

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

_____	)	
STATE OF NORTH DAKOTA by and through)	)	
the NORTH DAKOTA DEPARTMENT OF )	)	
ENVIRONMENTAL QUALITY, )	)	
)	)	
<i>Plaintiff,</i> )	)	No. 1:24-cv-00256-DMT-CRH
v. )	)	
)	)	
UNITED STATES DEPARTMENT OF )	)	
LABOR, <i>et al.</i> )	)	
)	)	
<i>Defendants.</i> )	)	
_____	)	

**FEDERAL DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS**

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As the Federal Defendants explained in their opening brief, North Dakota’s complaint should be dismissed in its entirety, for two reasons. First, this Court lacks jurisdiction to consider the state’s challenge to the Occupational Safety and Health Administration’s (“OSHA”)’s long-since-concluded investigation. And second, under well-settled case law, the state has no sovereign immunity from the OSHA investigation or the ongoing proceeding before the Administrative Law Judge (“ALJ”) in which OSHA is a prosecuting party. In response, North Dakota has abandoned its challenge to the OSHA investigation, and it acknowledges that OSHA may prosecute state agencies, including by intervening as a prosecuting party in an administrative proceeding involving a state employee. Those concessions resolve this case. The state’s argument that it is nonetheless immune from the specific proceedings at issue here rest on entirely new claims that are not properly before this Court and, in any event, are unavailing.

**I. North Dakota Concedes that this Court Cannot Enjoin the OSHA Investigation and that OSHA May Prosecute State Employers in an Administrative Proceeding.**

Plaintiff takes a sharply different position on the OSHA investigation and ALJ proceeding in its opposition brief than it did in its complaint. In its complaint, Plaintiff raised a facial challenge to both, arguing that sovereign immunity bars the “investigation” of Joshua Seerup’s allegations against the state agency, the North Dakota Department of Environmental Quality, (the “OSHA Case”) and “the adjudication” of these allegations (the “OALJ Case”). Compl. ¶ 45. The state thus sought an injunction ordering the Federal Defendants to “cease and desist” any “further prosecution or adjudication” of the “OSHA Case” and the “OALJ Case,” *id.* ¶ 48, plus declaratory relief, *id.* ¶ 43.

In its opposition, North Dakota concedes the Federal Defendants’ central legal arguments. Opp’n ¶¶ 16, 22. North Dakota no longer seeks “injunctive relief” from “the [OSHA] investigation,” as Plaintiff recognizes that such a request is moot—and therefore beyond this Court’s jurisdiction—because the investigation “is already completed.” *Id.* ¶ 16. North Dakota also acknowledges OSHA’s authority to prosecute states for whistleblower violations, including by intervening as a prosecuting party in an administrative proceeding that would otherwise be barred

by sovereign immunity if brought by a private complainant. Specifically, North Dakota concedes—as it must—that it lacks “immunity against the United States for suits [the United States] commences and prosecutes to vindicate federal interests,” and that “the intervention of the United States can indirectly allow a private party to receive some benefit to an action[.]” *Id.* ¶¶ 22, 23.<sup>1</sup> Because North Dakota no longer seeks to enjoin the OSHA investigation and acknowledges that OSHA’s prosecution of a state, including by intervening in a proceeding involving a private party, does not violate the state’s sovereign immunity, this action should be dismissed.

## II. North Dakota’s New Allegations and Claims are Not Properly Before the Court.

In place of its facial attack on the administrative proceeding in which OSHA is a prosecuting party, North Dakota presents different claims. North Dakota now contends that OSHA’s involvement in the proceeding is not an exercise of “political responsibility” because “the pursuit of this case” is a “façade for advancing a private party suit” and OSHA’s “status as a party is nominal at best.” *Id.* ¶¶ 21-22. And North Dakota asserts that parts of the relief that OSHA preliminarily addressed in its determination letter—directives to “expunge all of Complainant’s records of any reference to [his] protected activities or correspondence with EPA” and “remove the written discipline issued to Complainant,” ECF No. 14-1 at 6—exceed OSHA’s authority and are contrary to state records preservation law. Opp’n. ¶¶ 27-29.<sup>2</sup>

Such claims are not properly before this Court. These claims are materially different from those pleaded in the operative Complaint, and Defendants lacked notice of them when they filed their motion to dismiss. It is not appropriate for a litigant to “amend [its] complaint, or supplement insufficient factual allegations, in a brief filed in opposition to a motion to dismiss.” *Hawse v. Page*, 7 F.4th 685, 691 (8th Cir. 2021) (citation omitted). The Court should therefore decline to

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<sup>1</sup> Citing *R.I. Dep’t of Env’t Mgmt. v. U.S.*, 304 F.3d 31, 53 (1st Cir. 2002) (“*RIDEM*”) and *Mille Lacs Band of Chippewa Indians v. State of Minn.*, 124 F.3d 904 (8th Cir. 1997).

