

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

**MEMORANDUM IN  
SUPPORT OF DEFENDANT  
SUE GANJE’S RULE 12(b)(6)  
MOTION TO DISMISS**

Defendant, Sue Ganje, by and through her counsel of record Sara Frankenstein of Gunderson, Palmer, Nelson & Ashmore, LLC, pursuant to Fed. R. Civ. P. 12(b)(6), hereby submits her Memorandum in Support of Rule 12(b)(6) Motion to Dismiss. Specifically, Defendant Sue Ganje (“Ganje”) moves to dismiss Plaintiffs’ Voting Rights Act (“VRA”) claims, Counts 6 and 7 of Plaintiffs’ Complaint (Docket No. 1).

**FACTS**

Plaintiffs have alleged that they were wrongfully removed from the voter registration list based upon their felony convictions in federal court. Eileen R. Janis is currently registered to vote in Shannon County, South Dakota. See Exhibit A, Janis Voter Registry Information. Her voter registration is dated November 4, 2008. Id. Kim Colhoff is currently registered to vote in

Shannon County, South Dakota. See Exhibit B, Colhoff Voter Registry Information. Her voter registration is dated April 8, 2009. Id.

Plaintiffs are convicted criminals within the federal criminal justice system, sentenced by this Court. Plaintiffs make no allegations regarding the federal criminal justice system – the system that affected Plaintiffs. Plaintiffs do allege that Native Americans are disproportionately represented within the South Dakota criminal justice system. The Complaint does not allege, however, that Native Americans’ disproportionate representation in the state criminal justice system is due to racial discrimination. Plaintiffs do not allege that they have less opportunity to elect representatives of their choice.

#### **STANDARD**

A motion to dismiss is properly granted if, “...it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief.” Carter v. Arkansas et al., 392 F.3d 965, 967 (8th Cir. 2004)(*quoting* Knapp v. Hanson, 183 F.3d 786, 788 (8th Cir. 1999)). Under Fed. R. Civ. P. 12(b)(6), the Court must take all the facts alleged in the complaint to be true and all inferences in favor of the non-moving party. Strand v. Diversified Collection Service, Inc., 380 F.3d 316, 317 (8th Cir. 2004)(*citing* Stone Motor Co. v. Gen. Motors Corp., 293 F.3d 456, 465 (8th Cir. 2002); Fed. R. Civ. P. 12(b)(6)). However, “Although the pleading standard is liberal, the plaintiff must allege facts--not mere legal conclusions--that, if true, would support the existence of the claimed torts. Moses.com Securities, Inc. v. Comprehensive Software Systems, Inc., 406 F.3d 1052, 1062 (8th Cir. 2005)(*citing* Schaller Tel. Co. v. Golden Sky Sys., 298 F.3d 736, 740 (8th Cir. 2002)).

A failure to set forth facts sufficient to satisfy the requisite elements of a viable claim also provides grounds to dismiss under Fed. R. Civ. P. 12(b)(6). “While a complaint attacked by

a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Benton v. Merrill Lynch & Co., Inc., 524 F.3d 866, 870 (8th Cir. 2008)(quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964-65 (2007)(internal citations omitted)). "The complaint must allege facts, which, when taken as true, raise more than a speculative right to relief." Id. (citing Twombly, 127 S.Ct. at 1965). "Where the allegations show on the face of the complaint there is some insuperable bar to relief, dismissal under Rule 12(b)(6) is appropriate." Id. (citing Parnes v. Gateway 2000, Inc., 122 F.3d 539, 546 (8th Cir. 1997)).

#### **I. Section 5 of the Voting Rights Act**

Plaintiffs allege that the Defendants failed to comply with § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, by not first preclearing their violation of South Dakota law before violating state law to remove Plaintiffs' names from the voter registration list. Plaintiffs have failed to state a claim upon which relief can be granted.

