

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

EILEEN JANIS and KIM COLHOFF,)
))
Petitioners,)
))
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. MADSEN,)
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,)
))
Respondents.)

Civ. No. 09-5019

BRIEF IN SUPPORT OF
SUPPLEMENT TO STATE
DEFENDANT’S MOTION TO DISMISS
AND
SUPPLEMENT TO STATE
DEFENDANT’S MOTION
TO STAY DISCOVERY

Introduction

State Defendants have previously moved this Court both to dismiss and to toll discovery pending disposition of their motion to dismiss. Doc. 55. State Defendants have now been served with discovery by Plaintiffs, and the nature of that discovery supports each of their motions and indicates the pressing need for determination of the State’s Motion to Stay Discovery.

Argument

Ashcroft v. Iqbal, 129 S.Ct. 137, 1949 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007) established that, under FRCP Rule 8, a plaintiff’s complaint, to “survive a motion to dismiss . . . must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” State

Defendants, in their opening brief, established that Plaintiffs' present Complaint fails to satisfy that *Iqbal* demand.

A significant part of *Iqbal* pivoted on the harm to a defendant, in terms of response to discovery, "especially" with regard to defendants, entitled to a claim of qualified immunity, as in this case. See, *Iqbal*, 129 S.Ct. at 1953-4. The plaintiff in *Iqbal* argued that Rule 8 need not be carefully applied because courts could carefully "cabin" discovery. Id. at 1953. *Iqbal* squarely rejected that notion, holding that "the question to dismiss a complaint for insufficient pleadings does not turn on the control placed upon the discovery process." Id. *Iqbal* added that its "rejection of the careful-case-management approach is especially important in suits where Government-official defendants are entitled to assert the defense of qualified immunity." Id. The "basic thrust" of such a defense is "to free officials from the concerns of litigation, including 'avoidance of disruptive discovery.'" Id. (quoting *Siegert v. Gilley*, 500 U.S. 226, 236 (1991) (Kennedy, J., concurring in the judgment)).

The recent discovery request of Plaintiffs validates the concerns of *Iqbal* and strongly supports dismissal of the case. Although Plaintiffs have made no plausible allegations in their complaints with regard to actions of any person beyond the limits of Shannon County, their discovery request extends far beyond that county. Plaintiffs seek discovery which extends to the Native American status, felony convictions and sentences of probation of all South Dakota residents, in each of its 66 counties in state, federal and even out-of-state courts. Plaintiffs' First Set of Interrogatories and Requests for Production of Documents to State Defendants at Interrogatory No. 17, parts a-c; No. 18, parts a-c; No. 19, parts a-c; No 20, parts a-c (attached hereto). See also Request for Production No. 8.

Likewise, though its allegations of wrongdoing apply only to two persons in Shannon County, Plaintiffs demand extensive evidence of “statewide” policies. See, Plaintiffs’ First Set of Interrogatories 5, 6, 8, 9, 10, 11, 13, 14. Plaintiffs, in addition, demand evidence of multiple “county-wide” policies, and apparently attempt to require that the State produce evidence of such policies emanating from each of 66 counties. Id. at 5, 6, 8, 9, 10, 11, 13, 14.

Conclusion

The holding of *Iqbal* as it relates to the lack of a “plausible” claim against the statewide defendants, and the rationale in *Iqbal* as it is based on the avoidance of intrusive and unjustified discovery each support both (1) the State Defendants’ Motion to Dismiss and (2) State Defendants’ Motion to Stay Discovery.

Finally, as is plain, the State’s Motion to Stay Discovery is made more pressing by the Plaintiffs’ present attempt to avoid both the holding and rationale of *Iqbal*.

Dated this 31st day of July, 2009.

Respectfully submitted,

LAWRENCE E. LONG
ATTORNEY GENERAL

/s/ John P. Guhin

John P. Guhin
Scott R. Swier
Assistant Attorneys General
Sherri Sundem Wald
Deputy Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
sherri.wald@state.sd.us

UNITED STATES DISTRICT COURT
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WESTERN DIVISION

EILEEN JANIS AND KIM COLHOFF,

Plaintiffs,

v.

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Secretary of State of South Dakota and as
a member of the State Board of Elections;
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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,

Defendants.

