

No. 18A335

IN THE
Supreme Court of the United States

RICHARD BRAKEBILL, DOROTHY HERMAN, DELLA MERRICK,
ELVIS NORQUAY, RAY NORQUAY, AND LUCILLE VIVIER,

Applicants,

v.

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

Respondent.

**RESPONDENT'S OPPOSITION TO APPLICATION TO VACATE
STAY OF PRELIMINARY INJUNCTION**

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Dated: October 2, 2018

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RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent represents that it does not have any parent entities and does not issue stock.

Respectfully submitted,

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To the Honorable Neil M. Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eighth Circuit:

INTRODUCTION AND SUMMARY OF ARGUMENT

“A State indisputably has a compelling interest in preserving the integrity of its election process.” *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 231 (1989). Moreover, “[a]n appropriately defined and uniformly applied requirement of bona fide residence may be necessary to preserve the basic conception of a political community, and therefore could withstand close constitutional scrutiny.” *Dunn v. Blumstein*, 405 U.S. 330, 343-44 (1972).

To prevent fraud and ensure that voters receive the correct ballots, North Dakota has long required voters to show a document at the polling place that lists their current residential street address (“RSA”). The overwhelming majority of voters can satisfy that requirement by showing a driver’s license, non-driver’s ID card, or tribal ID that includes the voter’s current RSA. If the voter’s ID card does not contain a current RSA, the voter can verify his or her RSA by producing any one of a long list of supplemental documents, including a bank statement, utility bill, paycheck, or any document from a state, federal, or local government. The RSA requirement ensures both that the person is actually eligible to vote and that he or she receives the correct ballot. Because the boundaries of many elected offices are not contiguous—*e.g.*, one county might be split between multiple water districts—it is imperative to know exactly where the voter physically resides in order to determine the specific offices for which he or she may vote. In the 2016 election cycle, there were more than 800 different ballots used throughout the State depending on where the voter lived.

Applicants are six Native American residents of North Dakota who brought this suit in 2016 to challenge certain aspects of the State’s election laws. In the proceedings below, the district court entered a statewide injunction barring North Dakota from enforcing several of its ballot-integrity measures, including the RSA requirement. Based on a mere one paragraph of analysis, the court found that the RSA requirement was a “legal obstacle” inhibiting the ability to vote because “Native American communities often lack residential street addresses ... or do not have clear residential addresses.” Applicants’ App. B, at 8-9. The court thus ordered the Secretary of State (Respondent here) to accept at the polls any form of identification that includes either a current RSA or “a current mailing address (*P.O. Box or other address*) in North Dakota.” *Id.* at 15 (emphasis added). In short, the district court required North Dakota to allow anyone to vote based merely on proof of a P.O. Box address—even though P.O. Box addresses do not necessarily correspond with a voter’s precinct and, indeed, can easily be obtained by people who do not live in North Dakota or are otherwise ineligible to vote.

On September 24, 2018—more than six weeks before the general election and before general absentee voting had even begun—the Eighth Circuit issued a partial stay of the district court’s injunction to the extent it required the Secretary to accept P.O. Box addresses for voting purposes. The court concluded that, under *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), any challenge to the RSA requirement should have proceeded through an as-applied rather than facial challenge. The court further held that the State would be irreparably harmed by the

injunction because it would likely lead to votes being cast in the wrong precinct as well as outright fraud. And the Eighth Circuit found no risk that any of the six plaintiffs in this case would be denied the right to vote because *all six* have RSAs that they may use to vote in the November election.

* * *

Applicants now ask this Court to dissolve the Eighth Circuit's stay, enjoin the operation of a duly enacted state law, and order the Secretary to accept votes in the upcoming November election based on a mere P.O. Box address. But Applicants do not come close to meeting the demanding standard for the extraordinary relief they seek. The application should be denied.

First, the relevant equitable considerations tip overwhelmingly in favor of the Secretary. A State always suffers irreparable harm when it is enjoined from enforcing a duly enacted law, and that is doubly true when the enjoined law is intended to protect the integrity of the election process. If the district court's injunction had remained in force for the November election, individuals from outside North Dakota (or from elsewhere within the State) would be permitted to vote in any precinct's election merely by obtaining a P.O. Box and having mail sent to that address. And, even apart from outright fraud, the injunction would inevitably lead to confusion and mistakes if—as is common—the post office where the P.O. Box is located is in a different precinct than the voter's actual place of residence.

On the other side of the ledger, the Eighth Circuit's stay of the injunction pending appeal would result in no meaningful harm to Applicants. Applicants suggest

(at 1) that “imminent disenfranchisement” will result unless the district court’s preliminary injunction remains in place through the election. But each of the six Applicants here has an RSA that can be used to vote in the general election, and no Applicant alleges that he or she needs to use a P.O. Box address in order to vote. Any alleged harm to the specific Applicants here thus cannot justify a sweeping injunction barring North Dakota from enforcing a critical ballot-integrity measure *throughout the State*.

There is also no reasonable prospect that this Court would grant review after a final decision in the court of appeals. Applicants do not identify any split of authority or important legal issues that would warrant this Court’s intervention; instead, they merely challenge the application of settled legal principles to North Dakota’s unique statutory scheme. The RSA requirement that was the subject of the Eighth Circuit’s stay order is just one component of a broader, long-running dispute that has involved two injunctions, multiple legislative changes, and a number of North Dakota-specific issues. Applicants cannot plausibly contend that the questions presented here are likely to recur in other States.

