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

NORTH DAKOTA REPUBLICAN PARTY; MATTHEW SIMON, in his capacity as Chairman of the North Dakota Republican Party; ND DISTRICT 2 REPUBLICAN COMMITTEE; ND DISTRICT 8 REPUBLICAN COMMITTEE; ND DISTRICT 14 REPUBLICAN COMMITTEE; and, ND DISTRICT 46 REPUBLICAN COMMITTEE, Plaintiffs, v. MICHAEL HOWE, in his official capacity as Secretary of State of the State of North Dakota, Defendant.	Civil Action No. _____ **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

This suit seeks to correct the ongoing violations of the First Amendment rights of freedom of speech, freedom from coerced speech, and freedom of association created by North Dakota's open primary election system. Plaintiffs the North Dakota Republican Party (the "Party"), the Republican District Committees for Districts 2, 8, 14, and 46 (the "District Committees"), and Chairman Matthew Simon bring this action

for declaratory and injunctive relief against Defendant Michael Howe, in his official capacity as Secretary of State of the State of North Dakota (the "Secretary") and allege as follows.

INTRODUCTION

1. North Dakota's open primary election system allows any voter—including Democrats and independents who oppose the Party's principles and candidates—to participate in the Republican Party's primary and thereby choose the Party's nominees for public office. That open primary system violates the First Amendment rights of the Party and its members.

2. The First Amendment protects "the freedom to join together in furtherance of common political beliefs," and that freedom "necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only." *Cal. Democratic Party v. Jones*, 530 U.S. 567, 574 (2000); *Democratic Party of U.S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 122 (1981). These associational rights are at their apex in "the process by which a political party selects a standard bearer who best represents the party's ideology and preferences," because even "a single election in which the party nominee is selected by nonparty members could be enough to destroy the party." *Jones*, 530 U.S. at 575, 579.

3. North Dakota does not register voters by political party. At the primary, every elector receives a single "consolidated primary election ballot" and may vote in the Republican Party's section—and thereby select the Party's nominees—without any showing that the voter shares, or even tolerates, the Party's beliefs. N.D.C.C. § 16.1-

11-22. The Party is powerless under state law to limit participation in its own nomination process to Republicans.

4. This concern is not hypothetical. A statewide, post-election exit poll of the June 2026 North Dakota primary—conducted among 306 verified North Dakota voters—found measurable, organized, and outcome-oriented crossover voting in the Republican legislative primaries. Eleven percent of self-identified Democrat primary voters reported voting the Republican ballot for strategic purposes. Nearly 46% of all self-identified Democrat Primary voters responded in the post-election poll they had been contacted during the previous 30 days and encouraged to vote on the Republican side of the ballot rather than the Democratic-NPL ballot. Additionally, a majority of Democrat crossover voters said their principal purpose was to influence the outcome of a Republican primary race rather than to support a candidate they favored. **Exhibit 1** (*Public Polling Memorandum*) at 3–4.

5. North Dakota's primary system compounds the injury. State law requires that a candidate who gathers the required signatures and prevails in the open primary be certified as the person who "represents" the Party on the general-election ballot, and it forces the Party—and its legislative-district organizations in particular—to seat those primary winners, once elected, on the Party's own governing committees. N.D.C.C. §§ 16.1-11-06, 16.1-03-07.

6. The result is compelled speech and compelled association: the Party is made to hold out as its standard bearers, and to govern itself through, individuals selected in part by voters who oppose its platform.

7. Plaintiffs ask this Court to declare that North Dakota's open primary system, its ballot-access framework, and N.D.C.C. § 16.1-03-07 are unconstitutional as applied to the Republican Party, and to enjoin their enforcement insofar as they compel the Party to associate with, and be represented by, persons the Party has not chosen.

8. The following documents, including declarations of representatives of District Committees, are attached as Exhibits to this Complaint:

Exhibit No.	**Description**
1	"Public Polling Memorandum," *Survey Results: North Dakota Primary Voters*, David Jay Wolfson
2	Declaration of David Jay Wolfson
2-A	North Dakota Primary Exit Poll toplines (June 2026)
2-C	*Idaho Republican Party v. Ysursa*, 765 F. Supp. 2d 1266 (D. Idaho 2011)
2-D	Moore Information memorandum "Survey Results: Idaho Primary Voters" (Jan. 14, 2010)
2-E	Martin & Saunders Report: "Understanding Party Identification, Crossover Voting, and Strategic Voting in the Idaho Context,"
2-F	Public news reporting about the 2022 and 2024 races for North Dakota's U.S. House seat
3	Declaration of Jerol Gohrick
4	Declaration of Josey Milbradt, with internal exhibits
5	Declaration of Larry Danduran, with internal exhibits
6	Declaration of Rob Muntz, with internal exhibits
7	Leginate page for the 2025 session
8	NDGOP 2026 Resolution 12: Resolution to Eliminate Partisan Primaries - NDGOP Resolutions Committee
9	Eric Murphy Petition
10	Kristin Kenner Petition
11	Terry Goerger Petition

JURISDICTION AND VENUE

9. This Court has jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States, and under 28 U.S.C. § 1343 because it seeks to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States. This action is brought under the First and Fourteenth Amendments and 42 U.S.C. § 1983.