Civ. No. 09-5019

CERTIFICATE OF SERVICE

I hereby certify that on 31st day of July, 2009, a true and correct copy of the Supplement to Defendants' Motion to Dismiss and Supplement to Defendants' Motion to Stay Discovery was served thereof was served electronically through the CM/ECF system upon the following individuals:

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

Patrick K. Duffy
Patrick K. Duffy, LLC
629 Quincy Street, Suite 105
Rapid City, SD 57701
E-mail: pduffy@rushmore.com
*Attorney for Plaintiffs,
Eileen Janis and Kim Colhoff*

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

Jeffrey R. Connolly
Donald P. Knudsen
Sara M. Frankenstein
Gunderson, Palmer, Goodsell & Nelson
P.O. Box 8045
Rapid City, SD 57709
E-mail: sfrankenstein@gpgnlaw.com
*Attorney for Defendant,
Sue Ganje*

By: /s/ Sherri Sundem Wald
Sherri Sundem Wald
Deputy Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
sherri.wald@state.sd.us

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
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Plaintiffs,)

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Civil Action No. 09-5019

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Honorable Karen E. Schreier
U.S. District Court Judge

Honorable Roger L. Wollmore
U.S. District Court Judge

Honorable Lawrence L. Piersol
U.S. District Court Judge

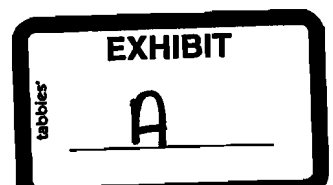
Defendants.)

**PLAINTIFFS' FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS
TO DEFENDANT SUE GANJE**

Plaintiffs, by and through counsel, request that Defendant Sue Ganje answer the following First Set of Interrogatories and Requests for Production of Documents under oath and serve them upon Plaintiffs' counsel within 30 days pursuant to Rules 26, 33, and 34 of the Federal Rules of Civil Procedure and Local Rule 26.1.

INSTRUCTIONS

In answering these Interrogatories and Requests for Production of Documents:



1. Defendant must furnish all information and documents available to the Defendant, as provided below, and not merely such documents or information as may be in the possession of or within the personal knowledge of the Defendant.

2. Defendant shall state if she cannot answer any one of these Interrogatories in full, but shall answer, to the extent possible, and specify Defendant's inability to answer the remainder of the Interrogatory and provide whatever information and/or knowledge Defendant has concerning the unanswered portion(s), and explain in full the reason(s) why Defendant cannot provide a full and complete answer.

3. In the event that the Plaintiffs claim any documents or things requested herein are subject to a claim of privilege, set forth in detail all facts upon which the claim of privilege is based, including, but not limited to, the following:

(a) The type of communication, document, or information at issue (e.g. oral, written or electronic) and the date;

(b) The name, current, or last known home and business address and the telephone number thereto, the field or position, occupation, and employer of each of the participants in such communication, document, or information, or of those individuals who were the recipients of such communication, document, or information;

(c) A description of the communication, document, or information sufficient to identify without revealing the information for which privilege is claimed;

(d) A description of the subject matter of the communication, document, or information in sufficient detail to allow the Court to adjudicate the validity of the claim of privilege;

(e) The factual and legal basis upon which Defendant claims any such privilege; and

(f) The interrogatory or part thereof to which the communications, document, or information relates.

4. The fact that an interrogatory calls in part for information which you claim to be privileged is not a basis for you to fail to identify fully all information called for by such interrogatory as to which no privilege is claimed.

5. Defendant must answer each Interrogatory separately and fully in writing. An incomplete or evasive response shall be deemed a failure to answer. When an Interrogatory herein calls for an answer in more than one part, Defendant shall separate the answer into parts so that it is clearly understandable.

6. These discovery requests are continuing in nature. If Defendant becomes aware of any additional information relating to matters into which these discovery requests inquire, Federal Rule of Civil Procedure 26(e) requires supplementation of the responses.

DEFINITIONS

As used herein:

1. The term "document" and/or "documents" means all original writings of any nature whatsoever and all non-identical copies thereof in the possession, custody, or control of Defendant, regardless of where located and regardless of whether different from the original by reason of any notation made on such copy or otherwise, and shall include, but are not limited to, agreements, records, correspondence, electronic mail, messages, communications, reports, studies, summaries, letters, minutes, notes,

memoranda, agenda, bulletins, notices, instructions, charts, manuals, pamphlets, ledgers, brochures, books, diaries, chronological data, telegrams, teletypes, inter-office and intra-office telephone calls, computer disks, newspaper articles, releases, microfiche, photographs, videotapes, audio recordings, and any type of data processing material or writing, or photocopy which can be produced from computer data or other electronic means, discovery of which is permitted by Fed. R. Civ. P 26. In all cases where the original and/or non-identical copies are not available, the terms "document" and "documents" shall also mean identical copies of original documents and copies of non-identical copies.

