generally* Doc. 50, the North Dakota Legislature failed to investigate the impact of HB 1369 on Native Americans prior to the bill's passage.

153. Indeed, no studies were commissioned investigating the bill's potential impacts and no consultations were made with tribal governments to see if the bill would disproportionately affect their people.

#### **VIII. ENACTMENT OF HB 1369**

154. HB 1369 was enacted on April 24, 2017. HB 1369 requires that all voters must have one of only three forms of specific ID, or fall into one of the specific exceptions made for the elderly, certain veterans, or the disabled absentee voter.

155. HB 1369 was intended to "replace[] voter affidavits in favor of a set-aside ballot that would be excluded from the count until such time that . . . voter that voted without the proper identification returns and . . . identifies himself at the polling place to prove their



identity.” *House Floor Session: Hearing on H.B. 1369*, 65th Leg. Assemb. (N.D. Feb. 2, 2017) (statement of Rep. Scott Louser, Member, H. Comm. on Gov’t and Veterans Affairs).

156. HB 1369 continues to require Native Americans to overcome “substantial and disproportionate burdens in obtaining each form of ID deemed acceptable.” Doc. 50 at 9.

157. Because HB 1369 still requires specific types of identification, HB 1369 does not contain any “fail-safe” provision to alleviate the disproportionate burden that Native Americans faced to comply with HB 1332 and HB 1333.

158. HB 1369 continues to limit the forms of ID that voters can use at the polls to (1) a North Dakota driver’s license; (2) North Dakota non-driver’s identification card; and (3) an official form of ID issued by a tribal government. *Compare* HB 1369 § 2 *with* HB 1332 § 5.

159. HB 1369 creates exceptions to the identification requirement for three classes of persons. It allows the secretary of state to prescribe a long-term care certificate for elderly individuals living in a long-term care facility to use as identification; allows uniformed service members or immediate family members temporarily stationed away from the residence or state to use a current military ID or passport; and allows for a person with a disability to have another qualified elector sign and certify the applicant is a qualified elector if the disabled person is voting absentee. HB 1369 § 2(4)(a)-(c).

160. For everyone else, as with HB 1332, their ID must be one of the three types allowed and provide the voter’s current residential street address and date of birth. HB 1369 § 2(2)(b),(c).

161. Additionally, H.B. 1369 established a section “Residence for voting – Rules for determining” that stated in relevant part “[f]or purposes of voting . . . [e]very qualified

elector may have only one residence, shown by an actual fixed permanent dwelling, establishment, or any other abode to which the individual returns when not called elsewhere for labor or other special or temporary purposes.” HB 1369 § 3(1).

162. The “Residence for voting – Rules for determining” section also includes a rule that “[f]or purposes of voting” the “street address verified by the individual as provided in section 16.1-01-04.1 when requesting a ballot to vote must be the address of residence for the individual.” HB 1369 § 3(2).

163. IDs with only a P.O. Box remain unacceptable as voter IDs under HB 1369.

164. If the voter presents one of the three forms of ID but the information on the ID is not current or lacks the voter’s current residential address or date of birth, the ID must be supplemented with one of five documents issued in the voter’s name and providing the missing or outdated information: (1) a current utility bill; (2) a current bank statement; (3) a check issued by a federal, state, or local government; (4) a paycheck; or (5) a document issued by a federal, state, or local government. HB 1369 § 2(3)(b)(1)-(5).

165. If the voter shows up to the polls to vote without a valid form of ID but asserts that he or she is qualified to vote in that precinct, the voter cannot vote. Instead, he or she is allowed to submit a ballot that “must be securely set aside” and is not counted until the voter returns with a valid ID. HB 1369 § 2(5).

166. As noted above, this “set-aside” provision was intended to replace the only “fail-safe” provision available—affidavits—with ballots that “would be excluded from the count” until the voter “returns and identifies himself.” *House Floor Session: Hearing on H.B. 1369*,

65th Leg. Assemb. (N.D. Feb. 2, 2017) (statement of Rep. Scott Louser, Member, H. Comm. on Gov't and Veterans Affairs).

167. The voter has until the polling place closes on Election Day to return to a “polling place election board member.” HB 1369 § 2(5).

168. After Election Day, the voter has six days to travel to “an employee of the office of the election official responsible for the administration of the election” and show a valid ID. *Id.*

169. Following verification, “[e]ach ballot set aside . . . must be presented to the members of the canvassing board for proper inclusion or exclusion from the tally.” *Id.*

170. Because a voter must still show a valid ID, and because the canvassing board may have discretion to deny inclusion of the vote, the provisional or set-aside ballot process is not a fail-safe mechanism for those that simply do not have an ID.

171. Further, the burden of traveling to present an ID for verification is especially burdensome for Native Americans who disproportionately lack resources for travel and access to transportation.

172. HB 1369 maintains HB 1332’s elimination of the voucher and affidavit fail-safe that, prior to HB 1332, could be utilized by qualified voters who cannot produce an ID when requested by the poll clerk.

173. However, in the most recent election law guidance issued August 2017, the Secretary of State allows absentee voters to sign a Voter Affidavit if they lack an ID. *See North Dakota Residences Choosing to Vote Absentee or By Mail*, N.D. Secretary of State, <https://vip.sos.nd.gov/pdfs/Portals/Voting-MailBallotAbsentee.pdf> (last visited Dec. 5,

2017) (stating that you must be able to provide an ID or “you complete a Voter’s Affidavit on which you attest to your qualifications as a voter”).

174. Additionally, HB 1369 maintains HB 1333’s mandate that driver’s licenses and non-driver ID cards must be current to be accepted at the polls.

175. HB 1369 also maintains HB 1333’s refusal to accept military identification as an acceptable form of ID except for service members stationed away from their North Dakota residence.

176. HB 1369 maintains HB 1333’s restrictions on absentee voting.

177. Prior to passage of HB 1333, absentee voters without a qualifying ID could submit an absentee ballot if another qualified elector vouched for his or her qualifications.

178. HB 1333 removed this provision for everyone except disabled voters. HB 1369 maintains this restriction.

179. HB 1369 maintains HB 1333’s modification to the “Qualification of electors – Voting requirements” section that “[a]n elector seeking to vote in an election must meet the identification requirements specified.” HB 1369 § 1(4).

180. On April 25, 2017, North Dakota Governor Doug Burgum signed HB 1369 into law and it was codified in N.D. Cent. Code 16.1-01-04, 16.1-01-04.1, and 16.1-01-04.2

181. Enactment of HB 1369 preserves the disenfranchisement and significant barriers imposed by HB 1332 and 1333 on qualified Native American voters by maintaining strict voter ID and street address requirements.

182. These requirements deny Native Americans, including Plaintiffs, an equal opportunity to participate in the political process.

183. Further, HB 1369's requirement that a qualified elector that utilized a "set-aside" ballot must make another trip to present an identification for verification is especially burdensome for Native Americans who disproportionately lack resources for travel and access to transportation.

184. The strict voter ID requirements of HB 1369 interact with social and historical conditions to cause an inequality in the opportunities enjoyed by Native American and White voters to participate in the political process and elect their preferred representatives.

185. Enactment of HB 1369 was intended to suppress the Native American vote.

#### **IX. HB 1369 MAINTAINS HB 1332'S AND 1333'S BURDEN ON NATIVE AMERICANS**

##### **A. General Native American Demographics in North Dakota**

186. North Dakota had a total population of 672,591 in 2010. Webster Decl., Doc. 44-4 ¶ 13. In 2010, North Dakota had a Native American population of 36,591 (5.4%). *Id.* According to the American Community Survey Five-Year Estimates 2011-2015, the Native American population rose to 38,286 (5.3%).

187. In 2010, 8,319 Native Americans lived on the Turtle Mountain Reservation – home of the Turtle Mountain Band of Chippewa Indians. *Id.* at ¶ 37 (Table 5). The Turtle Mountain Reservation is located in Rolette County, North Dakota. *Id.* at ¶ 16. It is approximately 72 square miles in area.

188. The Fort Berthold Indian Reservation, home of the Three Affiliated Tribes (Mandan, Hidatsa, and Arikara), has 4,556 Native Americans living on the reservation according to the 2010 Census. *Id.* at ¶ 37 (Table 5). The Fort Berthold Indian Reservation

occupies sections of six counties in North Dakota: Mountrail, McLean, Dunn, McKenzie, Mercer, and Ward. *Id.* at ¶ 16. The Fort Berthold Indian Reservation covers approximately 980,000 acres.

189. The Spirit Lake Reservation, home of the Spirit Lake Tribe, has 3,595 Native Americans living on the reservation according to the 2010 Census. *Id.* at ¶ 37 (Table 5). The Spirit Lake Reservation occupies sections of four counties in North Dakota: Benson, Eddy, Nelson, and Ramsey. *Id.* at ¶ 16. The Spirit Lake Reservation covers approximately 245,120 acres.

190. The Lake Traverse Reservation is the home of the Sisseton Wahpeton Oyate, and has only eight Native Americans living on the North Dakota side of the reservation according to the 2010 Census. *Id.* at ¶ 37 (Table 5). According to the 2013 American Indian Population and Labor Force Report by the Bureau of Indian Affairs, there were 448 tribal members living on the North Dakota portion of the Lake Traverse Reservation. *2013 American Indian Population and Labor Force Report*, U.S. Dep't of the Interior 87 (2014), <https://www.bia.gov/sites/bia.gov/files/assets/public/pdf/idc1-024782.pdf>. The Lake Traverse Reservation covers approximately 250,000 acres. The northern portion of the Reservation is located in Sargent and Richland counties in southeastern North Dakota. Doc. 44-4 at ¶ 16.

191. The Standing Rock Reservation, home of the Standing Rock Sioux Tribe, has 3,492 Native Americans living on the reservation according to the 2010 Census. *Id.* at ¶ 37 (Table 5). The Standing Rock Reservation is located in Sioux County, North Dakota. *Id.* at ¶ 16. The reservation covers approximately 2.3 million acres.

192. Chart 1 below details the total and voting age Native American population residing on reservations in North Dakota in 2010.

*Chart 1*

<b>Reservation</b>	<b>Total Native American Population</b>	<b>Total Voting Age Native American Population</b>
Ft. Berthold	4,556	2,883
Turtle Mountain	8,319	5,172
Spirit Lake	3,595	1,983
Standing Rock	3,492	2,136
Lake Traverse	8	6
<b>TOTAL</b>	<b>19,970</b>	<b>12,180</b>

SOURCE: Census of Population, 2010.

*Id.* at ¶ 37.

193. Chart 2 below provides the number of Native American people living in each of the fourteen North Dakota counties whose territory is wholly or partly on Indian reservations, according to the 2010 U.S. Census.

Chart 2

<b>North Dakota County</b>	<b>Reservation and Tribe(s)</b>	<b>Number of County Residents That are Native American; Percentage of the County Population (U.S. Census 2010)</b>
Rolette	Turtle Mountain Reservation: Turtle Mountain Band of Chippewa Indians	10,763; 77.2%
Mountrail	Fort Berthold: Three Affiliated Tribes	2,348; 30.6%
McLean	Fort Berthold: Three Affiliated Tribes	625; 7%
Dunn	Fort Berthold: Three Affiliated Tribes	449; 12.7%
McKenzie	Fort Berthold: Three Affiliated Tribes	1,412; 22.2%
Mercer	Fort Berthold: Three Affiliated Tribes	196; 2.3%
Ward	Fort Berthold: Three Affiliated Tribes	1630; 2.6%
Sargent	Lake Traverse: Sisseton Wahpeton Oyate	20; 0.5%
Richland	Lake Traverse: Sisseton Wahpeton Oyate	330; 2%
Benson	Spirit Lake Reservation: Spirit Lake Tribe	3,663; 55%



Eddy	Spirit Lake Reservation: Spirit Lake Tribe	58; 2.4%
Nelson	Spirit Lake Reservation; Spirit Lake Tribe	30; 1%
Ramsey	Spirit Lake Reservation; Spirit Lake Tribe	994; 8.7%
Sioux	Standing Rock Reservation; Standing Rock Sioux Tribe	3,492; 84.1%

*Profile of General Population and Housing Statistics: 2010 Demographic Profile Data, U.S.*

Census Bureau, Table DP-1 (2010),

<http://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (set to decennial census and modified for state and county data sets).

**B. Native Americans in North Dakota have higher unemployment rates than non-Native Americans**

194. “The unemployment rates on reservations are staggering. For example, unemployment at the Standing Rock and Turtle Mountain reservations is nearly 70%.” Doc. 50 at 18.

195. According to the 2009-2013 American Community Survey 5-Year Estimates, North Dakota as a whole has an unemployment rate of 3.3%, and a not in labor force rate of 29.5%.

196. According to the same survey, the unemployment rate for the White population in North Dakota is 2.8%, while the unemployment rate for the Native American population in

North Dakota is 10.3%. The percentage of White people not in the labor force in North Dakota is 29%, while the percentage of Native Americans not in the labor force in North Dakota is 42.8%.

197. Chart 3 below displays the estimated percentage of employed American Indians and Alaska Natives in civilian jobs for each tribe in North Dakota, according to the federal Bureau of Indian Affairs (“BIA”).

*Chart 3*

<b>Tribe</b>	<b>Estimated percentage of American Indian/Alaska Native Population Employed in Civilian Jobs in the Tribal Statistical Area</b>	<b>Estimated percentage of American Indian/Alaska Native Population Employed in Civilian Jobs in the Tribal Statistical Area and Nearby Counties</b>
<b>Three Affiliated Tribes</b>	50.9-61%	<i>Unavailable</i>
<b>Turtle Mountain Band of Chippewa Indians</b>	35.4-44.1%	<i>Unavailable</i>
<b>Standing Rock Sioux Tribe</b>	<i>Unavailable</i>	44.5-53.1% (North Dakota only)
<b>Spirit Lake Tribe</b>	39.9-47.2%	40.2-50.6%
<b>Sisseton-Wahpeton Oyate</b>	48.7-57.9% (North and South Dakota)	

*2013 American Indian Population and Labor Force Report, supra, at 50-51 .*

**C. Native Americans in North Dakota experience a higher rate of poverty than non-Native Americans**

198. “The undisputed evidence reveals that Native Americans living in North Dakota disproportionately live in severe poverty.” Doc. 50 at 17.