10. This Court has authority to grant declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

11. Venue is proper in this judicial District under 28 U.S.C. § 1391(b) because the Defendant resides in this District and a substantial part of the events giving rise to Plaintiffs' claims—the administration of North Dakota's primary elections—occurs throughout this District at every primary election.

PARTIES

12. Plaintiff North Dakota Republican Party is a political party organized under the laws of the State of North Dakota, including N.D.C.C. Chapter 16.1-03.

13. Matthew Simon is the Chairman of the North Dakota Republican Party and serves the Party, as directed by the Party's bylaws, rules, and convention resolutions.

14. Plaintiff District 2 Republican Committee is the legislative-district committee of the Party for North Dakota Legislative District 2, organized under N.D.C.C. Chapter 16.1-03. The District Committee selects the officers and governing body of the Party within its district and is directly affected by the composition

requirements of N.D.C.C. § 16.1-03-07. Jerol Gohrick is the current chairman of District 8. Exhibit 3, Declaration of Jerol Gohink at ¶ 2.

15. Plaintiff District 8 Republican Committee is the legislative-district committee of the Party for North Dakota Legislative District 8, organized under N.D.C.C. Chapter 16.1-03. The District Committee selects the officers and governing body of the Party within its district and is directly affected by the composition requirements of N.D.C.C. § 16.1-03-07. Josey Milbradt is the current chairman of District 8. Exhibit 4, Declaration of Josey Milbradt ¶ 2.

16. Plaintiff District 14 Republican Committee is the legislative-district committee of the Party for North Dakota Legislative District 14, organized under N.D.C.C. Chapter 16.1-03. The District Committee selects the officers and governing body of the Party within its district and is directly affected by the composition requirements of N.D.C.C. § 16.1-03-07. Larry Danduran is the current chairman of District 8. E.g., Exhibit 5, Declaration of Larry Danduran at ¶ 2.

17. Plaintiff District 46 Republican committee is the legislative-district committee of the Party for North Dakota Legislative District 14, organized under N.D.C.C. Chapter 16.1-03. The District Committee selects the officers and governing body of the Party within its district and is both directly and indirectly affected by the composition requirements of N.D.C.C. § 16.1-03-07. Rob Muntz is the current chairman of District 46. E.g., Exhibit 6 at ¶ 2.

18. Defendant Michael Howe is the Secretary of State of the State of North Dakota and is sued in his official capacity. The Secretary is North Dakota's chief

election officer and is responsible for administering and enforcing the primary-election provisions of N.D.C.C. Title 16.1 at issue in this case, including accepting candidate filings, prescribing the form of the consolidated primary ballot, canvassing primary returns, and certifying the nominees of each party for placement on the general-election ballot.

FACTUAL BACKGROUND

A. North Dakota Law Requires the Party To Select Its Nominees Through an Open Primary.

19. North Dakota selects party nominees through a primary election held on the second Tuesday in June of every general-election year, including nominees for members of the legislative assembly and partisan statewide offices. N.D.C.C. § 16.1-11-01.

20. At the primary, "there may be only one ballot containing the separate sections for all parties," known as the "consolidated primary election ballot." Each qualifying party has its own section, and each elector may vote within one party's section; if an elector votes in more than one party's section, that elector's political-party ballot is rejected. N.D.C.C. § 16.1-11-22.

21. North Dakota does not register voters by political party. No voter is required to declare, demonstrate, or possess any affiliation with the Republican Party—or any agreement with its principles—before voting in the Republican section of the primary ballot and thereby helping to select the Party's nominees.

22. The practical effect is that a voter with no connection to the Republican Party, including a voter who has consistently supported the Democratic-NPL party and

intends to do so in the general election, may vote in the Republican primary simply by marking the Republican section of the consolidated ballot.

23. The Party has no mechanism under North Dakota law to limit participation in its primary to Republicans, nor does state law limit participation in the Republican primary to Republicans, nor does state law to require that participants identify themselves as Republicans, or to exclude from its nomination process voters who are openly antagonistic to the Party's platform. That is, North Dakota has no law to prevent crossover voting.

24. The Secretary administers and enforces this system. A candidate the Party does not wish to be bound by—because that candidate was selected through participation by non-Republicans and also because that candidate supports views and policies and positions that are contrary to those of the Party—is nonetheless certified by the Secretary as the Party's nominee if that candidate receives the most votes in the Republican primary section.

B. North Dakota's Ballot-Access Framework Forces the Party To Nominate Through The Open Primary.

25. To appear on the primary ballot for a statewide or legislative office under a party designation, a candidate must file with the Secretary either (a) a certificate of endorsement signed by the party chairman, or (b) a nominating petition. Both filings must state "the party which the candidate represents." N.D.C.C. § 16.1-11-06.

26. A candidate seeking a legislative office by petition must gather the signatures of at least one percent of the total resident population of the legislative district. N.D.C.C. § 16.1-11-06(1)(b)(3)(d). A candidate seeking a statewide office by

petition must gather signatures equal to three percent of the party's vote for that office at the last general election, up to a maximum of 300 signatures. N.D.C.C. § 16.1-11-06(1)(b)(3)(a).