Alleged mistakes made by a county auditor do not require § 5 preclearance. Mistakes are not changes in policy or procedure that require § 5 preclearance. Courts have taken up this issue many times in the past. Perhaps most analogous is Montgomery v. Leflore County Republican Executive Committee, 776 F.Supp. 1142 (N.D.Miss. 1991). In Montgomery, the issue before the court was whether violations of Mississippi election law were changes covered by § 5 of the VRA, thus requiring preclearance. The court found that violations of Mississippi law were not changes within the meaning of § 5 and did not require preclearance. The Court held that

[t]he only allegations in the complaint relevant to the convening of a three-judge court are those that implicate § 5 of the Voting Rights Act. . . . Plaintiff contends that the violations of Mississippi law which she cites in her complaint, involve changes covered by § 5, and that those changes have not been precleared pursuant

to the statutory procedures. The issue for a three-judge court, then, is whether the acts of defendants . . . are changes within the meaning of § 5.

Id. at 1144 (internal citations omitted).

First, however, the court determined whether a three-judge panel was proper to hear the § 5 issue. The Montgomery court noted that § 5 of the Voting Rights Act provides in pertinent part as follows:

... [W]henever a State or political subdivision ... [covered by § 4] shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting different from that in force or effect on November 1, 1968, ... such State or subdivision may institute an action in the [U.S.] District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, ... and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice or procedure may be enforced without such proceeding if ... [it] has been submitted ... to the Attorney General and the Attorney General has not interposed an objection within sixty days ...

42 U.S.C. § 1973c.

The statute provides that “[a]ny action under this section shall be heard and determined by a court of three judges in accordance with the provisions of 28 U.S.C. § 2284 ...” 42 U.S.C. § 1973c. The three-judge court may adjudicate only what has become known as the “coverage” issue—that is, whether the political subdivision has adopted a change covered by § 5 without obtaining preclearance of that change. . . . If no such change occurred, or if the change was precleared, then the suit is dismissed; if a change occurred and was not precleared, then it is unlawful and may not be enforced.

Id. at 1144 (internal citation omitted).

While the statute allows for a three-judge panel to convene, most duties are properly performed by the single-judge court. “Although § 5 provides that claims arising under it are to be heard by a three-judge court, it also incorporates the provision of 28 U.S.C. § 2284.” Id. at

1144. That statute states that a single judge may conduct all proceedings except the trial, as well as enter all orders permitted by the Rules of Civil Procedure. 28 U.S.C. § 2284.

This provision stands for the proposition that the single-judge district court to whom the request for a three-judge court is made has the authority to determine if a three-judge court is required. . . . Because of the significant time and expense involved with impaneling a three-judge court, courts confronted with § 5 claims have consistently held that the single judge to whom the case is assigned may properly dismiss § 5 claims that are wholly insubstantial and completely without merit. . . . Regardless of the nature of the relief sought, a single judge has the authority to review a complaint seeking the convening of a three-judge court in order to determine whether it states a substantial claim and one over which the court would have jurisdiction; the single judge has the authority and responsibility to ascertain whether the claim is substantial and one over which the court has jurisdiction.

Id. at 1145 (internal citations omitted).

In the very case in which it authorized three-judge courts in § 5 suits, Allen v. Board of Elections, 393 U.S. at 561-62, 89 S.Ct. at 829-30, the Supreme Court explained why such panels should be sparingly invoked:

We have long held that congressional enactments providing for the convening of three-judge courts must be strictly construed ... Convening a three-judge court places a burden on our federal court system, and may often result in a delay in a matter needing swift adjudication ... Also, a direct appeal may be taken from a three-judge court to [the Supreme] Court, thus depriving us of the wise and often crucial adjudications of the courts of appeal. Thus we have been reluctant to extend the range of cases necessitating the convening of three-judge courts.

Montgomery at 1145.

The Montgomery court reiterated the rare nature of such claims requiring a three-judge panel and courts' obligation to determine whether a three-judge panel is truly necessary.

“Individuals must not be allowed to obtain a three-judge court, with its concomitant burdens, simply by intoning the catchwords of § 5. This court has an obligation to examine the complaint to determine whether it states a substantial claim.” Montgomery at 1145.

The Montgomery court found that its present situation was one whereby the defendants purportedly acted in violation of precleared Mississippi election laws that remained in full force.

The Montgomery court held that the alleged misconduct of the defendant represented “an ordinary, garden-variety election dispute; plaintiff’s attempt to convert it into a voting rights claim under § 5 is ‘completely without merit.’ . . . Thus, convening a three-judge court on such a claim would patently amount to a misuse of limited judicial resources.” Id. at 1145.

