

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

**DEFENDANT GANJE'S  
MEMORANDUM IN OPPOSITION  
TO PLAINTIFFS' MOTION TO  
COMPEL**

Defendant, Sue Ganje, by and through her counsel of record, Sara Frankenstein of Gunderson, Palmer, Nelson & Ashmore, LLP, hereby submits this Memorandum in Opposition to Plaintiffs' Motion to Compel. Plaintiffs have moved to compel responses or additional responses to Interrogatory Nos. 16 - 21; and Request for Production Nos. 6 – 10.

Defendant Sue Ganje (Ganje") does not oppose Plaintiffs' request for an extension of time to file expert reports. Ganje requests that her extensions to file expert reports are extended in a like manner. All motions to dismiss need to be adjudicated by the Court before the parties will know the scope of this case, as well as the need for experts and other discovery.

## INTRODUCTION

All parties met and conferred via a telephonic conference on August 19, 2009, regarding Plaintiffs' discovery requests. At such conference, Ganje informed Plaintiffs of the basis behind her objections to certain discovery requests. Ganje proposed the parties wait until the Court rules on the various pending motions to dismiss before moving to compel. Ganje indicated that much of the requested discovery was not within Ganje's possession, custody or control. Ganje suggested that Plaintiffs make Freedom of Information Act requests of any state or federal agencies and counties in order to obtain their requested information not in Ganje's possession, custody or control. Plaintiffs refused these suggestions.

Several Motions are before the Court, which should be adjudicated before determining discovery matters in this case. Pending before the Court are the following motions:

- State Defendant's Motion to Dismiss, or in the Alternative, Motion for Judgment on the Pleadings and to Toll Discovery Pending Disposition of State's Motions (Docket No. 55, 56, 64 and 65);
- Defendant Ganje's Motion to Dismiss on Mootness and Standing Grounds (Docket Nos. 66 and 67); and
- Defendant Ganje's Motion to Dismiss for Failure to State a Claim (Docket Nos. 74 and 75).

Once the Court has ruled on these Motions, the scope of this case will be defined. Only after such adjudication will the parties know what discovery is relevant in this case.

For the Court's convenience, a true a correct copy of Ganje's Responses to Plaintiffs' First Set of Interrogatories and Requests for Production of Documents is attached as Exhibit A.

## PLAINTIFFS' DISCOVERY REQUESTS

**Interrogatory No. 16** – Plaintiffs' Interrogatory No. 16 states as follows:

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.

Ganje objected on the grounds that such requests were outside the scope of this litigation and irrelevant; the information is obtainable from other sources that are more convenient, less burdensome, and less expensive; and the burden and expense of the request outweighed any likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

Plaintiffs' proposed Amended Complaint does not allege that Kim Colhoff even attempted to vote or requested a provisional ballot. Plaintiffs' proposed Amended Complaint alleges that Eileen Janis was denied a provisional ballot when she attempted to vote. Therefore, according to Plaintiffs' allegations, neither Plaintiff voted provisionally. This case is not a class action, and does not involve any other plaintiffs other than Kim Colhoff and Eileen Janis. Because neither cast provisional ballots, it is not relevant how many provisional ballots were cast in Shannon County. Nor is it relevant how many provisional ballots were counted in Shannon County and the basis for each provisional ballot's rejection. Plaintiffs are attempting to greatly expand the scope of this litigation by searching for additional plaintiffs, or to somehow allow the current Plaintiffs to sue on behalf of people who actually cast provisional ballots. Either attempt is improper under the authority discussed below. Plaintiffs make no attempt to state the relevancy or importance of other voters' provisional ballots to Plaintiffs' claims.

**Interrogatory No. 17** – Plaintiffs' Interrogatory No. 17 states as follows:

- 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.

Defendants responded with the same objections indicated above. Defendants went on to state that “Defendant Ganje has supplied this information relevant to the Plaintiffs. Such information with regard to others fall under the above objections.”

Many problems present itself with this interrogatory. First, Ganje has supplied all information relevant to the Plaintiffs. Plaintiffs request for other people’s felony information is an attempt to find additional plaintiffs, or to somehow allow the current Plaintiffs to sue on behalf of other felons. Moreover, both Plaintiffs were convicted in federal court, yet they request all individuals in Shannon County convicted of a felony in a South Dakota state court. Plaintiffs request state court information, yet their claims revolve solely around their conviction in federal court. Furthermore, Plaintiffs request how many individuals were convicted of a felony in other states. Plaintiffs fail to attempt any showing at relevance or importance for this request.