Finally, even in the unlikely event this Court were to grant certiorari, there is little chance that plaintiffs would prevail. North Dakota has a compelling interest in preserving the integrity of its election process, preventing fraud, and ensuring that voters cast their ballots in the correct precincts. In *Crawford*, this Court held 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 ensuring the eligibility and qualification of voters—is facially constitutional where it imposes nothing more than a limited burden on the vast majority of voters. That is precisely the case here. The RSA requirement is facially valid, imposes no burden at all on the vast majority of voters, and cannot justify an across-the-board injunction mandating that election officials accept P.O. Box addresses for voting throughout North Dakota.

Because the RSA requirement is justified by important government interests and imposes a burden (if at all) in only a small number of cases, Applicants cannot “demonstrate[] that the proper remedy—even assuming an unjustified burden on some voters—would be to invalidate the entire statute.” *Crawford*, 553 U.S. at 203. Instead, any constitutional challenges to the RSA requirement must be brought on an as-applied basis by the “small number of voters who may experience a special burden under the statute.” *Id.* at 200. Here, however, all six named Applicants possess qualifying RSAs and do not allege that they need to rely on a P.O. Box in order to vote. The fact that *other* non-parties *might* find it difficult to comply with the RSA requirement cannot justify a sweeping injunction categorically barring North Dakota from implementing the RSA requirement. The Eighth Circuit made clear that “the courthouse doors remain open” in the event another resident of North Dakota “is denied an opportunity to vote” on the ground that he or she lacks an RSA. Applicants’ App. A, at 11. This Court’s intervention is entirely unnecessary, and the Application to lift the stay should be denied.

BACKGROUND AND PROCEDURAL HISTORY

A. North Dakota's Elections and the Residential Street Address Requirement

Alone among all States, North Dakota has allowed citizens to vote without the burden of registration for more than sixty-five years. *See* Respondent's App. A, at ¶ 4. Unlike other States that bar citizens from voting unless they register in advance of the election, North Dakotans may vote simply by arriving at the polling place and demonstrating that they are eligible to vote.

North Dakota's Constitution sets forth the basic voting procedures and qualifications. An individual must be: (1) a citizen of the United States, (2) at least eighteen years of age, and (3) a North Dakota resident. *See* N.D. Const. Art. II, § 1; N.D. Cent. Code § 16.1-01-04. Because North Dakota does not require advance registration, the threshold qualifications to vote are evaluated by having electors "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 §§ 16.1-01-04.1(1), (2).

The core purposes of the RSA requirement are to prevent fraud (by ensuring that the individual actually lives in North Dakota) and ensure that North Dakotans vote in the correct elections. In North Dakota, as in most States, ballots must be specifically tailored for many local elections based on the geographic location of each voter's residence. There are elections for federal and statewide offices on every ballot as well as local county, judicial, city, park, school, vector control, soil conservation, and water authority races for each jurisdictional area, plus ballot measures.

Respondent's App. A, at ¶ 11. Because boundaries for these elections differ significantly and are not coterminous, neighbors living across the street from one another may have to cast different ballots if precinct lines separate the two sides of the street. *Id.* This leads to hundreds of different ballots across the state. For example, the June 2016 statewide election required 807 separate optical scan ballots. *Id.* ¶ 13. County auditors also prepared an additional 102 paper ballots from which votes were counted by hand for certain smaller contests, such as vector control district boards, library boards, and ambulance boards. *Id.* ¶ 14.

B. North Dakota's Election Law Before 2013

Under the law in place until 2013, North Dakota required voters to have identification that included each person's RSA. *See* N.D. Cent. Code § 16.1-05-07(1) (2012) ("Before delivering a ballot to an individual ... the poll clerks shall request the individual to show identification, which includes the individual's residential address and date of birth."). If the elector did not have a valid ID, the law then in place allowed the person to execute an affidavit attesting to their voting qualifications, including their RSA. *See* Respondent's App. A, at ¶ 4; N.D. Cent. Code § 16.1-05-07(2) (2012); N.D. Cent. Code § 16.1-05-06 (2012); N.D. Cent. Code § 16.1-05-06(4) (1999) (requiring an affidavit to include "present address"); N.D. Cent. Code § 16.1-05-06(1) (1981) ("The affidavit shall include the name and address of the affiant").

Although this practice was in place for many years, it was problematic from the start because it allowed individuals to cast ballots without any independent verification of whether they possessed the necessary qualifications to vote. Instead, county auditors would send a letter to each elector who voted by affidavit at the RSA

provided in the affidavit. N.D. Cent. Code § 16.1-02-05(4) (repealed Aug. 1, 2013). If that notice was “returned as not deliverable,” then the auditor would “attempt to determine the reason for the return” and, if no reason was ascertained, refer the matter to the state’s attorney for investigation. *Id.* Yet the state’s attorney rarely, if ever, acted on such referrals; the Secretary of State “is not aware of any convictions for voter fraud” in North Dakota before 2016. Respondent’s App. B, at ¶ 12.

The concerns with this regime came to a head during the 2012 general election. During that election, 325,862 votes were cast with 10,519 voters using self-authenticating affidavits. Respondent’s App. B, at ¶ 10. The Senate race was decided by just 2,936 votes. *Id.* But 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. And “[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.*

C. North Dakota’s 2013 Election Law and the First Injunction

After the 2012 election, the Legislative Assembly eliminated the self-authenticating affidavits from the election process. Respondent’s App. B, at ¶ 14. At that time, more than 97% of the voters listed in North Dakota’s Central Voter File had a valid driver’s license or non-driver’s ID issued by the Department of Transportation. *Id.* To alleviate the minimal burden that might be imposed upon less than 3% of the known electorate, a free non-driver’s ID would be issued to anyone

who wanted one for voting. *Id.*; N.D. Cent. Code § 39-06-03.1(4) (“Except for a duplicate or replacement card, the director may not charge a fee to provide a nondriver photo identification card to an eligible applicant.”). North Dakota operated under this law for the 2014 primary and general elections and the 2016 primary election with only a single suspected case of voter fraud. Respondent’s App. B, at ¶ 16.

