

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Doug Burgum, in his capacity as North)
Dakota's Governor,)

Petitioner,)

vs.)

Alvin Jaeger, in his capacity as North)
Dakota's Secretary of State, the North)
Dakota Legislative Assembly, and the)
District 8 Republican Committee, Loren)
DeWitz District Chairperson,)

Respondents.)

Supreme Court No: 20200298

**BRIEF OF RESPONDENT DISTRICT 8 REPUBLICAN COMMITTEE,
LOREN DEWITZ, CHAIRPERSON, IN OPPOSITION TO PETITION FOR
DECLARATORY JUDGMENT, WRIT OF INJUNCTION, AND WRIT OF
MANDAMUS**

ORAL ARGUMENT REQUESTED

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Is N.D.C.C. § 16.1-13-10 applicable to the vacancy created by Candidate David Andahl's death and subsequent receipt of the second-most votes at the November 3, 2020 election?

2. Is the apparent will of the District 8 electorate to be considered in filling the vacancy created by Candidate David Andahl's death?

STATEMENT OF RELIEF SOUGHT BY DISTRICT 8

[¶1] District 8 respectfully requests that the relief requested by the Petitioner be denied, that the provisions of N.D.C.C. 16.1-13-10 be followed, that the actions taken in accordance with this provision be upheld, and that the person appointed by the District 8 Executive Committee be allowed to fill the vacancy created by the death of David Andahl.

ARGUMENT

I. Is N.D.C.C. § 16.1-13-10 applicable to the vacancy created by Candidate David Andahl's death and subsequent receipt of the second-most votes at the November 3, 2020 election?

[¶2] The purpose of this District 8 Republican Committee Response is not to further address the legal arguments put forth by the Petitioner in this case. Without reservation, District 8 supports the legal position of the Attorney General as addressed in his opinion to the Secretary of State on October 13, 2020, 2020 N.D. Op. Att'y Gen. No. L-08 (2020), and as will be more fully developed in his Response in this proceeding before the Court.

II. Is the apparent will of the District 8 electorate to be considered in filling the vacancy created by Candidate David Andahl's death?

[¶3] The untimely and unfortunate death of candidate David Andahl came not only as a personal loss to many, but it also placed District 8 in a questionable position with his passing. The ballots had already been printed and there was no way for the District 8 republican party to place a replacement candidate on the ballot.

[¶4] On behalf of the District 8 Republican Party, Chairman Loren DeWitz consulted with the Secretary of State's office, and subsequently a letter was mailed on October 9, 2020, to 757 known republicans in the district essentially describing the process to be formally carried out in accordance with N.D.C.C. 16.1-13-10. Therefore, this strategy was formally adopted by the District 8 republicans to continue to promote the candidacy of the

deceased David Andahl, with the expectation that his success in the election would secure a republican replacement.

[¶5] Shortly thereafter, on October 12, 2020, a political advertisement (*Appendix, p. 007*) was sent to 5123 known voters in District 8, as sponsored by the District 8 Republican Party. The information conveyed to the voters was clear in its intent, and made an appeal that was consistent with the strategy that was adopted for filling the eventual vacancy. On the very next day, October 13, 2020, the Attorney General issued his opinion to the Secretary of State confirming the process to be followed under N.D.C.C. 16.1-13-10. and thereby affirming the legality of the campaign strategy adopted by the District 8 Republican Party.

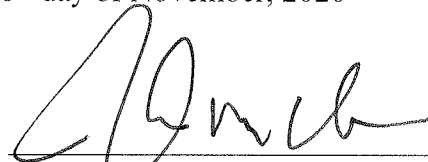
[¶6] In conjunction with the District 8 republican effort, the North Dakota State Republican Chairman sent a letter to the editor which was printed in the Bismarck Tribune on October 24, 2020. This same letter was also printed in three other newspapers in the District 8 geographic region. (*Appendix, p. 009*) As indicated, there was obviously wide circulation of the letter which appealed to the voters to adopt the strategy employed to ultimately secure a republican for the legislative position on the ballot. Clearly, the entire district population had been saturated with the pronouncement of this strategy. The fact that deceased Candidate Andahl prevailed on November 3, 2020, with an overwhelming electoral vote certainly speaks to the success of the campaign strategy employed by the District 8 republicans. To adopt any other approach in filling this vacancy would be an obvious affront to the electorate in District 8 and contrary to the will expressed by the vote.

[¶7] Currently, the District 8 Executive Committee is meeting to fill the vacancy and certify a new appointee to the Secretary of State to serve in the ND Legislature. To undo

this process, at this point, by adoption of the relief demanded by the Petitioner would be an electoral breach of trust to the voters of District 8. The District 8 Republican Party sought the advice and counsel of the Secretary of State and received the clear procedural instructions described by the Attorney General's opinion. District 8 republicans and all voters in the district relied on this guidance and were informed in numerous clear messages throughout the campaign, that a victory by the deceased Andahl would, in effect, end with a republican legislator appointed by the District 8 Republican Committee. The will of the people in District 8 and the choice they made should be affirmed.

Respectfully submitted this 18th day of November, 2020

By:



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CERTIFICATE OF COMPLIANCE

[¶8] Pursuant to Rule 32(e) of the North Dakota Rules of Appellate Procedure, this brief complies with the page limitation and consists of 7 pages.

[¶9] Dated this 18th day of November, 2020.

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**RESPONSE OF DISTRICT 8 REPUBLICAN COMMITTEE,
LOREN DEWITZ, CHAIRPERSON
CERTIFICATE OF SERVICE**

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I hereby certify that a true and correct copy of the foregoing **Response of District 8 Republican Committee, Loren DeWitz, Chairperson; and Supplemental Appendix**, were on the 19th day of November, 2020, served upon the following via electronic mail as follows:

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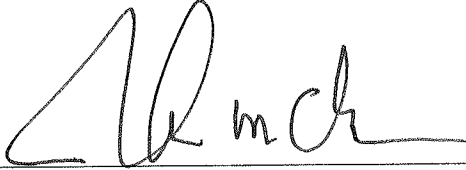
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