

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

EILEEN JANIS and KIM COLHOFF,

Plaintiffs,

v.

CHRIS NELSON, in his individual and official capacity as Secretary of State of South Dakota, and as a Member of the State Board of Elections; MATT McCAULLEY, 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 capacity 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.

Civ. 09-5019

STATE DEFENDANTS' AMENDED MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS AND TO TOLL DISCOVERY PENDING DISPOSITION OF STATE MOTIONS (Federal Rules Civil Procedure 8(a)(2), 12(b)(6) and 12(c))

COME NOW Defendants Chris Nelson, Matt McCaulley, Cindy Schultz, Christopher W. Madsen, Richard Casey, Karen M. Layher, and Linda Lea Viken, (hereinafter referred to as "State Defendants"), and submit this Amended Motion to Dismiss, or in the Alternative, Motion for Judgment on the Pleadings, on the grounds that Plaintiffs' First Amended Complaint fails to plead sufficient facts to state a claim for relief against the State Defendants. Fed. R. Civ. P. 8(a)(2), 12(b)(6) and 12(c). State Defendants further move that this Court toll discovery pending final disposition of the State Defendants' motions.

The purpose of this amended motion is to reassert and supplement State Defendants' arguments for dismissal in light of the filing of the First Amended Complaint and to join in motions to dismiss filed by Defendant Ganje.

Dated this 4th day of November, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2009, a true and correct copy of State Defendants' Amended Motion to Dismiss, or in the Alternative, Motion for Judgment on the Pleadings and to Toll Discovery Pending Disposition of State Motions was served electronically through the CM/ECF system upon the following persons:

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