2. The terms "you," "your" or "Defendant" refer to Sue Ganje and are intended to embrace and include each and every agent, servant, employee, representative, private investigator, auditor, attorney, and any others who have acted or purported to act, or been employed or retained by Defendant or on behalf of Defendant in regard to this case.

3. The term "person" means any natural person, individual, proprietorship, partnership, corporation, association, organization, body politic, political subdivision, joint venture, firm, other business enterprise, governmental body, group of natural persons or other entity.

4. The terms "identify", "state", "describe" and "provide" shall mean for a natural person:

(a) The person's full name, business and residential address (or, if the current address is not known, the last known address), his/her business and residential

telephone number (or, if his/her business and residential number are not known, the last known telephone number);

(b) The full name and address of each employer and each corporation of which the person is an officer or director, and each business in which the person is a principal, or each body politic or political subdivision of which the person is an official, officer, or agent;

(c) The person's present (or, if the present is not known, the last known) job title, and the person's job title at the time of the act to which the interrogatory response relates;

(d) Any other information necessary to provide full identification of the person.

5. The terms "identify", "state", "describe", and "provide" shall mean for a document or written communication:

(a) The type of document;

(b) The date, author(s), place of preparation, and the name and address of each addressee and recipient;

(c) The relationship between the author(s) of the document and the addressee(s) of the document;

(d) The general subject matter of the document;

(e) The title, name, or heading of the document or communication with sufficient particularity that the custodian of the document can produce the document;

(f) The present or last known location of the document and the identity of the custodian for the document;

(g) The identity of each person to whom a copy was sent and each date of its receipt and each date of its transmittal or other disposition by (i) you and (ii) any other person (naming such other person) who, at any time, either received, transmitted or otherwise disposed of such document or communication and each copy thereof; and

(h) The circumstances of each such receipt and each transmittal or other disposition, including identification of the person from whom received and the person to whom transmitted.

6. The terms “identify”, “state”, “describe” and “provide” when used in reference to any entity other than a natural person mean:

(a) The full name of the entity, the type of entity, the address of its principal place of business, its principal business activity and, if it is a corporation, the jurisdiction under the laws of which it has been organized and the date of such organization;

(b) Each of the entity’s officers, directors, shareholders, or other principals; and

(c) Any other relevant information concerning the existence or identity of the entity.

7. The terms “identify”, “state”, “describe” and “provide” when used with reference to an oral communication mean:

(a) Its nature;

(b) Its substance;

- (c) The date and place thereof;
- (d) The identity and address of each person participating therein, present during, or witness to any part thereof; and
- (e) A description of each document in which such communication was recorded, described, or referred.

8. The terms “identify”, “state”, “describe” and “provide” when used in reference to an act, action, or event mean:

- (a) Its nature and the sequence of steps in its occurrence;
- (b) The date and time it occurred;
- (c) Where it occurred;
- (d) The persons who were involved;
- (e) Who or what caused the act, action, or event to occur; and
- (f) The purposes or reasons for its occurrence.

9. The terms “identify”, “state”, “describe”, and “provide” used with reference to roles or responsibilities mean:

- (a) The position occupied;
- (b) The function or part performed;
- (c) The purpose of the work performed; and
- (d) The relationship of this position, function, and purpose to others.

10. The terms “identify”, “state”, “describe” and “provide” used in any other context than herein above set forth mean:

(a) A description of the subject to be identified and specification of the documents or communications in which the subject is or was recorded, described or referred; and

(b) All other information necessary to fully identify the subject.

11. "Electronic Voter Registration System" means the official voter registration database administered by the Office of the South Dakota Secretary of State as required by the Help America Vote Act, 42 U.S.C. § 15301 *et seq.*

INTERROGATORIES

1. State the basis for each affirmative defense you raise in your Answer to the Complaint. In your answer, please state or identify:

a. Each item of documentary evidence on which you rely to support this defense;

b. The name and address of each person with knowledge of your defense; and

c. The name and address of each person you may or will call at trial to support each defense, with a summary of each witness's expected testimony.

