

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

EILEEN JANIS AND KIM COLHOFF, )  
)  
Plaintiff(s), )  
)  
v. )  
)  
CHRIS NELSON, IN HIS 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. MADEN, RICHARD )  
CASEY, KAREN M. LAYHER, AND LINDA )  
LEA M. VIKEN, IN THEIR OFFICIAL )  
CAPACITIES AS MEMBERS OF THE STATE )  
BOARD OF ELECTIONS; AND SUE GANJE, )  
IN HER OFFICIAL CAPACITY AS AUDITOR )  
FOR SHANNON COUNTY, )  
)  
Defendant(s). )

Case No.: 09-5019

**DEFENDANT SUE GANJE'S  
ANSWER TO PLAINTIFFS'  
FIRST AMENDED  
COMPLAINT AND DEMAND  
FOR JURY TRIAL**

NOW COMES Defendant Sue Ganje, by and through her undersigned counsel, and answers the Plaintiffs' Complaint by denying each and every allegation not specifically admitted herein.

The paragraph numbers below correspond with the numbered paragraphs in Plaintiffs' First Amended Complaint.

1. Plaintiffs' ¶ 1 is an introduction summarizing the Complaint which does not require a response. To the extent that a response is necessary, Defendant Sue Ganje (hereinafter "Ganje") denies the allegations.

## **JURISDICTION AND VENUE**

2. Ganje admits this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 42 U.S.C. § 1973j(f). Ganje denies that this suit is authorized by 42 U.S.C. § 1983. Ganje denies the remainder of ¶ 2. Ganje denies that this Court has jurisdiction to hear Plaintiffs' Count 4, as Plaintiffs have not exhausted their administrative remedies.

3. Denied. The 42 U.S.C. § 1973c claim should be severed from the remaining claims.

4. Admit.

## **THE PARTIES**

5. Ganje admits Plaintiff Eileen Janis is a resident of Pine Ridge, South Dakota, located in Shannon County. Ganje admits that Plaintiff Janis registered to vote in September 1984. Ganje is without sufficient knowledge to form a belief about the truth of Plaintiffs' allegations that Plaintiff Janis remained on the voter registration rolls until January 2008. Ganje admits that Plaintiff Janis was convicted of a felony offence on January 28, 2008, and sentenced to a term of probation of five years. Ganje denies the remainder of ¶ 5, or is without sufficient information to admit or deny the remaining allegations.

6. Ganje admits Plaintiff Kim Colhoff is a resident of Pine Ridge, South Dakota, located in Shannon County. Ganje denies that Plaintiff Colhoff registered to vote for the first time in October 1974. Ganje is without sufficient knowledge to form a belief about the truth of Plaintiffs' allegation that Plaintiff Colhoff remained on the voter registration rolls until January 2008. Ganje admits that on January 28, 2008, Plaintiff

Colhoff was convicted of a felony offense and sentenced to a term of probation of five years. Ganje denies the remainder of ¶ 6, or Ganje is without sufficient information to admit or deny the remaining allegations.

7. Admit.

8. Admit.

9. Admit.

10. Admit.

### **FACTUAL ALLEGATIONS**

11. Admit.

12. Admit.

13. Admit.

14. Admit.

15. Deny.

16. Ganje has insufficient knowledge to form a belief about the truth of the allegations.

17. Ganje has insufficient knowledge to form a belief about the truth of the allegations.

18. Ganje has insufficient knowledge to form a belief about the truth of the allegations.

19. Ganje has insufficient knowledge to form a belief about the truth of the allegations.

20. Ganje has insufficient knowledge to form a belief about the truth of the allegations.

21. Ganje has insufficient knowledge to form a belief about the truth of the allegations.

22. Ganje has insufficient knowledge to form a belief about the truth of the allegations.

23. Ganje has insufficient knowledge to form a belief about the truth of the allegations.

24. Ganje has insufficient knowledge to form a belief about the truth of the allegations.

25. Deny.

26. Deny.

27. Admit.

28. Admit.

29. Admit.

30. Deny.

31. Ganje has insufficient knowledge to form a belief about the truth of the allegations.

32. Ganje has insufficient knowledge to form a belief about the truth of the allegations.

33. Deny.

34. Deny.

35. This paragraph states a legal conclusion which requires no response.

36. Deny.

37. Ganje denies the allegations or lacks sufficient knowledge to form a belief about the truth of the allegations.

38. Ganje is without sufficient information to admit or deny the allegations.

39. Deny.

40. Admit.

41. Ganje denies implementing a policy and practice of denying voting rights to people with felony convictions who are on probation. The remainder of the allegation is therefore denied.