After the Montgomery court held that a three-judge panel was not properly convened in the case, it went on to find that the § 5 issue was without merit. The court referred to the VRA text and held that § 5 refers to changed practices that a subdivision ‘enacts’ or ‘seeks to administer.’ Id. at 1145. “The approval or preclearance requirements of § 5 are triggered only when ‘a state or political subdivision shall enact or seek to administer’ a change in its voting procedures. . . . In other words, some volitional action on the part of the state or a subdivision thereof is required.” Id. at 1145 (internal citations omitted). The Montgomery court found no enactment of a “change” occurred because neither the Leflore County Democratic Executive Committee nor the Leflore County Republican Executive Committee were governmental subdivisions. “The complaint merely alleges that these committees have violated Mississippi election laws. With that in mind, it is the opinion of the court that *it was not Congress’ intent for litigants to utilize § 5 of the Voting Rights Act for purposes of enforcing precleared state election laws.*” Id. at 1144 (internal citations omitted, emphasis added).

The court emphasized that its ruling did not deny plaintiffs relief otherwise available through proper avenues. “The state court has jurisdiction to hear complaints that election officials have violated state election laws. Such claims may be raised in challenges to particular election results. Therefore, while plaintiff may have valid grievances under Mississippi law, her complaint lacks a legitimate claim under § 5 of the Voting Rights Act.” Id. at 1145, (internal citations omitted).

Similarly, the Fifth Circuit case U.S. v. Saint Landry Parish School Board, 601 F.2d 859, affirmed dismissal of a § 5 claim by a district court judge without assembling two other judges. The Fifth Circuit rejected the argument that the misconduct of local election officials amounted to a § 5 voting procedure. Id. at 863.

[O]ne would not normally conclude that a state “enacts or administers” a new voting procedure every time a state official deviates from the state's required procedures. The commonsense meaning of “shall enact” indicates that action of a state, as a body, is envisioned, and we think “shall seek to ... administer” was added to cover situations when an enactment was not actually passed, but when a procedure was nonetheless widely administered with at least the implicit approval of the state governing authority ... But we can find no case which even hints that actions of a state official which are in conflict with the state's required procedures should be considered a change in voting procedures enacted or administered by the state within the meaning of § 5 ...

Id. at 864.

The Montgomery court found wide support for its decision, not only in the Fifth Circuit Saint Landry decision, but numerous others. “Litigants with garden-variety election challenges such as ballot counting or election administration have been redirected from federal court to the state tribunals. In so doing, the court has recognized that the Constitution leaves to the states broad power to regulate the conduct of federal and state elections.” Montgomery at 1146, *citing* Duncan v. Poythress, 657 F.2d 691, 702 (5th Cir.1981); Hubbard v. Ammerman, 465 F.2d 1169 (5th Cir.1972) (federal courts should “not intervene in state election contests for the purpose of deciding issues of state law”), cert. denied, 410 U.S. 910 (1973); Powell v. Power, 436 F.2d 84, 86 (2d Cir. 1970) (federal courts are neither equipped, nor empowered, to rectify every alleged election irregularity”). In Duncan v. Poythress, 657 F.2d 691, the Fifth Circuit held that administration of elections is generally a matter of state concern, and that more than an ordinary dispute over the counting and marking of ballots is required for federal intervention to be appropriate. See Griffin v. Burns, 570 F.2d 1065, 1078 (1st Cir.1978).

After examining the wealth of case law on the topic, the Montgomery court summarized its holding as follows:

It would appear then, that misconduct of election officials does not constitute a § 5 claim. The court could not simultaneously embrace plaintiff's theory and avoid thrusting itself into the details of virtually every election, tinkering with the state's election machinery, reviewing petitions, registration cards, vote tallies, and certificates of election for all manner of error and insufficiency under state and federal law.

In conclusion, the court is of the opinion that this case appears to be a local election dispute which should be resolved by the Mississippi state court. What plaintiff has conclusively labeled as § 5 changes, are no more than alleged violations of valid state laws, precleared and still adhered to by Mississippi. Thus, these allegations are meritless under § 5 and do not justify convening a three-judge court. Those portions of the complaint alleging violation of § 5 of the Voting Rights Act are dismissed with prejudice.