<sup>2</sup> North Dakota includes eight exhibits to support these new allegations, including three exhibits, *see* Opp’n Exs. 6, 7, & 8, ECF Nos. 20-6 through 20-8, which contain settlement discussions involving the state agency, Mr. Seerup, and OSHA.

consider these claims here.

### **III. North Dakota’s New Claims Are Meritless.**

North Dakota’s new claims, in any event, also would not withstand dismissal, and thus leave to amend would not be proper. Leave to amend a complaint should be denied as futile, where, as here, “the amended complaint could not withstand a motion to dismiss[.]” *Zutz v. Nelson*, 601 F.3d 842, 850 (8th Cir. 2010) (citation omitted). North Dakota’s new claim that OSHA failed to exercise the requisite political responsibility in participating in the ALJ proceeding rests on a misunderstanding of the law and is contrary to the presumption of regularity. Moreover, Plaintiff’s new objections to possible forms of relief must be presented first to the agency and then, following a final order, to the Eighth Circuit—not this Court—under the Safe Drinking Water Act (“SDWA”) judicial review procedures. And these objections are meritless in any event.

#### **A. OSHA Removed Any Sovereign Immunity Bar by Participating in the Underlying Administrative Proceeding as a Prosecuting Party.**

##### **1. The “Political Responsibility” Described in *Alden v. Maine* is Inherent in OSHA’s Choice to Intervene in a Proceeding as a Prosecuting Party.**

Plaintiff now argues that OSHA failed to exercise the “political responsibility” mentioned in *Alden v. Maine*, 527 U.S. 706 (1999). Opp’n ¶¶ 20-21. But that argument fails at the outset because the Court’s reference to this phrase did not establish a standard for second-guessing prosecutorial decisions. Rather, the phrase merely describes an inherent aspect of such decisions.

In *Alden v. Maine*, 527 U.S. 706 (1999), the Court held that states are immune from private actions brought by their employees—but not by the United States—under the Fair Labor Standards Act. The Court explained that states consented to suits brought as part of the Executive Branch’s constitutional duty to take care that the laws are faithfully executed—that consent is inherent in the constitutional plan. *Id.* at 755-56. In expounding on that principle, the Court noted that suits “brought by the United States itself require the exercise of political responsibility for each suit prosecuted against a State,” whereas suits brought by “private persons” lack this “control.” *Id.* The Court added that “[t]he difference between a suit by the United States on behalf of the employees,” which is not barred by sovereign immunity, “and a suit by the employees,” which is barred, is that

“a suit by the United States on behalf of the employees” requires the Federal Government to “itself deem the case of sufficient importance to take action against the State[.]” *Id.* at 759–60.

This same logic applies when a federal agency intervenes in an administrative proceeding between a state and its employees, such as the one here. As Plaintiff concedes,<sup>3</sup> “[w]hen the federal government becomes a party in an administrative adjudication, the adjudication is transformed from a prohibited suit by a private party against a state to a permitted one by the federal government against a state.” *E.g., Conn. Dep’t of Env’t Prot. v. OSHA* 356 F.3d 226, 234 (2d. Cir. 2004) (“*CDEP*”). *See* Fed. Defs.’ Mem. 10-11. The Executive Branch’s affirmative election to participate in the underlying proceeding before the ALJ itself represents the requisite exercise of “political responsibility.” *Alden*, 527 U.S. at 755-56, 759-60; *CDEP*, 356 F.3d at 234-35. Here, that election necessarily reflects that the Executive Branch, through OSHA, “deem[ed] [this] case of sufficient importance to take action against” the state. *Alden*, 527 U.S. at 759–60.