27. The ballot-access framework thus channels every Republican candidacy into the state-administered open primary and makes the open primary the exclusive route by which the Party's nominees are chosen and certified. The Party cannot nominate its standard bearers through a closed primary, a party-run process, or any other method that would allow it to exclude non-members, and still have those nominees certified by the Secretary for the general-election ballot.

28. By requiring each candidate's filing to specify "the party which the candidate represents," the framework allows any candidate to claim the Party's affiliation at will. And by certifying as the Party's nominee whichever candidate prevails in an open primary, where non-members may cross over and decide the outcome, the framework strips the Party of any ability to select its own candidates.

C. North Dakota's Open Primary Produces Substantial, Organized Crossover Voting That Affects Close Republican Legislative Primaries.

29. Crossover voting occurs when voters affiliated with one party, or with no party at all, cast ballots in another party's primary.

30. In one form, crossover voting becomes akin to corporate raiding, in which members of a rival party deliberately vote to saddle the opposing party with a weaker or less faithful nominee.

31. Because crossover voters owe no allegiance to the party whose nominee they select, their participation distorts primary outcomes against the will of the party's

own members and pressures candidates to court outsiders at the expense of the party's platform.

32. The Supreme Court has recognized the danger of crossover voting. In *Jones*, the Court observed that surveys in States with comparable primary systems showed large shares of one party's voters planning to vote in the other party's primary. 530 U.S. at 578.[1]

33. In *Idaho Republican Party v. Ysursa*, the court found that crossover voting under an open primary averaged twelve percent under a strict definition and twenty to thirty percent under a broader one, and was especially pronounced in one-party States and districts where the dominant party's primary is the "only game in town." 765 F. Supp. 2d 1266, 1273–74 (D. Idaho 2011).

34. North Dakota is substantively similar to Idaho in regard to the dominant party. The Republican Party dominates North Dakota's statewide offices and legislative assembly, so that the Republican primary is frequently determinative of who will hold legislative office, giving Democrats and independents a powerful incentive to cross over and participate in Republican primaries.

35. Following reports that organized efforts had encouraged Democratic voters to participate in Republican legislative primaries, a statewide post-election exit poll of the June 2026 North Dakota primary was conducted among 306 verified North

[1] While the opinion in *Jones* was not based on an open primary precisely like that of North Dakota, its core principles regarding first amendment freedoms, including association, still control.

Dakota voters, with an approximate 95% confidence level and a ±5 percentage-point margin of error. **Exhibit 1** at 2; **Exhibit 2-A** North Dakota Primary Exit Poll Toplines at 1.

36. The exit poll shows measurable crossover voting into the Republican primary. Eleven percent of self-identified Democrat primary voters reported that they cast their ballot on the Republican side for strategic voting purposes. **Exhibit 1** at 3, 5.

37. Moreover, two-thirds (66.7%) of respondents voted the Republican ballot, leaving one-third (33.3%) on the Democratic-NPL ballot. Yet 38% of respondents reported that they normally vote the Democratic-NPL ballot. The 4.7-point gap between those figures establishes that, at a minimum, roughly one in eight respondents who normally vote Democratic-NPL (approximately 12%) cast a Republican ballot in this primary. **Exhibit 1** at 3; **Exhibit 2-A** at 2. A separate measure in the same poll corroborates that finding: 11% of self-identified Democratic primary voters reported casting a Republican ballot for strategic purposes. **Exhibit 1** at 3. Although the two figures draw on slightly different groups of respondents, they converge on nearly the same rate, and together they indicate that crossover voting in the Republican primary was not only measurable but largely strategic.

38. This crossover participation was organized, not incidental. Nearly 46% of self-identified Democrat primary voters reported that, in the 30 days before the election, they had been contacted and encouraged to vote on the Republican side of the ballot rather than the Democratic-NPL side—indicating widespread outreach

designed to draw Democratic voters into the Republican primary. **Exhibit 1** *Public Polling Memorandum* at 3; **Exhibit 2-A** at 2.

39. The crossover voting was aimed at influencing Republican outcomes. Among Democrat voters who voted the Republican ballot, 53.5% said their primary purpose was "to play a role in the outcome of a Republican primary race"—more than the 33.5% who voted to support a particular Republican candidate and the 12.9% who voted to oppose one. That the largest group sought to influence the outcome, rather than to support a preferred candidate, demonstrates that strategic interference was a principal motivation of crossover voters. **Exhibit 1** *Public Polling Memorandum* at 4; **Exhibit 2-A** at 2.

40. The crossover voting occurred across numerous legislative districts rather than in a single area. The exit poll measured participation in contested Republican legislative races throughout North Dakota, including in Legislative Districts 3, 7, 13, 15, 23, 25, 31, 33, 39, 42, and 43. Exhibit 1 *Public Polling Memorandum* at 4; **Exhibit 2-A** *North Dakota Primary Exit Poll Toplines* at 11.

