

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
MOTION TO DISMISS ON
MOOTNESS AND STANDING
GROUNDS**

Defendant, Sue Ganje, by and through her counsel of record Sara Frankenstein of Gunderson, Palmer, Nelson & Ashmore, pursuant to Fed. R. Civ. P. 12(b)(6) and 12(c), hereby submits her Motion to Dismiss on Mootness and Standing Grounds. Specifically, Defendant Sue Ganje moves to dismiss all Counts of Plaintiffs' Complaint (Docket No. 1) or proposed Amended Complaint (Docket No. 49, Exhibit 1) requesting injunctive and declaratory relief. Dismissal is appropriate under Fed. R. Civ. P. 12(b)(6) and 12(c), because the Plaintiffs' claims are moot, and they lack standing to bring such claims on behalf of other non-parties. Plaintiffs failed to set forth facts sufficient to raise claims upon which relief can be granted.

Dated: July 16, 2009.

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

By: *s/Sara Frankenstein*

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CERTIFICATE OF SERVICE

I hereby certify on July 16, 2009, a true and correct copy of **DEFENDANT SUE GANJE'S MOTION TO DISMISS ON MOOTNESS GROUNDS** was served electronically through the CM/ECF system upon the following individuals:

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By: :/s/Sara Frankenstein
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