2. For each allegation contained in Plaintiffs' Complaint for which you deny the truthfulness of that allegation, state the basis for your denial. In your answer, please state or identify:

a. Each item of documentary evidence on which you rely to support your claim.

b. The name and address of each person with knowledge of your denial.

c. The name and address of each person you may or will call at trial to support your denial, with a summary of each witness's expected testimony.

3. Identify any and all facts and accompanying documents related to Plaintiffs' attempts to vote in the 2008 primary and 2008 general elections.

4. Identify any and all persons in Shannon County responsible for compliance with federal and state election laws.

5. Identify any and all state and countywide policies, procedures, or practices for informing individuals of any and all changes to their voter registration status.

6. Identify any and all persons responsible for informing individuals of any and all changes to their voter registration status.

7. For each year since 2002, produce all documents related to statewide and countywide policies, procedures, and/or practices regarding the removal of individuals with felony convictions from the state and county voter registration lists.

8. Identify any and all statewide and countywide policies, procedures, or practices for differentiating between those persons with a felony conviction who retain the right to vote and those persons with a felony conviction who do not retain the right to vote.

9. Identify any and all statewide and countywide policies, procedures, or practices for verifying that individuals removed from the state and county voter registration lists are ineligible to vote.

10. Identify any and all statewide and countywide policies, procedures, or practices utilized if a question arises regarding the eligibility to vote of an individual removed from the voter registration lists.

11. Identify all practices and procedures related to the manner in which voter registration records are created, stored, and maintained, including:

a. Each criterion that is used under the South Dakota Electronic Voter Registration System to determine whether felony conviction records have been properly removed;

b. The manner in which information regarding felony convictions is recorded and updated in the South Dakota Electronic Voter Registration System; and

c. The roles and responsibilities of each Defendant with respect to implementing and carrying out these practices and procedures.

12. Identify the procedures and practices of the County Auditors with respect to the South Dakota Electronic Voter Registration System, including the roles and responsibilities of County Auditors with respect to implementing and carrying out these procedures and policies.

13. Identify any and all statewide and countywide policies, procedures or practices for recording, verifying, and counting provisional ballots.

14. Identify any and all statewide and countywide qualification requirements for poll workers.

15. Describe the training poll workers receive with respect to electors casting regular ballots and provisional ballots, including any specific training county employees or volunteers administer.

16. For each year since 2002, state, per year:

a. How many provisional ballots were cast in Shannon County;

b. How many provisional ballots were counted in Shannon County;
and

c. For each provisional ballot which was rejected, the basis for that rejection.

17. For each year since 2002, state, per year, how many people in Shannon County have been convicted of a felony. In your answer, state how many individuals were convicted of a felony in:

- a. A federal court;
- b. A South Dakota state court; and/or
- c. A court of another state.

18. For each year since 2002, state, per year, how many people in Shannon County have been sentenced only to probation as a result of a felony conviction. In your answer, please state how many individuals have received this sentence as a result of:

- a. A federal court conviction;
- b. A South Dakota court conviction; and/or
- c. A conviction in another state.

19. For each year since 2002, state, per year, how many Native Americans in Shannon County were convicted of a felony. In your answer, state how many individuals were convicted of a felony in:

- a. A federal court;
- b. A South Dakota state court; and
- c. A court of another state.

20. For each year since 2002, state, per year, how many Native Americans in Shannon County have been sentenced only to probation as a result of a felony conviction.

In your answer, state how many individuals have received this sentence as a result of:

- a. A federal court conviction;
- b. A South Dakota court conviction; and/or
- c. A conviction in another state.

21. For each year since 2002, state, per year, how many residents of Shannon County have had their voter registration terminated or denied, and state the reason for each termination and denial.

22. Identify all persons making answers to these interrogatories. If more than one person answers all or part of any interrogatory, please identify by respective number and part the answer made by each individual.

23. State whether you intend to rely upon any expert witnesses. If so, state the name and address of these individuals and provide a summary of each expert witness's expected testimony.

24. In addition to any potential witness identified in a response to one of the preceding interrogatories, provide the name and address of each additional witness who may have knowledge regarding any of the facts and circumstances of this case, and/or who you claim supports your defenses against Plaintiffs. For each person identified, state the facts and circumstances of which they have knowledge.

25. Identify and describe all educational materials and/ or public service announcements produced or distributed by state and/ or county officials regarding the voting rights of people with felony convictions.