It is irrelevant that the relief sought by OSHA might yield more than “incidental” benefits for Mr. Seerup. Opp’n ¶ 24.<sup>4</sup> Again, the Supreme Court in *Alden* explained that sovereign immunity does not preclude “a suit by the United States *on behalf* of the employees” of a state. 527 U.S. at 759 (emphasis added). That Mr. Seerup may ultimately derive significant benefits because of OSHA’s decision to participate in the ALJ proceeding does not somehow effectuate a

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<sup>3</sup> *See* Opp’n ¶ 23 (quoting *RIDEM*, 304 F.3d at 53, for the principle that the United States’ participation as a party in a private-party-initiated proceeding against a state to seek the relief sought by the private party “cures any Eleventh Amendment or sovereign immunity defect” and citing *Mille Lacs*, 124 F.3d at 904).

<sup>4</sup> As in its complaint, North Dakota bases its assertion that Mr. Seerup may not derive more than an “incidental benefit” from the administrative proceeding on an excerpt from the *RIDEM* district court decision distinguishing “between an action by the United States to enforce federal law in which a private party derives an incidental benefit and an action by, or on behalf of, the private party, the objection [sic] of which is to obtain damages or other relief claimed by that party.” Opp’n ¶ 20 (quoting *R.I. Dep’t of Env’t Mgmt. v. United States*, 115 F. Supp. 2d 269, 273 (D.R.I. 2000) (citing *Alden*, 527 U.S. at 756)). The *RIDEM* First Circuit decision—which modified the district court’s decision to clarify that OSHA *can* intervene in a whistleblower proceeding involving a state employer—does not address the term “incidental benefit.” 304 F.3d at 53-54.

second transformation of the proceeding from “a permitted one by the federal government against a state[.]” *CDEP*, 356 F.3d. at 234, back to an impermissible “private party suit.” Opp’n ¶ 21.

**2. The Presumption of Regularity Forecloses North Dakota’s Assertions that OSHA’s Motivations are Improper.**

Moreover, North Dakota’s assertion that OSHA’s intervention in the ALJ proceeding was “nominal at best,” and “truly a façade for advancing a private party suit,” Opp’n ¶¶ 21-22, is inadequate to overcome the presumption of regularity to which the Executive Branch is entitled. *See FDA v. Wages & White Lion Invs., L.L.C.*, 145 S. Ct. 898, 922–23 (2025). OSHA is entitled to a presumption that its intervention decision represents a good faith execution of the SDWA. *See id.*; *Alden*, 527 U.S. at 755-56. And as the Supreme Court recently reaffirmed, “to peel back the curtain” on an agency’s “representation[s]” and overcome the “presumption of regularity,” a litigant ““must make a strong showing of bad faith or improper behavior[.]”” *Wages & White Lion*, 145 S. Ct. at 922-23 (citation omitted). North Dakota contends that OSHA’s election of party status in the ALJ proceeding is a pretext for its true motivation—“purely to advance and benefit a private party,” and to provide “an administrative forum” for what is actually a “private” action. Opp’n ¶¶ 21, 26. But North Dakota provides no basis, let alone a strong showing, to level those accusations and open a judicial inquiry into Executive Branch motivations.

At the outset, recall that any prosecution/intervention decision is made in the context of the Executive Branch’s “constitutional duty to ‘take Care that the Laws be faithfully executed,’” including those laws that apply “against a State[.]” *Alden*, 527 U.S. at 755 (citation omitted). Here, OSHA’s intervention undoubtedly represents a faithful execution of the SDWA, which ensures that water supply systems meet national standards that protect public health.<sup>5</sup> The SDWA’s whistleblower provision works in conjunction with its drinking water standards and other enforcement mechanisms by prohibiting employers—including state employers—from discriminating against employees who take “action to carry out the purposes of [the SDWA],” and

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<sup>5</sup> H.R. Rep. 93-1185 at 1, *reprinted in* 1974 U.S.C.C.A.N. 6454, 1974 WL 11641 (Aug. 15, 1974).

it directs the Secretary, through OSHA,<sup>6</sup> to obtain “appropriate” relief for employees when it finds that they have been retaliated against for engaging in such protected activity. 42 U.S.C. §§ 300j-9(i), 300f(12); 29 C.F.R. § 24.105(a). By prosecuting the state agency for conduct that OSHA determined constituted unlawful retaliation, the Executive Branch is ensuring that the statute is executed as intended to protect public water systems, even if that benefits the private employee. Given that context, the minimal evidence Plaintiff adduces fails to meet the high bar—“strong showing of bad faith”—required to open a “[j]udicial inquiry into executive motivation[,]” *see Wages & White Lion Invs.*, 145 S. Ct. at 923 (citation omitted), using “extra-[administrative]-record discovery,” *Dep’t of Commerce v. New York*, 588 U.S. 752, 781 (2019).

