

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

EILEEN JANIS and)	CR. 09-5019-KES
KIM COLHOFF,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
CHRIS NELSON, in his official)	ORDER DENYING
capacity as Secretary of State of)	DEFENDANTS' MOTIONS TO
South Dakota and as a member of)	DISMISS AND TO TOLL
the State Board of Education;)	DISCOVERY PENDING
MATT McCAULLEY,)	DISPOSITION OF STATE
CINDY SCHULTZ,)	MOTIONS
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.)	

Defendants Chris Nelson, Matt McCaulley, Cindy Schultz, Christopher Madsen, Richard Casey, Karen Layher, and Linda Lea M. Viken move to dismiss plaintiffs Eileen Janis and Kim Colhoff's complaint on the basis that the complaint fails to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6). Defendants also move in the alternative for judgment on the pleadings. See Fed. R. Civ. P. 12(c). Additionally, defendants move to stay discovery pending the outcome of this motion. Co-defendant Sue Ganje also moves to dismiss Counts 6 and 7 of the complaint under Rule 12(b)(6).

On February 18, 2009, plaintiffs filed a civil action under 42 U.S.C. § 1983 alleging that their right to vote in the 2008 general elections had been unlawfully denied by defendants. Defendants' motions to dismiss were filed on June 12, 2009, and September, 11, 2009. Plaintiffs filed an amended complaint on October 7, 2009.

Because these motions to dismiss were filed prior to and do not address plaintiffs' first amended complaint, the motions to dismiss are rendered moot. See Pure Country, Inc. v. Sigma Chi Fraternity, 312 F.3d 952, 956 (8th Cir. 2002) ("If anything [plaintiff's] motion to amend the complaint rendered moot [defendant's] motion to dismiss the original complaint." (citation omitted)); see also Onyiah v. St. Cloud State Univ., ____ F. Supp. 2d ____, 2009 WL 2974738, at *5 (D. Minn. Sept. 17, 2009) ("[A]s a general proposition, if a defendant files a Motion to Dismiss, and the plaintiff later files an Amended Complaint, the amended pleading renders the defendant's Motion to Dismiss moot." (citations omitted)).

Defendants' motion to toll discovery is also denied as moot because the motion to dismiss has been denied.

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss the complaint (Docket 55) is denied as moot and without prejudice.

IT IS FURTHER ORDERED that defendants' motion to toll discovery (Docket 55) is denied as moot.

IT IS FURTHER ORDERED that co-defendant Ganje's motion to dismiss the complaint (Docket 74) is denied as moot and without prejudice.

Dated November 24, 2009.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
CHIEF JUDGE