

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

**ANSWER OF
DEFENDANT SUE GANJE**

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’ 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.

* Named Defendants Gail Brock and Paula Jones’ terms on the South Dakota Board of Elections expired and they have been replaced by Matt McCaulley and Cindy Schultz. Pursuant to Federal Rules of Civil Procedure 25(d), Defendant Ganje has substituted the names of Mr. McCaulley and Ms. Schultz for the Board Members they replaced.

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. Gail Brock and Paula Jones have been replaced by Matt McCaulley and Cindy Schultz. With these substitutions made, Ganje admits the remainder of the allegations.

9. Admit.

FACTUAL ALLEGATIONS

10. Admit.

11. Admit.

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

13. Denied. Plaintiff Janis's name was removed from the Shannon County voter registration list on or about February 8, 2008. Ganje denies or has insufficient knowledge to form a belief about the truth of the remaining allegations.

14. Deny.

15. Deny.

16. Deny.

17. Deny.

18. Admit.

19. Admit.

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

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

- 22. Deny.
- 23. Deny.
- 24. Deny.
- 25. Ganje denies the allegations or lacks sufficient knowledge to form a belief about the truth of the allegations.

- 26. Ganje is without sufficient information to admit or deny the allegations.
- 27. Deny.
- 28. Admit.
- 29. Ganje is without sufficient information to admit or deny the allegations.
- 30. Deny.
- 31. Deny.

COUNT ONE

Violation Of Equal Protection Under The Law

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

- 33. Admit.
- 34. Admit.
- 35. Deny.

COUNT TWO

Violation Of Due Process Of Law

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

- 37. Admit.

38. Admit.

39. Deny.

40. Deny.

COUNT THREE

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

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

42. Deny.

43. Deny.

44. Deny.

COUNT FOUR

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

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

46. Ganje admits that the precinct election board is required to provide a provisional ballot to any person who signs an affirmation that he or she is eligible to vote in the precinct in which the person is claiming to be registered to vote. Ganje admits that a member of the precinct election board shall notify any person who is denied the ability to vote that the person may cast a provisional ballot. Ganje denies any remaining allegations.

47. Ganje admits that the precinct election board is required to provide a provisional ballot to any person who signs an affirmation that he or she is eligible to vote

in the precinct in which the person is claiming to be registered to vote. Ganje admits that a member of the precinct election board shall notify any person who is denied the ability to vote that the person may cast a provisional ballot. Ganje denies any remaining allegations.

48. Deny.

COUNT FIVE

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

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

50. Ganje admits that any state program or activity to protect the integrity of the election process by ensuring the maintenance of an accurate and current voter registration roll for federal office shall be uniform, non-discriminatory, and in compliance with the NVRA. Ganje denies the remainder of the allegations. The remaining allegations are denied.

51. Ganje admits the NVRA contains the quoted language in Plaintiffs’ ¶ 51.

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

COUNT SIX

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

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

54. Admit.

55. Deny.

COUNT SEVEN

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

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

57. Deny.

COUNT EIGHT

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

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

59. Admit.

60. Admit.

61. 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 and government immunity to the extent of any state law claims. 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. Plaintiffs have improperly joined a cause of action which can only be determined by a three-judge court and a cause of action by which the claim can be determined only by a one-judge court. Plaintiffs' claim number 7 must be severed from the remaining claims.

4. 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.

5. Waiver and laches.

6. Plaintiffs failed to exhaust their administrative remedies, barring suit.

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.

Dated: March 17, 2009.

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

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CERTIFICATE OF SERVICE

I hereby certify on March 17, 2009, a true and correct copy of **ANSWER OF DEFENDANT SUE GANJE** was served electronically through the CM/ECF system upon the following individuals:

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