41. Even in legislative districts without measured crossover voting, which, to their knowledge include plaintiff District 46, such legislative districts are harmed by crossover voting affecting the leadership of the party, crossover candidates in other district taking policy positions, views, that is contrary to the party's positions, and forced association with those crossover candidates.

42. Many of those Republican legislative primaries in districts with measured crossover were decided by margins smaller than the crossover vote the exit poll

measured. In his declaration, Professor Wolfson compares the official margin in each contested Republican legislative primary in 2024 and 2026 with the estimated number of crossover voters in that contest. **Exhibit 2.** Decl. of David Jay Wolfson ("Wolfson Decl.") ¶¶ 32–33. Even at the most conservative crossover rate of 4.7%, crossover voters outnumber the margin to the nomination line in 3 of the 16 contested Republican legislative primaries in 2026 (House District 3, Senate District 15, and the unexpired House term in District 42). The same is true of 4 of the 15 contested primaries in 2024 (House Districts 8, 14, 26, and 42). *Id.* ¶ 34. A fifth 2024 contest, House District 2, reasonably belongs in that count: the winning margin there was 104 votes, only one vote more than the estimated 103 crossover voters, and the estimate assumes every voter cast both House votes. *Id.*

43. At 19.5%, the share of the vote Cara Mund received in the 2024 Republican primary for U.S. House, crossover voters outnumber the margin to the nomination line in 12 of the 16 contested Republican legislative primaries in 2026 and 9 of the 15 in 2024. *Id.* ¶¶ 29–31, 35.

44. In several of these primary contests, the crossover vote exceeded the margins of multiple candidates at once. At the 19.5% rate, every candidate in 2026 House Districts 3 and 31 and Senate District 15, and in 2024 House Districts 6, 8, and 14, falls within the crossover margin. *Id.* ¶ 36. The tables in the Wolfson Declaration list each affected contest and candidate, the estimated crossover vote, and each candidate's margin to the nomination line. *Id.* ¶¶ 34–35.

45. This crossover voting injures the Party in the two ways the Supreme Court has recognized as constitutionally significant. First, it allows the Party's "standard bearer[s]" to be chosen in part by persons who "at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival." *Jones*, 530 U.S. at 577.

46. Second, crossover voting (under North Dakota's open primary law) pressures Republican candidates to alter their positions to appeal to crossover voters, changing the Party's message. As the Supreme Court explained, "[e]ven when the person favored by a majority of the party members prevails, he will have prevailed by taking somewhat different positions—and, should he be elected, will continue to take somewhat different positions in order to be renominated." *Id.* at 580. The Court could "think of no heavier burden on a political party's associational freedom." *Id.* at 582. *See also Idaho Republican Party v. Ysursa*, 765 F. Supp. 2d at 1276 (applying *Jones* 530 U.S. at 582 to Idaho's open primary).

47. Unlike the records that defeated the associational-rights claims in *Ravalli County Republican Central Committee v. McCulloch*, 154 F. Supp. 3d 1063 (D. Mont. 2015), *Democratic Party of Hawaii v. Nago*, 833 F.3d 1119 (9th Cir. 2016), and *Colorado Republican Party v. Griswold*, 715 F. Supp. 3d 1339 (D. Colo. 2024)—each of which turned on the party's failure to supply state-specific empirical evidence of a severe burden—this case is supported by contemporaneous, North Dakota-specific empirical evidence that crossover voting occurs, is encouraged, is strategic, and affects close Republican primaries. *E.g.*, **Exhibit 1**.

D. Any Candidate May Claim the Republican Label, and Any Voter May Sign to Put That Candidate on the Republican Ballot.

48. North Dakota law lets a candidate reach the Republican primary ballot by self-designation of party affiliation. The Secretary's Petition/Certificate of Nomination (SFN 02704) asks only that the candidate check a box for "Political Party Affiliation of Candidate." The Party plays no role in that designation. N.D.C.C. § 16.1-11-06.

49. The petition's signers need not be Republicans either. The form's only requirement is that signers be "qualified electors of the jurisdiction." Any qualified elector, including a member or officer of a rival party, may sign a petition to place a candidate on the Republican primary ballot. The Party cannot refuse those signatures or reject the resulting candidate.

50. Crossover voting, crossover candidacy (meaning, a candidate who has been affiliated with and still holds the views and policy positions of the Democrat Party while designating themselves as a "Republican" candidate) and crossover ballot petition signing (meaning members of the Democrat party signing a petition for a Republican candidate, including crossover candidates) is not hypothetical. In 2026, officials and candidates of the Democratic-NPL Party signed the nominating petitions of Republican legislative candidates, including the following:

i. District 43. The petition of Republican incumbent Rep. Eric Murphy was signed by Rep. Zachary Ista, the Democratic-NPL incumbent representing the same district; by former Democratic-NPL

Senator JoNell Bakke; and by Kaye Carlson, co-chair of the District 43 Democratic-NPL Party. **Exhibit 9** (Murphy Pet. at 6, 8, 12).

ii. District 15. The petition of Senate candidate Kristin Kenner was signed by Douglas Goulding, chair of the District 15 Democratic-NPL Party; by Susan Goulding; and by Richard Drury, the husband of Frances Drury, the District 15 Democratic-NPL candidate for the House. **Exhibit 10** (K. Kenner Pet. at 17, 35.) Kenner won the Republican nomination by 42 votes, a margin smaller than even the most conservative crossover estimate. **Exhibit 2** Wolfson Decl. ¶ 34.

iii. District 25. The petition of House candidate Terry Goerger was signed by Perry Miller, who ran as the Democratic-NPL candidate against Republican Senator Larry Luick in 2014 and 2018. **Exhibit 11** (Goerger Pet. at 10.)

