

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

EILEEN JANIS and KIM COLHOFF,)
)
 Plaintiffs,)
)
 vs.)
)
 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. MADSEN,)
 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,)
)
 Defendants.)

Civil Action No. 09-5019

Honorable Karen E. Schreier
U.S. District Court Judge

Honorable Roger L. Wollmore
U.S. District Court Judge

Honorable Lawrence L. Piersol
U.S. District Court Judge

**PLAINTIFFS' MOTION TO COMPEL
DISCOVERY FROM DEFENDANT SUE GANJE**

Pursuant to Fed. R. Civ. P. 37(a) and Local Rule 37.1, Plaintiffs hereby move for an order compelling Defendant Sue Ganje to produce discovery related to the denial of Plaintiffs' right to vote in the 2008 primary and general elections, as well as Shannon County's systematic removal of qualified voters from the list of eligible voters in South Dakota. Plaintiffs served Defendant Ganje with their First Set of Interrogatories and Requests for Production of Documents on July 22, 2009. Defendant Ganje served partial responses on August 20, 2009. She made general objections to all of the discovery requests, claiming that the information Plaintiffs seek is outside the scope of the litigation, can be obtained from other sources, and would result in an undue burden and

expense on Defendant Ganje's part. Defendant Ganje, however, did not provide any specific objections as to why she should not be required to answer Interrogatory Nos. 16-21 or Requests Nos. 6-10 in Plaintiffs' Requests for Production of Documents, all of which directly relate to the factual allegations and legal claims in Plaintiffs' complaint.

Plaintiffs' counsel certifies that, prior to filing this motion to compel, they made several good faith attempts to resolve this matter with counsel for Defendant Ganje. Nancy G. Abudu contacted Sara Frankenstein and Jeffrey Connolly via email on August 28, 2009 and September 1, 2009, to set up a meeting to discuss the discovery dispute, and she left Mr. Connolly a voicemail message on September 2, 2009. Mr. Connolly never responded to Ms. Abudu's voicemail and no meeting time was ever set.

Accordingly, and for the reasons set forth in the accompanying memorandum, Plaintiffs ask this Court to: (1) enter an order compelling Defendant Ganje to produce responses to Interrogatory Nos. 16-21 and Requests for Production of Documents Nos. 6-10; (2) extend the time for Plaintiffs to identify and provide the reports of retained experts until thirty (30) days after Defendant Ganje complies with this Court's order; and (3) require Defendant Ganje to pay Plaintiffs' reasonable expenses in bringing this motion, and impose such other sanctions as are appropriate and just.

Respectfully submitted,

By: /s/ Patrick Duffy
PATRICK DUFFY
629 Quincy Street, Suite 105
Rapid City SD 57701
Tel: (605) 342-1963
Fax: (605) 399-9512
pduffy@rushmore.com

LAUGHLIN MCDONALD*
NANCY G. ABUDU*
BRYAN SELLS*
AMERICAN CIVIL LIBERTIES UNION,
VOTING RIGHTS PROJECT
230 Peachtree Street, Suite 1440
Atlanta, GA 30303-1227
Tel: (404) 523-2721
Fax: (404) 653-0331
lmcdonald@aclu.org
nabudu@aclu.org
bsells@aclu.org
*Admitted pro hac vice

ROBERT DOODY
AMERICAN CIVIL LIBERTIES UNION,
SOUTH DAKOTA CHAPTER
401 East 8th Street, Suite 200P
Sioux Falls, SD 57103
Tel: (605) 332-2508
rdoody@aclu.org

ATTORNEYS FOR PLAINTIFFS