In January 2016, however, seven individual Native Americans (Applicants here, less one individual who is no longer a plaintiff) filed this suit against the Secretary of State challenging the 2013 law. *See* Doc. 1.¹ Among other claims, the complaint alleged that the law violated the Equal Protection Clause. *Id.* at 40-41. The plaintiffs later moved for a preliminary injunction on that basis, which the district court granted on August 1, 2016. Relying primarily on statistical data, the district court held that Applicants were likely to prevail because Native Americans faced disproportionate burdens in obtaining acceptable forms of identification. Applicants’ App. C, at 9-20. And because Native Americans could no longer vote via the affidavit “fail safe,” the district court found that the inability to obtain a valid ID would preclude them from voting at the same rates as non-Native Americans. *Id.* at 21-23. As a remedy, the district court entered a preliminary injunction that allowed *all* voters in the State—not just the individual plaintiffs—to use self-authenticating affidavits to cast votes, similar to the pre-2013 regime. Doc. 62, at 1-2. The Secretary did not appeal that decision.

¹ “Doc.” refers to entries on the district court docket.

During the November 2016 general election, 16,215 individuals cast ballots using self-authenticating affidavits. Respondent’s App. B, at ¶ 21. Election officials later sought to verify whether those individuals were qualified to vote. Despite extensive and expensive efforts, they could not determine the validity of 3,682 votes cast by affidavit. *Id.* ¶¶ 22-33. Worse still—like the 2012 Senate election—the number of ballots cast by self-authenticating affidavit for several offices exceeded the vote differential for those contests, with candidates from both political parties being advantaged (and disadvantaged) by such votes. *Id.* ¶¶ 36-37.

D. North Dakota’s 2017 Election Law and the Second Injunction

Following the November 2016 general election, and in response to the district court’s first injunction, the Legislative Assembly amended North Dakota’s election laws to provide more flexibility for electors to satisfy the identification requirement. The 2017 law established two primary forms of identification: “(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.” N.D. Cent. Code § 16.1-01-04.1(3). As before, the non-driver’s identification card is free. N.D. Cent. Code § 39-06-03.1(4). And as the Secretary explained to the district court, North Dakota interprets the tribal ID option as requiring “nothing more than a document from tribal authorities setting forth the tribal member’s name, date of birth, and current residential street address.” Doc. 81, at 19; Respondent’s App. B, at ¶ 43.

If the voter’s ID is missing required information (such as a current RSA), the voter can rely on a wide variety of other documents to supply the missing information.

Those supplemental documents include: “(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.” N.D. Cent. Code § 16.1-01-04.1(3)(b).

In addition to using one of these supplemental documents to confirm the voter’s RSA, the 2017 law also created a new “fail-safe” that is far more reliable than self-authenticating voter affidavits. N.D. Cent. Code § 16.1-01-04.1(5). A voter who does not possess a valid ID or supplemental documents “may mark a ballot that must be securely set aside in a sealed envelope.” N.D. Cent. Code § 16.1-01-04.1(5). The voter may then return to the polling place that day with a valid ID (or supplemental documents) to confirm that he or she is a valid voter. *Id.* Alternatively, the voter can present a valid ID (or supplemental documents) to the local election office within six days. *Id.* In either event, the set-aside ballot is included in the final certification of the election. *Id.*

In December 2017, Applicants filed an amended complaint. *See Applicants’ App. I.* That complaint renewed many of the previous allegations regarding the alleged burdens on Native Americans to obtain a valid ID. *Id.* ¶¶ 245-284. But it also shifted gears and directly challenged *the RSA requirement itself* as a burden on Native Americans’ ability to vote, alleging that this longstanding and seemingly uncontroversial requirement “impose[d] a property ownership requirement on electors.” *Id.* ¶¶ 4, 412-415. Applicants sought to challenge that requirement even though they each have addresses that qualify as valid RSAs and thus the requirement

does not affect *their own* ability to vote. *See* Applicants’ App. A, at 5. Because Applicants have suffered no harm as a result of the RSA requirement, most of the amended complaint focuses on burdens allegedly faced by *other* Native Americans who were not named as parties. Applicants’ App. I, at ¶¶ 245-284. And, like the original complaint, the amended complaint focused largely on general statistical data about socioeconomic differences between the Native American and non-Native American populations, rather than on the specific burdens allegedly facing the individual Applicants. *See id.* ¶¶ 186-310.

Applicants moved for another preliminary injunction against the 2017 law. They sought to enjoin the RSA requirement (among other portions of the law) as violating the Equal Protection Clause despite the fact that each of the Applicants had a valid RSA that could be used for voting. The district court granted the preliminary injunction in part on April 3, 2018. *See* Applicants’ App. B. In doing so, it adopted its earlier preliminary injunction decision and cited similar statistical evidence concerning the impact that the ID requirement purportedly has on Native Americans relative to non-Native Americans. *Id.* at 4-6, 8-9. But the district court did not remedy that alleged injury through carefully tailored relief. Instead, the court—in just one paragraph with little legal analysis—enjoined the Secretary of State *from enforcing the RSA requirement*, holding that the “Secretary of State shall allow a qualified voter to receive a ballot if they provide a valid form of ID ... *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.” *Id.* at 14-15 (emphasis added). Put

differently, the court ordered the Secretary to accept votes from individuals based merely on a P.O. Box address—something that does not necessarily correspond with a voter’s RSA and, indeed, can easily be obtained even by individuals who do not live in North Dakota or are otherwise ineligible to vote. The Secretary filed a timely notice of appeal the next day.

