

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

Turtle Mountain Band of Chippewa Indians,
Spirit Lake Tribe, Wesley Davis, Zachery S.
King, and Collette Brown

Plaintiffs,

vs.

Michael Howe, in his official capacity as
Secretary of State of North Dakota,

Defendant.

Case No. 3:22-cv-00022

**DEFENDANTS'
MOTION IN LIMINE**

Pursuant to Rule 7.1(B) of the Local Rules of the United States District Court for the District of North Dakota, the Court's inherent authority, and other applicable law and rule, Defendant Michael Howe makes the following motion requesting the Court exclude as inadmissible all expert reports, except when offered for non-hearsay purposes. Defendant Howe also requests the Court exclude as inadmissible the portions of the testimony and expert report of Dr. Loren Collingwood relating to compactness and voting age population, which were formed by analyzing unreliable data using the unreliable software Dave's Redistricting App. Further, Defendant Howe requests the Court exclude as inadmissible the portions of the testimony and expert report of Dr. Weston McCool relating to his opinion that systemic disparities hinder the ability of Native American tribal members to participate effectively in the North Dakota political process, as the opinion is a mere assumption, unsupported by any facts or data at all. Additionally, Defendant Howe requests the Court exclude as inadmissible the portions of the testimony and expert report of Dr. Weston McCool relating to his opinion that Native Americans have less access to healthcare due to the cost, which was formed based on unreliable Kaiser Family Foundation

data. Finally, Defendant Howe requests the Court exclude the recently disclosed and entirely new categories of subject matter of Lonna Jackson Street's anticipated testimony, which goes well beyond the formerly disclosed subject matter of anticipated testimony related to the alleged injury the Spirit Lake Tribe and its members have allegedly suffered by the State's use of a redistricting plan that allegedly dilutes their vote, consistent with initial disclosures.

This motion is based upon all of the files, records, and proceedings herein, including the memorandum and affidavit submitted in support of this motion.

Dated this 12th day of May, 2023.

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

Attorney for Defendant Michael Howe, in his
official capacity as Secretary of State of the
State North Dakota

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANTS' MOTION IN LIMINE** was on the 12th day of May, 2023 filed electronically with the Clerk of Court through ECF:

Michael S. Carter
OK No. 31961
Matthew Campbell
NM No. 138207, CO No. 40808
Native American Rights Fund
1506 Broadway
Boulder, CO 80301
carter@narf.org
mcampbell@narf.org

Molly E. Danahy
DC Bar No. 1643411
Nicole Hansen
NY Bar No. 5992326
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
mdanahy@campaignlegal.org
nhansen@campaignlegalcenter.org

Mark P. Gaber
DC Bar No. 98807
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
mgaber@campaignlegal.org

Bryan L. Sells
GA No. 635562
The Law Office of Bryan L. Sells, LLC
PO BOX 5493
Atlanta, GA 31107-0493
bryan@bryansellsllaw.com

Samantha Blencke Kelty
AZ No. 024110
TX No. 24085074
Native American Rights Fund
1514 P Street NW, Suite D
Washington, DC 20005
kelty@narf.org

Timothy Q. Purdon
ND No. 05392
ROBINS KAPLAN LLP
1207 West Divide Avenue, Suite 200
Bismarck, ND 58501
TPurdon@RobinsKaplan.com

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