Montgomery at 1146 (internal citations omitted).

Many other courts have agreed that misconduct of election officials does not constitute a § 5 change. See e.g. Beatty v. Esposito, 439 F.Supp. at 832; Gordon v. Executive Committee, 335 F.Supp. 166, 169-70 (D.S.C. 1971) (three-judge court) (per curiam); Webber v. White, 422 F.Supp. at 425-28, Eccles v. Gargiulo, 497 F.Supp. at 422; Gremillion v. Rinaudo, 325 F.Supp. 375, 378 (E.D.La. 1971). In Powell v. Power, 436 F.2d 84 (2d Cir. 1970), an unsuccessful candidate and voters in a Democratic congressional primary alleged that election officials had permitted non-party members to vote in the primary, in violation of the Voting Rights Act and § 1983. The district court denied relief, and the Court of Appeals affirmed. Regarding the plaintiffs' Voting Rights Act claims, the Second Circuit stated:

Were we to embrace plaintiffs' theory, this court would henceforth be thrust into the details of virtually every election, tinkering with the state's election machinery, reviewing petitions, registration cards, vote tallies, and certificates of election for all manner of error and insufficiency under state and federal law.... (W)e are not inclined to undertake such a wholesale expansion of our jurisdiction into an area which, with certain narrow and well defined exceptions, has been in the exclusive cognizance of the state courts.

Id. at 86.

As set forth in Secretary of State Nelson's Affidavit, all applicable statutory and administrative rule provisions at issue have been precleared by Department of Justice. Nelson Affidavit ¶ 74, Docket No. 36. Plaintiffs do not contest this fact. Any deviations from those precleared provisions by local election workers or officials are neither a basis for convening a three-judge district court panel nor a cause of action under § 5. Accordingly, Plaintiffs' § 5 VRA claim should be dismissed.

## **II. Section 2 Of The Voting Rights Act**

Plaintiffs' Claim 6 of their Complaint alleges a § 2 VRA violation. Section 2 of the Voting Rights Act provides:

No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color..."

42 U.S.C. § 1973(a). As the statute states, Plaintiffs must prove that any voting abridgement occurred "on account of race or color."

Plaintiffs state in ¶ 55 of their Complaint (and ¶ 77 of their proposed Amended Complaint) that

Defendants' unlawful removal of Native Americans convicted of felonies who retain the right to vote has resulted in Native Americans, including Plaintiffs, having less opportunity than other members of the electorate to participate in the political process in violation of Section 2 of the Voting Rights Act.

The Complaint's only factual allegations supporting the "on account of race or color" requirement of a VRA claim are in ¶¶ 26 and 27 (¶¶ 38 and 39 of the proposed Amended Complaint):

26. Native Americans are disproportionately represented in South Dakota's criminal justice system. Upon information and belief, Native Americans represent a disproportionate number of those who are sentenced to probation.
27. Defendants' actions of denying voting rights to people convicted of felonies regardless of their sentence has a disproportionate and negative impact on Native Americans including Plaintiff and results in the denial of their voting rights on account of race, color, or membership in a language minority group.

Significantly, Plaintiffs do *not* allege that Native Americans are discriminated against on *account of their race* in the South Dakota criminal justice system. Plaintiffs also do not allege that Native Americans are discriminated against in the *federal* criminal justice system. Both Plaintiffs are criminals convicted within the federal criminal justice system, and sentenced by this Court.

Moreover, Plaintiffs have not alleged Defendant Ganje removed the two Plaintiffs' names from the voter registration rolls on account of race. Nor have Plaintiffs alleged that any other person violated Plaintiffs' rights on account of race. Plaintiffs sole hope of proving a § 2 VRA claim is their assertion that the state criminal justice system (not the federal criminal justice system) contains a disproportionate number of Native Americans, and that Native Americans represent a disproportionate number of those sentenced to probation. Plaintiffs have also failed to allege that they, or Native Americans as a class, have less opportunity to elect representatives of their choice.

Furthermore, Plaintiffs provide no facts to support such claims in their Complaint. Plaintiffs state no statistics or other proof of such allegations. Rather, Plaintiffs only allege *conclusions*.