E. Motions for Stay Pending Appeal

On April 10, 2018, the Secretary filed a motion in district court seeking a stay of the injunction pending appeal. The Secretary argued that Applicants had failed to allege or show that they lack a qualifying RSA or depend upon a P.O. Box address to vote, and thus lacked standing to challenge that aspect of North Dakota law. *See* Doc. 104, at 2-5. And the Secretary further argued that even if some small percentage of residents would have difficulty complying with the RSA requirement, that claim must be advanced through an as-applied challenge rather than a facial challenge to the RSA requirement in its entirety. *Id.* at 6-8. Though the district court acknowledged that the Secretary “has raised some legitimate concerns as to the Plaintiffs’ lack of standing to challenge the residential street address requirement,” it denied the motion on April 30, 2018. *See* Doc. 112, at 2, 5. The district court also brushed aside the Secretary’s concerns about voter fraud because “[t]he theoretical possibility of voter fraud exists in every election nationwide.” *Id.* at 3.

Two days later, the Secretary filed a motion for stay in the Eighth Circuit. The Secretary asked for a stay of the portion of the district court’s order permitting statewide use of P.O. Box mailing addresses to vote, arguing that the State would be irreparably harmed if that portion of the order remained in place for North Dakota’s

next statewide election on June 12, 2018, or future elections. The court of appeals denied the motion “[b]ased primarily on the imminent primary election date of June 12, 2018.” Respondent’s App. C. However, the denial was “without prejudice to the filing of a renewed motion for stay after the completion of briefing on the merits of this appeal.” *Id.*

The Secretary renewed his motion to stay the preliminary injunction on August 16 after merits briefing was completed. The Eighth Circuit held oral argument on September 10, and the stay issues were addressed extensively during the argument. In particular, counsel for the State informed the Court that it was imperative to have a decision on the stay before September 27, which was the day on which the State was required to begin making absentee and mail-in ballots available to voters who request them. *See* Oral Arg. Audio 30:30-38:30, *Brakebill v. Jaeger*, 18-1725 (Sept. 10, 2018), <https://bit.ly/2xW2lUr>.

F. The Eighth Circuit’s Stay Order

On September 24, 2018, the Eighth Circuit issued an order partially staying the district court’s injunction to the extent that it enjoined application of the RSA requirement. *See* Applicants’ App. A. The court found that at least one plaintiff (Elvis Norquay) had standing to challenge the RSA requirement because—even though Mr. Norquay has an RSA at the homeless apartment complex where he currently resides—he could not vote in his precinct unless he obtains a new ID or supplemental document showing that address. *Id.* at 5-6.²

² Applicants suggested in their opposition to Respondent’s renewed motion for stay that Mr. Norquay has “bec[o]me homeless again,” *see* Opp. to Renewed Mot. for

The court further concluded, however, that the Secretary had adequately shown that he was likely to prevail on the merits on appeal. *Id.* at 6-8. Under *Crawford*, a state statute may not be invalidated on its face merely because it burdens *some* voters. Yet that is precisely what the district court did here: even though Applicants’ theory was limited to Native Americans, the district court enjoined the Secretary from requiring proof of an RSA throughout the State, even for “the vast majority of residents who have [RSAs].” *Id.* at 7.

Under *Crawford*, the Eighth Circuit explained, the proper course was not to enjoin the law in its entirety but instead to bring an as-applied challenge that seeks “a narrower injunction to relieve certain voters of an unjustified burden.” *Id.* at 8. The court noted that this would be a poor case in which to bring an as-applied challenge because “[e]ach of the plaintiffs ... has a current residential street address, so an injunction allowing voters to present identification with a mailing address rather than identification with a residential street address did not relieve any excessive burden of the statute as applied to *these plaintiffs*.” *Id.* (emphasis in original).³ The “courthouse doors remain open,” however, to an as-applied challenge

Stay at 11-12 & n.5, No. 18-1725 (8th Cir. Aug. 27, 2018), but they did not offer any new declarations or attempt to supplement the record regarding his current living status. Their Application before this Court is vague about Mr. Norquay’s current living situation, and cites only his declaration from Feb. 7, 2018, which states that Mr. Norquay was living in the homeless apartment complex in Dunseith. *See* Applicants’ App. H.

³ The Eighth Circuit also rejected any suggestion that North Dakota’s law required “an interest in property” in order to vote; by its plain terms, the statute merely required proof of *where the person physically resided*, and posed no bar to voting by individuals who, for example, were homeless or living with their parents. Applicants’ App. A, at 7-8.

by any individual who is “denied an opportunity to vote” on the ground that he or she lacks an RSA. *Id.* at 11.

The Eighth Circuit further concluded that the State would be irreparably harmed absent a stay because, without the RSA requirement, voters could mistakenly cast ballots in the wrong precinct and the State would have no way to confirm that a voter even lived in North Dakota. *Id.* at 8-9. “Even if the State can prosecute fraudulent voters after the fact, it would be irreparably harmed by allowing them to vote in the election.” *Id.* at 9.

Finally, the court found that it was not too close to the election to lift the stay. Although this Court “sometimes frowns on changes in election procedure when they come too close to an election,” *id.*; *see also Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006), this election was more than a month away when the Eighth Circuit issued its decision partially staying the injunction. Applicants’ App. A, at 10. The court also issued its decision before any absentee ballots were issued on September 27, thereby further minimizing any risk of confusion. Judge Kelly dissented; in her view, the Secretary had not satisfied the stay factors.

ARGUMENT

“[A] Circuit Justice has jurisdiction to vacate a stay where it appears that the rights of the parties to a case pending in the court of appeals, which case could and very likely would be reviewed here upon final disposition in the court of appeals, may be seriously and irreparably injured by the stay, and the Circuit Justice is of the opinion that the court of appeals is demonstrably wrong in its application of accepted standards in deciding to issue the stay.” *W. Airlines, Inc. v. Int’l Bhd. of Teamsters*,

480 U.S. 1301, 1305 (1987) (O'Connor, J., in chambers) (quoting *Coleman v. Paccar, Inc.*, 424 U.S. 1301, 1304 (1976) (Rehnquist, J., in chambers)). Applicants do not meet the demanding standard for the extraordinary relief they seek.