51. Through petition signatures, the Party's political opponents help decide which candidates may run for the Party's nomination. Through the open primary, they then help decide which of those candidates wins it.

E. The Party Wishes To Limit Its Nomination Process to Republicans.

52. The Party, its chair, its districts, and its members wish to exercise their First Amendment right to select the Party's nominees through a process limited to Republicans, and to exclude from that process voters who do not share the Party's principles.

53. Matthew Simon, as Chairman of the Party and the District Committees for Districts 2, 8, 14, and 46 all wish and object to non-Republicans selecting the Party's nominees. E.g., **Exhibits 3, 4, and 5**.

54. The Party has formally adopted that position through its highest governing body. At the 2026 North Dakota Republican Party State Convention, held March 28–29, 2026, in Minot, the convention delegates adopted Resolution 12, the "Resolution to Eliminate Partisan Primaries." **Exhibit 8**.

55. Resolution 12 declares that North Dakota's current partisan primary system is "unconstitutional and contrary to the First Amendment rights of the Party and its members, as it violates the Party's freedom of association by allowing crossover voting and unregulated petition access that prevent the Party from controlling its own nominees." *Id.* at 1.

56. Resolution 12 finds that the open primary "forces the NDGOP to associate with, and have its nominee chosen by, individuals who may not share its principles." *Id.* at 1.

57. Resolution 12 also finds that, although the Party "has historically endorsed candidates through its conventions and district meetings," state law "subordinates those endorsements to the outcome of an open primary that may be manipulated by non-Republicans or petition-driven challengers." *Id.*

58. Resolution 12 calls for "the establishment of a system permitting political parties to directly nominate candidates for the general election ballot through their own internal processes, such as state and district conventions, caucuses, or other

methods chosen by the Party consistent with its rules and the U.S. Constitution." *Id.* at ¶ 2.

59. Resolution 12 directs the Party's State Chairman, Executive Committee, Legislative Action Committee, and elected Republican officials to pursue "every available legal, legislative, and political path—including . . . any appropriate litigation—to enact direct party nomination to the general election ballot and restore the NDGOP's constitutional right to control its nominees." *Id.* at ¶ 3. The Party brings this action pursuant to that directive.

60. The Party has resolved to establish and administer a party-registration or party-membership mechanism and to coordinate with election officials so that only Republicans participate in selecting the Party's nominees.

61. Despite the Party's resolution described in the preceding paragraphs, the Party cannot lawfully undertake that effort so long as the Secretary will certify as the Party's nominees only those candidates chosen through the open primary required by state law.

F. N.D.C.C. § 16.1-03-07 Forces the District Party To Affiliate With Primary Winners and Legislators Who May Oppose Its Platform, as outlined through statistics and knowledge of District Party Chairs.

62. North Dakota law does not merely force the Party to nominate through an open primary. Rather, it forces the Party's legislative district organizations to seat the resulting officeholders on the Party's own governing bodies.

63. Under N.D.C.C. § 16.1-03-07(1), "[a]ny incumbent members of the legislative assembly from the party and any other individual provided for by the district committee's bylaws constitute the district committee of the party."

64. Under N.D.C.C. § 16.1-03-07(2), "[t]hat party's nominees for and members of the legislative assembly shall serve as members of the executive committee" of the district committee.

65. Requiring the primary nominees to become members of the executive committee of each respective district committee is unwanted by the majority of the committees for Plaintiff Districts 2, 8, 14, and 46, and also other non-plaintiff districts, as well as Plaintiff Simon and the Party as a whole. *E.g.*, **Exhibit 8**, Resolution 12.

66. The combined effect of the open primary and § 16.1-03-07 is that a candidate nominated and elected through a process open to non-Republicans—including a legislator whose nomination may have been secured by crossover voters and who opposes the Party's platform—is, by operation of state law, automatically installed as a member of the District Committee and its executive committee. The District Committee has no power under state law to exclude such a person from its governing body.

67. Statistics from the legislature, published through Leginate.com and experiences of District Committee chairs demonstrate compelled associations with candidates and legislators that do not support the Party platform. Leginate.com publishes W-NOMINATE scores for North Dakota legislators. W-NOMINATE is a statistical method, developed by political scientists Keith Poole and Howard Rosenthal,

that places legislators on a scale according to how often they vote together on non-unanimous roll calls. Leginate places Democrats on the left side of each scale and Republicans on the right. It marks Republicans who fall on the left side as members who voted more often with the Democratic-leaning end of the scale. A true and correct printout of the Leginate page for the 2025 House session is attached as Exhibit 7.