It is well settled that disproportionate racial impact alone does not establish a VRA violation. Wesley v. Collins, 791 F.2d 1255, 1260-61 (6th Cir. 1986). The VRA was passed

pursuant to Congressional enforcement powers under the Fifteenth Amendment, and was intended to provide voting rights to all eligible “without distinction of race, color, or previous condition of servitude.” Beatty v. Dinkins, 478 F.Supp. 749, 751 (S.D.N.Y. 1979). The Supreme Court stated in Thornburg v. Gingles that “[t]he essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions *to cause* an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.” 478 U.S. 30, 47 (1986)(emphasis added). “That is, the Supreme Court recognized that there must be some causal connection between the challenged electoral practice and the alleged discrimination that results in a denial or abridgement of the right to vote.” Ortiz v. City of Philadelphia, 28 F.3d 306, 310 (3d Cir. 1994).

The Supreme Court has held that because felon disenfranchisement is specifically referenced in § 2 of the Fourteenth Amendment, laws disqualifying felons who have served their sentence are not subject to strict scrutiny. Richardson v. Ramirez, 418 U.S. 21, 54 (1974). In addition, three Courts of Appeal have held that laws disqualifying felons from voting are not subject to the VRA. “Congress never intended to extend the coverage of the Voting Rights Act to felon disenfranchisement.” Hayden v. Pataki, 449 F.3d 305, 332 (2nd Cir. 2006). The Eighth Circuit has not ruled on this issue, but the Second, Sixth, and Eleventh circuits agree that the VRA does not allow felon disenfranchisement suits. Muntaqim v. Coombe, 366 F.3d 102 (2nd Cir. 2004) (dismissed en banc on standing grounds in Muntaqim v. Coombe, 449 F.3d 371 (2006)); Wesley v. Collins, 791 F.2d 1255, 1262 (6th Cir. 1986); Johnson v. Governor of Florida, 405 F.3d 1214 (11th Cir. 2005).

Moreover, the VRA requires Plaintiffs to prove that they “have less opportunity than other members of the electorate to participate in the political process and to elect representative

of their choice.” Ortiz at 314; citing Chisom v. Roemer, 501 U.S. 380, 397 (1991). “That is, Section 2 plaintiffs must demonstrate that they had less opportunity both (1) to participate in the political process, and (2) to elect representatives of their choice.” Ortiz at 314. Plaintiffs have not alleged that they have less opportunity to elect candidates of their choice (by factual allegations *or* conclusory statements). Plaintiffs must allege and prove that the misapplication of state felon disenfranchisement laws “impairs their ability to influence the outcome of an election.” Ortiz at 315; citing Chisom, 501 U.S. at 397. Without such an allegation, Plaintiffs have failed to sufficiently plead a § 2 VRA violation.

Plaintiffs claim must be dismissed on yet another basis -- for failure to allege racial discrimination in the federal criminal justice system. Plaintiffs were convicted within the federal justice system, not the state system.

Despite the majority of courts ruling otherwise, only the Ninth Circuit has allowed § 2 VRA claims with regard to felon disenfranchisement. Farrakhan v. Washington, 338 F.3d 1009 (9<sup>th</sup> Cir. 2003). The Eighth Circuit will likely not reject the sound holdings of the Second, Sixth, and Eleventh Circuits and allow § 2 VRA felon disenfranchisement claims. If, however, the Eighth Circuit adopts the Ninth Circuit’s holding in Farrakhan, such requires a plaintiff to allege and prove racial discrimination in the criminal justice system. Id. at 1019. Farrakhan held that a bare statistical showing of disproportionate impact on a racial minority does not satisfy § 2, because causation cannot be inferred from impact alone. Id.

Certainly, plaintiffs must prove that the challenged voter qualification denies or abridges their right to vote on account of race, but the 1982 Amendments and subsequent case law make clear that factors outside the election system can contribute to a particular voting practice’s disparate impact *when those factors involve race discrimination*.

Id. at 1019 (emphasis added). Even the expansive view of the Ninth Circuit in Farrakhan requires the Plaintiffs to allege more than they have – Plaintiffs must allege discrimination in the criminal justice system.