I. THE EQUITABLE FACTORS SUPPORT THE EIGHTH CIRCUIT'S PARTIAL STAY OF THE PRELIMINARY INJUNCTION.

A. The Eighth Circuit's stay was needed to prevent irreparable harm to North Dakota and its efforts to ensure the integrity of the ballot box. A general harm, of course, inures whenever the legislature's will is judicially undone. "[A]ny time a State is enjoined by a Court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers); *see also Coal. for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) ("[I]t is clear that a state suffers irreparable injury whenever an enactment of its people ... is enjoined."). Those sovereign harms are magnified, moreover, when the challenged law reflects "the State's policy judgments" about election-related matters. *Perry v. Perez*, 565 U.S. 388, 393 (2012); *see also Benisek v. Lamone*, 138 S. Ct. 1942, 1943 (2018) (noting that unwarranted preliminary injunctions can have a "needlessly 'chaotic and disruptive effect upon the electoral process'") (citation omitted).

Here, the district court's order would have required 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." Applicants' App. B, at 15. That would have been a veritable invitation to fraud. Individuals who do not live in North Dakota could have easily cast ballots after setting up a P.O. Box in the State.

See Dunn, 405 U.S. at 345 (noting the “compelling government interest” of addressing the “concern ... that nonresidents will temporarily invade the State or county [or precinct], falsely swear that they are residents to become eligible to vote, and, by voting, allow a candidate to win by fraud”).

Even putting aside the risk of fraud, the injunction would have inevitably led to confusion over which ballots should be given to citizens who vote using a P.O. Box address. Election officials with no address information other than a P.O. Box would have had to issue ballots based on the location of the post office rather than the individual’s actual place of residence. That would have unquestionably led to voters casting ballots in the wrong races. For example, some portions of the City of Wilton are in Burleigh County and require a ballot offered in a Burleigh County voting precinct, whereas other portions of Wilton are in McLean County and require a ballot offered in a McLean County voting precinct. *See* Doc. 81-9, at 19-20; Doc. 81-29, at 27-28. But the Wilton Post Office is located in McLean County. If a Wilton resident who lives in Burleigh County attempted to vote with an ID containing a Wilton P.O. Box address, the election official would have had no choice but to issue a ballot from a McLean County precinct. This would have led to that voter casting a ballot in the wrong county for the county commissioners, auditor, sheriff, and state’s attorney, to the detriment of voters in both jurisdictions. *See, e.g., Anderson v. United States*, 417 U.S. 211, 226 (1974) (“The right to an honest (count) is a right possessed by each voting elector, and to the extent that the importance of his vote is nullified, wholly or

in part, he has been injured in the free exercise of a right or privilege secured to him by the laws and Constitution of the United States.”) (citation omitted).

B. Applicants (at 10-13) rely heavily on *Purcell* for the proposition that the Eighth Circuit’s stay order came too late in the election process, but that reliance is misplaced. At the outset, *Purcell* involved a court of appeals order issued less than a month before the election that *struck down* a duly enacted state law in a “four-sentence order.” 549 U.S. at 6; *see also id.* at 7 (discussing importance of state laws that ensure “the integrity of our electoral processes”). This case arose in the exact opposite posture: the Eighth Circuit stayed an injunction that would have prohibited North Dakota from implementing a duly enacted state law. The Eighth Circuit thus reached the same basic outcome as this Court in *Purcell*—both decisions ensured that a State could enforce its ballot-integrity measures during an upcoming election. The Eighth Circuit was enforcing *Purcell*—not violating it.

Purcell also noted the risks of “conflicting orders” that may lead to “voter confusion and consequent incentives to remain away from the polls.” *Id.* at 4-5. But at the time of the Eighth Circuit’s stay order, the election was still six weeks away and was sufficiently far in the future that any such risks were minimal. Most notably, the court issued its order before general absentee voting had begun on September 27, 2018, thus ensuring that there would be uniform procedures in place throughout the election. *See* Applicants’ App. A, at 9-10. Military and overseas voting began on September 21st, three days before the Eighth Circuit issued its stay order, but to the best of the Secretary’s knowledge, no military or overseas voters have been issued a

ballot (or cast one) based on the use of a P.O. Box address. In short, Applicants offer no basis for this Court to second-guess the Eighth Circuit’s conclusion that “there is still sufficient time before election activity to make a stay permissible.” *Id.* at 9.

C. Applicants next contend (at 13-17) that they will suffer irreparable harm absent this Court’s intervention because they will be “disenfranchised” if the Eighth Circuit’s stay remains in force through the election. But those arguments rest primarily on overheated rhetoric rather than the evidence in the record.

Applicants argue (at 14-16) that homeless individuals generally and Elvis Norquay specifically will be burdened by the requirement to offer proof of a current RSA in order to vote. Not so. North Dakota law expressly protects the voting rights of the homeless by providing that a person who becomes homeless and has not yet obtained a new residence may 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.”). Here, it is undisputed that Mr. Norquay still possesses a tribal ID card that lists his most recent address before he became homeless; Mr. Norquay also continues to have mail sent to that address and visits it occasionally to retrieve his mail. Applicants’ App. H, at 2. Mr. Norquay could thus use that ID and address to vote either in-person or by absentee ballot. Alternatively, Mr. Norquay could vote using a document that shows the street address of the homeless apartment complex in which he currently resides. He has admitted that he receives utility bills at that address, *see id.* at 2-3, which are an

accepted form of proof for establishing a voter's current RSA.⁴ And, either way, Mr. Norquay does not allege in his declaration that he would vote using a P.O. Box address if that were an option. *See Id.*

Applicants (at 15-16) also cite declarations suggesting that some of the Applicants had difficulty voting in the 2014 election. As noted above, however, the Legislative Assembly amended North Dakota's election laws in 2017 to provide more flexibility for voters to meet the identification requirement. In all events, Applicants concede (at 16) that they now have qualifying identification cards that include their current residential addresses.

