

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

EILEEN JANIS and KIM COLHOFF,)	Civ. No. 09-5019
)	
Plaintiffs,)	
)	
v.)	STATE DEFENDANTS'
)	AMENDED ANSWER TO
NELSON, in his individual)	PLAINTIFFS FIRST AMENDED
and official capacity as Secretary of)	COMPLAINT FOR
State of South Dakota and as a)	DECLARATORY RELIEF,
member of the State Board of)	INJUNCTIVE RELIEF,
Elections; MATT McCAULLEY,)	AND MONETARY DAMAGES
CINDY SCHULTZ, CHRISTOPHER W.)	
MADSEN, RICHARD CASEY,)	
KAREN M. LAYHER, and LINDA LEA)	
M. VIKEN, in their individual and)	
official capacities as members of the)	
State Board of Elections; SUE)	
GANJE, in her official and individual)	
Capacity as Auditor for Shannon)	
County; LA FAWN CONROY, in)	
her individual and official capacity)	
as a poll worker for Shannon)	
County,)	
)	
Defendants.)	

Secretary of State Chris Nelson and Election Board Members Matt McCaulley, Cindy Schultz, Christopher W. Madsen, Richard Casey, Karen M. Layher, and Linda Lea Viken, Defendants, in their official and individual capacities (hereinafter "State Defendants") hereby provide the following Amended Answer to Plaintiffs' First Amended Complaint for Declaratory Relief, Injunctive Relief, and Monetary Damages (hereinafter First Amended Complaint).

1. State Defendants hereby deny each and every thing, matter, and allegation contained within the First Amended Complaint except that which is hereinafter specifically admitted.

2. Paragraph 1 states a characterization of Plaintiffs' case to which no answer is required.

3. Paragraph 2 is statement of jurisdiction to which no response is required.

4. Paragraph 3 is denied.

5. Paragraph 4 states a legal conclusion as to which no response is required.

6. State Defendants are without sufficient knowledge to admit or deny paragraph 5.

7. State Defendants are without sufficient knowledge to admit or deny paragraph 6.

8. As to paragraph 7, State Defendants admit Chris Nelson is Secretary of State of South Dakota, admit that Nelson is the chief state election official within the meaning of the Help America Vote Act of 2002 and the National Voter Registration Act of 1993, and is Chairman of the State Board of Elections of South Dakota. The remainder of the paragraph states legal conclusions and constitutes a characterization of the case to which no response is required.

9. As to paragraph 8, the named persons are admitted to be members of the State Board of Elections of South Dakota. The

remainder of the paragraph states legal conclusions and constitutes a characterization of the case as to which no response is required.

10. As to paragraph 9, State Defendants admit that Sue Ganje is the Auditor of Shannon County, South Dakota. The remainder of the paragraph states legal conclusions and constitutes a characterization of the case as to which no response is required.

11. State Defendants are without sufficient knowledge to admit or deny the first sentence of paragraph 10. The remainder of the paragraph constitutes a legal conclusion and a characterization of the case as to which no response is required.

12. State Defendants are without sufficient knowledge to admit or deny paragraph 11.

13. Paragraph 12 constitutes a legal conclusion as to which no response is required.

14. State Defendants are without sufficient knowledge to admit or deny paragraph 13.

15. State Defendants are without sufficient knowledge to admit or deny paragraph 14.

16. State Defendants are without sufficient knowledge to admit or deny paragraph 15.

17. State Defendants are without sufficient knowledge to admit or deny paragraph 16.

18. State Defendants are without sufficient knowledge to admit or deny paragraph 17.

19. State Defendants are without sufficient knowledge to admit or deny paragraph 18.

20. State Defendants are without sufficient knowledge to admit or deny paragraph 19.

21. State Defendants are without sufficient knowledge to admit or deny paragraph 20.

22. State Defendants are without sufficient knowledge to admit or deny paragraph 21.

23. State Defendants are without sufficient knowledge to admit or deny paragraph 22.

24. State Defendants are without sufficient knowledge to admit or deny paragraph 23.

25. State Defendants are without sufficient knowledge to admit or deny paragraph 24.

26. State Defendants are without sufficient knowledge to admit or deny paragraph 25.

27. State Defendants are without sufficient knowledge to admit or deny the material before the comma in paragraph 26. The remainder of the sentence constitutes a characterization of Plaintiffs' case as to which no answer is required.

28. State Defendants are without sufficient knowledge to admit or deny paragraph 27.

29. State Defendants are without sufficient knowledge to admit or deny paragraph 28.

30. State Defendants are without sufficient knowledge to admit or deny paragraph 29.

31. State Defendants are without sufficient knowledge to admit or deny paragraph 30.

32. State Defendants are without sufficient knowledge to admit or deny paragraph 31.

33. State Defendants are without sufficient knowledge to admit or deny paragraph 32.

34. State Defendants are without sufficient knowledge to admit or deny paragraph 33.

35. State Defendants are without sufficient knowledge to admit or deny the material before the comma in paragraph 34. The remainder of the sentence constitutes a characterization of Plaintiffs' case as to which no answer is required.

36. Paragraph 35 states a legal conclusion as to which no response is required.

37. Paragraph 36 states a legal conclusion as to which no response is required.

38. Paragraph 37 is denied.

39. Paragraph 38 states legal conclusions as to which no response is required. To the extent that a response is required, State Defendants are without sufficient knowledge to admit or deny the allegations.

40. Paragraph 39 states a characterization of the Plaintiffs' case as to which no response is required and a legal conclusion as to which no response is required.

41. Paragraph 40 is admitted.

42. Paragraph 41 constitutes a characterization of the Plaintiffs' case as to which no response is required, together with legal conclusions as to which no response is required.