Moreover, Defendant Ganje simply does not have possession, custody or control of other states’ felony conviction records. If Plaintiffs wish to obtain this information, they simply need to make a Freedom of Information Act request upon any and all governmental agencies they would like.

**Interrogatory No. 18** – Plaintiffs Interrogatory No. 18 states as follows:

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.

Defendants responded with the same objections, and stated “Defendant Ganje has supplied this information relevant to the Plaintiffs. Such information with regard to others fall under the above-objections.”

This interrogatory is the same as No. 17, except No. 17 requests information for all felons, whereas No. 18 requests information for felons sentenced only to probation. Defendants objections apply for the same reasons as indicated above under Interrogatory No. 17.

**Interrogatory No. 19** – Plaintiffs’ Interrogatory No. 19 states as follows:

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.

Defendant’s response objected for the same reasons as above and stated “Defendant Ganje has supplied this information relevant to the Plaintiffs. Such information with regard to others fall under the above objections.”

This discovery request asks the same information as No. 17, but requests the information by race—for only Native Americans. Therefore, Defendants objections listed above relate here. Moreover, the information Defendant Ganje supplied clearly indicates that such information is not broken down by race. Defendant Ganje would have no way to know which felons are Native American.

**Interrogatory No. 20** – Plaintiffs’ Interrogatory No. 20 states as follows:

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.

Defendants responded with the same objections and indicated all information relevant to Plaintiffs have been previously provided.

Interrogatory No. 20 is the same as No. 18, except it requests such information by race -- for Native Americans. All objections listed above apply.

**Interrogatory No. 21** – Plaintiffs’ Interrogatory No. 21 states as follows:

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.

Defendants responded with all objections indicated above, and indicated that all information relevant to Plaintiffs had been previously provided.

Plaintiffs allege their names were improperly removed from the voter registration list based on Plaintiffs’ felony convictions. Plaintiffs have not alleged that Ganje removed their names for any other reason. While Plaintiffs attempt to sue on behalf of other unknown and speculative persons, the Complaint does not allege that such unknown persons had their voter registrations terminated or denied based on anything other than felony convictions. Therefore, there is no relevance to Plaintiffs’ request for other Shannon County residents’ voter registration termination based on issues other than felony convictions. A response to this interrogatory would require listing all people whose names were removed due to death, moving, inactive voting, etc. It would also require listing names of people who registered without listing proper information, registered more than once, were ineligible registrants, etc. Such requests are not only irrelevant, but extremely burdensome. Of course, only the Plaintiffs are at issue in the case, and such evidence could not possibly bear upon their claim that their names were improperly removed from the voter registration list. Plaintiffs have not stated how such a request could be relevant or important to their case.

**Request for Production No. 6** – Request No. 6 states as follows:

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.

Defendants responded "See objections above. With respect to Plaintiffs Janis and Colhoff, please see SCA 55-60, previously produced and SCA 90-112 and 302-340, attached hereto."

SCA 55-60 are correspondence between Shannon County and the Secretary of State's Office regarding the Plaintiffs' felony convictions. SCA 90-112 include training material Ganje received from the State instructing how to register voters and maintain the statewide voter registration file. SCA 302-340 includes correspondence from the Secretary of State's Office to Ganje instructing Ganje how to remove felons from the registry, and confirming for Ganje the removal of certain felons. Attached to the correspondence is a listing of federally-convicted felons the South Dakota U.S. Attorney's Office sent to the Secretary of State, which in turn, sent the document to Ganje. Any other correspondence in existence comes from the U.S. Attorney's Office and refers solely to felons other than Plaintiffs. In other words, Ganje has provided all correspondence and instruction requested regarding the removal of felons other than letters originating from the South Dakota U.S. Attorney's Office solely regarding other felons.

**Request For Production No. 7** – Request No. 7 states as follows:

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.

Defendants' responded "See objections above. With respect to Shannon County, see SCA 90-112, previously produced and SCA 90-112 and 302-340, attached hereto." Ganje has supplied *all* information relevant to Shannon County policies or procedures, including any statewide instruction she possesses, and Ganje possesses no documents regarding other counties' policies. Ganje should not be compelled to obtain and submit documents possessed only by the other 65 counties in South Dakota. The documents and policies of the other 65 South Dakota counties are not only entirely irrelevant, but also overly burdensome, and can be obtained by Plaintiffs from those counties.

In addition, Defendant Ganje has produced all statewide information that she has. Further requests for statewide information more properly made to State Defendants sued in this action.