In sum, Applicants cannot fairly claim that they would be "disenfranchised" absent this Court's intervention, as each of them possesses the documents needed to cast a vote in the upcoming November election if the Eighth Circuit's stay remains in force. Moreover, any alleged harm to other individuals not before the Court cannot justify a sweeping injunction barring the state from enforcing a duly enacted ballot-integrity measure. As the Eighth Circuit emphasized, "the courthouse doors remain open" in the event that a resident of North Dakota "is denied an opportunity to vote" on the ground that he or she lacks an RSA. Applicants' App. A, at 11. In the meantime, no Applicant is being "disenfranchised" or denied the right to vote, and there is no basis for this Court to grant the extraordinary relief sought in the Application.

⁴ As noted above, *see supra* n.2, Applicants have suggested that Mr. Norquay's living situation has changed, but have offered no evidence of any such changes. Either way, however, it is undisputed that if Mr. Norquay is currently homeless he can vote using his most recent address before he became homeless (which appears to be the address that he still visits to pick up his mail).

II. IT IS UNLIKELY THIS COURT WOULD GRANT CERTIORARI ON THE UNDERLYING QUESTIONS IN THIS CASE FOLLOWING A FINAL DECISION FROM THE EIGHTH CIRCUIT.

It is highly unlikely that this Court would intervene in this case following final disposition in the court of appeals. Applicants suggest (at 6) that the Court would grant certiorari to “continue the validity” of *Harper v. Va. Bd. of Elections*, 383 U.S. 633 (1966), which addresses (in the context of poll taxes) when restrictions on the right to vote are sufficiently related to legitimate voter qualifications. But Applicants do not identify a single *question of law* that they would ask this Court to resolve; instead, they merely argue that the specific North Dakota statute at issue here cannot satisfy the longstanding test from *Harper*. See Application 8 (arguing that North Dakota’s current residential address requirement is “unrelated to” legitimate voting qualifications under “*Harper’s rule*”). This Court’s rules are clear that “[a] petition for a writ of certiorari is rarely granted when the asserted error consists of ... the misapplication of a properly stated rule of law.” S. Ct. R. 10; see also *Cavazos v. Smith*, 561 U.S. 1, 16 (2011) (Ginsburg, J., dissenting, joined by Breyer and Sotomayor, J.J.) (“In sum, this is a notably fact-bound case in which the Court of Appeals unquestionably stated the correct rule of law. It is thus ‘the type of case in which we are *most* inclined to deny certiorari.’” (quoting *Kyles v. Whitley*, 514 U.S. 419, 460 (1995) (Scalia, J., dissenting))).

Applicants do not even attempt to argue that there is a division of authority over the validity of “residential street address” requirements or that the issues presented here are likely to recur in other jurisdictions. To the contrary, Applicants correctly concede (at 7) that North Dakota’s voting system is “unlike [] every other

state.” As noted above, North Dakota is the only State that does not require voters to register in advance of an election. That unique system minimizes the *pre-election* burden on voters but also requires additional vigilance at the polls to ensure that prospective voters are eligible to vote and are casting their ballots in the right precinct. Any constitutional analysis of North Dakota’s voting requirements must account for the pro-voter implications of its unique no-registration rule.

Finally, certiorari is especially unwarranted given that the RSA requirement is just one component of a broader statutory scheme that remains mired in litigation. Throughout their brief, Applicants allude to other identification requirements that they contend burden their right to vote. *See* Application 1 (arguing, incorrectly, that North Dakota charges \$8 for voter ID card); *id.* at 5 (arguing that many Native Americans “lack qualifying IDs”).⁵ But those provisions are not at issue here, and the Eighth Circuit has granted a stay *only* with respect to one portion of the injunction that barred North Dakota from requiring proof of a current residential address. The Eighth Circuit did not, for example, stay a provision of the injunction that expanded the types of tribal IDs that can be used to vote. The broader case has already involved three years of litigation, two preliminary injunctions, and several statutory changes made by the Legislature. The issues raised in the Application are unique to North

⁵ The suggestion that North Dakota charges for a non-driver ID card to be used for voting purposes is clearly contrary to state law and was based on extra-record material (a website) cited by the district court. *See* Applicants’ App. A, at 7 n.2 (Eighth Circuit refuting notion that North Dakota requires payment of a fee to receive an ID for voting). Regardless, the current version of the website accurately states that a non-driver ID card is available without payment of a fee. *Id.*

Dakota and to this litigation, and Applicants cannot plausibly contend that the questions presented here are matters of national importance or likely to recur in other States.

III. APPLICANTS ARE UNLIKELY TO SUCCEED ON THE ULTIMATE MERITS OF THEIR CLAIMS.

Finally, even in the unlikely event this Court were to grant certiorari, there is little chance that Applicants would prevail on the merits.