199. Native Americans experience “disparate living conditions”: non-Native Americans earn “a median household income” of \$56,566 while Native Americans make “only \$29,909.” *Id.* at 18. “[T]he average income for non-Native Americans living in North Dakota is \$73,313, compared to \$48,763 for Native Americans.” *Id.* And “22.3% of Native Americans who lack voter ID’s have household incomes less than \$10,000.” *Id.*

200. According to the 2009-2013 American Community Survey 5-Year Estimates, North Dakota as a whole has a family poverty rate of 7.1%. This statistic represents the number of families whose income in the past 12 months was below the poverty level. The state has an individual poverty rate of 11.9%, which includes individuals whose income in the past 12 months was below the poverty level. Doc. 44-4 ¶ 18.

201. Within the Native American community in North Dakota, “21.7% of voting-age Native Americans had incomes below the poverty line, compared to only 7.6% of non-Native Americans.” Doc. 50 at 17. Overall, “37.7% of all Native Americans live in poverty, compared to 5.3% of Anglo families.” *Id.* at 18.

202. “Thus, the poverty rate for Native Americans of voting age is nearly three times that for Whites of voting age in North Dakota.” Doc. 44-4 ¶ 18.

203. The poverty rate for each reservation in North Dakota is similar. According to the 2009-2013 American Community Survey, the Fort Berthold Reservation has a family poverty rate of 18.6%. Families with at least one Native American household member have a poverty rate of 27.3%. Native American individuals have a poverty rate of 29.2%.

204. The Lake Traverse Reservation has a family poverty rate of 15%. Families with at least one Native American household member have a poverty rate of 36.9%. Native American individuals have a poverty rate of 40.8%. *Id.*

205. The Spirit Lake Reservation has a family poverty rate of 41.3%. Families with at least one Native American household member have a poverty rate of 49.9%. Native American individuals have a poverty rate of 53.5%. *Id.*

206. The Standing Rock Reservation has a family poverty rate of 33.6%. Families with at least one Native American household member have a poverty rate of 46%. Native American individuals have a poverty rate of 51.3%. *Id.*

207. The Turtle Mountain Reservation has a family poverty rate of 36.9%. Families with at least one Native American household member also have a poverty rate of 36.9%. Native American individuals have a poverty rate of 40.1%. *Id.*

208. As Chart 4 below reveals, the 2009-2013 American Community Survey 5-Year Estimates also shows that a disproportionately large percentage of individual Native Americans live below the poverty line when compared with White North Dakotans when broken down by county.

*Chart 4*

	<b>Percentage of all Citizens Living Below Poverty Line</b>	<b>Native Americans Living Below Poverty Line</b>	<b>White North Dakotans Living Below Poverty Line</b>

<b>North Dakota</b>	11.9%	39.6%	9.6%
<b>Sioux County</b>	40.5%	45%	10.6%
<b>Rolette County</b>	36%	41.4%	13.5%
<b>Benson County</b>	35.8%	53.2%	13.8%
<b>Mountrail County</b>	12.3%	21.9%	7.8%
<b>McKenzie County</b>	13.8%	47.2%	6%
<b>Dunn County</b>	10.1%	21.1%	9.1%
<b>Ramsey County</b>	12.1%	47.1%	7.7%
<b>McLean County</b>	10.9%	18.5%	10.4%
<b>Sargent County</b>	7.4%	31.6%	7%
<b>Ward County</b>	9.1%	29%	8.5%
<b>Mercer County</b>	7.3%	29.8%	6.8%
<b>Richland County</b>	11.8%	22.9%	11.1%

*Poverty Status in Past 12 Months, 2009-2013 American Community Survey 5-Year Estimates,*

U.S. Census Bureau, Table S1701,

<http://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (last visited May 2, 2017) (modified for county and state data sets).

**D. Native Americans in North Dakota experience a higher rate of Homelessness than non-Native Americans**

209. Native American people make up a disproportionate part of the state's homeless population. According to a 2014 point-in-time survey of homeless persons conducted for the U.S. Department of Housing and Development by the North Dakota Coalition for Homeless People, the total homeless population in North Dakota was 1,258. Of the total number of homeless people, 213 were American Indian or Alaska Native, making up 16.9% of the total, despite the fact that Native Americans make up only about 5% of the total state population. The point in time survey for 2015 had similar results. North Dakota Coalition for Homeless People, Inc., *News & Publications, Point in Time Counts*, <https://www.ndhomelesscoalition.org/new-page-2/> (last visited Dec. 6, 2017).

210. Beginning in 2016, the total number of homeless in North Dakota declined markedly to 261 individuals. However, of the total homeless people, 70 were Native American, increasing the percentage of Native American homeless to 26.8%. In 2017 the total homeless population again decreased to 257 but the total of Native American homeless instead increased to 76. In 2017, 29.5% of the homeless population is Native American despite Native Americans only comprising 5% of the population.

211. Additionally, homeless does not necessarily mean without a roof over their head, and many homeless would not be captured by the point-in-time survey. For example, according to the Turtle Mountain Housing Authority 2008 Preliminary Ten-Year Strategic Plan to End Homelessness, "[t]he homeless at Turtle Mountain are described as



‘precariously housed’ – that is, people who are imminent risk of becoming literally homeless at any time. Often, they are temporarily doubled up with friends or relatives – contributing to the overcrowding of many reservation homes.”

212. The precariously housed rely on the temporary goodwill of their family and friends and lack a permanent mailing address of their own.

**E. Native Americans in North Dakota Face Greater Health Threats than non-Native Americans**

213. The North Dakota Department of Health has released data from the 2010 census showing that among ten leading causes of death, the rate of death for Native American North Dakotans is higher than for the state’s general population. N.D. Dept. of Health, *North Dakota American Indian Health Profile* (2014), <http://www.ndhealth.gov/healthdata/communityhealthprofiles/American%20Indian%20Community%20Profile.pdf>.

214. The rate of infant and child deaths is also much higher among Native Americans in North Dakota than among the general population. *Id.*

215. Greater numbers of Native Americans in North Dakota are living with a disability than in the general North Dakotan population. While 8.6% of North Dakotans 18-65 live with a disability, 17.5% of Native Americans in the state do. *Id.*

216. Where 8.2% of white high school students have attempted suicide, Native American high school students’ suicide rate is nearly double at 14.3%. Among middle school students, Native American students attempt suicide at rates roughly triple that of their non-Native peers. 5.2% of white middle school children have attempted suicide, while

18.7% Native American middle school children have attempted suicide. McCool Decl., Doc. 44-2 ¶ 97.

217. North Dakota only has two Indian Health Service hospitals out of the 50 hospitals in the state. Therefore, many Native Americans must access health care outside of Indian Health Services, yet Native Americans are three times less likely than whites to have health insurance in the state. *Id.* at ¶ 94.

218. Nearly twice as many Native Americans than whites have reported they needed a doctor in the past year that they cannot afford. *Id.*

219. Native Americans in North Dakota are struggling to meet their most basic needs. *Id.* at ¶ 98.

**F. Native Americans in North Dakota are more likely than non-Native Americans to Lack Qualifying IDs, Supplemental Documentation, and/or Street Addresses**

**1. Native Americans Disproportionately Lack Qualifying IDs**

220. “23.5% of Native Americans currently lack valid voter ID, compared to only 12% of non-Native Americans.” Doc. 44-1 ¶ 11.

221. “15.4% of Native Americans who voted in 2012 currently lack qualifying voter ID, compared to only 6.9% of non-Native Americans.” *Id.* ¶ 41.

222. “Only 78.2% of Native Americans have a driver’s license that they could potentially use as a qualifying voter ID. In contrast, 94.4% of non-Native Americans have a driver’s license.” *Id.* ¶ 11.

223. “47.7% of Native Americans who do not currently have a qualifying voter ID lack the underlying documents they need to obtain an acceptable ID.” *Id.*



224. According to a nationwide study, citizens earning less than \$25,000 a year are twice as likely to lack documentation necessary to obtain qualifying forms of ID. Brennan Ctr. for Justice, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, 2(2006), [http://www.brennancenter.org/sites/default/files/legacy/d/download\\_file\\_39242.pdf](http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf).

225. The same report found that citizens earning less than \$35,000 a year are more than twice as likely to lack current government-issued photo identification. *Id.*

226. Additionally, although North Dakota law allows for use of an “official form of identification issued by a tribal government,” (N.D. Cent. Code § 16 1-01-04.1), Plaintiffs, as well as many other Native Americans in North Dakota, do not possess tribal government IDs, or do not possess tribal government IDs that contain a current physical address.

227. Further, some tribal IDs, like those issued to Standing Rock Sioux tribal members, are issued by the BIA and may not meet the requirement of an “identification issued by a tribal government” as required by HB 1369 § 2.

## **2. Native Americans Disproportionately Lack Supplemental Documents**

228. Even though HB 1369 allows voters to supplement required information where missing from the ID, many Native Americans will not have the supplemental documents required to prove a physical address.

229. “5.6% of Native Americans in North Dakota do not have a social security card or a W2 evidencing their social security number.” Doc. 44-1 ¶ 11.

230. Many Native Americans lack access to transportation and have no car registration showing their current address. *Id.* ¶ 47.

231. “21.6% of Native Americans do not have two documents that show their residential address.” *Id.* ¶ 11.

232. Native Americans are less likely than whites to have a bank statement in their name that has a street address.

233. Native Americans are less likely than whites to have a utility bill in their name that contains a street address.

234. Native Americans are less likely than whites to have a pay stub or earning statement with their name and street address.

235. Native Americans are less likely than whites to have a document from a state, local, or federal government agency that contains their name and street address.

### **3. Native Americans Disproportionally Lack Street Addresses**

236. “21.6% of Native Americans do not have two documents that show their residential address. One reason is that many Native Americans do not have residential addresses and the Post Office delivers their mail to a post office box.” Doc. 50 at 11.

237. Another reason is that, “on many reservations, the residential address system produces conflicting and problematic results.” *Id.*

238. In fact, many tribal members do not even know their street address.

239. Some tribal members have been told they have more than one street address, and many either may not have one, or believe they do not.

240. Many tribal IDs do not include any address, and most tribes and the BIA do not require that tribal citizens put a street address on tribal IDs.

241. Even among tribal IDs that include a form of address, due to lack of, or relatively recent arrival of, residential mail delivery, many tribal citizens only list a P.O. Box address on their tribal IDs because that is the address they utilize for conducting their affairs or the address that they know.

242. Indeed, from 2011 to 2017, the Legislature was aware that Native Americans may not possess a street address or may not know their street address.

243. In 2011, Deputy Secretary Silrum testified to the Legislature: “[t]his is very much the case also in small town North Dakota where if you sent something to their street address the post office will return it because it needs to go to their post office box . . . We are also going to need to work with the tribal governments to make sure because a couple of our counties that have reservations in the state have not completed their 911 addressing. Even if they have the residence of those counties don’t know what their 911 address is [sic].” *Hearing Minutes on H.B. 1447 Before H. Political Subdivision Comm.*, 62nd Leg. Assemb. 3 (N.D. Apr. 20, 2011) (statement of Jim Silrum, H. Political Subcomm.).

244. On January 23, 2016, Rep. Marvin Nelson, whose district is majority Native American, explained in an op-ed in the Grand Forks Herald that as a Legislator he was well aware of how “it’s not a question of ID. Tribal members have IDs, but they happen to be IDs that North Dakota decided weren’t good enough” since “tribal IDs in North Dakota do not . . . list the person’s address.” The reasons for this are “many” but most notably because “[t]here are still rural residents who cannot count on their 911 address being correct. So a great many tribal IDs do not have a 911 address that can be counted.” *See Marvin Nelson, N.D.’s Voter ID Laws Hurt Minorities, supra.*

**G. Obtaining a Qualifying ID in North Dakota is More Difficult For Native Americans**

245. “Native Americans who currently lack a qualifying voter ID disproportionately face logistical and financial burdens in obtaining a qualifying ID.” Doc. 50 at 19.

246. “Further, getting a new driver’s license also requires proof of ID—the same forms of ID required to obtain a non-driver’s ID, which is problematic for Native Americans.” *Id.* at 14.

247. Social and historical conditions lead to high rates of poverty and unemployment among Native Americans in North Dakota, which prevent and will continue to prevent many Native Americans from obtaining the requisite underlying documentation necessary to obtain an ID required for voting.

**1. Limited Hours of, and Distance to, North Dakota DLS Sites Increase The Burden On Native American Voters**

248. “[T]ravel to a Driver’s License Site to obtain a non-driver’s ID card (or a driver’s license) is substantially burdensome for Native Americans.” *Id.* at 14.

249. “As with non-driver’s ID’s, acquiring a new driver’s license also requires a personal visit to a Driver’s License Site. . . . such a visit can be burdensome for Native Americans who currently lack a qualifying voter ID.” *Id.*

250. In order to obtain a North Dakota driver’s license or a nondriver ID card, a qualified voter in North Dakota must go to one of North Dakota’s remaining 19 DLSs.

251. There are only 19 DLS locations because eight DLSs have closed down since Dr. Gerald R. Webster submitted his analysis of DLSs on June 20, 2016, now making obtaining a driver’s license or nondriver ID card even more difficult. *Compare* N.D. Dep’t of Transp.,

*Schedules, hours, and addresses for ND Drivers License sites*, <https://www.dot.nd.gov/divisions/driverslicense/docs/Drivers%20Lic%20Sites.pdf> (last visited Dec. 1, 2017) (“2017 Drivers License Sites”) *with* Doc. 44-4 at ¶ 24.

252. There is not a single DLS on an Indian reservation in North Dakota. Doc. 50 at 12.

253. Because there are no Driver’s License Sites on any reservations in North Dakota, access for Native Americans is severely limited.