First, Plaintiff erroneously claims that a July 2023 email showing Mr. Seerup’s settlement offer establishes that OSHA’s determination letter “simply mirrored the request made by Seerup.” Opp’n ¶ 21. But again, whether the relief sought by an agency that intervenes in a proceeding involving a state and a private party benefits the private party—or even whether the intervening agency is acting “on behalf” of the private party—has no bearing on whether the intervention decision reflects a good faith execution of the SDWA. *See Alden*, 527 U.S. at 755, 759. And the agency’s determination letter clearly reflects OSHA’s substantiated conclusion that the state agency violated the SDWA, 42 U.S.C. § 300j-9(i). *See* Fed. Defs.’ Ex 1 at 4-5, Fed. Defs.’ Ex. 4.<sup>7</sup>

Second, Plaintiff erroneously claims that representations purportedly made by OSHA and its counsel during settlement discussions show a “complete divergence in the type of relief sought” by OSHA and Mr. Seerup, and that this “divergence” shows that OSHA’s participation before the ALJ “is truly a façade for advancing a private party suit.” *Id.* ¶ 21. At the outset, representations

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<sup>6</sup> Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health, 85 Fed. Reg. 58,393 (Sept. 18, 2020).

<sup>7</sup> Moreover, it is factually incorrect that OSHA’s determination letter “simply mirror[s]” Mr. Seerup’s settlement offer. As North Dakota acknowledges in passing, the preliminary order of relief in OSHA’s determination letter did not include an award of damages for pain and suffering, as Mr. Seerup had requested. *See* Opp’n ¶ 8 (characterizing OSHA’s determination letter as “in line with” Mr. Seerup’s request, “*save the request for compensation*” (emphasis added)). *Compare* Fed. Defs.’ Ex 1 at 5 with Opp’n Ex. 6, ECF No. 20-6.

made in settlement discussions are generally inadmissible to “prove or disprove the validity of the claims that the offers were meant to settle.” *See Weems v. Tyson Foods, Inc.*, 665 F.3d 958, 965 (8th Cir. 2011) (quoting Fed. R. Evid. 408). North Dakota’s effort to use OSHA’s potential willingness to compromise on some of the relief it eventually demanded as evidence that OSHA does not actually believe such relief is appropriate falls squarely within this principle.

But even if this Court were to consider these settlement communications, they are far from sufficient to satisfy “the high standard that must be met” to overcome the presumption that OSHA’s intervention decision represents a good faith execution of the SDWA and to open a judicial inquiry into executive motivation. *Wages & White Lion*, 145 S. Ct. at 923 (internal quotations omitted). OSHA’s attempt to settle Mr. Seerup’s whistleblower claim was in accordance with OSHA policy.<sup>8</sup> In the course of such attempts, the parties discussed possible avenues of resolution, including potential compromises. Once these settlement discussions proved unsuccessful, OSHA issued its determination letter and, through its counsel, elected to participate fully—not “nominal[ly]”—as a prosecuting party in the ALJ proceeding, including by propounding written discovery, seeking to schedule depositions, and moving to reschedule the hearing date to accommodate a conflict.<sup>9</sup> Nothing about the conduct of OSHA and its counsel supports North Dakota’s assertion that OSHA’s intervention is a “façade”—let alone makes the requisite strong showing of bad faith.

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<sup>8</sup> *See* OSHA, Whistleblower Investigations Manual, Sec. XI., Settlement, *available at* [CPL 02-03-011 Whistleblower Investigations Manual](#) (providing that “[v]oluntary resolution of disputes is desirable and investigators are encouraged to actively assist the parties in reaching an agreement, where possible”).