A. “A State indisputably has a compelling interest in preserving the integrity of its election process.” *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 231 (1989); *see also Crawford*, 553 U.S. at 196 (“There is no question about the legitimacy or importance of the State’s interest in counting only the votes of eligible voters.”). “The State’s interest is particularly strong with respect to efforts to root out fraud, which not only may produce fraudulent outcomes, but has a systemic effect as well: It ‘drives honest citizens out of the democratic process and breeds distrust of our government.’” *John Doe No. 1 v. Reed*, 561 U.S. 186, 197 (2010) (quoting *Purcell*, 549 U.S. at 4). And because “[v]oters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised,” “[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.” *Id.* In short, “the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

Moreover, States have a powerful interest in ensuring that citizens vote only within the precincts in which they *actually reside*, so that votes are cast for the

candidates and measures in which the voters have a personal stake. In *Harper*—a case Applicants repeatedly cite—this Court emphasized that it was not “questioning the power of a State to impose reasonable residence restrictions on the availability of the ballot.” 383 U.S. at 666; *see also Dunn*, 405 U.S. at 343-44 (“An appropriately defined and uniformly applied requirement of bona fide residence may be necessary to preserve the basic conception of a political community, and therefore could withstand close constitutional scrutiny.”); *Carrington v. Rash*, 380 U.S. 89, 91 (1965) (recognizing Texas’s “unquestioned power to impose reasonable residence restrictions [on] the availability of the ballot”); *Auerbach v. Rettaliata*, 765 F.2d 350, 354-55 (2d Cir. 1985) (upholding under strict scrutiny voter registration law that “identif[ied] classes of persons whose residence for voting purposes and whose physical residence may not coincide” because the law “permissibly aids the State in ferreting out those whose claimed residence is not bona fide.”) (citation omitted).

B. Under those principles, this should be an easy case, as North Dakota’s RSA requirement is facially valid and cannot possibly justify an across-the-board injunction mandating that election officials accept P.O. Box addresses for voting. *See Applicants’ App. A*, at 6-8 (Eighth Circuit finding Applicants unlikely to succeed on facial challenge to RSA requirement). In *Crawford*, this Court held 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 ensuring the eligibility and

qualification of voters—is facially constitutional where it imposes nothing more than a limited burden on the vast majority of voters. *See* 553 U.S. at 202-04.

That is precisely the case here. North Dakota’s RSA requirement advances each of the important interests discussed in *Crawford*. By requiring voters to establish the *physical* location of their residence, the RSA requirement protects the integrity of elections, prevents voter fraud, and ensures that individuals receive the correct ballots based on the actual location of their residence. A P.O. Box address, by contrast, can be obtained by persons who are ineligible to vote in North Dakota. And even when an eligible voter obtains a P.O. Box, the address of the post office may be in a different precinct than the voter’s physical residence. The RSA requirement thus protects *candidates’* interest in ensuring that only eligible constituents cast ballots in each race, and protects *voters’* interest in ensuring that valid votes are not diluted by ineligible voters who should have voted in a different precinct (or not at all). *See Crawford*, 553 U.S. at 196 (“There is no question about the legitimacy or importance of the State’s interest in counting only the votes of eligible voters.”); *Anderson*, 417 U.S. at 226 (discussing 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”).

North Dakota’s RSA requirement is also consistent with federal law. The application instructions under the federal National Voting Registration Act expressly instruct individuals to “**not** use a post office box” as their home address when completing the official Voter Registration Application. *See* U.S. Election Assistance

Commission, National Voter Registration Form at 2, *available at* <https://bit.ly/2NivhLf>.

Moreover, as in *Crawford*, the RSA requirement imposes no burden on the vast majority of North Dakota voters. Undisputed evidence shows that more than 97% of voters in North Dakota’s Central Voter File already have a valid ID with an RSA that qualifies for voting purposes under state law. *See* Respondent’s App. B, at ¶ 8. In short, the “broad application [of the RSA requirement] to all [North Dakota] voters ... ‘imposes only a limited burden on voters’ rights,” and the “‘interests’ advanced by the State are therefore sufficient to defeat [the plaintiffs’] facial challenge” to the RSA requirement. *Crawford*, 553 U.S. at 202-03 (citation omitted). 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 (citation omitted); *see also* *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008) (facial challenge must fail where the statute has a “plainly legitimate sweep”); *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 district court’s order enjoining the RSA requirement in all cases despite powerful government interests in support of that common-sense rule is unsustainable.

Applicants suggest throughout their brief (at 8-9, 17), that the RSA requirement imposes an unconstitutional property ownership requirement on voters.

That is pure hyperbole, and the Eighth Circuit correctly rejected that argument. *See* Applicants’ App. A, at 7-8. North Dakota law 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). That 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, and countless other living situations. As the Eighth Circuit explained, a voter “need only show where he or she resides” and “need have no interest in property” in order to vote. Applicants’ App. A, at 7.

C. Because the RSA requirement is justified by important government interests and imposes a burden (if at all) in only a small number of cases, Applicants cannot “demonstrate[] that the proper remedy—even assuming an unjustified burden on some voters—would be to invalidate the entire statute.” *Crawford*, 553 U.S. at 203. Instead, any constitutional challenges to the RSA requirement must be brought on an as-applied basis by the “small number of voters who may experience a special burden under the statute.” *Id.* at 200; *see also Frank v. Walker*, 819 F.3d 384, 386 (7th Cir. 2016) (applying *Crawford* and holding that “the burden some voters faced could not prevent the state from applying the law generally” but that the “high

hurdles for some persons eligible to vote [may] entitle those particular persons to relief”); *Veasey v. Abbott*, 830 F.3d 216, 249 & n.40 (5th Cir. 2016).