254. Moreover, the DLSs closest to North Dakota Indian reservations typically have very limited hours and are often located in places that are difficult for Native Americans to access. Doc. 44-4 ¶¶ 25, 39.

255. For instance, the closest DLS to the Turtle Mountain Reservation, located in Rolla, has recently decreased its operating hours from twice a month to once a month. It is now only open the first Wednesday of every month. It has also decreased its operating hours from 9:40 a.m. to 3:20 p.m. to 10:20 a.m. to 2:35 p.m. This DLS site, the nearest to all Plaintiffs in this case, now operates the most restrictive hours of any DLS location. *Compare* N.D. Dep’t of Transp., *Drivers License Sites* (revised Feb. 2014), <https://web.archive.org/web/20140327204243/http://www.dot.nd.gov/divisions/driverlicense/docs/Drivers%20Lic%20Sites.pdf> *with* 2017 Drivers License Sites.

256. The next closest site to the Turtle Mountain Reservation, located in Bottineau, is only open the first and third Tuesday of every month and only from 9:40 a.m. to 3:05 p.m. *Id.* The mean travel distance for voting age Native Americans from Turtle Mountain Reservation to a DLS is eleven miles, and the mean travel time is 17.4 minutes. Doc. 44-4 ¶¶ 38–39, Table 6.

257. The closest DLS to the Standing Rock Reservation was in Carson or Bismarck.

258. The Carson site closed in early August 2017.

259. An individual living on the Standing Rock Reservation will now have to travel to Bismarck to obtain a state ID. The mean travel distance for voting age Native Americans from the Standing Rock Reservation to a DLS is now 65.8 miles, and the mean travel time is approximately 112.4 minutes.

260. The closest DLS to the Fort Berthold Reservation is either in Watford City or Beulah. The Watford City site is only open on the first and third Wednesday of each month from 9:40 a.m. to 3:40 p.m. The Beulah site is only open on the second and fourth Wednesday of each month from 9:40 a.m. to 3:20 p.m. Otherwise, a tribal member on the Fort Berthold Reservation would have to travel farther to Williston or Minot. The mean travel distance for voting age Native Americans from Fort Berthold Reservation to a DLS is 49.6 miles. The mean travel time is 84.6 minutes. *Id.* at ¶ 38, 39, Table 6.

261. The closest DLS to the Lake Traverse Reservation is either the Oakes site or the Wahpeton site. The Oakes DLS is only open on the second Wednesday of each month from 10:00 a.m. to 3:00 p.m. The Wahpeton site is only open on the first and third Thursday of each month from 9:20 a.m. to 3:40 p.m. *See* 2017 Revised Drivers License Sites. The mean travel distance for voting age Native Americans from Lake Traverse Reservation to a DLS is 40.1 miles, and the mean travel time is 64.3 minutes. Doc. 44-4 at ¶ 39.

262. The closest DLS to the Spirit Lake Reservation is in Devil's Lake. That site is open every weekday from 8:00 a.m. to 4:45 p.m., except it is closed on the first and third Wednesdays of the month. *See* 2017 Revised Drivers License Sites, *supra*. The mean travel

distance for voting age Native Americans from Spirit Lake Reservation to a DLS is 14 miles.

The mean travel time is 25.3 minutes. Doc. 44-4 at ¶ 39.

263. There are no DLS sites open on Saturday or Sunday in North Dakota. 2017 Drivers License Sites.

264. The times and hours that the DLS sites are open change periodically.

265. For some Native Americans, traveling these distances would be unduly burdensome and costly given their lack of access to transportation and the time needed during working hours.

266. Charts 5 and 6 below illustrate the limited hours of, and average travel distances and times to, a DLS from each North Dakota reservation.

*Chart 5*

<b><i>Reservation</i></b>	<b><i>Mean Travel Distance to a DLS for Voting Age Native Americans</i></b>	<b><i>Mean Travel Time to a DLS for Voting Age Native Americans</i></b>
Ft. Berthold	49.6 miles	84.6 minutes
Turtle Mountain	11.0 miles	17.4 minutes
Spirit Lake	14.0 miles	25.3 minutes
Standing Rock	65.8 miles	112.4 minutes
Lake Traverse	40.1 miles	64.3 minutes
All Reservations	29.4 miles	50.3 minutes



Chart 6

<b><i>Reservation</i></b>	<b><i>Closest Driver's Licensing Site(s)</i></b>	<b><i>Hours of Operation*</i></b>
Standing Rock	Bismarck	Mon.-Fri., 7:30 AM-4:45 PM
Turtle Mountain	Rolla	1st Wed., 10:20 AM -2:35 PM
Turtle Mountain	Bottineau	1 <sup>st</sup> and 3 <sup>rd</sup> Tues., 9:40 AM-3:05 PM
Fort Berthold	Watford City	1 <sup>st</sup> and 3 <sup>rd</sup> Wed., 9:40 AM-3:40 PM
Fort Berthold	Beulah	2 <sup>nd</sup> and 4 <sup>th</sup> Wed., 9:40 AM-3:20 PM
Lake Traverse	Oakes	2 <sup>nd</sup> Wed., 10:00 AM-3:00 PM
Lake Traverse	Wahpeton	1 <sup>st</sup> and 3 <sup>rd</sup> Thurs., 9:20 AM-3:40 PM
Spirit Lake	Devil's Lake	Mon., Tues, Thurs., Fri., 2 <sup>nd</sup> and 4 <sup>th</sup> Wed., 8:00 AM-4:45 PM

\*Hours of operation are based on a North Dakota Department of Transportation document revised August 2017. *See* 2017 Drivers License Sites.

267. There was a 29.6% reduction of sites between 2015 and August 2017.

268. Following the 2017 closure of DLS sites there has been an 11.4% increase in distance that the Native American voting age population has to travel to get to a DLS site.

269. There was a 1.7% decrease in operating hours.



270. “[A] successful visit to a site requires knowledge and experience dealing with bureaucratic institutions, a means of transportation, money to pay for transportation, and the free time to travel the often significant distances to such sites. The undisputed evidence before the Court reveals that overcoming these obstacles can be difficult, particularly for an impoverished Native American.” Doc. 50 at 12.

271. “[O]nly 64.9% of Native Americans in North Dakota who lack a qualifying voter ID know the location of the nearest Driver’s License Site (as compared to 85.2% of non-Native Americans).” *Id.* at 12-13

272. “[O]nly 73.9% of Native Americans in North Dakota lacking a qualifying voter ID own or lease a car (as compared to 88% of non-Native Americans); and 47.3% of Native Americans in North Dakota believe it would be a hardship if they had to rely on public transportation to get to a Driver’s License Site (as compared to 23.1% of non-Native Americans).” *Id.* at 13.

273. “For the average voting-eligible Native American in North Dakota, the average travel distance to the closest site is nearly 20 miles (as compared to appx. 11 miles for non-Native Americans).” *Id.*

274. And indeed, as explained above, this distance has since increased based on the August 28, 2017 revisions to North Dakota DLS locations.

275. “On the average, Native Americans in North Dakota must travel twice as far as non-Natives to visit a Driver’s License Site.” *Id.* at 8.

276. “This translates to more than 70 minutes of travel time for a round trip. For Native Americans in North Dakota living on a reservation, the travel distance can be as great as 60 miles one way.” *Id.* at 13.

277. “44.1% of Native Americans lacking a qualifying voter ID reported they would have difficulty taking time off from work to travel to a Driver’s License Site (compared to 26.2% of non-Native Americans), and 36.7% of Native Americans said it would be a problem to travel even six miles each way to a site (compared to 17.3% of non-Native Americans).” *Id.* at 14.

278. It will be overly burdensome or impossible for many Native Americans to access a DLS.

## **2. Native Americans are less likely to have access to transportation in North Dakota**

279. “Many [Native Americans] lack means of transportation. According to the Barreto/Sanchez Survey, only 73.9% of Native Americans in North Dakota lacking a qualifying voter ID own or lease a car (as compared to 88% of non-Native Americans); and 47.3% of Native Americans in North Dakota believe it would be a hardship if they had to rely on public transportation to get a Driver’s License Site (as compared to 23.1% of non-Native Americans).” *Id.* at 13 (emphasis in original).

280. “Many Native American lack access to transportation and have no car registration showing their current address.” Doc. 50 at 11.

281. The 2006-2010 American Community Survey shows that 4.8% of White households in North Dakota lacked access to a vehicle, while 10.5% of Native American

households did not have access to a vehicle. Native American households are twice as likely to be unable to access a motor vehicle. Doc. 44-4 ¶ 20.

282. In four counties in North Dakota, 8% or more of households lack access to a motor vehicle. Those counties include Sioux (12.5%); Benson (8.4%); Pierce (8.3%); and Rolette (8.2%). Sioux, Benson, and Rolette counties have the largest percentages of Native American residents of North Dakotan counties. *Id.* at ¶ 21.

283. In sum, “a successful visit to a [Driver’s License] site requires . . . a means of transportation, money to pay for transportation, and the free time to travel the often significant distances to such sites . . . . The undisputed evidence before the Court reveals that overcoming these obstacles can be difficult, particularly for an impoverished Native American.” Doc. 50. at 12 (emphasis in original, referring to declarations of Plaintiff’s expert witnesses).

284. “The undisputed evidence in this case has established that travel to a Driver’s License Site to obtain a non-driver’s ID card (or a driver’s license) is substantially burdensome for Native Americans.” *Id.* at 14 (emphasis in original).

### **3. The Costs of Obtaining Documentation Is Overly Burdensome For Native Americans**

285. High rates of poverty and unemployment and the lack of access to transportation among Native Americans in North Dakota prevent, and will continue to prevent, many Native Americans from travelling to a DLS and obtaining a requisite ID for voting.

286. HB 1369 increases the proof of identity that a person had to show to get an ID under HB 1332 from three requirements to four: name, date of birth, legal presence in the

United States, and citizenship. *See* N.D. Cent. Code § 39-06-07.1 (adding proof of citizenship).

287. A renewal for a non-commercial driver's license is \$15 and "a new license can cost as much as \$25 (\$5 to take the written test, \$5 to take a road test, and \$15 for the license fee)." *See* Doc. 50 at 14.

288. "Many impoverished Native Americans do not have the disposable income to pay for these fees." *Id.* at 15.

289. HB 1369 maintains HB 1332's fee waiver for the issuance or renewal of a non-driver ID card for eligible applicants that do not already have a North Dakota Driver's license. If, however, an eligible applicant for a non-driver ID already has a driver's license, is seeking a replacement for an unexpired non-driver ID, or is seeking a duplicate non-driver ID, there is an \$8 fee. *See* N.D. Cent. Code § 39-06; 49; 39-06-03.1.

290. However, the North Dakota DLs apply the non-driver fee waiver inconsistently.

291. For example, on the North Dakota Department of Transportation's website, it provides that the only time there is no fee associated with obtaining a non-driver ID card is when you are *renewing* an ID and do not possess a North Dakota driver's license. N.D. Dep't of Transp., *ID Card Requirements*, <https://www.dot.nd.gov/divisions/driverslicense/idrequirements.htm> (last visited Nov. 29, 2017). The law, however, is supposed to waive the fee for issuance or renewal of a non-driver ID, not just for the renewal. *See* N.D. Cent. Code §§ 39-06-03.1, 39-06-49.

292. According to the DOT website, even when you do not have a North Dakota driver's license, you still have to pay eight dollars for a non-driver ID. *ID Card Requirements, supra*.

293. What's more, for someone seeking a license or non-driver ID, proof of a physical residential address is required. Doc. 44-2 ¶ 75.

294. The Department of Transportation does not accept a P.O. Box as proof of a residential address. *Id.*

295. Many qualified Native American voters will have a hard time furnishing one or more of the limited, acceptable forms of proof of residential address in order to obtain a qualifying ID in North Dakota. *Id.*

296. Individuals without a physical residential address will not be able to obtain a free non-driver ID.

297. Additionally, obtaining the required documentation to prove identity costs time and money.

298. For example, obtaining a North Dakota birth certificate and driver's license or non-driver ID presents a conundrum for many Native American voters: the North Dakota Department of Health ("DOH") requires an ID to obtain a certified copy of a birth certificate, but the applicant needs the birth certificate to procure the state ID necessary to obtain the birth certificate; other forms of ID accepted by DOH are either expensive or have limited availability.

299. The least expensive document to prove identity is a North Dakota birth certificate, which costs \$7. Doc. 50 at 10.

300. If a voter is born out of state, however, the cost is likely more.

301. Native Americans disproportionately lack birth certificates. Indeed, “32.9% of Native Americans who presently lack [a] qualifying voter ID do not have a birth certificate.” *Id.*

302. “Impoverished Native Americans, such as Plaintiff Lucille Vivier, lack the disposable income necessary to obtain a birth certificate, and make the difficult decision not to spend their limited resources on a birth certificate.” *Id.*

303. Additional documentation – and additional costs – are required if the person’s name has changed, for example due to marriage.

304. HB 1369 maintains the lack of waiver or exemption under HB 1332 and HB 1333 from the underlying documentation required for an applicant to obtain a non-driver ID card, or from the costs and fees associated with obtaining this underlying documentation.

305. Nor does HB 1369 address any fees that will be imposed on voters who must obtain the requisite underlying documentation from out-of-state agencies.

306. Similarly, North Dakota has not provided any funding to offset the cost faced by prospective voters for purchasing new tribal ID cards that have residential addresses.

307. For example, a new Turtle Mountain tribal ID card is \$10 and a replacement ID is \$15.

308. Even though the state advertises the non-driver IDs as “free,” there is a disproportionate cost to obtain the ID for some voters.

309. There is the burden of time, transportation, and cost to obtain an ID and the documentation needed to get one, and many Native American voters will find it impossible

to overcome all these hurdles to obtain the required ID and documentation due to social and historical conditions that led to their economic circumstances.

310. Due to the costs involved in obtaining a qualifying ID, many Native American voters have been, and will continue to be, disproportionately burdened and disenfranchised.