26. Identify and describe all formal or informal complaints, administrative grievances, and lawsuits involving you for claims relating to the alleged denial of a person's right to vote on the grounds that they were ineligible due to a felony conviction.

FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all documents relevant to, referenced, or relied upon by you in responding to the preceding interrogatories.

2. Produce a copy of, or description by category and location of, all documents, electronically stored information, and tangible things that are in your possession, custody, or control, and that you may use to support your claims and/or defenses.

3. Provide a copy of each and every document or other exhibit, including summaries of other evidence, separately identifying those which you expect to offer into evidence at trial and those which you may offer into evidence if the need arises.

4. Produce all documents related to the Plaintiffs' voting activity in the past ten years, including:

(a) All documents related to the Plaintiffs' voter registration history, including attempts to register to vote; and

(b) Any documents related to any provisional voting and/or attempts to vote provisionally.

5. Produce copies of all documents sent to Plaintiffs regarding their removal from county and state voter registration lists.

6. For each year since 2002, produce all correspondence between Shannon County officials and the Secretary of State's office and/or the State Board of Elections regarding the removal of individuals from state and county voter registration lists.

7. For each year since 2002, produce all documents related to statewide and countywide policies or procedures regarding the removal of individuals with felony convictions from the state and county voter registration lists.

8. For each year since 2002, produce all documents related to criminal convictions of South Dakota residents received from:

- a. The U.S. Department of Justice;
- b. Any and all South Dakota state courts; and
- c. Any and all other state courts.

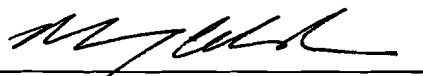
9. For each year since 2002, produce all documents related to statewide and countywide policies or procedures regarding persons whose names were removed from the county and/or state voter registration database.

10. Produce copies of all submissions to the U.S. Department of Justice and/or the U.S. District Court for the District of Columbia regarding any proposed changes to voting practices, policies, or procedures related to the voting rights of people with felony convictions.

DATED this 28th day of July, 2009.

Respectfully submitted,

By:



LAUGHLIN MCDONALD*
NANCY G. ABUDU*
BRYAN SELLS*
AMERICAN CIVIL LIBERTIES UNION,
VOTING RIGHTS PROJECT
230 Peachtree Street, Suite 1440

Atlanta, GA 30303-1227

Tel: (404) 523-2721

Fax: (404) 653-0331

lmcdonald@aclu.org

nabudu@aclu.org

bsells@aclu.org

*Admitted pro hac vice

PATRICK DUFFY

629 Quincy Street, Suite 105

Rapid City SD 57701

Tel: (605) 342-1963

Fax: (605) 399-9512

pduffy@rushmore.com

ROBERT DOODY

AMERICAN CIVIL LIBERTIES UNION,

SOUTH DAKOTA CHAPTER

401 East 8th Street, Suite 200P

Sioux Falls, SD 57103

Tel: (605) 332-2508

rdoody@aclu.org

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

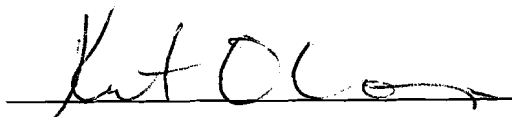
I hereby certify that a copy of the foregoing was served on counsel of record by

Federal Express, Standard Overnight delivery, addressed as follows:

Sherri Sundem Wald
John Guhin
Scott Swier
Attorney General's Office
1302 E. Highway 14, Suite 1
Pierre, South Dakota 57501-8501

Sara Frankenstein
Gunderson, Palmer, Nelson, Ashmore
440 Mt. Rushmore Road, 3rd Floor
Rapid City, South Dakota 57709

This 28th day of July, 2009.

A handwritten signature in black ink, appearing to read "K. A. Olson", is written over a horizontal line.

FedEX Attorney General
JUL 30 2009

315953

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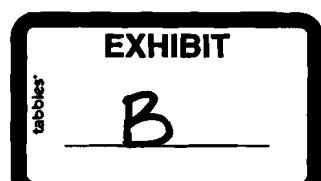
Honorable Lawrence L. Piersol
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**PLAINTIFFS' FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF
DOCUMENTS TO THE STATE DEFENDANTS**

Plaintiffs, by and through counsel, request that Defendants Chris Nelson, Matt McCauley, Cindy Schultz, Christopher W. Madsen, Richard Casey, Karen M. Layher, and Linda Lea M. Viken answer the following First Set of Interrogatories and Requests for Production of Documents under oath and serve them upon Plaintiffs' counsel within 30 days pursuant to Rules 26, 33, and 34 of the Federal Rules of Civil Procedure and Local Rule 26.1.

