

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION**

EILEEN JANIS and KIM COLHOFF,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Civil Action No. 09-5019
	)	
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 MCCAULEY,	)	
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 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.	)	

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT SUE GANJE'S  
MOTION TO DISMISS COUNTS 6 AND 7 OF THE AMENDED COMPLAINT**

Plaintiffs, by and through counsel, hereby file this response in opposition to Defendant Sue Ganje's motion to dismiss Plaintiffs' claims under Sections 2 and 5 of the Voting Rights Act (Counts 6 and 7, respectively) in the amended complaint and state as follows:

Plaintiffs filed the original complaint on February 18, 2009, and, on May 4, 2009, moved to file an amended complaint. [Docket Entry "D.E." 1, 49]. On July 16, 2009, Defendant Ganje filed a motion to dismiss all of the counts in the original and proposed amended complaint pursuant to Fed. R. Civ. P. 12(b)(6) or, in the alternative, a motion

for judgment on the pleadings under Fed. R. Civ. P. 12(c). [D.E. 62]. On September 11, 2009, she moved to dismiss only Counts 6 and 7 of the original complaint pursuant to Fed. R. Civ. P. 12(b)(6). [D.E. 74].

On October 2, 2009, the Court granted Plaintiffs' motion to amend the complaint. [D.E. 80]. On November 24, 2009, the Court denied Defendant Ganje's motion to dismiss all of the claims, ruling that Plaintiffs have standing to raise their claims under the Voting Rights Act, and that the remaining claims were not moot. [D.E. 106]. The Court also denied her motion to dismiss Counts 6 and 7 in the original complaint [D.E. 74] as moot in light of Plaintiffs' amended complaint. [D.E. 105].

Defendant Ganje now requests that this Court reconsider its order denying her motion to dismiss Counts 6 and 7 [D.E. 74], arguing that her motion applied to the amended complaint as well. [D.E. 108 and 109]. In the alternative, she restates, verbatim, all of the arguments asserted in the brief she filed in support of her previous motion to dismiss Counts 6 and 7. [D.E. 109]. The only change in language is that, instead of referring to the original complaint, she specifically cites to the amended complaint. Id.

Because Defendant Ganje's arguments in the instant motion [D.E. 108] are identical to the arguments she raised in her earlier motion [D.E. 74], Plaintiffs incorporate by reference the response they filed in opposition to that previous motion [D.E. 79] and ask that the Court deny her motion to dismiss Counts 6 and 7 in the amended complaint.

DATED this 21<sup>st</sup> day of December, 2009.

Respectfully submitted,

By: /s/ Patrick Duffy  
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