**X. THE SECRETARY OF STATE'S CAMPAIGN FOR HB 1332 AND 1333 PROVIDED INADEQUATE NOTICE OF ID REQUIREMENTS**

311. In March of 2014, the Secretary of State announced a statewide advertising campaign, utilizing federal funds, to educate the North Dakota public on the requirements of HB 1332 - then the new voter ID law.

312. The Secretary of State's campaign to educate qualified electors about HB 1332 and 1333's requirements was insufficient. Not all qualified electors heard or saw the educational materials, and electors who did hear or see the materials found them misleading.

313. "21.4% of Native Americans [we]re not at all aware of the new voter ID laws [under HB 1332 and HB 1333], and only 20.8% have heard about the law." Doc. 44-1 ¶ 43.

314. The State's education materials left qualified electors believing that their tribal ID was a qualifying form of ID, when many tribal IDs do not contain a residential address as required under HB 1332 and 1333. Because electors believed they had qualifying ID, they did not attempt to obtain a new ID before attempting to vote and were ultimately denied the right to vote due to lack of a qualifying ID.

315. There is no known additional campaign to alert voters that they need a specific type of ID to vote pursuant to HB 1369.

**XI. NATIVE AMERICANS ARE DISPROPORTIONATELY BURDENED BY A LACK OF A FAIL-SAFE VOTING OPTION**

316. The Secretary of State stated that the total number of individuals who utilized the affidavit provision in the election before the adoption of HB 1332 was 10,517. *Hearing Minutes on H.B. 1332 Before the S. Appropriations Comm.*, 63rd Leg. Assemb. (N.D. Apr. 2, 2013) (statement of Al Jaeger, N.D. Sec’y of State).

317. In compliance with this Court’s ruling that a “fail-safe” provision be provided for the November 2016 General Election, North Dakota provided an affidavit provision, which was utilized by over 16,000 individuals as stated in the legislative hearings for HB 1369. NDACo Legislative Blog, *ND Legislative Approves New Voter ID Law Allows for Set Aside Ballots*, <http://ndcounties.blogspot.com/2017/04/> (Apr. 26, 2017)

318. As explained above, *see* above discussion at ¶¶ 118-127, Native Americans disproportionately relied on the affidavit and voucher “fail-safe” provisions that were first removed by HB 1332 and whose absence is maintained by HB 1369.

319. Native Americans therefore are disproportionately burdened by the continued elimination of those provisions.

320. The Secretary of State’s office and North Dakota Association of Counties endeavored to track the number of people who attempted to vote, and were disenfranchised, in the June 2014 primaries when there was no voucher or affidavit option.

321. Chart 6 below provides the number of people denied the right to vote in North Dakota counties where reservations are located, and the number of those who returned to vote with qualifying ID in the 2014 primary election.



Chart 6

<b>COUNTY</b>	<b>Number with ID, But Not Updated</b>	<b>Number with No ID</b>	<b>Number who Returned to Vote</b>	<b>Comments</b>
<b>Benson</b>	0	6	1	One returned with ID and voted – several attempted to use a Tribal ID with no physical address listed
<b>Dunn</b>	No Response			
<b>McKenzie</b>	No Response			
<b>McLean</b>	No Response			
<b>Mercer</b>	0	0	0	
<b>Mountrail</b>	No Response			
<b>Ramsey</b>	0	0	0	There were a few tribal members who had tribal IDs with no residential address, but they all had driver's licenses, so they were able to vote successfully.
<b>Richland</b>	0	1	0	
<b>Rolette</b>	20	35	0	30-35 of the people turned away only had tribal IDs that did not have their residential address on it. The remaining 15-20 had drivers' licenses but their records did

				not place them in the precinct in Rolette County.
<b>Sargent</b>	0	2	0	One individual claimed not to have an ID. The other attempted to use their passport to vote in person.
<b>Sioux</b>	0	4	4	All returned with ID and voted.
<b>Ward</b>	0	2	0	Long term residents had not yet obtained ND IDs.

322. During the 2014 general election, voters were turned away from polling locations because they did not meet the requirements set forth by the voter ID law and the Secretary of State's office.

323. After the 2014 primary election, the Secretary of State noted that the number of problems were higher with tribal IDs during that election.

324. Since this lawsuit was filed, the Secretary of State, upon our knowledge and belief, has stopped attempting to track the number of people who attempted to vote and were disenfranchised.

325. Following the 2014 general election, the North Dakota Association of Counties surveyed all 53 county auditors, over 25 of which responded.

326. In the counties that responded to the survey, around 1200 voters were disenfranchised due to improper voter ID. (In addition, an unknown number of voters were disenfranchised in the over 25 counties that did not respond to the survey).

327. Upon our knowledge and belief, the North Dakota Association of Counties has not surveyed its county auditors since this lawsuit was filed.

**XII. THE STATE'S INTERESTS ARE NOT OUTWEIGHED BY THE DISPROPORTIONATE BURDEN ON NATIVE AMERICANS' ABILITY TO VOTE**

328. The state has identified four reasons why the voter ID law was purportedly necessary despite its sound election administration: (1) to prevent and cut down on voter fraud; (2) to streamline the voting process; (3) to cut down on the perception that the affidavit ballots get mixed in with the other ballots and they cannot be retrieved; and (4) to make the election process fair, open, and honest.

329. Voter ID laws only address one type of fraud: in-person voter fraud.

330. The legislative record, however, is devoid of any evidence of in person voter fraud in North Dakota.

331. Moreover, North Dakota “failed to present any evidence showing that ‘fail-safe’ provisions . . . have resulted in voter fraud in the past, or are particularly susceptible to voter fraud in the future.” Doc. 50 at 22.

332. In his September 5, 2017 letter to the Presidential Advisory Commission on Election Integrity, Secretary of State Alvin A. Jaeger admitted that “[i]f convictions exist [for election-related crimes including voter fraud], this office is not aware of them.” Letter from Alvin A. Jaeger, N.D. Sec’y of State to The Presidential Advisory Commission on Election Integrity (Sep. 5, 2017) (on file at: <https://www.scribd.com/document/358292085/Sos-00435420170907141608>).

333. Regardless of its effectiveness, the very strict approach that North Dakota took results in disenfranchisement of significant numbers of qualified Native American and other voters.

334. The strict approach that North Dakota took was intended to disproportionately burden and disenfranchise Native American voters.

335. An election where a large percentage of voters cannot vote because of obstacles created by the state, which are restrictive and not necessary, is not free, fair, and open.

### **XIII. HISTORY OF DISCRIMINATION IN NORTH DAKOTA**

336. North Dakota has a long history of discrimination against Native Americans generally, and of denying Native Americans the right to vote in particular.

#### **A. Discrimination in Voting**

337. This Court has recognized the history of discrimination in North Dakota against Native Americans with regard to voting. *See Spirit Lake Tribe v. Benson Cty., N.D.*, No. 2:10-cv-095, [2010 WL 4226614](#), at \*3 (D.N.D. 2010); Consent Judgment and Decree, *United States v. Benson Cty.*, Civ. A. No. A2-00-30 (D.N.D. Mar. 10, 2000) ; *State ex rel. Tompton v. Denoyer*, [72 N.W. 1014, 1019](#) (N.D. 1897)

338. In 1897, Native American voters in North Dakota had to take their quest to get a voting precinct on the Spirit Lake Reservation to the North Dakota Supreme Court because the County had denied them the right to have a precinct on the reservation. *Denoyer*, [72 N.W. at 1015](#). At that time, North Dakota Code had, under “section 480, Rev. Codes,” a provision that did not allow Native Americans to be voters “unless they had entirely

abandoned their tribal relations, and were in no manner subject to the authority of any Indian chief or Indian agent.” *Id.* at 1019.

339. Additionally, in the late 19th Century, an Amendment to North Dakota’s initial Constitution, adopted and ratified in 1898, provided that only “[c]ivilized persons of Indian descent” who “severed their tribal relations two years next preceding such election” were eligible to vote. N.D. Const., art. V, § 121 (1898). Thus, in order to vote, Native Americans had to be “civilized” and had to have explicitly “severed their tribal relations.” *Id.* This insidious classification only applied to Native Americans and was not removed until 1922.

340. The North Dakota Constitution also established an educational test requirement as a precondition for voting. The requirement stated “the legislature shall by law establish an educational test as a qualification, and may prescribe penalties for failing, neglecting, or refusing to vote at any general election.” N.D. Const. art. II, §§ 121, 127 (ratified by vote on Nov. 8, 1898). Literacy tests were a common method used to disenfranchise minority voters, and were addressed by the Voting Rights Act. *See South Carolina v. Katzenbach*, [383 U.S. 301, 312, 316](#) (1966) (discussing the discriminatory use of literacy tests and the Voting Rights Act’s ban of such tests).

341. Indeed, racism against Native Americans by the state of North Dakota persisted into the 20th century. In 1920 in *Swift v. Leach*, [178 N.W. 437](#) (N.D. 1920), the North Dakota Supreme Court was asked to apply the “civilized persons” constitutional provision to Native American voters. While the Court found that the Native American plaintiffs were eligible voters in that case, it required the local Superintendent of the Bureau of Indian Affairs, as well as other witnesses, to testify that the Natives “live just the same as white

people” to show that they were “civilized” and had “severed” their tribal relationship. *Id.* at 438-40. This was despite the Appellant’s argument that the Native Americans, by being dependent on the federal government, could not be “civilized persons.” *Id.* at 441.

342. Indeed, discrimination against Native Americans persists today.

343. Discrimination against Native American voters in North Dakota is not a relic of the 19th and early 20th Centuries. In 2000, the Justice Department filed an action against Benson County, North Dakota in this Court to enforce Section 2 of the Voting Rights Act because Benson County’s at large elections that gave Native Americans less opportunity to participate in the political process. *See* Consent Judgment at preamble, *Benson Cty.*

344. The parties entered into a consent decree, and Benson County agreed to change the way it conducted elections from one at-large district to five separate districts, with two majority Native American districts. *Id.* ¶ 6.

345. The Spirit Lake Tribe had to sue again in 2010 to keep a polling place on its reservation, some 100 years after that Tribe first sued to establish a polling place on its reservation. This Court found that the removal of Spirit Lake’s polling place was likely a violation of Section 2. *Spirit Lake Tribe*, [2010 WL 4226614](#), at \*3. After a preliminary injunction hearing, the polling place was reestablished on the reservation. *Id.*, at \*6.

## **B. Discrimination in Other Areas**

346. Native Americans in North Dakota face discrimination in other arenas as well, which hinders their ability to participate effectively in the political process.

### **1. Education**

347. The “past federal policy was to assimilate American Indians into United States culture, in part by deliberately suppressing, and even destroying, traditional tribal religions and culture in the 19th and early 20th centuries.” *Bear Lodge Multiple Use Ass’n v. Babbitt*, 175 F.3d 814, 817 (10th Cir. 1999). “By the late 19th Century federal attempts to replace traditional Indian religions with Christianity grew violent. In 1890 for example, the United States Cavalry shot and killed 300 unarmed Sioux men, women and children en route to an Indian religious ceremony called the Ghost Dance[.]” *Id.*

348. Indeed, the government administered Indian trust funds to pay Christian denominations to educate the Indians about Christianity – a policy upheld by the Supreme Court. *Reuben Quick Bear v. Leupp*, 210 U.S. 50, 81-82 (1908).

349. Native Americans in North Dakota were not exempt from this overt discrimination and cultural assimilation.

350. Christian and government boarding schools were set up all over in North Dakota to indoctrinate the Native Americans into Christianity, or “civilization.” See e.g. U.S. Dep’t of Interior, *Extracts from the Annual Report of the Secretary of the Interior For Fiscal Year, 1927* 45 (1927), <https://babel.hathitrust.org/cgi/pt?id=umn.31951t003938445;view=1up;seq=1>.

351. There were at least 19 boarding or day schools in North Dakota for Native Americans. W.A. Jones, *Report of the Commissioner of Indian Affairs* 18, 20, 23 (Oct. 15, 1903).

352. In 1921, the federal government recognized the disparity in Native American education in *The Problem of Indian Administration*. Lewis Meriam, Tech. Dir. for Inst. for

Gov't Research, *The Problem of Indian Administration, Report of a Survey made at the request of Hubert Work, Secretary of the Interior, and submitted to him, Feb. 21, 1928*, [https://www.narf.org/nill/documents/merriam/b\\_merriam\\_letter.pdf](https://www.narf.org/nill/documents/merriam/b_merriam_letter.pdf) (hereinafter "Meriam Report"). The Meriam Report showed that the theory of removing Native children "as far as possible" from their home environment did not work, and that Native schools in general were "distinctly below the accepted social and educational standards of school systems in most cities and the better rural communities." Meriam report at 346. For instance, in 1920 in North Dakota the rural illiteracy rate was only 2.2%, but the Native Americans had an illiteracy rate of 29.6%. *Id.* at 357.

353. While many Native Americans attended federal schools, the effects of discrimination were still felt. The 1969 report by the Senate Committee on Labor and Public Welfare, entitled *Indian Education: A National Tragedy – A National Challenge*, highlighted the failure of public schools. Special Subcomm. on Indian Educ., 91st Cong., S. R. No. 91-501 (1969), [https://ia801305.us.archive.org/30/items/ERIC\\_ED034625/ERIC\\_ED034625.pdf](https://ia801305.us.archive.org/30/items/ERIC_ED034625/ERIC_ED034625.pdf) (hereinafter "Kennedy Report").

354. The Kennedy Report found that Indian children in public schools were subjected to humiliating stereotypes, faced language discrimination, felt a sense of powerlessness, experienced depression, and generally did not receive education relevant to their cultures. Evidence showed that dropout rates were higher and reading levels lower among Indian children. *Id.* at 23-31.



355. The Kennedy Report also found that Indian people were generally prevented from serving on school boards. *Id.*

356. The effects of discrimination in the educational setting are still felt by Native Americans in North Dakota.

357. The North Dakota Native Education Division in the North Dakota Department of Public Instruction has noted that Native American students constitute approximately 8.9% of the total North Dakota enrolled student population.