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(a) The type of communication, document, or information at issue (e.g. oral, written or electronic) and the date;

(b) The name, current, or last known home and business address and the telephone number thereto, the field or position, occupation, and employer of each of the participants in such communication, document, or information, or of those individuals who were the recipients of such communication, document, or information;

(c) A description of the communication, document, or information sufficient to identify without revealing the information for which privilege is claimed;

(d) A description of the subject matter of the communication, document, or information in sufficient detail to allow the Court to adjudicate the validity of the claim of privilege;

(e) The factual and legal basis upon which Defendants claims any such privilege; and

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As used herein:

1. The term "document" and/or "documents" means all original writings of any nature whatsoever and all non-identical copies thereof in the possession, custody, or control of Defendants, regardless of where located and regardless of whether different from the original by reason of any notation made on such copy or otherwise, and shall include, but are not limited to, agreements, records, correspondence, electronic mail, messages, communications, reports, studies, summaries, letters, minutes, notes,

memoranda, agenda, bulletins, notices, instructions, charts, manuals, pamphlets, ledgers, brochures, books, diaries, chronological data, telegrams, teletypes, inter-office and intra-office telephone calls, computer disks, newspaper articles, releases, microfiche, photographs, videotapes, audio recordings, and any type of data processing material or writing, or photocopy which can be produced from computer data or other electronic means, discovery of which is permitted by Fed. R. Civ. P 26. In all cases where the original and/or non-identical copies are not available, the terms "document" and "documents" shall also mean identical copies of original documents and copies of non-identical copies.

2. The terms "you," "your", or "Defendants" refer to Chris Nelson, Matt McCauley, Cindy Schultz, Christopher W. Madsen, Richard Casey, Karen M. Layher, and Linda Lea M. Viken, and are intended to embrace and include each and every agent, servant, employee, representative, private investigator, auditor, attorney, and any others who have acted or purported to act, or been employed or retained by Defendants or on behalf of Defendants in regard to this case.

3. The term "person" means any natural person, individual, proprietorship, partnership, corporation, association, organization, body politic, political subdivision, joint venture, firm, other business enterprise, governmental body, group of natural persons or other entity.

4. The terms "identify", "state", "describe" and "provide" shall mean for a natural person:

(a) The person's full name, business and residential address (or, if the current address is not known, the last known address), his/her business and residential

telephone number (or, if his/her business and residential number are not known, the last known telephone number);

(b) The full name and address of each employer and each corporation of which the person is an officer or director, and each business in which the person is a principal, or each body politic or political subdivision of which the person is an official, officer, or agent;

(c) The person's present (or, if the present is not known, the last known) job title, and the person's job title at the time of the act to which the interrogatory response relates;

(d) Any other information necessary to provide full identification of the person.

5. The terms "identify", "state", "describe", and "provide" shall mean for a document or written communication:

(a) The type of document;

(b) The date, author(s), place of preparation, and the name and address of each addressee and recipient;

(c) The relationship between the author(s) of the document and the addressee(s) of the document;

(d) The general subject matter of the document;

(e) The title, name, or heading of the document or communication with sufficient particularity that the custodian of the document can produce the document;

(f) The present or last known location of the document and the identity of the custodian for the document;

(g) The identity of each person to whom a copy was sent and each date of its receipt and each date of its transmittal or other disposition by (i) you and (ii) any other person (naming such other person) who, at any time, either received, transmitted or otherwise disposed of such document or communication and each copy thereof; and

(h) The circumstances of each such receipt and each transmittal or other disposition, including identification of the person from whom received and the person to whom transmitted.

6. The terms “identify”, “state”, “describe” and “provide” when used in reference to any entity other than a natural person mean:

(a) The full name of the entity, the type of entity, the address of its principal place of business, its principal business activity and, if it is a corporation, the jurisdiction under the laws of which it has been organized and the date of such organization;

(b) Each of the entity’s officers, directors, shareholders, or other principals; and

(c) Any other relevant information concerning the existence or identity of the entity.

