

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

|   |   |                          |
|---|---|--------------------------|
| EILEEN JANIS and KIM COLHOFF,               | ) |                          |
|   | ) |                          |
| Plaintiffs,                                 | ) |                          |
|   | ) |                          |
| vs.   | ) | Civil Action No. 09-5019 |
|   | ) |                          |
| CHRIS NELSON, in his individual and         | ) |                          |
| official capacity as Secretary of State of  | ) |                          |
| South Dakota and as a member of the State   | ) |                          |
| Board of Elections; MATT MCCAULEY,          | ) |                          |
| CINDY SCHULTZ, CHRISTOPHER W.               | ) |                          |
| MADSEN, RICHARD CASEY, KAREN M.)            | ) |                          |
| LAYHER, and LINDA LEA M. VIKEN, in )        | ) |                          |
| their individual and official capacities as | ) |                          |
| members of the State Board of Elections;    | ) |                          |
| SUE GANJE, in her official and individual   | ) |                          |
| capacity as Auditor for Shannon County;     | ) |                          |
| LA FAWN CONROY, in her individual and )     | ) |                          |
| official capacity as a poll worker for      | ) |                          |
| Shannon County                              | ) |                          |
|   | ) |                          |
| Defendants.                                 | ) |                          |

**PLAINTIFFS' RESPONSE IN OPPOSITION TO THE STATE DEFENDANTS'  
MOTION TO DISMISS PLAINTIFFS' FOURTEENTH AMENDMENT CLAIMS**

Plaintiffs, by and through counsel, file this response in opposition to Defendants Chris Nelson, Matt McCaulley, Cindy Schultz, Christopher W. Madsen, Richard Casey, Karen M. Layher, and Linda Lea M. Viken's (hereinafter "the State Defendants") Fed. R. Civ. P. 12(c) motion to dismiss\* Plaintiffs' claims under the Equal Protection and Due Process Clauses of the Fourteenth Amendment (Counts 1 and 2 of the Amended Complaint, respectively). In their motion, the State Defendants incorporate by reference

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\* The State Defendants have styled their motion as a "Motion to Dismiss," but Fed. R. Civ. P. 12 (c) applies to motions for judgment on the pleadings. For the sake of consistency, Plaintiffs will use the term "motion to dismiss."

each of the legal arguments Defendants Sue Ganje and La Fawn Conroy raised in their motion to dismiss Plaintiffs' Fourteenth Amendment claims filed on January 7, 2010 [D.E. 114]. In response to the State Defendants' motion, Plaintiffs incorporate by reference thereto each of the legal arguments as stated in Plaintiffs' response in opposition to Defendant Ganje and Conroy's motion. [D.E. 118]. For the reasons stated in that opposition, Plaintiffs respectfully request that this Court deny the State Defendants' motion.

Respectfully submitted,

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