<sup>9</sup> *See* Fed. Defs.’ Ex. 8, Secretary of Labor’s Unopposed Motion to Reschedule Trial Date and Continue Pre-Trial Deadlines; Fed. Defs.’ Ex. 9, Email from Matthew Finnigan, Senior Trial Attorney, Office of the Solicitor, to Courtney Titus, Assistant Attorney General, State of North Dakota, attaching discovery request, Nov. 4, 2024; Fed. Defs.’ Ex. 10, Email from Matthew Finnigan, Senior Trial Attorney, Office of the Solicitor, to Courtney Titus, Assistant Attorney General, State of North Dakota, Nov. 19, 2024.

**B. North Dakota’s Objections to Certain Remedies Are Not Properly Before the Court and Are Meritless in Any Event.**

Finally, North Dakota contends that some relief OSHA is seeking in the ALJ proceeding would exceed the agency’s authority, if finally entered. Opp’n ¶¶ 27-29. Specifically, North Dakota takes issue with any relief requiring it to expunge government records of references to Mr. Seerup’s protected activity and requiring it to remove the written warning it issued to Mr. Seerup from his personnel file. *Id.* North Dakota contends that this relief would be inappropriate because the warning letter also “addressed performance and behavioral issues” that occurred before Mr. Seerup’s SDWA-protected activity, and because these parts of OSHA’s order allegedly conflict with North Dakota’s records-preservation laws. *Id.* But this action provides no basis for this Court’s interlocutory review of some relief not yet reduced to a final order.<sup>10</sup> Instead, those claims must be raised in the manner required by the SDWA and its implementing regulations.

Plaintiff’s arguments that certain relief sought by OSHA may exceed the agency’s authority must be brought in the Court of Appeals under the SDWA’s review scheme after appropriate agency proceedings generating a final agency order. 42 U.S.C. § 300j-9(i)(3); 29 C.F.R. §§ 24.106–110. Plaintiff is precluded from raising these issues under the type of “nonstatutory review” effectively invoked in the Complaint,<sup>11</sup> because the SDWA procedures provide an adequate means for review of these claims. Nonstatutory review involves a district court’s limited power to review agency action absent a statutory cause of action, stemming from

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<sup>10</sup> OSHA issued an initial determination letter preliminarily finding, based upon its investigation, that the state agency violated the SDWA, and, based on those findings, issued an agency action identifying appropriate relief. *See* Fed. Defs.’ Ex. 1 at 5-6. But these findings and identified relief ceased to have any ongoing effect when North Dakota requested ALJ review on September 13, 2023, because such a request stays OSHA’s initial findings and order, *see* 29 C.F.R. 24.106(b). And the ALJ has not yet considered OSHA’s preliminary findings and order, because the ALJ stayed the underlying proceeding pending the outcome of this litigation.

<sup>11</sup> The complaint does not allege a cause of action. Although it references sovereign immunity and the Eleventh Amendment, a court’s power to enforce the Constitution in the absence of a statutory cause of action does not rest on an implied one contained in the Constitution. *Armstrong v. Exceptional Child Ctr. Inc.*, 575 U.S. 320, 324-27 (2015). Rather, “[t]he ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity[.]” *Id.* at 327.

“courts’ use of their equitable jurisdiction to enjoin illegal agency action.” 33 CHARLES A. WRIGHT & ARTHUR R. MILLER, *FED. PRAC. & PROC. JUDICIAL REVIEW* § 8307 (2d ed. 2024 update).

Given the equitable basis of nonstatutory review, Plaintiff may not invoke it unless it satisfies “the traditional requirement for equitable relief that a plaintiff lack an adequate remedy at law.” *Id.* “Thus, if the APA or a special statutory review proceeding can provide adequate relief, an equitable remedy via nonstatutory review ought not be available.” *Id.*; *see also Puerto Rico v. United States*, 490 F.3d 50, 59 (1st Cir. 2007) (“[S]uch review may occur only if its absence would ‘wholly deprive the party of a meaningful and adequate means of vindicating its . . . rights.’”) (quoting *Bd. of Governors of Fed. Reserv. Sys. v. MCorp. Fin., Inc.*, 502 U.S. 32, 43 (1991)).<sup>12</sup>

Plaintiff’s objections to forms of relief not yet reduced to a final order differ materially from its claim to complete immunity from the underlying proceeding. If Plaintiff does not have immunity from the proceeding, then the SDWA and its implementing regulations provide an adequate means of vindicating its objections to any remedies ordered. *Puerto Rico*, 490 F.3d at 59-60; 42 U.S.C. § 300j-9(i)(3); 29 C.F.R. §§ 24.106–110. And a statutory cause of action to challenge final SDWA orders implies that a nonstatutory cause of action is not available in this Court. *Armstrong*, 575 U.S. at 327-28; *MCorp*, 502 U.S. at 43-44; *Puerto Rico*, 490 F.3d at 59-60; *Defs of Wildlife v. EPA*, 882 F.2d 1294, 1299 (8th Cir. 1989) (A “statutory review procedure for administrative actions” is “generally treat[ed] as the exclusive means of review”).