**Request for Production No. 8** – Request No. 8 states as follows:

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.

Request No. 8 requests the same information as in Interrogatories No. 16 through 20, addressed above.

**Request For Production No. 9** – Request No. 9 states as follows:

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.

Again, Defendant Ganje can only respond regarding her policies and procedures for Shannon County and those statewide procedures that she has in her possession. Ganje has submitted all such documents regarding felony convictions. Plaintiffs request for 65 other

counties are not properly made to Defendant Ganje. Statewide documents not in Ganje's possession should be requested from State Defendants.

Plaintiffs request all documents related to all persons removed from the county and state voter registration database. Such is far outside the scope of this litigation. This request does not limit itself to persons removed for felony convictions. It is entirely irrelevant to request information regarding persons whose names were removed from the database for reasons other than felony conviction. For instance, policies to remove persons due to death or moving out of state have absolutely nothing to do with this case. Plaintiffs have not stated the relevance or importance of this information.

**Request For Production No. 10** – Request No. 10 states as follows:

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.

It is disingenuous for Plaintiffs to claim they need such preclearance submissions when Plaintiffs' attorneys have been copied on all such submissions made on Shannon County's behalf. Such submissions are extremely voluminous, and there is no need for Defendants to replicate them and send Plaintiffs counsel yet another copy. Moreover, the Rules of Civil Procedure allow Defendant Ganje to indicate to the Plaintiffs where they might find such documents. Ganje has indicated that Plaintiffs should look to their own attorneys' office, which houses copies of all these submissions. Ganje has no other submissions to disclose other than those the state made on Shannon County's behalf.

## ARGUMENT

Federal Rule of Civil Procedure 26(b)(1) indicates that all discovery is subject to the limitations imposed by Rule 26(b)(2)(C). That provision indicates the Court *must* limit the frequency or extent of discovery otherwise allowed by the Rules if it determines that

- (i) The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
- (ii) The party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
- (iii) The burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

Fed. R. Civ. P. 26(c)(1)(A) and (D) allow the Court to forbid or limit discovery inquiry into certain matters, limiting the scope of discovery. Ganje will be joining in the State Defendants' Motion for Protective Order shortly.

Fed. R. Civ. P. 26(b)(1) and the Advisory Committee's note to the 2000 Amendments to Rule 26(b)(1) indicates the Court "has the authority to confine discovery to the claims and defenses asserted in the pleadings, and signals to the parties that they have no entitlement to discovery to develop new claims or defenses that are not already identified in the pleadings." The Advisory Committee's note also indicates that "the actual scope of discovery should be determined according to the reasonable needs of the action." Id.

For the reasons indicated below, the Plaintiffs' discovery requests at issue are irrelevant; can be obtained from another more convenient and less burdensome and expensive source; not in Defendant Ganje's possession, custody or control; are duplicative; and the burden and expense of the discovery greatly outweighs any possible benefit.

## **1. Plaintiffs' Claims are Moot**

As previously briefed in Docket Nos. 66, 67, 74, and 75, Plaintiffs' claims are moot. Article III of the Constitution requires a "case or controversy" to exist at every stage in the litigation before the Court can reach the merits of a case. See Schanou, 62 F.3d at 1042. A "case or controversy" requires "a definite and concrete controversy involving legal interests at every state in the litigation." McFarlin v. Newport Special Sch. Dist., 980 F.2d 1208, 1210 (8th Cir. 1992).

Plaintiffs request an injunction to place their names back on the voter registration rolls. Both Plaintiffs are currently on the voter registration rolls. Moreover, Defendant Ganje has testified that she will not be removing either Plaintiff's name without a court order instructing her to do so. See Ganje Affidavit. As the Eighth Circuit has found, this conduct renders moot Plaintiffs' request for declaratory judgment and all injunctive relief. Plaintiffs' requests for discovery to build their injunctive case is therefore moot.

## **2. Plaintiffs Lack Standing**

Plaintiffs have no standing to pursue the majority of their requested relief and therefore their discovery requests are also irrelevant. Standing "is perhaps the most important of the jurisdictional doctrines." U.S. v. Hays, 515 U.S. 737, 742 (1995). The United States Supreme Court has clearly indicated "the irreducible constitutional minimum of standing" which contains three elements. Id. First, the Plaintiff must have suffered an "injury in fact" which is defined as an invasion of a legally protected interest that is a) concrete and particularized; and b) actual or imminent, not conjectural or hypothetical. Id. at 743. Second, there must be a causal connection between the injury and the conduct complained of. Id. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. Id. The U.S.

