

**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.)	

MOTION FOR CLASS CERTIFICATION

For the reasons stated below and in the supporting memorandum of law, Plaintiffs – South Dakota residents who Defendants disfranchised because of their felony convictions, but who retained the right to vote – move that the Court certify this proceeding as a Class and Subclass action pursuant to Fed. R. Civ. P. 23. The proposed plaintiff class consists of all registered persons in South Dakota who have been convicted of a felony, but not sentenced to imprisonment and, thus, remain eligible to vote under S.D.C.L. § 23A-27-35. The proposed plaintiff subclass consists of all Native American residents in South Dakota who have been convicted of a felony, but not sentenced to imprisonment and, thus, remain eligible to vote under S.D.C.L. §23A-27-35. The

proposed defendant class consists of all South Dakota county auditors who are responsible for maintaining and safeguarding the voter registration records for their respective counties pursuant to S.D.C.L. § 12-4-2.

The proposed plaintiff class and the proposed plaintiff subclass meet all the requirements of Fed. R. Civ. P. 23(a) in that:

a. The class and subclass are so numerous that joinder of all members is impracticable. Hundreds of individuals are part of this class and subclass, and the membership is constantly changing as new individuals enter the criminal justice system. Accordingly, joinder would be impracticable and the numerosity requirement of Fed. R. Civ. P. 23(a)(1) is satisfied.

b. The relevant questions of law and fact are common to the proposed class and subclass as a whole and, therefore, the commonality requirement of Fed. R. Civ. P. 23(a)(2) is met.

c. Lead Plaintiffs Eileen Janis and Kim Colhoff are typical to the proposed plaintiff class and subclass as a whole and, therefore, the typicality requirement of Fed. R. Civ. P. 23(a)(3) is satisfied.

d. Lead Plaintiffs Janis and Colhoff will fairly and adequately protect the interests of the proposed plaintiff class and subclass as Fed. R. Civ. P. 23(a)(4) requires.

The proposed defendant class also meets all the requirements of Rule 23(a) in that:

a. The defendant class of approximately sixty-six (66) county auditors is so numerous that joinder would be impracticable and the numerosity requirement of Fed. R. Civ. P. 23(a)(1) is satisfied.

b. The relevant questions of law and fact are common to the defendant class as a whole and, therefore, the commonality requirement of Fed. R. Civ. P. 23(a)(2) is met.

c. The lead defendants are typical of the class as a whole and, therefore, the typicality requirement of Fed. R. Civ. P. 23(a)(3) is satisfied.

d. The lead defendants can fairly and adequately protect the interests of the defendant class as Fed. R. Civ. P. 23(a)(4) requires.

For the reasons set forth in this motion and the supporting memorandum of law, Plaintiffs respectfully request that this Court certify this action as a class action and create a subclass pursuant to Fed. R. Civ. P. 23.

Respectfully submitted,

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