358. The North Dakota Native Education Division found that

[f]or many Native students, the dominant culture of the public school is incompatible with their own cultures and languages. There are differences in distinct and various ways of acquiring knowledge, forms of communication, familial structures, and sociological, cultural, and linguistic modes [sic] learning of Native learners, which can cause problems for Native American students in the school environment. Socio-economic issues also complicate the learning environment as well. The consequences of these issues are realized by low achievement scores, [and] high dropout and transfer rates. For example, the 1999 dropout rate for Native American students [in North Dakota] was 42.2 percent. The economic conditions of many Native communities reveal high incidences of poverty, unemployment, and health problems for Native children and their families.

*Educational Condition*, N.D. Dep't of Pub. Education.,

[https://web.archive.org/web/20151225031658/https://www.nd.gov/dpi/SchoolStaff/IME/Programs\\_Initiatives/IndianEd/resources/EducationalCondition/](https://web.archive.org/web/20151225031658/https://www.nd.gov/dpi/SchoolStaff/IME/Programs_Initiatives/IndianEd/resources/EducationalCondition/) (last visited Dec. 7, 2017).

359. According to the 2009-2013 American Community Survey 5-Year Estimates, Native American residents in North Dakota are far more likely to lack a high school diploma than other groups in the state as a whole—18.6% of Native American residents over the

age of 25 lack a high school diploma compared to 9.1% of the state as a whole and only 8.4% of White residents.

360. According to the U.S. Department of Education Office of Civil Rights, Native American students receive out of school suspensions at much higher rates than their White counterparts.

361. From 2011-2012, 9% of male Native Americans were given out of school suspensions in North Dakota, while only 2% of White male students were given out of school suspension. Likewise, 6% of female Native American students were given out of school suspensions in 2011-2012, while only 1% of White female students were given out of school suspensions.

362. The kindergarten retention rate in North Dakota shows similar disparity. According to the U.S. Department of Education Office of Civil Rights, between 2011-2012, 8% of Native American kindergarten students in North Dakota were retained an extra year in North Dakota compared to 4% of their White counterparts.

363. Thus, as the North Dakota Native American Education division documented, the effects of historical discrimination in North Dakota continue to have a negative impact on Native Americans.

## **2. Loss of Land**

364. The loss of Native American land through the discriminatory allotment policies also still plagues Native Americans. According to the 1948 Hoover Commission's evaluation of the allotment policy: "Two-thirds of Indian-owned land, including much of the best land, was alienated before the Allotment policy was abandoned. If the 90 million acres

lost through the process had remained in Indian ownership, the problem of poverty among most tribes could be solved with less difficulty and with more certainty today.” Kennedy Report at Appendix I, 149-150.

365. Likewise, Senator Robert Kennedy recognized in 1968 that the “Allotment Act succeeded in the period of the next 40 years in diminishing the Indian tribal economic base from 140 million acres to approximately 50 million acres of the least desirable land. Greed for Indian resources and intolerance of Indian cultures combined in one act to drive the American Indian into the depths of a poverty from which he has never recovered.” *Id.* at 150.

366. For instance, in 1882 the Turtle Mountain Reservation constituted 22 townships in North Dakota, but by 1884 it was reduced to two townships and the remainder was opened up to the public domain.

367. Likewise, the Great Sioux Reservation, which covered parts of Wyoming, Montana, Nebraska, Colorado, North Dakota, and South Dakota, was diminished greatly by 1890, with some nine million acres of land lost even by that time.

### **3. North Dakota Indian Affairs Commission**

368. The State of North Dakota also effected discrimination in North Dakota through the North Dakota Indian Affairs Commission, which from its inception made several recommendations to purportedly “assimilate” Native Americans into mainstream culture. This was despite the fact that the Commission was established to facilitate relationships with North Dakota Tribes. As the North Dakota Indian Affairs Commission has recognized, it has at times embraced the negative rhetoric of termination, assimilation, and relocation

for Indian tribes. It was not until 1959 and the roots of self-determination that the tribes within North Dakota acquired representation on the Commission.

#### **4. Lending Discrimination**

369. Federal judicial intervention has been necessary to eliminate numerous other devices intentionally used to discriminate against Native Americans in North Dakota. One notable example includes lending discrimination directed at Native Americans. In 2010, Native American farmers settled a class-action lawsuit alleging that they had been systematically denied farm loans. The lead plaintiff, Marilyn Keepseagle was from the Standing Rock Sioux Reservation. Evidence in the lawsuit showed that farm agents discriminated against Native farmers systematically. *Keepseagle v. Vilsack*, 118 F. Supp. 3d. 98 (D.D.C. 2015), *appeal denied*, 2015 WL 9310099 (D.C. Cir. 2015). In 2014, the Department of Housing and Urban Development settled a suit on behalf of a Native American couple from North Dakota who were refused a loan because their property was located on the reservation. *See* News Release, U.S. Dep't of Housing and Urban Dev., HUD Reaches Settlement with US Bank Resolving Allegations of Lending Discrimination Against Native American Couple (Sept. 15, 2014) (available at: <https://archives.hud.gov/news/2014/pr14-106.cfm>).

370. As the unemployment, poverty, education and other statistics above show, Native Americans in North Dakota have been subject to social and historical discrimination that still impacts them to this day.

371. This social and historical discrimination hinders North Dakota Native Americans' ability to participate effectively in the political process because they are now less able, and

often unable, to obtain the necessary documentation and qualifying ID that continues to be a prerequisite to vote.

372. The Legislature was aware of these social and historical factors and intended to use these disadvantages to hinder Native American's ability to vote.

### **CAUSES OF ACTION**

#### **I. COUNT ONE: THE VOTER ID REQUIREMENTS IN HB 1369 WERE ENACTED FOR THE PURPOSE OF DENYING OR ABRIDGING THE RIGHT TO VOTE ON THE ACCOUNT OF RACE IN VIOLATION OF SECTION 2 OF THE VOTING RIGHTS ACT**

373. The Plaintiffs re-allege and incorporate by reference the allegations set forth in all preceding paragraphs of this complaint.

374. Section 2 of the Voting Rights Act, [52 U.S.C. § 10301](#), prohibits the enforcement of any voting qualification or prerequisite to voting or any standard, practice, or procedure that has the purpose of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

375. HB 1369 violates Section 2 because it was passed with the purpose to deny and abridge the right to vote on account of race.

376. Without an order enjoining the implementation and enforcement of HB 1369, Defendants will continue to violate Section 2, resulting in the denial of the right of qualified Native American electors in North Dakota to vote.

#### **II. COUNT TWO: THE VOTER ID REQUIREMENTS OF HB 1332, HB 1333, AND HB 1369 VIOLATE SECTION 2 OF THE VOTING RIGHTS ACT BECAUSE THEY HAVE THE RESULT OF DENYING OR ABRIDGING THE RIGHT TO VOTE ON ACCOUNT OF RACE.**

377. The Plaintiffs re-allege and incorporate by reference the allegations set forth in all preceding paragraphs of this complaint.

378. Section 2 of the Voting Rights Act prohibits the enforcement of any voting qualification or prerequisite to voting or any standard, practice, or procedure that has the result of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

379. HB 1332, HB 1333, and HB 1369 require an ID that Native Americans disproportionately lack, and obtaining and maintaining such an ID current is unreasonably burdensome for Native Americans. Furthermore, Native Americans are disproportionately less likely to possess the supplemental documentation permitted under HB 1369.

380. Accordingly, North Dakota's implementation and enforcement of HB 1332, HB 1333, and HB 1369 continues to result in a denial or abridgement of equal opportunities for Native American voters to participate in the political process, in violation of Section 2 of the Voting Rights Act.

381. Without an order permanently enjoining the implementation and enforcement of HB 1332, 1333, and 1369, Defendants will continue to violate Section 2, resulting in the denial of the right of qualified Native American electors in North Dakota to vote.

**III. COUNT THREE: THE LACK OF "FAIL-SAFE" VOTING MECHANISMS IN HB 1332, HB 1333, AND HB 1369 HAS THE RESULT OF DENYING OR ABRIDGING THE RIGHT TO VOTE ON ACCOUNT OF RACE IN VIOLATION OF SECTION 2 OF THE VOTING RIGHTS ACT.**

382. The Plaintiffs re-allege and incorporate by reference the allegations set forth in all preceding paragraphs of this complaint.

383. Section 2 of the Voting Rights Act prohibits the enforcement of any voting qualification or prerequisite to voting or any standard, practice, or procedure that has the result of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

384. HB 1332 and 1333 eliminated the voucher and affidavit processes that a qualified elector previously could use to prove his or her qualifications without having a qualifying ID. HB 1369 failed to restore the of voucher and affidavit processes and otherwise lacks an effective “fail-safe” provision.

385. Native Americans disproportionately relied on the voucher and affidavit process to vote in North Dakota and the elimination of these fail-safe methods resulted in an adverse discriminatory impact on Native American voters.

386. Additionally, the “set-aside” system adopted by North Dakota in lieu of a “fail-safe” method requires burdensome travel that Native Americans are disproportionately unable to make.

387. Accordingly, North Dakota’s implementation and enforcement of HB 1332, HB 1333, and HB 1369 continues to result in a denial or abridgement of equal opportunities for Native American voters to participate in the political process, in violation of Section 2 of the Voting Rights Act, [52 U.S.C. § 10301](#).

388. Without an order permanently enjoining the implementation and enforcement of HB 1332, 1333, and 1369, Defendants will continue to violate Section 2, resulting in the denial of the right of qualified Native American electors in North Dakota to vote.

**IV. COUNT FOUR: HB 1332, HB 1333, AND HB 1369 PLACE UNCONSTITUTIONAL BURDENS ON QUALIFIED ELECTORS IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.**

389. The Plaintiffs re-allege and incorporate by reference the allegations set forth in all preceding paragraphs of this complaint.

390. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides in relevant part: “[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const., amend. XIV, § 1.

391. The Fourteenth Amendment prohibits the imposition of severe burdens on the fundamental right to vote unless they are “narrowly drawn to advance a compelling state interest.” *Burdick v. Takushi*, [504 U.S. 428, 434](#) (1992) (citation omitted).

392. The burdens of HB 1332 and 1333 on qualified North Dakota electors, especially qualified Native American electors in North Dakota, were severe. HB 1369 fails to alleviate those burdens.

393. Here, as set forth above, Plaintiffs’ right to vote is burdened by the arbitrary and unjustified imposition of a strict voter ID law with no fail-safe provision and no provision to protect the right of indigent qualified electors to vote. Plaintiffs, as well as many other qualified electors do not possess a qualifying ID or supplemental documentation and face significant obstacles to procuring these items. This has resulted, and will continue to result in, disenfranchisement of Plaintiffs and other qualified voters. After observing and documenting evidence of disenfranchisement, the State did not attempt to protect the rights of these voters but rather tightened the restrictions on qualified electors.



394. After this Court enjoined HB 1332 and 1333 for lack of a “fail-safe” provision, holding there was a substantial likelihood that Plaintiffs would succeed on the merits, the State enacted new legislation, HB 1369, that also lacked any meaningful “fail-safe” provision.

395. The State’s interest is not compelling, and the law is not narrowly tailored to advance the State’s asserted interest.

396. HB 1332 and 1333 did not actually further a compelling State interest. HB 1369 does not either.

397. Additionally, HB 1332, 1333, and 1369 are not reasonable restrictions on the right to vote.

398. Without an order permanently enjoining the implementation and enforcement of HB 1332, 1333 and HB 1369 Defendants will continue to violate the Equal Protection Clause, resulting in the denial of the right of qualified Native American electors in North Dakota to vote.

**V. COUNT FIVE: HB 1369 EXCLUDES NON-PROPERTY HOLDERS FROM VOTING IN ELECTIONS IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT**

399. The Plaintiffs re-allege and incorporate by reference the allegations set forth in all preceding paragraphs of this complaint.

400. The Equal Protection Clause provides in relevant part: “[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

401. HB 1369 violates the Equal Protection Clause because it excludes non-property holders from voting in elections by requiring that “[e]very qualified elector may have only one residence, shown by an actual fixed permanent dwelling, establishment, or any other abode to which the individual returns when not called elsewhere for labor or other special or temporary purposes” and that a “street address verified by the individual as provided in section 16.1-01-04.1 when requesting a ballot to vote must be the address of residence for the individual.” HB 1369 § 3.

402. Without an order permanently enjoining the implementation and enforcement of HB 1332, 1333, and 1369, Defendants will continue to violate the Equal Protection Clause, resulting in the denial of the right of qualified Native American electors in North Dakota to vote.

**VI. COUNT SIX: HB 1369 VIOLATES THE FIFTEENTH AMENDMENT.**

403. The Plaintiffs re-allege and incorporate by reference the allegations set forth in all preceding paragraphs of this complaint.

404. HB 1369 violates the Fifteenth Amendment to the Constitution of the United States because it purposely denies and abridges the right to vote to Plaintiffs and other minority voters on the account of race and ethnic origin. U.S. Const. amend. XV, § 1.

405. Without an order enjoining the implementation and enforcement of HB 1369, Defendants will continue to violate the Fifteenth Amendment, resulting in the denial of the right of qualified Native American electors in North Dakota to vote.

**VII. COUNT SEVEN: HB 1332, HB 1333, AND HB 1369 VIOLATE THE NORTH DAKOTA EQUAL PROTECTION CLAUSE IN ARTICLE I OF THE NORTH DAKOTA CONSTITUTION.**

406. The Plaintiffs re-allege and incorporate by reference the allegations set forth in all preceding paragraphs of this complaint.

407. North Dakota Constitution article I, section 21 provides the State's guarantee of equal protection to its citizens. Section 21 states: "No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens." In North Dakota, strict scrutiny is applied to "an inherently suspect classification or infringement of a fundamental right." *Hector v. City of Fargo*, 844 N.W. 2d 542, 554 (N.D. 2014) (quoting *Gange v. Clerk of Burleigh Cty. Dist. Court*, 429 N.W.2d 429, 433 (N.D. 1988)). A law that significantly interferes with such a right must "promot[e] a compelling [state] interest and that the distinctions drawn by the law [must be] necessary to further its purpose". *Id.*

408. Article II, section 1 of the North Dakota Constitution provides that "every citizen of the United States, who has attained the age of eighteen years and who is a North Dakota resident shall be a qualified elector."