In sum, although nonstatutory review may be available to consider a state’s claim that *participation* in an administrative proceeding would violate its sovereign immunity, *see RIDEM*, 304 F.3d at 41, such review is not available to consider its challenges to the *remedies* in OSHA’s preliminary order of relief—which have no bearing on its entitlement to sovereign immunity from

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<sup>12</sup> In line with these principles, the Government has not objected to this Court’s consideration of North Dakota’s (meritless) claim that the state is entirely immune from the administrative proceeding. A state “ha[s] no other avenue for vindicating its [alleged] right to [complete] immunity from suit[.]” *Puerto Rico*, 490 F.3d at 59. If Plaintiff had to await Eighth Circuit review of a final order, “its [claimed] ‘immunity would be effectively lost[.]’” *Id.* (quoting *RIDEM*, 304 F.3d at 43).

the ALJ proceeding itself, *see Puerto Rico*, 490 F.3d at 59-60. Accordingly, Plaintiff lacks a nonstatutory cause of action for those challenges, which are also not ripe for judicial review since OSHA’s preliminary determination is not final, *see supra* n.10. To the extent that Plaintiff believes the remedies that OSHA seeks exceed OSHA’s authority or conflict with state law, it must raise these challenges first before the agency and then in a petition for review under the special statutory review procedures Congress included in the SDWA. 42 U.S.C. § 300j-9(i)(3); 29 C.F.R. §§ 24.106–110.

In any event, Plaintiff’s challenges to OSHA’s preliminary order are unavailing. Requiring an employer to expunge records of adverse action is consistent with authority under the statute, 42 U.S.C. § 300j-9(i)(2)(B)(ii), and under the regulations, 29 C.F.R. § 24.105(a)(1), to order the person to “abate the violation[.]” *See, e.g., Scott v. Roadway Express, Inc.*, ARB No. 99-013, 1999 WL 563368, at \*11 (ARB July 28, 1999) (construing the same language in another whistleblower provision, 49 U.S.C. § 31105(b)(3)(A)). Moreover, OSHA’s authority to direct that the state agency remove Mr. Seerup’s written warning is not limited even though the warning also addressed conduct that preceded Mr. Seerup’s protected activity because the SDWA protects employees from adverse action if their protected activity was a “motivating factor” in the adverse action—not only if it was the sole factor. *See Kaufman v. Perez*, 745 F.3d 521, 527 (D.C. Cir. 2014). Finally, OSHA’s order to “expunge” limited portions of Ms. Seerup’s personnel file hardly constitutes “mutilat[ing], destroy[ing], transferr[ing], remov[ing], s[elling], or otherwise damag[ing] or dispos[ing] of a record,” Opp’n ¶ 20 (quoting N.D. Cent. Code. § 54-46-07).<sup>13</sup> Even if it did, state law permits these activities “as provided by law,” language that includes OSHA’s authority to abate federal SWDA violations. And even if there were a conflict, federal law would control under the Supremacy Clause. *See Lankford v. Sherman*, 451 F.3d 496, 510 (8th Cir. 2006).

## CONCLUSION

The Court should dismiss North Dakota’s complaint in its entirety.

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<sup>13</sup> Contrary to North Dakota’s assertions, OSHA did not expressly demand that the state agency to “modify or destroy” any records. Opp’n ¶ 25 (purportedly citing ECF No. 14-1 at 6).

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**CERTIFICATE OF SERVICE**

I certify that, on June 11, 2025, I electronically filed a copy of the foregoing. Notice of this filing will be sent via email to all parties by operation of the Court's CM/ECF system. Parties may access this filing through the CM/ECF system. I certify that I am e-mailing a copy of this filing to the *pro se* Defendant who may lack access to the Court's CM/ECF system.

/s/ Liam C. Holland

LIAM C. HOLLAND