Supreme Court has characterized these principles by repeatedly refusing “to recognize a generalized grievance against allegedly illegal government conduct as sufficient for standing to invoke the federal judicial power.” Id. The burden is upon the party seeking the exercise of jurisdiction in his favor, who must clearly allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute. Id.

“The rule against generalized grievances applies with as much force in the equal protection context as in any other.” Id. In Allen v. Wright, 468 U.S. at 755, the U.S. Supreme Court made clear that even if a governmental actor is discriminating on the basis of race, the resulting injury “accords a basis for standing only to those persons who are personally denied equal treatment by the challenged discriminatory conduct.” Hays at 743-44; citing Allen at 755. “Only those citizens able to allege injury as a direct result of having *personally* been denied equal treatment may bring such a challenge, and citizens who do so carry the burden of proving their standing, as well as their case on the merits.” Hays at 746, citing Allen at 755.

“Federal courts, bound by Article III, are ‘not empowered to seek out and strike down any governmental act that they deem to be repugnant to the Constitution.’” Dillard v. Chilton Co. Commission, 495 F.3d 1324, 1331 (11th Cir. 2007); citing Hein v. Freedom From Religion Found., Inc., 127 S.Ct. 2553, 2562 (2007). “[A] plaintiff raising only a generally available grievance about government – claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large – does not state an Article III case or controversy.” Id. at 2563-64 (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992)). As in Lance v. Coffman, “[t]he only injury . . . allege[d] is that the law . . . has not been followed. This injury

is precisely the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past.” 127 S.Ct. 1194, 1198 (2007) (per curium).

For Plaintiffs to demonstrate standing under their Voting Rights Act claims, they must demonstrate that the injury is likely to be redressed by the requested relief; the plaintiff[s] must assert his own legal rights and interest, not those of a third party; and the injury must consist of more than a generalized grievance that is shared by many. Newman v. Voinovich, 789 F.Supp. 1410, 1415 (S.D. Ohio 1992) (emphasis added), citing Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 471-77 (1982).

“Moreover, when . . . the plaintiff is seeking injunctive relief he must establish that he personally faces a realistic, immediate, and non-speculative threat of being prospectively subjected to or harmed by the particular conduct at issue.” Newman at 1415.

Plaintiffs Janis and Colhoff do not have standing to assert claims of other persons. Nor should Plaintiffs Janis and Colhoff’s Complaint be used as a method to discover other potential plaintiffs and other potential defendants. Ashcroft v. Iqbal, 129 S.Ct. 1937, 1953 (2009). The majority of Plaintiffs’ discovery requests are precisely that – attempts to find other plaintiffs and other defendants. Plaintiffs may not engage in burdensome and expensive discovery by alleging speculative, similar wrongdoing against other potential defendants not named in this lawsuit. Neither should Plaintiffs be allowed to discovery how injunctive relief may affect others not a party to this lawsuit.

### **C. Relief For Nonparties**

Much of Plaintiffs discovery requested seeks to define how injunctive relief would benefit nonparties. Plaintiffs may not seek injunctive relief which does not directly address their own injury. In Professional Ass’n of Coll. Educators v. El Paso County Cmty. Coll. Dist., 730

F.2d 258, 275 (5th Cir. 1948), the court held that “[i]ntrusion of federal courts into state agencies should extend no further than necessary to protect federal rights *of the parties*.” (emphasis added). “An injunction, however, is not necessarily made overbroad by extending benefit or protection to persons other than prevailing parties in the lawsuit—even if it is not a class action—if *such breadth is necessary to give prevailing parties the relief to which they are entitled*.” (emphasis added). *Id.* at 273-74. The Professional Ass’n court vacated the district court’s injunctions as it applied to persons other than the plaintiff injured. The district court could not infer why protecting nonparties was necessary to relieve the injured plaintiff. *Id.* The Fifth Circuit found the district court “could not have concluded that protecting [nonparties] was necessary to grant it full relief as a prevailing party.” *Id.* The United States Supreme Court recently discussed this topic in Horne v. Flores, 129 S.Ct. 2579, 2606 (2009) (stating that it is not apparent that plaintiffs had standing to seek injunctive relief beyond that affecting plaintiffs).

#### **D. Relevancy under § 2 of the VRA**

Interrogatory Nos. 17, 18, 19, 20 and Request for Production No. 8, request information about convictions in South Dakota state court and other state courts. This lawsuit revolves around two Plaintiffs who are convicted felons within the *federal* court system. As indicated in previous briefing, information regarding a criminal justice system which did not affect Plaintiffs is irrelevant to Plaintiffs’ claims. Plaintiffs cannot possibly allege (and have not alleged), that any information gleaned from South Dakota state courts and courts of other states could possibly affect or have previously affected Plaintiffs’ ability to vote.