68. The Leginate page for the 2025 House session indicates multiple representatives who, though not endorsed by the Party, ran in the open primary to become the Party's candidate, and yet, once elected to office, voted against Party positions and in favor of Democrat-leaning positions in District 2, District 8, and District 14. Exhibit 3 ¶¶14–18; Exhibit 4 ¶¶ 21–24; Exhibit 5 ¶¶13–16; Exhibit 7.

69. For example, in District 2, Leginate has placed both Representative Anderson and Representative Longmuir (neither of whom have sought party convention endorsement, but utilized the petition-process to get on the Republican Primary ballot) on the left side of the scale with Democratic-NPL members, in contrast with convention-endorsed Senator Mark Enget who Leginate positioned as the furthest rightward member of the State Senate. Exhibit 3 at ¶ 15.

70. Representatives Anderson and Longmuir were then seated on the District 2 Republican committee. While Anderson and Longmuir rarely attend District Committee meetings, District 2 Chairman Jerol Gohrick believes their presence undermines the committee's discussions of strategies and its shared goal of advancing the Republican Party platform. Exhibit 3 at ¶ 17.

71. In the District 8 2024 election cycle, the endorsing convention selected Jeff Magrum as its endorsed Senate Candidate, as well as Brandon Prichard and Susan Olson for House Representative. *See* Exhibit 4 at ¶ 8, 13. However, other primary candidates Mike Berg and Ken Rensch reached the primary election that year solely through the petition process. There were no Democratic-NPL party candidates filed for either the State House or State Senate for District 8. It became known during the 2024 primary campaign that the Berg and Rensch campaigns were recruiting Democrats to vote in the Republican primary against Olson and Prichard. Democrats did vote for at least Mr. Berg in the Republican primary election. Mr. Berg gained a republican office. Exhibit 4 ¶¶ 12-20.

72. District 8 Representative Berg falls on Leginate's left-side of the scale, along with the Democratic-NPL members, while other District 8 Representative Olson and Senator Magrum are listed on the right side of the scale. Exhibit 4 ¶ 22; Exhibit 7.

73. District 8 Chairman Milbradt believes that Representative Berg (who was seated on the District 8 Republican committee by operation of law) makes other committee members hesitant about what they share, because what is said usually gets to people that Berg works with politically outside District 8. Exhibit 4 ¶ 23.

74. In District 14, the 2024 endorsing convention supported Karisa Grothe for State Senate and Jason Steidl as well as district Chairman Larry Danduran for the State House. Exhibit 5 ¶ 7. At that convention, incumbent Senator Klein and Representatives Nelson and Weisz stated publicly that they were not interested in working with the party and did not submit their names for endorsement. They said that

whatever happened at the meeting did not matter because they would gather petition signatures and file for the primary ballot instead, which they then did. Exhibit 5 ¶ 8. Subsequently, Klein and Weisz, and Nelson won their respective primary races. Exhibit 5 ¶ 9.

75. District 14 Chairman Larry Danduran personally saw Klein, Nelson, and Weisz signs in known Democratic-NPL voter's yards while campaigning. Exhibit 5 ¶ 11. The District 14 Republican Party has no way to know how many Democrats may have voted a Republican Primary ballot, nor can it tell who signed Representative Weisz or Nelson's nominating petitions. Exhibit 5 at ¶¶ 11-12, C1 & C2.

76. 2025 session Leginate scores for District 14 Representatives Nelson and Weisz, as well as Senator Klein are all on the left side of the scale. Exhibit 5 at ¶¶ 13-14.

77. After winning the 2024 general election, Senator Klein and Representatives Nelson and Weisz were seated on the District 14 Republican executive committee by operation of law, even though each had told the 2024 convention that they were not interested in working with the party. But, because the legislators were forced onto the executive committee, they had access to District strategy and plans in 2024 and during the 2025 legislative session. Exhibit 5 at ¶ 15.

78. District 46 Republican Committee Chairman Robb Muntz has stated his view that before 2023, the District 46 Republican Party was controlled by leadership that did not believe in or promote the platform of the North Dakota Republican party. Exhibit 6 ¶ 5.

79. Before the 2024 election, Representative Roers Jones was a representative of District 46, though Leginate reports her votes were more consistent with the most liberal member of the North Dakota House than with the most conservative house member. Exhibit 6 ¶ 10. Until her term ended, she was a member of the District 46 Republican executive committee by operation of law. Exhibit 6 ¶ 15. During that time, Representative Roers Jones displayed Democratic-NPL candidates for District 46 in the front yard of her residence. Exhibit 6 ¶ 16.

80. North Dakota laws and open primary framework do not prohibit crossover voting and crossover candidates, nor does it allow for a lawful way to remove or disassociate from an executive committee member that is there by operation of law like former District 46 Representative Roers Jones. *See* Exhibit 6 ¶ 18.

81. But-for the State enforcing the open primary and candidate committee laws, each Plaintiff District would limit participation in choosing its nominees to Republicans, require its nominees to be party members, and decide for itself who sits on its executive committee. Exhibit 3 ¶ 19; Exhibit 4 ¶ 25; Exhibit 5 ¶17; Exhibit 6 ¶ 27.