409. The right to vote is a fundamental right and the most essential part of a functional democratic system. North Dakota's "whole election system . . . is built up and founded on the fundamental principle that every elector shall be given the opportunity to vote for or against any candidate." *Stern v. City of Fargo*, 122 N.W. 403, 408 (N.D. 1909).

410. HB 1332 and 1333 severely burdened and significantly interfered with the fundamental right of qualified Native American and other North Dakota electors to vote. HB 1369 preserves that burden and interference and does not actually further a compelling

interest, is not narrowly tailored to a compelling interest, and is not carried out by the least restrictive means.

411. Without an order permanently enjoining the implementation and enforcement of HB 1332, 1333, and HB 1369 Defendants will continue to violate the North Dakota Equal Protection Clause, resulting in the denial of the right of qualified Native American electors in North Dakota to vote.

**VIII. COUNT EIGHT: HB 1369 VIOLATES THE EQUAL PROTECTION CLAUSE IN ARTICLE I OF THE NORTH DAKOTA CONSTITUTION BECAUSE IT EXCLUDES NON-PROPERTY HOLDERS FROM VOTING**

412. The Plaintiffs re-allege and incorporate by reference the allegations set forth in all preceding paragraphs of this complaint.

413. North Dakota Constitution Article I, sections 21 and 22 provide the State's guarantee of equal protection to its citizens. Section 21 states: "No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens."

414. HB 1369 violates North Dakota's equal protection guarantee because it excludes non-property holders from voting in elections by providing that "[e]very qualified elector may have only one residence, shown by an actual fixed permanent dwelling, establishment, or any other abode to which the individual returns when not called elsewhere for labor or other special or temporary purposes" and that a "street address verified by the individual as provided in section 16.1-01-04.1 when requesting a ballot to vote must be the address of residence for the individual." HB 1369 § 3.

415. Without an order permanently enjoining the implementation and enforcement of HB 1332, 1333, and 1369, Defendants will continue to violate the North Dakota Constitution, resulting in the denial of the right of qualified Native American electors in North Dakota to vote.

**IX. COUNT NINE:HB 1332, HB 1333, AND HB 1369 VIOLATE ARTICLE II OF THE NORTH DAKOTA CONSTITUTION BY IMPOSING NEW VOTER QUALIFICATIONS**

416. The Plaintiffs re-allege and incorporate by reference the allegations set forth in all other paragraphs of this complaint.

417. Under the North Dakota Constitution, “[e]very citizen of the United States, who has attained the age of eighteen years and who is a North Dakota resident, shall be a qualified elector.” N.D. Const., art. II, § 1.

418. The North Dakota Supreme Court has stated that “where the Constitution prescribes the qualifications of electors the Legislature is powerless to add or subtract from those qualifications.” *Spatgen v. O’Neil*, 169 N.W. 491, 494 (N.D. 1918).

419. The requirements in HB 1332 and 1333 mandating possession of a specific form of state or tribally issued ID in order to vote was an elector qualification added by the legislature that is not in the North Dakota constitution. HB 1369 preserves those requirements and, so, is likewise an elector qualification added by the legislature that is not in the North Dakota constitution. N.D. Cent. Code § 16.1-01-04(4).

420. Additionally, North Dakota’s requirement that “[e]very qualified elector may have only one residence, shown by an actual fixed permanent dwelling, establishment, or any other abode to which the individual returns when not called elsewhere for labor or other

special or temporary purposes” is an elector qualification added by the legislature that is not in the North Dakota constitution. *Id.* § 16.1-01-04.2.

421. Finally, North Dakota Code’s requirement that a “street address verified by the individual as provided in section 16.1-01-04.1 when requesting a ballot to vote must be the address of residence for the individual” is an elector qualification added by the legislature that is not in the North Dakota constitution. *Id.* § 16.1-01-04.2(2.)

422. Because the legislature cannot add additional qualifications to those contained in the North Dakota Constitution, these additional qualifications are unconstitutional.

423. Without an order permanently enjoining the implementation and enforcement of HB 1332, HB 1333, and HB 1369 Defendants will continue to violate the North Dakota Constitution, resulting in the denial of the right of qualified Native American electors in North Dakota to vote.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that this Court enter an order:

424. Permanently enjoining HB 1332, 1333, and 1369;

425. Declaring HB 1369 unconstitutional under Fourteenth and the Fifteenth Amendments of the U.S. Constitution and enjoining Defendants from enforcing the requirements of those provisions;

426. Declaring that HB 1369 violates Section 2 of the Voting Rights Act, and

**a.** enjoining Defendants from enforcing the requirements of HB 1369; and

**b.** authorizing the appointment of Federal observers by the Director of the Office of Personnel Management in accordance with Section 8 of the Voting Rights Act to serve for

such period of time as the Court shall determine is appropriate to enforce the guarantees of the Fifteenth Amendment to the U.S. Constitution, as provided by [52 U.S.C. § 10302\(a\)](#);

[427](#). Declaring HB 1369 unconstitutional under the Equal Protection Clause of the North Dakota Constitution;

428. Declaring HB 1369 unconstitutional under article II, section I of the North Dakota Constitution;

429. Awarding Plaintiffs' attorney fees and costs as allowed and required by law, including, but not limited to, [42 U.S.C. § 1988](#), [52 U.S.C. § 10310](#), and the Private Attorney General Doctrine; and

430. Ordering such additional relief as the interests of justice may require, together with the costs and disbursements in maintaining this action.

Respectfully submitted: December 13, 2017

/s/ Matthew Campbell

Matthew Campbell, NM Bar No. 138207, CO Bar No. 40808  
[mcampbell@narf.org](mailto:mcampbell@narf.org)  
NATIVE AMERICAN RIGHTS FUND  
1506 Broadway  
Boulder, Colorado 80302  
Telephone: (303) 447-8760

Jacqueline De León, CA Bar No. 288192, DC Bar No. 1023035  
[jdeleon@narf.org](mailto:jdeleon@narf.org)  
NATIVE AMERICAN RIGHTS FUND  
1506 Broadway  
Boulder, Colorado 80302  
Telephone: (303) 447-8760

Joel West Williams, PA Bar No. 91691

[williams@narf.org](mailto:williams@narf.org)

NATIVE AMERICAN RIGHTS FUND

1514 P Street NW (Rear), Suite D

Washington, D.C. 20005

Telephone: (202) 785-4166

Daniel David Lewerenz, WI Bar No. 1069385, OK Bar No. 30627

[williams@narf.org](mailto:williams@narf.org)

NATIVE AMERICAN RIGHTS FUND

1514 P Street NW (Rear), Suite D

Washington, D.C. 20005

Telephone: (202) 785-4166

Richard de Bodo, CA Bar No. 128199

[rich.debodo@morganlewis.com](mailto:rich.debodo@morganlewis.com)

Morgan, Lewis & Bockius LLP

2049 Century Place East, Suite 700

Los Angeles, CA 90067

Phone 1.310.255.9055

Fax 1.310.907.2000

Tom Dickson, ND Bar No. 03800

[tdickson@dicksonlaw.com](mailto:tdickson@dicksonlaw.com)

Dickson Law Office

P.O. Box 1896

Bismarck, North Dakota 58502

P: (701) 222-4400

F: (701) 258-4684



**UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

Richard Brakebill, Deloris Baker, Dorothy  
Herman, Della Merrick, Elvis Norquay, Ray  
Norquay, and Lucille Vivier, on behalf of  
themselves,

Plaintiffs,

vs.

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

Defendant.

**DECLARATION OF ELVIS NORQUAY**

Civil No. 1:16-cv-8

**Declaration of Elvis Norquay**

I, Elvis Norquay, make the following declaration:

1. My name is Elvis Norquay, and I am an enrolled member of the Turtle Mountain Band of Chippewa Indians. I have personal knowledge of the facts set forth in this declaration and could and would competently testify to those facts if asked to do so.
2. I was born on June 2, 1957 in Belcourt, North Dakota, located on the Turtle Mountain Reservation. I am a citizen of the United States. I currently live in Dunseith, North Dakota and have lived in the Belcourt/Dunseith area for most of my life and for the past 30 years.
3. I have voted in many elections since turning 18 years of age and becoming a qualified voter.

4. I am a veteran of the U.S. Marine Corps.
5. I was denied the right to vote in the November 4, 2014 general election. In November 2014, I presented my tribal ID, but was denied the right to vote because my tribal ID listed no residential address.
6. I do not have a state driver's license or ID, and do not have a birth certificate.
7. I cannot afford the documentation needed to obtain a state ID. I also do not have access to transportation to travel to a Driver's License Site.
8. Last year, I obtained a tribal ID for \$10 but my wallet was stolen in June so I lost that ID. On October 3, 2017, I again replaced my tribal ID for a cost of \$15. I listed my residential address as 4604 BIA Rd 10 #664, which is in Belcourt, North Dakota. At the time, I was homeless and the residential address I listed was my address prior to becoming homeless.
9. At the time I obtained my ID I was living at the Belcourt Fayer Albert Building known as the Eaglesview Shelter for Men. In November of 2017, I moved to the Dunseith, into a homeless apartment complex near Willow Creek. I currently live in apartment number one.
10. Currently, social services in Rolla pays for my electricity. I have applied for fuel assistance and am waiting to hear back.
11. I receive social security and disability, which is directly deposited into my debit card. I do not receive a bank statement. I receive \$860 a month and I pay \$50 in child support.
12. I currently go and pick up my mail at my prior residential address 4604 BIA Rd #10 #664 in Belcourt. It is too difficult to switch my address over. I would

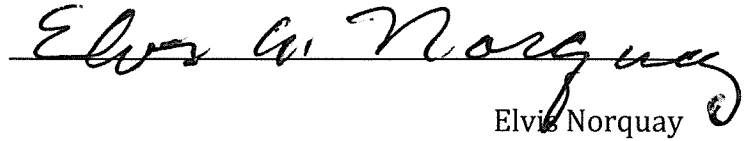
have to go to Social Security and Veterans Affairs and change my address and that is too much paperwork, especially since I am not sure if I am going to move again. I am in a homeless shelter and I do not know what Veterans Affairs will do with me. I currently have a letter from the Department of Veterans Affairs with my Belcourt address on it.

13. The only mail I get at Willow Creek is my utility bill. I immediately give the utility bill to Rolla Social Services who pays it. The utility company is Otter Tail. I hand it over and do not keep the bill. I currently have no documentation that contains my current address.
14. I do not have enough money to pay for a new ID with my new address. I would prefer to pay for food rather than update my address on my ID.

*Remainder of page left intentionally blank. Signature page to follow.*

Executed on February 7 2018 at Dunseith, ND

I declare under penalty of perjury that the foregoing is true and correct.

  
Elvis Norquay

UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION

Richard Brakebill, Dorothy Herman, Della  
Merrick, Elvis Norquay, Ray Norquay, and  
Lucille Vivier, on behalf of themselves,

Plaintiffs,

vs.

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

Defendant.

**ELVIS NORQUAY'S RESPONSE TO  
DEFENDANT'S  
INTERROGATORIES, REQUESTS  
FOR PRODUCTION OF  
DOCUMENTS, AND REQUESTS FOR  
ADMISSIONS (SET 1)**

Civil No. 1:16-cv-8

Plaintiff, Elvis Norquay ("Plaintiff"), hereby provides this response to the First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions filed by Alvin Jaeger, in his official capacity as the North Dakota Secretary of State ("Defendant").

**These responses are not intended for public disclosure and contain confidential and sensitive information. Any use of the answers provided or materials obtained through these interrogatories must be put under seal prior to public filing in consultation with Plaintiffs' counsel.**

**GENERAL OBJECTIONS**

1. Plaintiff objects to the instant discovery request to the extent that it seeks information that Plaintiff has not yet had the opportunity to develop fully.

2. These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such requests were asked of, or any statement, material, or information provided were made by, witnesses present

**EXHIBIT**

**8** 245 of 270

**RESPONSES TO INTERROGATORIES:**

**INTERROGATORY NO. 1:** Identify each person who prepared or assisted in preparing answers to these interrogatories and requests, including the following identifying information:

- a) Full name and an alias(es);
- b) Date of birth;
- c) Marital status (and name of spouse if applicable);
- d) Address;
- e) Telephone Number; and
- f) Social Security Number.

**RESPONSE:** Objection to subsection (f) as overbroad, unduly burdensome, irrelevant, and because disclosure of the information could lead to annoyance, embarrassment, or oppression with regard to response of Elvis Norquay. Objection to Interrogatory No. 1 as it relates to persons who “assisted in preparing answers” to the extent that it seeks information protected from disclosure by the attorney-client privilege and attorney work product doctrine. Plaintiffs also object to subsections (b), (c), and (f) as overbroad, irrelevant, and unduly burdensome with regard to the persons who assisted in preparing answers. Without waiving the objections:

- (a) Elvis Adin Norquay
- (b) June 2, 1957
- (c) Separated, Marla Dubois
- (d) 215 SE Willow Creek #9001, Dunseith 58316
- (e) (701) 550-5601

**INTERROGATORY NO. 2:** Please state all financial support you have received in the last twelve months, including:

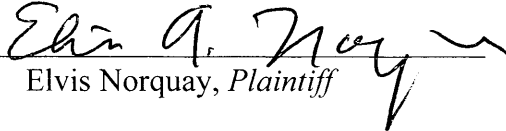
- a) Name(s) of person(s) who provided support;
- b) Address(es) of person(s) who provided support;
- c) Amount of support received; and
- d) Source of support each month.