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.”

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). 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. Yet, Plaintiffs seek discovery in hopes of proving racial discrimination in the state and federal court systems.

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.

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 Cr. 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 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.

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. Yet, Plaintiffs seek discovery to prove precisely that (or solely in an effort to find additional plaintiffs).

#### **E. Discovery Obtainable from Other Sources**

Much of Plaintiffs' discovery requested are obtainable from public agencies, and Plaintiffs need only make a Freedom of Information Act request for such documents and pay for their replication themselves. Obviously, South Dakota state criminal data is obtainable from the Unified Judicial System. Federal criminal data is obtainable from the federal criminal justice system, and other states' criminal data is obtainable from those states. Other counties policies and procedures are available from those other counties.

Moreover, much of the discovery requested is not in Defendant Ganje's possession, custody or control. Ganje cannot produce what she does not have.

#### **F. Burden and Expense Outweigh the Likely Benefit**

The burden and expense of Plaintiffs' discovery requests outweigh any possible benefit, considering the mootness, standing, and failure to state a claim arguments above. Moreover, such discovery does not aid Plaintiffs in proving Plaintiffs' need for their requested injunctive relief. Plaintiffs needs in this case are far more limited and straight-forward.

The amount in controversy is paltry in this case, and Plaintiffs' primary goal is to obtain injunctive relief for others. Considering the importance of the actual stakes of this litigation, the actual relief in controversy, the actual needs in the case, and Shannon County's resources, the discovery sought should be denied. Shannon County is the poorest county in the nation, and Plaintiffs' onerous, time-consuming, and expensive discovery is not needed to resolve the case, particularly in light of the needs to prove Plaintiffs' limited case.

## CONCLUSION

The Court should rule on the outstanding motions, which will determine the scope of this case. The Court should re-set the parties' deadlines to disclose experts, as the experts needed turn on the Courts' determination of the scope of this case. The Court should deny Plaintiffs' motion for sanctions. If the Court grants Plaintiffs' Motion, Defendant Ganje requests an *in camera* review to determine the relevance of such discovery.

Dated: September 28, 2009.

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**CERTIFICATE OF SERVICE**

I hereby certify on September 28, 2009, a true and correct copy of **DEFENDANT GANJE'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL** was served electronically through the CM/ECF system upon the following individuals:

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By: *s/Sara Frankenstein*  
Sara Frankenstein

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

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

Defendant Sue Ganje, for her responses to Plaintiffs' First Set of Interrogatories and Request for Production of Documents, deposes and states as follows:

Defendant Ganje herein preserves the following objections to Plaintiffs' interrogatories and requests for production as if individually listed in each of Defendant Ganje's responses.

**Outside the Scope of this Litigation** – Plaintiffs' discovery requests are irrelevant to their claims and not reasonably calculated to lead to the discovery of admissible evidence.

**Obtainable from Other Sources** – Plaintiffs' discovery requests are unreasonably cumulative and duplicative, and can be obtained from other sources that are more convenient, less burdensome, and less expensive.

**Burden and Expense Outweigh Benefit** – The burden and expense of Plaintiff's discovery requests outweigh any likely benefit, considering the needs of the case, the amount in

controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

Any Responses provided below are provided without waiving the above objections.

### 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.

#### **Response:**

Defendant Ganje's affirmative defenses 1, 2, and 3 involve primarily legal issues, for which little or no factual evidence is required.

*First Affirmative Defense:* The Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

This defense involves legal analysis.

*Second Affirmative Defense:* 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.

This defense involves primarily legal analysis.

- a. Please see public entity pool coverage previously submitted as Bates stamp numbers SCA 1-54.
- b. N/A
- c. N/A

*Third Affirmative Defense:* 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.

This defense involves legal analysis.

*Fourth Affirmative Defense:* 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.

- a. None at this time. Discovery continues and this answer will be supplemented should any become known.
- b. Sue Ganje. Defendant anticipates that Shannon County poll workers may also have knowledge regarding this defense. Discovery continues and this answer will be supplemented should additional witnesses become known.
- c. See above. Defendant Ganje will testify that she had no intent to deny Plaintiffs their rights allegedly deprived.

*Fifth Affirmative Defense:* Waiver and laches.