In addition, it is only logical that Plaintiffs allege discrimination in the federal criminal justice system – the system which convicted and sentenced them. It is absurd to allege that a system which did not affect the Plaintiffs discriminated against them in a way which deprived them of their voting rights on account of their race.

Furthermore, Plaintiffs provide no facts to support such claims in their Complaint. Plaintiffs state no statistics or other proof of such allegations. Rather, Plaintiffs only allege conclusions. The Supreme Court held that a complaint must allege more than conclusions. Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007); Moses.com Securities, Inc. v. Comprehensive Software Systems, Inc., 406 F.3d 1052, 1062 (8th Cir. 2005)(*citing* Schaller Tel. Co. v. Golden Sky Sys., 298 F.3d 736, 740 (8th Cir. 2002)). This basis alone requires dismissal of Plaintiffs’ VRA claims.

## **CONCLUSION**

Based upon the aforementioned arguments and authorities, Sue Ganje respectfully requests the Court enter an Order dismissing the Plaintiffs’ VRA claims. Dismissal is appropriate under Fed.R.Civ.P. 12(b)(6), because Plaintiffs failed to set forth facts sufficient to state claims upon which relief can be granted.

Specifically, Plaintiffs have failed to allege:

1. A § 5 VRA claim recognized by any court in the land;
2. A § 2 VRA felon disenfranchisement claim recognized by the Eighth Circuit;

3. That Plaintiffs were racially discriminated against when denied their right to vote as required by § 2;
4. That Plaintiffs were racially discriminated against in the federal criminal justice system;
5. That Plaintiffs were affected by the state criminal justice system, and that the state criminal justice system has a disproportionate number of Native American felons due to racial discrimination within the justice system;
6. That Plaintiffs have less opportunity to elect representatives of their choice; and
7. Any fact whatsoever to serve as the basis for their conclusory allegation that § 2 was violated.

All of the above allegations are required to sufficiently plead a § 2 and § 5 VRA claim.

Plaintiffs have not properly pleaded their claims, and the Court must dismiss their VRA claims for failure to state a claim upon which relief can be granted.

Dated: September 11, 2009.

GUNDERSON, PALMER, NELSON  
& ASHMORE, LLP

By: *s/Sara Frankenstein*

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**CERTIFICATE OF SERVICE**

I hereby certify on September 11, 2009, a true and correct copy of **MEMORANDUM IN SUPPORT OF DEFENDANT SUE GANJE'S RULE 12(b)(6) MOTION TO DISMISS** was served electronically through the CM/ECF system upon the following individuals:

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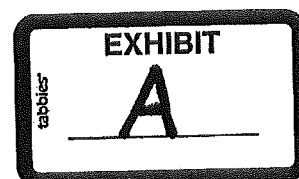
By: :/s/Sara Frankenstein  
Sara Frankenstein

Shannon County                      Voter Display  
Voter's Id: J0465 060500000  
Voter's Name: JANIS, EILEEN R  
Address: PO BOX 525                      Sex:  
          PINE RIDGE SD  
          57770  
Date Registered: 11/04/08              Party: DEMOCRAT  
Twp/City: 98 NOT IN FIRE DIS      Ward:        PIN  
School: 01 SHANNON        65-1      Precinct: 3  
Election History:                      Date Last Voted:

Phone Number:  
Date of Birth:  
Old SS#/DrL#: 000000000  
DriversLic:  
DriversLicState: SD  
Last 4 of SS#:  
Water Dist:  
Special District: 00  
Commissioner District: 04

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Shannon County                      Voter Display  
Voter's Id:    C1810 060500000  
Voter's Name: COLHOFF, KIM A  
Address:       GENERAL DELIVERY                      Sex:  
                 PINE RIDGE SD  
                 57770  
Date Registered: 4/08/09                      Party: DEMOCRAT  
  
Twp/City: 98 NOT IN FIRE DIS    Ward:            PIN  
School: 01 SHANNON            65-1    Precinct: 1  
  
Election History:                      Date Last Voted:

Phone Number:  
Date of Birth:  
Old SS#/DrL#:                      000000000  
DriversLic:  
DriversLicState:                      SN  
Last 4 of SS#:  
Water Dist:  
Special District:                      00  
Commissioner District:                      03

ENTER to Continue Search

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