

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

EILEEN JANIS AND KIM COLHOFF,)
))
Plaintiff(s),)
))
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. MADEN,)
RICHARD CASEY, KAREN M. LAYHER,)
AND LINDA LEA M. VIKEN, IN THEIR)
INDIVIDUAL AND OFFICIAL CAPACITIES)
AS MEMBERS OF THE STATE BOARD OF)
ELECTIONS; AND SUE GANJE, IN HER)
OFFICIAL AND INDIVIDUAL CAPACITY AS)
AUDITOR FOR SHANNON COUNTY; AND)
LA FAWN CONROY, IN HER INDIVIDUAL)
AND OFFICIAL CAPACITY AS A POLL)
WORKER FOR SHANNON COUNTY,)
))
Defendant(s).)

Case No.: 09-5019

**DEFENDANT LAFAWN
CONROY’S ANSWER TO
PLAINTIFFS’ FIRST
AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

NOW COMES Defendant LaFawn Conroy, by and through her undersigned counsel, and answers the Plaintiffs’ First Amended 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 LaFawn Conroy (hereinafter “Conroy”) denies the allegations.

JURISDICTION AND VENUE

2. Conroy 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). Conroy denies that this suit is authorized by 42 U.S.C. § 1983. Conroy denies the remainder of ¶

2. Conroy 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. Conroy admits Plaintiff Eileen Janis is a resident of Pine Ridge, South Dakota, located in Shannon County. Conroy admits that Plaintiff Janis registered to vote in September 1984. Conroy 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. Conroy admits that Plaintiff Janis was convicted of a felony offense on January 28, 2008, and sentenced to a term of probation of five years. Conroy denies the remainder of ¶ 5, or is without sufficient information to admit or deny the remaining allegations.

6. Conroy admits Plaintiff Kim Colhoff is a resident of Pine Ridge, South Dakota, located in Shannon County. Conroy denies that Plaintiff Colhoff registered to vote for the first time in October 1974. Conroy 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. Conroy admits that on January 28, 2008, Plaintiff Colhoff was convicted of a felony offense and sentenced to a term of probation of five years. Conroy denies the remainder of ¶ 6, or Conroy 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. Conroy has insufficient knowledge to form a belief about the truth of the allegations.

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

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

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

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

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

22. Defendant Conroy admits that she called the Shannon County auditor's office regarding Plaintiff Janis's voter registration status. Defendant Conroy denies telling Janis she was ineligible to vote. Defendant Conroy denies she refused to allow Plaintiff Janis to cast any type of ballot.

23. Conroy denies that Plaintiff Janis was denied a regular ballot. Defendant Conroy denies the remainder of ¶ 23.

24. Deny.

25. Deny.

26. Deny.

27. Admit.

28. Admit.

29. Admit.

30. Deny.

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

32. Conroy 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. Conroy denies the allegations or lacks sufficient knowledge to form a belief about the truth of the allegations.

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

39. Deny.

40. Admit.

41. Conroy 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. Conroy 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. Conroy 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. Conroy 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. Conroy 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. Conroy 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. Conroy 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. Conroy 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. Conroy 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. Conroy is immune from suit based on sovereign, qualified and statutory immunity. Conroy 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 may be determined by a three-judge court with a 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 her 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 LaFawn Conroy respectfully pray that the Court enter relief as follows:

- A. Plaintiffs' Complaint be dismissed;
- B. Plaintiffs' claims be severed;
- C. Defendant LaFawn Conroy be awarded costs and disbursements in this action, including reasonable attorneys' fees;
- D. Plaintiffs' request for a preliminary injunction be denied;
- E. Defendant LaFawn Conroy 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 LAFAWN CONROY DEMANDS A JURY TRIAL ON ALL
CLAIMS SUBMISSIBLE TO A JURY**

Dated: December 22, 2009.

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

By: *s/Sara Frankenstein*

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CERTIFICATE OF SERVICE

I hereby certify on December 22, 2009, a true and correct copy of **DEFENDANT LAFAWN CONROY'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL** was served electronically through the CM/ECF system upon the following individuals:

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By: :/s/Sara Frankenstein

Sara Frankenstein