An injunction facially invalidating the RSA requirement is especially inappropriate in this case because, as noted above, the six named Applicants *are not denied the right to vote* by the RSA requirement. Applicants do not allege that they lack qualifying RSAs or that they must rely upon a P.O. Box address in order to vote. See Applicants’ App. A, at 8 (“Each of the plaintiffs ... has a current residential street address”).⁶

Thus, at bottom, Applicants’ core allegation is that *other* Native American voters *might* find it difficult to provide an ID with an RSA for voting purposes. But that theory cannot justify a sweeping injunction categorically barring the State from implementing the RSA requirement, as “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 *Frank*, 819 F.3d at 387 (“The predicament of people who cannot get acceptable photo ID with

⁶ Even though each of the Applicants already has an RSA that can be used for voting, the Eighth Circuit found that at least one Applicant (Elvis Norquay) had Article III standing because he does not yet possess a document that lists his *current* RSA and would thus need to take additional steps to “obtain[] a qualifying identification or supplemental document.” Applicants’ App. A, at 5-6. None of this affects Norquay’s right to vote, however, since it is undisputed that he could still vote using an ID that lists his previous address. See *supra* 20-21. In all events, the Secretary respectfully disagrees with the Eighth Circuit’s analysis of Article III standing, and the existence of an ongoing dispute over that threshold jurisdictional issue further underscores why this Court is unlikely to grant review and Applicants are unlikely to succeed on the merits.

reasonable effort would not have supported the sweeping injunction the district court entered.”).

CONCLUSION

The Application to lift the Eighth Circuit’s stay of the preliminary injunction should be denied.

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Dated: October 2, 2018

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No. 18A335

IN THE
Supreme Court of the United States

RICHARD BRAKEBILL, DOROTHY HERMAN, DELLA MERRICK,
ELVIS NORQUAY, RAY NORQUAY, AND LUCILLE VIVIER,

Applicants,

v.

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

Respondent.

**APPENDIX TO RESPONDENT'S OPPOSITION TO APPLICATION TO
VACATE STAY OF PRELIMINARY INJUNCTION**

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TABLE OF APPENDICES

Appendix A

Affidavit of John Arnold, *Brakebill v. Jaeger*,
No. 1:16-cv-00008 (D.N.D. Jan. 16, 2018), ECF No. 81-1

Appendix B

Affidavit of Irwin James Narum (Jim) Silrum, *Brakebill v. Jaeger*,
No. 1:16-cv-00008 (D.N.D. Jan. 16, 2018), ECF No. 81-55

Appendix C

Order of the United States Court of Appeals for the Eighth Circuit,
Brakebill v. Jaeger, No. 18-1725 (June 8, 2018)

Respondent's Appendix A

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.



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 1st Ward-City; Carrington 1st Ward-Rural; Carrington 2nd Ward-City; Carrington 2nd 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-Karlshruhe 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 04-1st Ward 1st-1st Ward-A/Rural; Precinct 04-1st Ward 1st-1st
Ward-B/City; Precinct 05-1st Ward 2nd; Precinct 06-2nd Ward-2nd Ward-
A/Rural; Precinct 06-2nd Ward-2nd Ward-B/City; Precinct 07-3rd Ward;
Precinct 08-4th Ward-4th Ward-A/Rural; Precinct 08-4th Ward-4th 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.

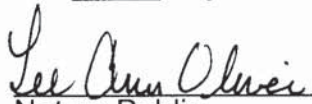
- A51. Ward County – 52 Ballots – All Seasons Arena-Nedrose Consolidated; All Seasons Arena-Nedrose Minot School; Sundre Bell School-Consolidated; Sundre Bell School-Minot School; Surrey City Hall; NE Minot Dist 3-Ward 1; NE Minot Dist 3-Ward 2; NE Minot Dist 3-2 Rural; SE Minot Dist 3-Minot SE Ward 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.

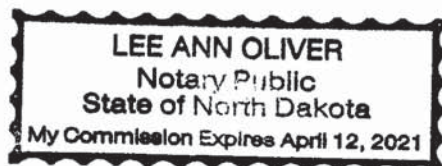
A53. Williams County – 26 Ballots – Williston Comm Library-59; Williston Comm Library-59A; National Guard Armory-60; National Guard Armory 60A; Williston State College-74; Williston State College-74A; Williston State College-74B; Raymond Center-Airport-75; Mountrail/Wms REC-43A; Mountrail/Wms REC-43B; 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 5th day of January, 2018.


Notary Public



Respondent's Appendix B

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

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

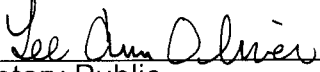
inability to verify the qualifications of all affiants before the votes were counted raises questions about the election that cannot be answered.

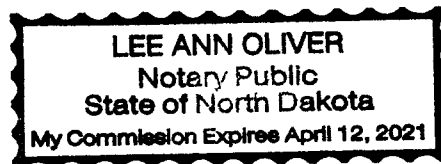
45. It is important to remember that each vote is important and that even a single fraudulent vote can impact the results of an election. This is especially true when considering how many contests are decided by small differences in votes between those elected and those who were not. The integrity of 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 11th day of January, 2018.


Notary Public



Respondent's Appendix C

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

No: 18-1725

Richard Brakebill, et al.

Appellees

v.

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

Appellant

Appeal from U.S. District Court for the District of North Dakota - Bismarck
(1:16-cv-00008-DLH)

ORDER

Before COLLOTON, BENTON and KELLY, Circuit Judges.

The State of North Dakota moves to stay the district court's injunction of April 3, 2018, concerning certain subsections of the North Dakota elections statute, N.D.C.C. § 16.1-01-04.1. Based primarily on the imminent primary election date of June 12, 2018, the motion for stay is denied. *See Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (per curiam); *Williams v. Rhodes*, 393 U.S. 23, 34-35 (1968); *Veasey v. Perry*, 769 F.3d 890, 892-95 (5th Cir. 2014). The denial is without prejudice to the filing of a renewed motion for stay after the completion of briefing on the merits of this appeal. The appellees' brief is due on or before June 29, 2018, and the appellant's reply brief must be filed within fourteen days after service of the appellees' brief. *See Fed. R. App. P. 31(a)(1)*. No extensions of time will be granted.

June 08, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans