

**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 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.	)	

**PLAINTIFFS' REPLY IN SUPPORT OF  
THEIR MOTION TO AMEND THE COMPLAINT**

Plaintiffs filed their motion to amend the complaint on May 4, 2009 to: (1) add La Fawn Conroy, a Shannon County poll worker, as a defendant; (2) sue all of the defendants individually and in their official capacities; and (3) include additional allegations related to the denial of Plaintiffs' right to vote. [Docket Entry ("D.E.") 49]. Defendant Sue Ganje did not file a response in opposition to Plaintiffs' motion. The state defendants, however, filed an opposition letter on May 28, 2009 in which they contend Plaintiffs do not "present any new claims that were not available to them at the time they filed their initial Complaint." [D.E. 52].

As already set forth in Plaintiffs' memorandum of law in support of their motion, the factors this Court should consider when deciding whether to grant a motion to amend

are whether there was any undue delay, bad faith, or dilatory motive on Plaintiffs' part, or if the defendants will face any undue prejudice by allowing the amendments. Sherman v. Winco Fireworks, Inc., 532 F.3d 709, 715 (8<sup>th</sup> Cir. 2008); Bailey v. Bayer Cropscience L.P., 563 F.3d 302, 307 (8<sup>th</sup> Cir. 2009); Amrine v. Brooks, 522 F.3d 823, 833 (8<sup>th</sup> Cir. 2008). The state defendants do not allege the existence of any of these factors because they cannot point to any. Further, they do not provide any basis for this Court to depart from the controlling principle of law when ruling on a motion to amend which is "[t]he court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). See also Frey v. City of Herculaneum, 44 F.3d 667, 672 (8<sup>th</sup> Cir. 1995) (reversing denial of plaintiffs' motion to amend their complaint to include additional allegations against defendants already named in suit); Photolab Corp. v. Simplex Specialty Co., 806 F.2d 807, 811 (8<sup>th</sup> Cir. 1986) (affirming grant of plaintiff's motion to amend the complaint to include additional defendants).

Because the state defendants do not present any legitimate or reasonable arguments to support their opposition, Plaintiffs again request that this Court grant their motion to amend the complaint.

DATED this 2<sup>nd</sup> day of June, 2009.

Respectfully submitted,

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