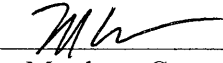
**RESPONSE:**

Based on information and belief and to the best of my knowledge:

Dated: March 27, 2018

Respectfully submitted,

  
Elvis Norquay, *Plaintiff*

  
Matthew Campbell

Matthew Campbell,  
NM Bar No. 138207, CO Bar No. 40808  
[mcampbell@narf.org](mailto:mcampbell@narf.org)  
**NATIVE AMERICAN RIGHTS FUND**  
1506 Broadway  
Boulder, Colorado 80302  
Phone: (303) 447-8760

Jacqueline De León, CA Bar No. 288192,  
DC Bar No. 40808  
[jdeleon@narf.org](mailto:jdeleon@narf.org)  
1506 Broadway  
Boulder, Colorado 80302  
Phone: (303) 447-8760

Daniel David Lewerenz, WI Bar No. 1069385,  
OK Bar No. 30627  
[lewerenz@narf.org](mailto:lewerenz@narf.org)  
1514 P Street NW (Rear), Suite D  
Washington, D.C. 20005  
Phone: (202) 785-4166

Richard de Bodo, CA Bar No. 128199  
[Rich.debodo@morganlewis.com](mailto:Rich.debodo@morganlewis.com)  
**MORGAN, LEWIS & BOCKIUS LLP**  
1601 Cloverfield Blvd., Suite 2050 North  
Santa Monica, CA 90404-4082  
Phone: (310) 255-9055  
Fax: (310) 907-2000

**UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

Richard Brakebill, Deloris Baker, Dorothy  
Herman, Della Merrick, Elvis Norquay, Ray  
Norquay, and Lucille Vivier, on behalf of  
themselves,

Plaintiffs,

vs.

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

Defendant.

**DECLARATION OF LUCILLE VIVIER**

Civil No. 1:16-cv-8

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**Declaration of Lucille Vivier**

I, Lucille Vivier, make the following declaration:

1. My name is Lucille Vivier, and I am an enrolled member of the Turtle Mountain Band of Chippewa Indians. I have personal knowledge of the facts set forth in this declaration and could and would competently testify to those facts if asked to do so.
2. I was born on June 24, 1963 in Belcourt, North Dakota and I am a citizen of the United States. I grew up in North Dakota and have lived in either Dunseith or Belcourt my entire life.
3. I currently live in Dunseith, North Dakota and have for about the last 15 years. I have voted in many elections since turning 18 years of age and becoming a qualified voter.
4. I taught elementary and high school for 15 years, but I am now unemployed. For the last couple of years I cared for 5 children when I lived at my mother's house. I have



since moved and I no longer take care of them. I have since moved and I currently live at 208 Cottonwood Drive with my boyfriend.

5. I do not have a car and have to arrange a ride to get anywhere as there is no public transportation where I live.
6. In order to pay for utilities, groceries, and transportation I receive disability assistance and food stamps. Disability provides me with about \$750 per month and food stamps provides me with about \$46. I spend the majority of my disability assistance on electricity, water, phone, groceries (which is about half of my monthly income), clothes, transportation, and the health care needs for myself. At the end of every month, I typically do not have any money.
7. I receive fuel assistance, and I hope my assistance funds will last me through March. My lights and my heat are electric. I gave my North Central Electric account number to the Low Income Home Energy Assistance Program ("LIHEAP"), which pays the bill directly. Every month I call to see how much is left to know the account balance. I do not receive a bill.
8. On November 4, 2014, I attempted to vote in the general election but was not allowed to cast a ballot because I did not have the required form of identification.
9. Before the election, I never saw or heard anything about the voter ID law. I do not have a state of North Dakota identification card ("ID") or a North Dakota driver's license.
10. When I presented my tribal ID, the poll workers informed me that it was unacceptable because it did not have a residential address printed on it. The poll workers did not allow me to vote.

11. I have known the poll worker that turned me away since she was five years old and her family for most of my life. She knows who I am.
12. In order to vote, I obtained an updated tribal ID on August 8, 2016 for \$10. At that time I was still living with my mother. My tribal ID has my former residential address where I used to live with my mother, 3680 BIA Rd 8. It is now outdated since I moved from my mother's address and live with my boyfriend.
13. It was a challenge to obtain my ID with my residential address since I do not know exactly what my residential address is. Each agency I spoke to told me a different address. For example, the paramedics, Bureau of Indian Affairs ("BIA"), and United States Postal Service each gave me different addresses for my mother's house. I believe I ended up using the address that the BIA gave me, but I am not certain.
14. In my experience, many places on the reservation still do not have good addresses and the United States Postal Service does not consistently make residential mail deliveries. I tried to get my debit card sent to my current address but I never received it. I do not know if it is because Fed Ex could not locate my address to deliver the card, but I suspect that might be the case.
15. On August 10, 2016, the day after I got my tribal ID, I took my tribal ID, baptismal certificate, and EBT card to Minot to try and get a social security card because I believed I needed it to get a state ID.
16. The trip was very costly. I paid \$120 for a friend to drive me to the Social Security office in Minot, which is approximately 100 miles away and takes about 1.5 hours. The cost included payment to the driver, gas, and a meal for the driver. I also paid another \$40 to have another friend watch the three children I used to care for so I

could make the trip during business hours. I believed (because I looked at the social security application form) that I could utilize my Turtle Mountain tribal ID to obtain a social security card.

17. When I arrived I was told the office would accept Standing Rock and Spirit Lake tribal IDs but not Turtle Mountain IDs. I was denied a social security card.
18. Last December my boyfriend took me to the social security office again and I brought my baptismal certificate, Medicaid card, tribal ID, and birth certificate but I was again told that was not enough.
19. Because of the expense, I do not know if I will try to get a social security card again.
20. I attempted to vote in the 2016 general election with my new tribal ID. The poll worker told me that because I had a tribal ID I had to fill out an affidavit. I was upset that my tribal ID did not work because I went through the trouble of getting an updated tribal ID so that I could vote. I believe my tribal ID should have worked since it had my mom's residential address on it and the list said tribal ID was an acceptable form of identification.
21. I refused to sign the affidavit because I had an ID and did not think it was right that I had to sign the affidavit and give another address. I did not vote.

Executed on February 7 2018 at \_\_\_\_\_

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Lucille Vivier", written over a horizontal line.

Lucille Vivier

**UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

Richard Brakebill, Deloris Baker, Dorothy Herman, Della Merrick, Elvis Norquay, Ray Norquay, and Lucille Vivier, on behalf of themselves,

Plaintiffs,

vs.

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

Defendant.

**RICHARD BRAKEBILL'S RESPONSE  
TO DEFENDANT'S  
INTERROGATORIES, REQUESTS  
FOR PRODUCTION OF  
DOCUMENTS, AND REQUESTS FOR  
ADMISSIONS (SET 1)**

Civil No. 1:16-cv-8

Plaintiff, Richard Brakebill ("Plaintiff"), hereby provides this response to the First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions filed by Alvin Jaeger, in his official capacity as the North Dakota Secretary of State ("Defendant").

**These responses are not intended for public disclosure and contain confidential and sensitive information. Any use of the answers provided or materials obtained through these interrogatories must be put under seal prior to public filing in consultation with Plaintiffs' counsel.**

**GENERAL OBJECTIONS**

1. Plaintiff objects to the instant discovery request to the extent that it seeks information that Plaintiff has not yet had the opportunity to develop fully.

2. These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such requests were asked of, or any statement, material, or information provided were made by, witnesses present



**RESPONSES TO INTERROGATORIES:**

**INTERROGATORY NO. 1:** Identify each person who prepared or assisted in preparing answers to these interrogatories and requests, including the following identifying information:

- a) Full name and an alias(es);
- b) Date of birth;
- c) Marital status (and name of spouse if applicable);
- d) Address;
- e) Telephone Number; and
- f) Social Security Number.

**RESPONSE:** Objection to subsection (f) as overbroad, unduly burdensome, irrelevant, and because disclosure of the information could lead to annoyance, embarrassment, or oppression with regard to response of Richard Brakebill. Objection to Interrogatory No. 1 as it relates to persons who “assisted in preparing answers” to the extent that it seeks information protected from disclosure by the attorney-client privilege and attorney work product doctrine. Plaintiffs also object to subsections (b), (c), and (f) as overbroad, irrelevant, and unduly burdensome with regard to the persons who assisted in preparing answers.

Without waiving the objections:

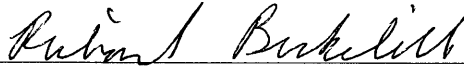
- (a) Richard Gene Brakebill
- (b) April 30, 1963
- (c) Married, Janita Laducer-Brakebill
- (d) 9159 49th Ave NE, Rolla, ND 58367
- (e) 701-381-0493

**INTERROGATORY NO. 2:** Please state all financial support you have received in the last twelve months, including:

- a) Name(s) of person(s) who provided support;
- b) Address(es) of person(s) who provided support;
- c) Amount of support received; and
- d) Source of support each month.

Dated: March 27, 2018

Respectfully submitted,

  
Richard Brakebill, *Plaintiff*

  
Matthew Campbell

Matthew Campbell,  
NM Bar No. 138207, CO Bar No. 40808  
[mcampbell@narf.org](mailto:mcampbell@narf.org)  
**NATIVE AMERICAN RIGHTS FUND**  
1506 Broadway  
Boulder, Colorado 80302  
Phone: (303) 447-8760

Jacqueline De León, CA Bar No. 288192,  
DC Bar No. 40808  
[jdeleon@narf.org](mailto:jdeleon@narf.org)  
1506 Broadway  
Boulder, Colorado 80302  
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Daniel David Lewerenz, WI Bar No. 1069385,  
OK Bar No. 30627  
[lewerenz@narf.org](mailto:lewerenz@narf.org)  
1514 P Street NW (Rear), Suite D  
Washington, D.C. 20005  
Phone: (202) 785-4166

Richard de Bodo, CA Bar No. 128199  
[Rich.debodo@morganlewis.com](mailto:Rich.debodo@morganlewis.com)  
**MORGAN, LEWIS & BOCKIUS LLP**  
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Santa Monica, CA 90404-4082  
Phone: (310) 255-9055  
Fax: (310) 907-2000

UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION

Richard Brakebill, Deloris Baker, Dorothy Herman, Della Merrick, Elvis Norquay, Ray Norquay, and Lucille Vivier, on behalf of themselves,

Plaintiffs,

vs.

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

Defendant.

**DOROTHY HERMAN'S RESPONSE  
TO DEFENDANT'S  
INTERROGATORIES, REQUESTS  
FOR PRODUCTION OF  
DOCUMENTS, AND REQUESTS FOR  
ADMISSIONS (SET 1)**

Civil No. 1:16-cv-8

Plaintiff, Dorothy Herman ("Plaintiff"), hereby provides this response to the First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions filed by Alvin Jaeger, in his official capacity as the North Dakota Secretary of State ("Defendant").

**These responses are not intended for public disclosure and contain confidential and sensitive information. Any use of the answers provided or materials obtained through these interrogatories must be put under seal prior to public filing in consultation with Plaintiffs' counsel.**

**GENERAL OBJECTIONS**

1. Plaintiff objects to the instant discovery request to the extent that it seeks information that Plaintiff has not yet had the opportunity to develop fully.

2. These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such requests were asked of, or any statement, material, or information provided were made by, witnesses present





**RESPONSES TO INTERROGATORIES:**

**INTERROGATORY NO. 1:** Identify each person who prepared or assisted in preparing answers to these interrogatories and requests, including the following identifying information:

- a) Full name and an alias(es);
- b) Date of birth;
- c) Marital status (and name of spouse if applicable);
- d) Address;
- e) Telephone Number; and
- f) Social Security Number.

**RESPONSE:** Objection to subsection (f) as overbroad, unduly burdensome, irrelevant, and because disclosure of the information could lead to annoyance, embarrassment, or oppression with regard to response of Dorothy Herman. Objection to Interrogatory No. 1 as it relates to persons who “assisted in preparing answers” to the extent that it seeks information protected from disclosure by the attorney-client privilege and attorney work product doctrine. Plaintiffs also object to subsections (b), (c), and (f) as overbroad, irrelevant, and unduly burdensome with regard to the persons who assisted in preparing answers. Without waiving the objections:

- (a) Dorothy Laducer Herman
- (b) June 11, 1940
- (c) Married, Edward J. Herman
- (d) 611 4th St. NE
- (e) 701-477-5705

**INTERROGATORY NO. 2:** Please state all financial support you have received in the last twelve months, including:

- a) Name(s) of person(s) who provided support;
- b) Address(es) of person(s) who provided support;
- c) Amount of support received; and
- d) Source of support each month.

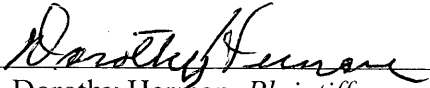
**RESPONSE:**

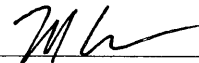
Based in part on information and belief and to the best of my knowledge:

- a) Bureau of Indian Affairs
- b) Unknown
- c) Approximately \$1900/month
- d) Retirement Income

Dated: March 28, 2018

Respectfully submitted,

  
Dorothy Herman, *Plaintiff*

  
Matthew Campbell

Matthew Campbell,  
NM Bar No. 138207, CO Bar No. 40808  
[mcampbell@narf.org](mailto:mcampbell@narf.org)  
**NATIVE AMERICAN RIGHTS FUND**  
1506 Broadway  
Boulder, Colorado 80302  
Phone: (303) 447-8760

Jacqueline De León, CA Bar No. 288192,  
DC Bar No. 40808  
[jdeleon@narf.org](mailto:jdeleon@narf.org)  
1506 Broadway  
Boulder, Colorado 80302  
Phone: (303) 447-8760

Daniel David Lewerenz, WI Bar No. 1069385,  
OK Bar No. 30627  
[lewerenz@narf.org](mailto:lewerenz@narf.org)  
1514 P Street NW (Rear), Suite D  
Washington, D.C. 20005  
Phone: (202) 785-4166

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[Rich.debodo@morganlewis.com](mailto:Rich.debodo@morganlewis.com)  
**MORGAN, LEWIS & BOCKIUS LLP**  
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UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION

Richard Brakebill, Deloris Baker, Dorothy  
Herman, Della Merrick, Elvis Norquay, Ray  
Norquay, and Lucille Vivier, on behalf of  
themselves,

Plaintiffs,

vs.

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

Defendant.