- a. See Bates stamp numbers SCA 61, 65, and 121.
- b. Sue Ganje and Chris Nelson. Defendant anticipates that Shannon County poll workers or Defendant Ganje's staff may also have knowledge regarding these defenses. Discovery continues and this answer will be supplemented should additional witnesses become known.
- c. See above. Defendant Ganje and/or her staff will testify that her office mailed each Plaintiff Bates-stamped document SCA 61 and 65, and that neither mailing was returned as undeliverable. Defendant Ganje and/or her staff will testify that her office received no phone calls or other communications from Plaintiffs regarding their voter status prior to election day. Defendant Ganje and/or her staff will testify that Plaintiff Colhoff was trained regarding election law, including the use of provisional ballots. Chris Nelson will likely testify that Plaintiffs made no attempts to retain their right to vote with his office. Discovery continues and this answer will be supplemented should additional witnesses become known.

*Sixth Affirmative Defense:* Plaintiffs failed to exhaust their administrative remedies, barring suit.

- a. None at this time. Discovery continues and this answer will be supplemented should documents become known.
- b. Chris Nelson
- c. Defendant anticipates that Chris Nelson will testify that neither Plaintiff filed complaints or made other communications with the Secretary of State's Office regarding their voter status.

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.

**Response:**

*Paragraph 2* deals with legal issues only.

*Paragraph 3* deals with legal issues only.

*Paragraph 5:* Plaintiff Janis was not denied the right to vote provisionally. See ¶ 15 below.

*Paragraph 13:* Plaintiff Janis was removed from the voter registration list based on her felony conviction and Plaintiff Janis' lack of taking the steps necessary to prevent her removal. Plaintiff Janis did not take the steps to exercise her ability to vote, which would have cured the situation.

- a. See Bates stamp number SCA 61.
- b. Chris Nelson and Sue Ganje.
- c. Defendant anticipates that Chris Nelson and Sue Ganje will testify that Plaintiff Janis did not take any steps to prevent her removal from the registration list or to exercise her ability to vote.

*Paragraph 14:*

- d. See Bates stamp number SCA 61.
- e. Sue Ganje
- f. Sue Ganje will testify that her office mailed Plaintiff Janis the letter indicated above and it did not come back in the mail as undeliverable.

*Paragraph 15:*

- a. See Bates stamp number SCA 121.
- b. None at this time. Discovery continues and this answer will be supplemented should witnesses become known.
- c. See above.

*Paragraph 16:*

- a. See Bates stamp numbers SCA 121.
- b. None at this time. Discovery continues and this answer will be supplemented should witnesses become known.
- c. See above.

*Paragraph 17:*

- a. See Bates stamp number SCA 121.
- b. None at this time. Discovery continues and this answer will be supplemented should witnesses become known.
- c. See above.

*Paragraph 22:*

- a. See Bates stamp number SCA 65.
- b. Sue Ganje.
- c. Defendant Ganje will testify that her office mailed Plaintiff Colhoff Bates-stamped document SCA 65, and that this mailing was not returned as undeliverable. Discovery continues and this answer will be supplemented should additional witnesses become known.

*Paragraph 23:*

- a. See Bates stamp numbers SCA 90-112, 130, 131-202, 203-299, and 300-301.
- b. Sue Ganje.
- c. Sue Ganje will testify that Plaintiff Colhoff was a Shannon County poll worker for years. As such, Plaintiff Colhoff received many training sessions and materials regarding the use of provisional ballots.

*Paragraph 24:*

- a. See Bates stamp number SCA 121. Discovery continues and this answer will be supplemented should documents become known.
- b. Discovery continues and this answer will be supplemented should witnesses become known.
- c. None at this time. Discovery continues and this answer will be supplemented should witnesses become known.

*Paragraph 27 involves legal issues.*

- a. None at this time. Discovery continues and this answer will be supplemented should documents become known.
- b. Sue Ganje and/or Shannon County poll workers.
- c. Sue Ganje and/or Shannon County poll workers will likely testify that Plaintiffs were not denied their right due vote on account of race or color.

*Paragraph 30:*

- a. See Bates stamp numbers SCA 88-89.
- b. Sue Ganje.

- c. Sue Ganje will testify that Plaintiffs are currently registered to vote and will not be removed from the voter registration list without a court order.

*Paragraph 31:* See Response above. See also Plaintiff's Complaint requesting damages.

*Paragraph 35:* See Responses to paragraphs 13-17, 22-24, 27 and 30 above.

*Paragraph 39:* See numerous Responses addressing these facts.