43. Paragraph 42 constitutes a legal conclusion as to which no response is required.

44. Paragraph 43 constitutes a legal conclusion as to which no response is required.

45. As to paragraph 44, State Defendants reassert and reallege their response to the preceding paragraphs.

46. Paragraph 45 recites the text of a federal constitutional provision and no response is required.

47. Paragraph 46 recites the text of a state constitutional provision and no response is required.

48. Paragraph 47 constitutes a characterization of the Plaintiffs' case as to which no response is required, together with legal conclusions as to which no response is required.

49. As to paragraph 48, State Defendants reassert and reallege their response to the preceding paragraphs.

50. Paragraph 49 recites the text of a federal constitutional provision as to which no response is required.

51. Paragraph 50 recites the text of a state constitutional provision to which no response is required.

52. State Defendants are without sufficient knowledge to admit or deny paragraph 51.

53. Paragraph 52 states legal conclusions to which no response is required.

54. As to paragraph 53, State Defendants reassert and reallege their response to the preceding paragraphs.

55. Paragraph 54 states legal conclusions as to which no response is required.

56. Paragraph 55 states legal conclusions as to which no response is required.

57. Paragraph 56 states legal conclusions as to which no response is required.

58. Paragraph 57 states legal conclusions as to which no response is required.

59. Paragraph 58 states legal conclusions as to which no response is required.

60. Paragraph 59 states legal conclusions as to which no response is required.

61. As to paragraph 60, State Defendants reassert and reallege their response to the preceding paragraphs.

62. Paragraph 61 states legal conclusions as to which no response is required.

63. Paragraph 62 states legal conclusions as to which no response is required.

64. Paragraph 63 states legal conclusions as to which no response is required.

65. Paragraph 64 constitutes a characterization of Plaintiffs' case to which no response is required, along with legal conclusions as to which no response is required.

66. Paragraph 65 states legal conclusions as to which no response is required.

67. As to paragraph 66, State Defendants reassert and reallege their response to the preceding paragraphs.

68. Paragraph 67 states legal conclusions as to which no response is required.

69. Paragraph 68 states legal conclusions as to which no response is required.

70. Paragraph 69 states legal conclusions as to which no response is required.

71. Paragraph 70 states legal conclusions as to which no response is required.

72. Paragraph 71 states legal conclusions as to which no response is required.

73. State Defendants are without sufficient knowledge to admit or deny paragraph 72.

74. Paragraph 73 constitutes a characterization of Plaintiffs' case to which no response is required, along with legal conclusions as to which no response is required.

75. Paragraph 74 constitutes a characterization of Plaintiffs' case to which no response is required, along with legal conclusions as to which no response is required.

76. As to paragraph 75, State Defendants reassert and reallege their response to the preceding paragraphs.

77. Paragraph 76 repeats the text of a statute as to which no response is required.

78. Paragraph 77 constitutes a characterization of Plaintiffs' case to which no response is required, along with legal conclusions as to which no response is required.

79. As to paragraph 78, State Defendants reassert and reallege their response to the preceding paragraphs.

80. Paragraph 79 constitutes a characterization of Plaintiffs' case to which no response is required, along with legal conclusions as to which no response is required.

81. As to paragraph 80, State Defendants reassert and reallege their response to the preceding paragraphs.

82. Paragraph 81 repeats the text of a statute as to which no response is required.

83. Paragraph 82 repeats the text of a state constitutional provision as to which no response is required.

84. Paragraph 83 constitutes a characterization of Plaintiffs' case to which no response is required, along with legal conclusions as to which no response is required.

85. Plaintiffs' Prayer for Relief, paragraphs (1) through (12), does not require a response.

Affirmative Defenses

1. The First Amended Complaint fails to state a claim upon which relief can be granted against State Defendants.

2. State Defendants are immune from suit under the Eleventh Amendment to the United States Constitution.

3. Pursuant to the Eleventh Amendment, the Court lacks subject matter and personal jurisdiction over claims against State Defendants which request monetary or nonprospective relief.

4. State Defendants are immune from suit based upon qualified immunity.

5. State Defendants are immune from suit based on sovereign and governmental immunity to the extent of any state law claims. Any action against State Defendants is subject to the provisions of SDCL chs. 3-21 and 3-22. Plaintiffs have failed to exhaust their remedies under these statutes.

6. The Section 5 claim made herein should be severed from the action because it is improperly joined with a Section 2 claim which can only be determined by a one-judge court.

7. Plaintiffs' claims should be dismissed against State Defendants because they fail to allege, with the requisite showing of specificity and plausibility, acts which would subject State Defendants to liability.

8. The Court lacks both personal and subject matter jurisdiction over State Defendants.

9. Plaintiffs' claims should be dismissed for failing to join required and indispensable parties.

10. Count 5 should be dismissed for failure to exhaust administrative remedies by failure to give notice of violation to Defendant Nelson pursuant to 42 U.S.C. 1973gg-9(b).

11. Both Plaintiffs' claims are barred by the doctrines of waiver and laches.

12. Section 5 of the Voting Rights Act (42 U.S.C. § 1973c) is unconstitutional.

13. Plaintiff Colhoff's claims are barred by the doctrines of waiver, laches, and estoppel.

STATE DEFENDANTS DEMAND A JURY TRIAL ON ALL CLAIMS
SUBMISSIBLE TO A JURY

Dated this 4th day of November, 2009.

Respectfully submitted,

MARTY J. JACKLEY
ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2009, a true and correct copy of State Defendants' Amended Answer to Plaintiffs' First Amended Complaint for Declaratory Relief, Injunctive Relief, and Monetary Damages was served electronically through the CM/ECF system upon the following persons:

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