7. The terms “identify”, “state”, “describe” and “provide” when used with reference to an oral communication mean:

(a) Its nature;

(b) Its substance;

- (c) The date and place thereof;
- (d) The identity and address of each person participating therein, present during, or witness to any part thereof; and
- (e) A description of each document in which such communication was recorded, described, or referred.

8. The terms "identify", "state", "describe" and "provide" when used in reference to an act, action, or event mean:

- (a) Its nature and the sequence of steps in its occurrence;
- (b) The date and time it occurred;
- (c) Where it occurred;
- (d) The persons who were involved;
- (e) Who or what caused the act, action, or event to occur; and
- (f) The purposes or reasons for its occurrence.

9. The terms "identify", "state", "describe", and "provide" used with reference to roles or responsibilities mean:

- (a) The position occupied;
- (b) The function or part performed;
- (c) The purpose of the work performed; and
- (d) The relationship of this position, function, and purpose to others.

10. The terms "identify", "state", "describe" and "provide" used in any other context than herein above set forth mean:

(a) A description of the subject to be identified and specification of the documents or communications in which the subject is or was recorded, described or referred; and

(b) All other information necessary to fully identify the subject.

11. "Electronic Voter Registration System" means the official voter registration database administered by the Office of the South Dakota Secretary of State as required by the Help America Vote Act, 42 U.S.C. § 15301 *et seq.*

INTERROGATORIES

1. State the basis for each affirmative defense you raise in your Answer to the Complaint. In your answer, please state or identify:

a. Each item of documentary evidence on which you rely to support this defense;

b. The name and address of each person with knowledge of your defense; and

c. The name and address of each person you may or will call at trial to support each defense, with a summary of each witness's expected testimony.

2. For each allegation contained in Plaintiffs' Complaint for which you deny the truthfulness of that allegation, state the basis for your denial. In your answer, please state or identify:

a. Each item of documentary evidence on which you rely to support your claim.

b. The name and address of each person with knowledge of your denial.

c. The name and address of each person you may or will call at trial to support your denial, with a summary of each witness's expected testimony.

3. Identify any and all facts and accompanying documents related to Plaintiffs' attempts to vote in the 2008 primary and 2008 general elections.

4. Identify any and all persons responsible for compliance with federal and state election laws.

5. Identify any and all statewide and countywide policies, procedures, or practices for informing individuals of any and all changes to their voter registration status.

6. Identify any and all persons responsible for informing individuals of any and all changes to their voter registration status.

7. Identify any and all statewide and countywide policies, procedures, or practices for processing the removal of an individual from the state or county voter registration lists.

8. Identify any and all statewide and countywide policies, procedures, or practices for differentiating between those persons with a felony conviction who retain the right to vote and those persons with a felony conviction who do not retain the right to vote.

9. Identify any and all statewide and countywide policies, procedures or practices for verifying that individuals removed from the state and county voter registration lists are ineligible to vote.

10. Identify any and all statewide and countywide policies, procedures or practices utilized if a question arises regarding the eligibility to vote of an individual removed from the voter registration lists.

11. Identify any and all statewide and countywide policies, procedures, or practices for recording and updating new felony conviction information into the South Dakota Electronic Voter Registration System.

12. Identify the roles and responsibilities of each Defendant with respect to the voter registration of people with felony convictions.

13. Identify any and all statewide and countywide policies, procedures, or practices for recording, verifying and counting provisional ballots.

14. Identify any and all statewide and countywide qualification requirements for poll workers.

15. Describe the training poll workers must receive with respect to electors casting regular ballots or provisional ballots.

16. For each year since 2002, state, per year:

- a. How many provisional ballots were cast in South Dakota;
- b. How many provisional ballots were counted in South Dakota; and
- c. For each provisional ballot which was rejected, the basis for that rejection.

17. For each year since 2002, state, per year, how many residents of South Dakota have been convicted of a felony. In your answer, please state how many individuals have been convicted in:

- a. A federal court conviction;

- b. A South Dakota state court conviction; and/or
- c. A conviction in another state.

18. For each year since 2002, state, per year, how many residents of South Dakota have been sentenced only to probation as a result of a felony conviction. In your answer, please state how many individuals have received this sentence as a result of:

- a. A federal court conviction;
- b. A South Dakota state court conviction; and/or
- c. A conviction in another state.

19. For each year since 2002, state how many Native American residents of South Dakota have been convicted of a felony. In your answer, please state how many individuals have been convicted in:

- a. A federal court.
- b. A South Dakota state court.
- c. A court of another state.