*Paragraph 40:* See responses to paragraphs 13-17, 22-24, 27, and 30 above.

*Paragraph 42:* Voters may be removed from my registration list for numerous reasons under South Dakota election statutes and administrative rules.

*Paragraph 43:* See numerous Responses above addressing these facts.

*Paragraph 44:* None.

*Paragraph 47* involves legal issues only.

*Paragraph 48* involves legal issues only.

*Paragraph 50* involves legal issues only.

*Paragraph 55:*

- a. See Bates stamp number SCA 121.
- b. Sue Ganje and Shannon County poll workers.
- c. Defendant Ganje and/or Shannon County poll workers will likely testify that Plaintiffs were not denied their right to vote on account of race or color.

*Paragraph 57* involves legal issues only.

*Paragraph 61:*

- a. See Bates stamp number SCA 121.
- b. Sue Ganje and/or Shannon County poll workers.
- c. Sue Ganje and/or Shannon County poll workers will likely testify that people are afforded provisional ballots uniformly.

3. Identify any and all facts and accompanying documents related to Plaintiffs'

attempts to vote in the 2008 primary and 2008 general elections.

**Response:** Ganje is unaware of any attempts to vote by Janis or Colhoff in the June 2008 Primary. However, Plaintiff Colhoff was a paid poll worker at the June 2008 election and has served as a poll worker for numerous other

elections. In addition, Ganje has no information at this time relating to Janis or Colhoff attempting to vote at the November 2008 general election. Shannon County poll workers wrote a note stating "Eileen Janis not found. Voted Provisional. Found in pulled file per conviction" made during the November 2008 election. See SCA 121, previously produced.

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

**Response:** In addition to the individuals identified in Ganje's June 15, 2009, Rule 26 Initial Disclosures, the following individuals:

James Sword, Shannon County State's Attorney, 906 N. River Street, Hot Springs, SD 57747, (605) 745-3866; contact only through attorney Sara Frankenstein;

Patricia Seegrist, Shannon County Deputy Auditor/Payroll Clerk, c/o attorney Sara Frankenstein;

Julie Graham, Shannon County Election Clerk, c/o attorney Sara Frankenstein;

Laurie Theilmann, Shannon County Bookkeeper, c/o attorney Sara Frankenstein;

Michele Jensen, Shannon County Payables, c/o attorney Sara Frankenstein;

Beth Stewart, Shannon County Data Processing, c/o attorney Sara Frankenstein;

Rosemarie Dillingham, P.O. Box 5019, Pine Ridge, SD 57770, (605) 867-5609, c/o attorney Sara Frankenstein;

Darlyne Clements, P.O. Box 344, Pine Ridge, SD 57770, (605) 867-5226, c/o attorney Sara Frankenstein;

Arlene Brewer, P.O. Box 195, Pine Ridge, SD 57770, (605) 867-5661, c/o attorney Sara Frankenstein;

Sophie Morgan, P.O. Box 501, Pine Ridge, SD 57770, (605) 867-5012, c/o attorney Sara Frankenstein; and

Bertha Yellow Hawk, P.O. Box 1537, Pine Ridge, SD 57770, c/o attorney Sara Frankenstein.

See also SCA 126-129 attached hereto.

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.

**Response:** See objections above. With respect to Shannon County, upon receipt of a voter registration card, if the Auditor's office receives an incomplete voter registration card, the Auditor's office attempts to contact the registrant by telephone if a telephone number is listed. If telephone contact cannot be made, a letter is sent stating the Auditor is unable to process the card until we receive the information needed (usually physical location, date of birth, driver's license or social security number). If it is determined that a person should be removed due to conviction of a felony, a letter is sent via U.S. Mail informing them of the same.

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

**Response:** With respect to Shannon County, Plaintiff Sue Ganje, Shannon County Auditor, c/o attorney Sara Frankenstein.

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.

**Response:** See objections above. With respect to Shannon County, see SCA 90-112 and 302-340.

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.

**Response:** See objections above. With respect to Shannon County, see SCA 90-112 and 302-340.

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.

**Response:** See objections above. With respect to Shannon County, the Auditor's office confirms that the registered voter matches the information received by the Secretary of State, a letter is prepared to the voter, and they are removed from the registration. In addition, if incomplete voter registration cards are received, the Auditor's office attempts to contact the registrant by telephone if a telephone number is listed. If telephone contact cannot be made, a letter is sent stating the Auditor is unable to process the card until we receive the information needed. In addition, voter file maintenance is done every odd numbered year. If a voter has been inactive, we follow South Dakota law regarding inactive voters. In addition, voter registrations are canceled upon written request when registering in another county or state. See SCA 90-112 and 302-340.