82. The Party is thereby compelled to speak by holding out primary winners as the candidates who "represent" the Party and by being governed through legislators the Party did not choose and may not exclude. N.D.C.C. § 16.1-03-07 N.D.C.C. § 16.1-11-06.

83. The Party is further thereby compelled to associate by holding out primary winners as the candidates who "represent" the Party and by being governed

through legislators the Party did not choose and may not exclude. N.D.C.C. § 16.1-03-07 N.D.C.C. § 16.1-11-06.

84. Because § 16.1-03-07 seats every legislator and legislative nominee from the district on the executive committee, officeholders and nominees who oppose the Party's platform can form a bloc large enough to shift the committee's direction, turning the body charged with advancing the Party's platform against it.

G. The Injury Is Ongoing and Will Recur.

85. North Dakota conducts primary elections every even-numbered year.

86. Absent relief, the Party will again be required at the next primary to select its nominees through a process open to non-Republicans, to hold out the resulting candidates as its representatives, and to seat the resulting legislators on its district governing bodies.

87. The deprivation of First Amendment associational rights constitutes irreparable injury for which there is no adequate remedy at law.

CLAIMS FOR RELIEF

COUNT I
Violation of the First and Fourteenth Amendments
Freedom of Association (Open Primary)
(42 U.S.C. § 1983)

88. Plaintiffs reallege and incorporate by reference the allegations of all the above paragraphs as though set forth in full.

89. The First Amendment, applicable to the States through the Fourteenth Amendment, protects the Party's freedom to associate for the advancement of common political beliefs, which "necessarily presupposes the freedom to identify the

people who constitute the association, and to limit the association to those people only." *La Follette*, 450 U.S. at 122. That protection is at its height in the selection of the Party's nominees. *Jones*, 530 U.S. at 575.

90. North Dakota's open primary system, codified in N.D.C.C. §§ 16.1-11-01 and 16.1-11-22, and enforced by the Secretary, forces the Party to select its nominees through a process in which voters who are not Republicans—including Democrats and independents who oppose the Party's principles—may participate without any showing of affiliation with the Party.

91. North Dakota's open primary system, codified in N.D.C.C. §§ 16.1-11-01 and 16.1-11-22, and enforced by the Secretary, forces the District Committees to associate with, and hold as standard-bearers and district committee board members, nominees that were put forth through a process in which voters who are not Republicans—including Democrats and independents who oppose the Party's principles—may participate without any showing of affiliation with the Party.

92. North Dakota's open primary system, codified in N.D.C.C. §§ 16.1-11-01 and 16.1-11-22, and enforced by the Secretary, forces Matthew Simon, in his capacity as Chairman of the North Dakota Republican Party, to associate with, and hold as standard-bearers for the party nominees that were put forth through a process in which voters who are not Republicans—including Democrats and independents who oppose the Party's principles—may participate without any showing of affiliation with the Party.

93. As demonstrated by the June 2026 exit-poll evidence, this system produces substantial, organized, and strategically motivated crossover voting that affects close Republican legislative primaries. **Exhibit 1** *Public Polling Memorandum* at 3–4. The system therefore forces the Party to have its nominees, and its message, determined by those who, at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival. *Jones*, 530 U.S. at 577.

94. This forced inclusion of non-members in the Party's candidate-selection process seriously distorts the Party's collective decisions—thus impairing its essential functions, *La Follette*, 450 U.S. at 122, and imposes a severe burden on the Party's associational rights, *Jones*, 530 U.S. at 582; *see Miller v. Brown*, 503 F.3d 360, 369–70 (4th Cir. 2007); *Ysursa*, 765 F. Supp. 2d at 1275–77.

95. Because the open primary imposes a severe burden on the Party's associational rights, it must be narrowly tailored to serve a compelling state interest. It is not. No interest asserted by the State—including increasing voter participation, ballot secrecy, or administrative convenience—is compelling, nor is mandatory open participation narrowly tailored to serve any such interest. *Jones*, 530 U.S. at 582–86.

96. The open primary system is therefore unconstitutional as applied to the Party, and the Secretary's enforcement of it deprives Plaintiffs of their rights under color of state law in violation of 42 U.S.C. § 1983.

COUNT II
Violation of the First and Fourteenth Amendments
Freedom of Association (Ballot-Access Framework)
(42 U.S.C. § 1983)

97. Plaintiffs reallege and incorporate by reference the allegations of all the above paragraphs as though set forth in full.

98. North Dakota's ballot-access framework for candidates, codified in N.D.C.C. §§ 16.1-11-06 and 16.1-11-30 and enforced by the Secretary, makes the state-administered open primary the exclusive means by which the Party's nominees may be placed on, and certified for, the general election ballot. The framework affords the Party no method of nominating its standard bearers that both excludes non-members and results in certification by the Secretary.

99. The framework burdens the Party's and the District Committees' respective associational rights at both ends of the petition. First, the candidate, by requiring only that a candidate identify "the party which the candidate represents," N.D.C.C. § 16.1-11-06, the framework lets any person claim the Party's label by checking a box and forces the Party to present that person as a Republican candidate, without any power to approve or exclude them. Second, the signers, by allowing any qualified elector to sign a Republican candidate's petition, the framework lets non-members, including officials and candidates of a rival party, decide who may seek the Party's nomination.