42. Deny.

43. Deny.

#### **COUNT ONE**

##### **Violation Of Equal Protection Under The Law**

44. Ganje reasserts and re-alleges her responses to all preceding paragraphs as if fully set forth herein.

45. Admit.

46. Admit.

47. Deny.

#### **COUNT TWO**

##### **Violation Of Due Process Of Law**

48. Ganje reasserts and re-alleges her responses to all preceding paragraphs as if fully set forth herein.

49. Admit.

50. Admit.

51. Deny.

52. Deny.

**COUNT THREE**

**Violation Of The Help America Vote Act (“HAVA”)  
(42 U.S.C. § 15483)**

53. Ganje reasserts and re-alleges her responses to all preceding paragraphs as if fully set forth herein.

54. Deny.

55. This paragraph states a legal conclusion not requiring a response.

56. This paragraph states a legal conclusion not requiring a response.

57. Deny.

58. Deny.

59. Deny.

**COUNT FOUR**

**Violation Of The Help America Vote Act (“HAVA”)  
(42 U.S.C. § 15482) and State Law**

60. Ganje reasserts and re-alleges her responses to all preceding paragraphs as if fully set forth herein.

61. This paragraph states a legal conclusion not requiring a response.

62. This paragraph states a legal conclusion not requiring a response.

63. This paragraph states a legal conclusion not requiring a response.

64. Deny.

65. Deny.

**COUNT FIVE**

**Violation Of The National Voter Registration Act (“NVRA”)**  
**(42 U.S.C. § 1973gg-6)**

66. Ganje reasserts and re-alleges her responses to all preceding paragraphs as if fully set forth herein.

67. This paragraph states a legal conclusion not requiring a response.

68. This paragraph states a legal conclusion not requiring a response.

69. This paragraph states a legal conclusion not requiring a response.

70. This paragraph states a legal conclusion not requiring a response.

71. This paragraph states a legal conclusion not requiring a response.

72. Deny.

73. Deny.

74. Deny.

**COUNT SIX**

**Violation Of The Voting Rights Act of 1965**  
**(42 U.S.C. § 1973)**

75. Ganje reasserts and re-alleges her responses to all preceding paragraphs as if fully set forth herein.

76. This paragraph states a legal conclusion not requiring a response.

77. Deny.

**COUNT SEVEN**

**Violation Of The Voting Rights Act of 1965**  
**(42 U.S.C. § 1973c)**

78. Ganje reasserts and re-alleges her responses to all preceding paragraphs as if fully set forth herein.

79. Deny.

**COUNT EIGHT**

**Violation Of The Civil Rights Act of 1964**  
**(42 U.S.C. § 1971) and State Law**

80. Ganje reasserts and re-alleges her responses to all preceding paragraphs as if fully set forth herein.

81. This paragraph states a legal conclusion not requiring a response.

82. This paragraph states a legal conclusion not requiring a response.

83. Deny.

**AFFIRMATIVE DEFENSES**

1. The Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

2. Ganje is immune from suit based on sovereign, qualified and statutory immunity. Ganje alleges that any recovery against her is limited by statute to the amount of coverage under the public entity pool for liability established by S.D.C.L. ch. 3-22 and that the payment of any judgment that may be obtained would be governed by the provisions thereof.

3. Lack of subject-matter jurisdiction.

4. Plaintiffs have improperly joined a claim which can only be determined by a three-judge court with claim determined only by a one-judge court with claims that must be determined by a jury. Plaintiffs' claims must be severed in order to proceed to the proper finder(s) of fact.

5. Defendant had no intent, purpose, or deliberate indifference on their part to deny Plaintiffs their constitutional rights or statutory rights, or any rights allegedly to



have been deprived of them by the complaint, and Plaintiffs are barred from any relief herein.

6. Waiver and laches.
7. Plaintiffs failed to exhaust their administrative remedies, barring suit.
8. Plaintiffs' claims should be dismissed for failing to join indispensable parties.

**PRAY FOR RELIEF**

WHEREFORE, Defendant Sue Ganje respectfully pray that the Court enter relief as follows:

- A. Plaintiffs' Complaint be dismissed;
- B. Plaintiffs' claims be severed;
- C. Defendant Sue Ganje be awarded costs and disbursements in this action, including reasonable attorneys' fees;
- D. Plaintiffs' request for a preliminary injunction be denied;
- E. Defendant Sue Ganje be awarded such other and further relief as the Court may deem just and equitable; and
- F. Plaintiffs' request for compensatory and nominal damages be denied.

**DEFENDANT SUE GANJE DEMANDS A JURY TRIAL ON ALL CLAIMS  
SUBMISSIBLE TO A JURY**

Dated: October 28, 2009.

GUNDERSON, PALMER, NELSON  
& ASHMORE, LLP

By: s/Sara Frankenstein

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Sara Frankenstein  
Attorneys for defendant,  
Sue Ganje  
440 Mt. Rushmore Road, 3rd floor  
P.O. Box 8045  
Rapid City, SD 57709  
Telephone: (605) 342-1078  
Telefax: (605) 719-3471  
E-mail: [sfrankenstein@gpnalaw.com](mailto:sfrankenstein@gpnalaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify on October 28, 2009, a true and correct copy of **DEFENDANT SUE GANJE'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT** was served electronically through the CM/ECF system upon the following individuals:

Nancy Abudu  
Bryan L. Sells  
American Civil Liberties Union  
230 Peachtree Street, N.W., Suite 1440  
Atlanta, GA 30303-1513  
E-mail: nabudu@aclu.org  
E-mail: bsells@aclu.org  
*Attorneys for plaintiffs,  
Eileen Janis and Kim Colhoff*

Patrick K. Duffy  
Patrick K. Duffy, LLC  
P.O. Box 8027  
Rapid City, SD 57709-8027  
E-mail: pduffy@rushmore.com  
*Attorneys for plaintiffs,  
Eileen Janis and Kim Colhoff*

Robert Doody  
American Civil Liberties Union  
401 East 8th Street, Suite 200P  
Sioux Falls, SD 57103  
E-mail: rdoody@aclu.org  
*Attorneys for,  
Eileen Janis and Kim Colhoff*

Sherri Sundem Wald  
Bobbi Rank  
Attorney General's Office  
1302 East Highway 14, #1  
Pierre, SD 57501  
Telephone: (605) 773-3215  
Fax: (605) 773-4106  
E-mail: Sherri.Wald@state.sd.us  
*Attorneys for defendants,  
Chris Nelson, Matt McCaulley, Cindy Schultz,  
Christopher Maden, Richard Casey, Karen Layher,  
and Linda Lea Viken*

By: :/s/Sara Frankenstein  
Sara Frankenstein