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.

**Response:** See objections above. With respect to Shannon County, the Auditor's office will contact the Secretary of State's Office or the voter as needed.

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.

**Response:** With respect to Shannon County, voter registration forms are filled out at the Auditor's office, finance offices, or state offices. Voters may also download a registration from the Secretary of State website, or register during registration drives. All forms, except those registering at the Auditor's office, are either mailed or delivered to the Auditor's office.

- a. When the Auditor's office is notified through the weekly Felony Record Match, birth date, social security or driver's license numbers, name and address are checked. The same information is checked for Felon reports coming from the U.S. Department of Justice.
- b. If the records match with the submitted information, we remove the voter from the physical files, and mark delete in the voters records and submit to the State.
- c. It is our responsibility to verify the voter we removed is the voter indicated on whatever form we receive. A letter is then sent to the voter if we determine they are the correct voter.

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.

**Response:** See Response to Interrogatory No. 11.

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

**Response:** See objections above. With respect to Shannon County, we follow the laws, regulations, and handbooks which govern South Dakota elections.

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

**Response:** See objections above. With respect to my office, we follow South Dakota laws and regulations.

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.

**Response:** See objections above. With respect to Shannon County, training is given in Shannon County to poll workers, usually the Thursday or Friday prior

to the election. Along with verbal training, an Election code book is supplied to each precinct that goes over all of the laws, along with a shorter pamphlet which goes through the procedures of setting up the precinct, along with a brief description of the laws for the election, which includes provisional ballots.

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.

**Response:** See objections above.

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.

**Response:** See objections above. Defendant Ganje has supplied this information relevant to the Plaintiffs. Such information with regard to others fall under the above objections.

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.

**Response:** See objections above. Defendant Ganje has supplied this information relevant to the Plaintiffs. Such information with regard to others fall under the above objections.

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.

**Response:** See objections above. Defendant Ganje has supplied this information relevant to the Plaintiffs. Such information with regard to others fall under the above objections.

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.

**Response:** See objections above. Defendant Ganje has supplied this information relevant to the Plaintiffs. Such information with regard to others fall under the above objections.

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.

**Response:** See all objections above. Defendant Ganje has supplied this information relevant to the Plaintiffs. Such information with regard to others fall under the above objections.

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.

**Response:** Defendant Sue Ganje, Julie Graham, and attorney Sara Frankenstein.

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.

**Response:** Ganje will disclose her expert witnesses when required under the deadlines set forth in the June 16, 2009, Scheduling Order.

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.

**Response:** Please see Ganje's June 15, 2009, Rule 26 Initial Disclosures. In addition, please see Response to Interrogatory No. 4.

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.

**Response:** See Bate stamp numbers SCA 90-112 and 302-340.

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.

**Response:** None.

## FIRST SET OF REOUESTS FOR PRODUCTION OF DOCUMENTS

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

**Response:** See all documents previously produced, as well as SCA 126-340 attached hereto.

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.

**Response:** See all documents previously produced and attached hereto.

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.

**Response:** Trial exhibits will be identified pursuant to the June 16, 2009, Scheduling Order. Likely exhibits include all documents previously produced and attached hereto.

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.

**Response:**

- a. See Bates stamp numbers SCA 62-64, 66-67, 69-70, 73-76, 86-89, and 117, previously produced.
- b. See Bates stamp number SCA 121, previously produced.

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

**Response:** See Bates stamp numbers SCA 61 and 65, previously produced.

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.

**Response:** See objections above. With respect to Plaintiffs Janis and Colhoff, please see SCA 55-60, previously produced and SCA 90-112 and 302-340, attached hereto.

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.

**Response:** See objections above. With respect to Shannon County, see SCA 90-112, previously produced and SCA 90-112 and 302-340, attached hereto.

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.

**Response:** See objections above. With respect to Shannon County and the Plaintiffs, see SCA 55-60, and 71, previously produced.

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.

**Response:** See objections above.



AS TO THE OBJECTIONS:

Dated: August 20<sup>th</sup>, 2009.

GUNDERSON, PALMER, NELSON  
& ASHMORE, LLP

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**CERTIFICATE OF SERVICE**

I hereby certify on August 20, 2009, a true and correct copy of **DEFENDANT SUE GANJE'S RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS** was served in the manner set forth below

X U.S. Mail  
Overnight Delivery  
Hand Delivery  
Facsimile

upon the following individuals:

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