20. For each year since 2002, state, per year, how many Native American residents of South Dakota have been sentenced only to probation as a result of felony conviction. In your answer, please state how many individuals have received this sentence as a result of:

- a. A federal court conviction;
- b. A South Dakota state court conviction; and/or
- c. A conviction in another state.

21. For each year since 2002, state, per year, how many residents of South Dakota have had their voter registration terminated or denied and state the reason for each termination and denial.

22. Identify all persons making answers to these interrogatories. If more than one person answers all or part of any interrogatory, please identify by respective number and part the answer made by each individual.

23. State whether you intend to rely upon any expert witnesses. If so, state the name and address of these individuals and provide a summary of each expert witness's expected testimony.

24. In addition to any potential witness identified in a response to one of the preceding interrogatories, provide the name and address of each additional witness who may have knowledge regarding any of the facts and circumstances of this case, and/or who you claim supports your defenses against Plaintiffs. For each person identified, state the facts and circumstances of which they have knowledge.

25. Identify and describe all educational materials and/ or public service announcements produced or distributed by state and/ or county officials regarding the voting rights of people with felony convictions.

26. Identify and describe all formal or informal complaints, administrative grievances, and lawsuits involving you for claims relating to the alleged denial of a person's right to vote on the grounds that they were ineligible due to a felony conviction.

FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all documents relevant to, referenced, or relied upon by you in responding to the preceding interrogatories.

2. Produce a copy of, or description by category and location of, all documents, electronically stored information, and tangible things that are in your possession, custody, or control, and that you may use to support your claims and/or defenses.

3. Provide a copy of each and every document or other exhibit, including summaries of other evidence, separately identifying those which you expect to offer into evidence at trial and those which you may offer into evidence if the need arises.

4. Produce all documents related to the Plaintiffs' voting activity in the past ten years, including:

(a) All documents related to the Plaintiffs' voter registration history, including attempts to register to vote; and

(b) Any documents related to any provisional voting and/or attempts to vote provisionally.

5. Produce copies of all documents sent to Plaintiffs regarding their removal from county and state voter registration lists.

6. For each year since 2002, produce all correspondence between Shannon County officials and the Secretary of State's office and/or the State Board of Elections regarding the removal of individuals from state and county voter registration lists.

7. For each year since 2002, produce all documents related to statewide and countywide policies, procedures, and/or practices regarding the removal of individuals with felony convictions from the state and county voter registration lists.

8. For each year since 2002, produce all documents related to criminal convictions of South Dakota residents received from:


- a. The U.S. Department of Justice;
- b. Any and all South Dakota state courts; and
- c. Any and all other state courts.

9. For each year since 2002, produce all documents related to statewide and countywide policies or procedures regarding persons whose names were removed from the county and/or state voter registration database.

10. Produce copies of all submissions to the U.S. Department of Justice and/or the U.S. District Court for the District of Columbia regarding any proposed changes to voting practices, policies, or procedures related to the voting rights of people with felony convictions.

DATED this 28th day of July, 2009.

Respectfully submitted,

By: 
LAUGHLIN MCDONALD*
NANCY G. ABUDU*
BRYAN SELLS*
AMERICAN CIVIL LIBERTIES UNION,
VOTING RIGHTS PROJECT
230 Peachtree Street, Suite 1440
Atlanta, GA 30303-1227
Tel: (404) 523-2721
Fax: (404) 653-0331
lmcdonald@aclu.org
nabudu@aclu.org
bsells@aclu.org
*Admitted pro hac vice

PATRICK DUFFY
629 Quincy Street, Suite 105
Rapid City SD 57701
Tel: (605) 342-1963
Fax: (605) 399-9512
pduffy@rushmore.com

ROBERT DOODY
AMERICAN CIVIL LIBERTIES UNION,
SOUTH DAKOTA CHAPTER
401 East 8th Street, Suite 200P
Sioux Falls, SD 57103
Tel: (605) 332-2508
rdody@aclu.org

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on counsel of record by

Federal Express, Standard Overnight delivery, addressed as follows:

Sherri Sundem Wald
John Guhin
Scott Swier
Attorney General's Office
1302 E. Highway 14, Suite 1
Pierre, South Dakota 57501-8501

Sara Frankenstein
Gunderson, Palmer, Nelson, Ashmore
440 Mt. Rushmore Road, 3rd Floor
Rapid City, South Dakota 57709

This 28th day of July, 2009.