100. Both burdens have materialized. In 2026, a sitting Democratic-NPL legislator, a former Democratic-NPL senator, and two district Democratic-NPL party officers signed the petitions of Republican legislative candidates, including the candidate who won the District 15 Senate nomination by 42 votes.

101. The freedom to associate "necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only." *La Follette*, 450 U.S. at 122. The framework denies the Party that freedom at the threshold of its nomination process and allows persons who "have expressly affiliated with a rival" to shape the field from which its "standard bearer[s]" are chosen. *Jones*, 530 U.S. at 577. *See Miller*, 503 F.3d at 369–70; *Ariz. Libertarian Party, Inc. v. Bayless*, 351 F.3d 1277, 1281–82 (9th Cir. 2003).

102. This burden is severe and is not narrowly tailored to serve any compelling state interest. *Cf. Jones*, 530 U.S. at 582. Even if the burden were less than severe, no state interest requires that a rival party's officers and candidates help choose which candidates may seek the Party's nomination. *See Burdick*, 504 U.S. at 434.

103. The ballot-access framework is therefore unconstitutional as applied to the Party, and the Secretary's enforcement of it deprives Plaintiffs of their rights under color of state law in violation of 42 U.S.C. § 1983.

COUNT III
Violation of the First and Fourteenth Amendments
Compelled Speech and Compelled Association
(N.D.C.C. § 16.1-03-07) (42 U.S.C. § 1983)

104. Plaintiffs reallege and incorporate by reference the allegations of all the above paragraphs as though set forth in full.

105. The First Amendment forbids the State from compelling a private political association to speak a message it does not endorse and from compelling it to accept members or leaders it has not chosen. Freedom of association plainly

presupposes a freedom not to associate. *Jones*, 530 U.S. at 574; *La Follette*, 450 U.S. at 122.

106. North Dakota's framework compels the Party to speak. By requiring that a candidate's ballot-access filing state "the party which the candidate represents," and by certifying the open primary winner as the Party's representative on the general election ballot, the State forces the Party to hold out as its standard bearer—as the person who "represents" the Party—an individual selected through a process open to non-Republicans and whom the Party had no power to approve. N.D.C.C. § 16.1-11-06.

107. North Dakota's framework also compels the Party to associate. Under N.D.C.C. § 16.1-03-07(1), incumbent legislators "from the party" automatically "constitute the district committee of the party," and under § 16.1-03-07(2), the party's "nominees for and members of the legislative assembly shall serve as members of the executive committee."

108. The combined operation of these provisions forces the District Committee to seat on its own governing body—as members of the district committee and its executive committee—primary winners and legislators who were chosen through a process open to non-Republicans and who may oppose the Party's platform. The Party and the District Committee have no power under state law to exclude such persons from their governing bodies.

109. Compelling the Party to present as its representatives, and to be governed through, officeholders it did not choose and may not exclude imposes a

severe burden on the Party's rights of free speech and free association and is not narrowly tailored to serve any compelling state interest. *Jones*, 530 U.S. at 575, 582.

110. N.D.C.C. § 16.1-03-07, together with N.D.C.C. § 16.1-11-06, is therefore unconstitutional as applied to the Party, and the enforcement of those provisions deprives Plaintiffs of their rights under color of state law in violation of 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare that North Dakota's open primary system, as codified in N.D.C.C. §§ 16.1-11-01 and 16.1-11-22 and enforced by the Secretary, is unconstitutional as applied to the North Dakota Republican Party insofar as it requires the Party to select its nominees through a primary in which non-Republicans may participate;

B. Declare that North Dakota's ballot-access framework, as codified in N.D.C.C. §§ 16.1-11-06 and 16.1-11-30 and enforced by the Secretary, is unconstitutional as applied to the Party insofar as it makes the open primary the exclusive means of nominating and certifying the Party's candidates and thereby denies the Party any method of selecting its nominees that excludes non-members;

C. Declare that N.D.C.C. § 16.1-03-07, together with N.D.C.C. § 16.1-11-06, is unconstitutional as applied to the Party insofar as it compels the Party to hold out open primary winners as the Party's representatives and to seat primary

winners and legislators chosen through the open primary on the Party's district committee and executive committee;

D. Declare that the Party has a First Amendment right to identify those who associate with it, has the right to dissociate those who do not, and to exclude from its nomination and governance processes those who do not;

E. Permanently enjoin the Secretary, and his agents, employees, and successors, from enforcing N.D.C.C. §§ 16.1-11-01, 16.1-11-22, 16.1-11-06, 16.1-11-30, and 16.1-03-07 against the Party to the extent those provisions compel the Party to nominate through an open primary, to present open primary winners as its representatives, or to seat them on its governing committees, and direct the Secretary to certify for the general-election ballot nominees the Party selects through a process consistent with its constitutional rights;

F. Award Plaintiffs their reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988; and

G. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: November 24, 2026

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