**DELLA MERRICK'S RESPONSE TO  
DEFENDANT'S  
INTERROGATORIES, REQUESTS  
FOR PRODUCTION OF  
DOCUMENTS, AND REQUESTS FOR  
ADMISSIONS (SET 1)**

Civil No. 1:16-cv-8

Plaintiff, Della Merrick ("Plaintiff"), hereby provides this response to the First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions filed by Alvin Jaeger, in his official capacity as the North Dakota Secretary of State ("Defendant").

**These responses are not intended for public disclosure and contain confidential and sensitive information. Any use of the answers provided or materials obtained through these interrogatories must be put under seal prior to public filing in consultation with Plaintiffs' counsel.**

**GENERAL OBJECTIONS**

1. Plaintiff objects to the instant discovery request to the extent that it seeks information that Plaintiff has not yet had the opportunity to develop fully.

2. These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such requests were asked of, or any statement, material, or information provided were made by, witnesses present



**RESPONSES TO INTERROGATORIES:**

**INTERROGATORY NO. 1:** Identify each person who prepared or assisted in preparing answers to these interrogatories and requests, including the following identifying information:

- a) Full name and an alias(es);
- b) Date of birth;
- c) Marital status (and name of spouse if applicable);
- d) Address;
- e) Telephone Number; and
- f) Social Security Number.

**RESPONSE:** Objection to subsection (f) as overbroad, unduly burdensome, irrelevant, and because disclosure of the information could lead to annoyance, embarrassment, or oppression with regard to response of Della Merrick. Objection to Interrogatory No. 1 as it relates to persons who “assisted in preparing answers” to the extent that it seeks information protected from disclosure by the attorney-client privilege and attorney work product doctrine. Plaintiffs also object to subsections (b), (c), and (f) as overbroad, irrelevant, and unduly burdensome with regard to the persons who assisted in preparing answers. Without waiving the objections:

- (a) Della Marie Merrick
- (b) April 6, 1971
- (c) No; Ray Norquay is my partner
- (d) 9818 BIA Rd 7 #98, P.O. Box. 1511, Belcourt ND 58316
- (e) 701-550-7957

**INTERROGATORY NO. 2:** Please state all financial support you have received in the last twelve months, including:

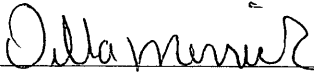
- a) Name(s) of person(s) who provided support;
- b) Address(es) of person(s) who provided support;
- c) Amount of support received; and
- d) Source of support each month.


**RESPONSE:**

Based in part on information and belief and to the best of my knowledge:

Dated: March 27, 2018

Respectfully submitted,

  
Della Merrick, *Plaintiff*

  
Matthew Campbell

Matthew Campbell,  
NM Bar No. 138207, CO Bar No. 40808  
[mcampbell@narf.org](mailto:mcampbell@narf.org)  
**NATIVE AMERICAN RIGHTS FUND**  
1506 Broadway  
Boulder, Colorado 80302  
Phone: (303) 447-8760

Jacqueline De León, CA Bar No. 288192,  
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[lewerenz@narf.org](mailto:lewerenz@narf.org)  
1514 P Street NW (Rear), Suite D  
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Richard de Bodo, CA Bar No. 128199  
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UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION

Richard Brakebill, Deloris Baker, Dorothy  
Herman, Della Merrick, Elvis Norquay, Ray  
Norquay, and Lucille Vivier, on behalf of  
themselves,

Plaintiffs,

vs.

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

Defendant.

**RAY NORQUAY'S RESPONSE TO  
DEFENDANT'S  
INTERROGATORIES, REQUESTS  
FOR PRODUCTION OF  
DOCUMENTS, AND REQUESTS FOR  
ADMISSIONS (SET 1)**

Civil No. 1:16-cv-8

Plaintiff, Ray Norquay ("Plaintiff"), hereby provides this response to the First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions filed by Alvin Jaeger, in his official capacity as the North Dakota Secretary of State ("Defendant").

**These responses are not intended for public disclosure and contain confidential and sensitive information. Any use of the answers provided or materials obtained through these interrogatories must be put under seal prior to public filing in consultation with Plaintiffs' counsel.**

**GENERAL OBJECTIONS**

1. Plaintiff objects to the instant discovery request to the extent that it seeks information that Plaintiff has not yet had the opportunity to develop fully.

2. These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such requests were asked of, or any statement, material, or information provided were made by, witnesses present



**RESPONSES TO INTERROGATORIES:**

**INTERROGATORY NO. 1:** Identify each person who prepared or assisted in preparing answers to these interrogatories and requests, including the following identifying information:

- a) Full name and an alias(es);
- b) Date of birth;
- c) Marital status (and name of spouse if applicable);
- d) Address;
- e) Telephone Number; and
- f) Social Security Number.

**RESPONSE:** Objection to subsection (f) as overbroad, unduly burdensome, irrelevant, and because disclosure of the information could lead to annoyance, embarrassment, or oppression with regard to response of Ray Norquay. Objection to Interrogatory No. 1 as it relates to persons who “assisted in preparing answers” to the extent that it seeks information protected from disclosure by the attorney-client privilege and attorney work product doctrine. Plaintiffs also object to subsections (b), (c), and (f) as overbroad, irrelevant, and unduly burdensome with regard to the persons who assisted in preparing answers. Without waiving the objections:


- (a) Ray Adin Norquay
- (b) February 2, 1963
- (c) No; Della Merrick is my partner
- (d) 9018 BIA Road 10 Apt. 7, P.O. Box. 1511, Belcourt, ND 582316
- (e) 701-477-0505


**INTERROGATORY NO. 2:** Please state all financial support you have received in the last twelve months, including:

- a) Name(s) of person(s) who provided support;
- b) Address(es) of person(s) who provided support;
- c) Amount of support received; and
- d) Source of support each month.

Dated: March 27 2018

Respectfully submitted,

  
Ray Norquay, Plaintiff

  
Matthew Campbell

Matthew Campbell,  
NM Bar No. 138207, CO Bar No. 40808  
[mcampbell@narf.org](mailto:mcampbell@narf.org)  
**NATIVE AMERICAN RIGHTS FUND**  
1506 Broadway  
Boulder, Colorado 80302  
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OK Bar No. 30627  
[lewerenz@narf.org](mailto:lewerenz@narf.org)  
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UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION

Richard Brakebill, Deloris Baker, Dorothy Herman, Della Merrick, Elvis Norquay, Ray Norquay, and Lucille Vivier, on behalf of themselves,

Plaintiffs,

vs.

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

Defendant.

**LUCIELLE VIVIER'S RESPONSE TO  
DEFENDANT'S  
INTERROGATORIES, REQUESTS  
FOR PRODUCTION OF  
DOCUMENTS, AND REQUESTS FOR  
ADMISSIONS (SET 1)**

Civil No. 1:16-cv-8

Plaintiff, Lucille Vivier ("Plaintiff"), hereby provides this response to the First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions filed by Alvin Jaeger, in his official capacity as the North Dakota Secretary of State ("Defendant").

**These responses are not intended for public disclosure and contain confidential and sensitive information. Any use of the answers provided or materials obtained through these interrogatories must be put under seal prior to public filing in consultation with Plaintiffs' counsel.**

**GENERAL OBJECTIONS**

1. Plaintiff objects to the instant discovery request to the extent that it seeks information that Plaintiff has not yet had the opportunity to develop fully.

2. These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such requests were asked of, or any statement, material, or information provided were made by, witnesses present



**RESPONSES TO INTERROGATORIES:**

**INTERROGATORY NO. 1:** Identify each person who prepared or assisted in preparing answers to these interrogatories and requests, including the following identifying information:

- a) Full name and an alias(es);
- b) Date of birth;
- c) Marital status (and name of spouse if applicable);
- d) Address;
- e) Telephone Number; and
- f) Social Security Number.

**RESPONSE:** Objection to subsection (f) as overbroad, unduly burdensome, irrelevant, and because disclosure of the information could lead to annoyance, embarrassment, or oppression with regard to response of Lucille Vivier. Without waiving the objection:

- (a) Lucille Camilla Vivier
- (b) June 24, 1963
- (c) No
- (d) 208 Cottonwood Drive Dr., Dunseith, ND 58329
- (e) 701-244-0021

Objection to Interrogatory No. 1 as it relates to persons who “assisted in preparing answers” to the extent that it seeks information protected from disclosure by the attorney-client privilege and attorney work product doctrine. Plaintiffs also object to subsections (b), (c), and (f) as overbroad, irrelevant, and unduly burdensome with regard to the persons who assisted in preparing answers.

**INTERROGATORY NO. 2:** Please state all financial support you have received in the last twelve months, including:

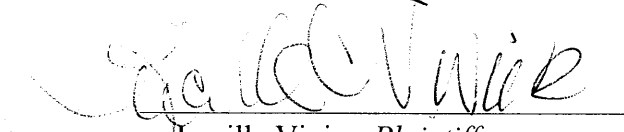
- a) Name(s) of person(s) who provided support;
- b) Address(es) of person(s) who provided support;
- c) Amount of support received; and
- d) Source of support each month.

**RESPONSE:**

Based on information and belief and to the best of my knowledge:

Dated: March 28, 2018

Respectfully submitted,

  
\_\_\_\_\_  
Lucille Vivier, *Plaintiff*  
\_\_\_\_\_

Matthew Campbell

Matthew Campbell,  
NM Bar No. 138207, CO Bar No. 40808  
[mcampbell@narf.org](mailto:mcampbell@narf.org)  
**NATIVE AMERICAN RIGHTS FUND**  
1506 Broadway  
Boulder, Colorado 80302  
Phone: (303) 447-8760

Jacqueline De León, CA Bar No. 288192,  
DC Bar No. 40808  
[jdeleon@narf.org](mailto:jdeleon@narf.org)  
1506 Broadway  
Boulder, Colorado 80302  
Phone: (303) 447-8760

Daniel David Lewerenz, WI Bar No. 1069385,  
OK Bar No. 30627  
[lewerenz@narf.org](mailto:lewerenz@narf.org)  
1514 P Street NW (Rear), Suite D  
Washington, D.C. 20005  
Phone: (202) 785-4166

Richard de Bodo, CA Bar No. 128199  
[Rich.debodo@morganlewis.com](mailto:Rich.debodo@morganlewis.com)  
**MORGAN, LEWIS & BOCKIUS LLP**  
1601 Cloverfield Blvd., Suite 2050 North  
Santa Monica, CA 90404-4082  
Phone: (310) 255-9055  
Fax: (310) 907-2000

West's North Dakota Century Code Annotated  
Title 16.1. Elections  
Chapter 16.1-01. General Provisions

NDCC, 16.1-01-04.1

§ 16.1-01-04.1. Identification verifying eligibility as an elector

Currentness

1. A qualified elector shall provide a valid form of identification to the proper election official before receiving a ballot for voting.
2. The identification must provide the following information regarding the elector:
  - a. Legal name;
  - b. Current residential street address in North Dakota; and
  - c. Date of birth.
3. a. A valid form of identification is:
  - (1) A driver's license or nondriver's identification card issued by the North Dakota department of transportation;  
or
  - (2) An official form of identification issued by a tribal government to a tribal member residing in this state.
- b. If an individual's valid form of identification does not include all the information required under subsection 2 or the information on the identification is not current, the identification must be supplemented by presenting any of the following issued to the individual which provides the missing or outdated information:
  - (1) A current utility bill;
  - (2) A current bank statement;
  - (3) A check issued by a federal, state, or local government;
  - (4) A paycheck; or



(5) A document issued by a federal, state, or local government.

4. The following forms of identification are valid for the specified individuals living under special circumstances who do not possess a valid form of identification under subsection 3.

a. For an individual living in a long-term care facility, a long-term care certificate prescribed by the secretary of state and issued by a long-term care facility in this state;

b. For a uniformed service member or immediate family member temporarily stationed away from the individual's residence in this state, or a resident of the state temporarily living outside the country, a current military identification card or passport; and

c. For an individual living with a disability that prevents the individual from traveling away from the individual's home, the signature on an absentee or mail ballot application from another qualified elector who, by signing, certifies the applicant is a qualified elector.

5. If an individual is not able to show a valid form of identification but asserts qualifications as an elector in the precinct in which the individual desires to vote, the individual may mark a ballot that must be securely set aside in a sealed envelope designed by the secretary of state. After the ballot is set aside, the individual may show a valid form of identification to either a polling place election board member if the individual returns to the polling place before the polls close, or to an employee of the office of the election official responsible for the administration of the election before the meeting of the canvassing board occurring on the sixth day after the election. Each ballot set aside under this subsection must be presented to the members of the canvassing board for proper inclusion or exclusion from the tally.

6. The secretary of state shall develop uniform procedures for the requirements of subsection 5 which must be followed by the election official responsible for the administration of the election.

#### Credits

[S.L. 2017, ch. 152](#) (H.B. 1369), § 2, eff. Aug. 1, 2017.

NDCC 16.1-01-04.1, ND ST 16.1-01-04.1

Current through the 2017 Regular Session of the 65th Legislative Assembly.

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West's North Dakota Century Code Annotated  
Title 16.1. Elections  
Chapter 16.1-01. General Provisions

NDCC, 16.1-01-04.2

§ 16.1-01-04.2. Residence for voting--Rules for determining

Currentness

For purposes of voting:

1. Every qualified elector may have only one residence, shown by an actual fixed permanent dwelling, establishment, or any other abode to which the individual returns when not called elsewhere for labor or other special or temporary purposes.
2. The street address verified by the individual as provided in [section 16.1-01-04.1](#) when requesting a ballot to vote must be the address of residence for the individual.
3. An individual retains a residence in this state until another has been gained.
4. The acts of residing at a new address for thirty days and verifying that address as provided under [section 16.1-01-04.1](#) constitute a change in the individual's voting residence.

**Credits**

[S.L. 2017, ch. 152](#) (H.B. 1369), § 3, eff. Aug. 1, 2017.

NDCC 16.1-01-04.2, ND ST 16.1-01-04.2

Current through the 2017 Regular Session of the 65th Legislative Assembly.

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