

**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' RESPONSE IN OPPOSITION TO  
DEFENDANT SUE GANJE'S MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS**

**I. INTRODUCTION**

Plaintiffs file this Response in Opposition to Defendant Sue Ganje's motion to dismiss the case against her under Fed. R. Civ. P. 12(b)(6) on mootness and standing grounds or, in the alternative, a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c).

This case is not moot because Plaintiffs have not been afforded all of the declaratory and injunctive relief they seek, and because Plaintiffs' claims for compensatory and nominal monetary damages are outstanding. Plaintiffs, as residents

and voters of Shannon County, have standing to seek enforcement of Section 5 of the Voting Rights, 42 U.S.C. § 1973c, as well as their other federal and state voting rights claims. Plaintiffs also have standing because they seek injunctive relief in the form of systemic changes to the way Defendant Ganje enforces the state's felon disenfranchisement law, and because a ruling in Plaintiffs' favor on their voting rights claims will not only shield Plaintiffs from disenfranchisement in the future, but will benefit other disenfranchised voters.

Defendant Ganje's Fed. R. Civ. P. 12(c) motion for judgment on the pleadings is improper because there are genuine issues of material fact in dispute regarding the reason why Plaintiffs improperly were removed from the state and county voter registration lists, and the impact of Defendant Ganje's unlawful application of the state's felon disenfranchisement law on Native Americans. Therefore, Plaintiffs respectfully request that this Court deny Defendant Ganje's motion to dismiss the case against her and her motion for judgment on the pleadings.

## **II. PROCEDURAL AND FACTUAL BACKGROUND**

Plaintiffs filed this civil action on February 18, 2009, challenging the defendants' removal of their names from the statewide and Shannon County voter registration rolls based on their felony convictions even though they were sentenced only to probation and South Dakota law allows probationers to vote. Docket Entry (D.E.) 1. See S.D.C.L. § 23A-27-35 (suspending the right to vote only during a term of imprisonment in the state penitentiary). Plaintiffs maintain they were denied an opportunity to cast regular ballots during the 2008 elections, and that Defendants infringed upon their right to cast provisional ballots in violation of state and federal laws. Id.; Help America Vote Act

(HAVA), 42 U.S.C. § 15482(a)(1) (allowing persons whose names do not appear on the list of eligible voters to cast a provisional ballot, and requiring poll officials to advise persons of that right); S.D.C.L. § 12-18-39 (allowing persons whose names do not appear on the list of eligible voters to cast a provisional ballot).

In addition, Plaintiffs assert that Shannon County's removal of their names from the county voter registration lists, and the names of others with felony convictions who lawfully are entitled to vote, constitutes a change in the county's voting practices and procedures. Because Shannon County is a covered jurisdiction for purposes of Section 5 of the Voting Rights Act, Defendant Ganje was required to obtain preclearance from the Department of Justice or the U.S. District Court for the District of Columbia under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973(c), prior to implementing such a change. See Bone Shirt v. Hazeltine, 200 F. Supp. 2d 1150, 1152 (D.S.D. 2002) (three-judge court). Plaintiffs, who are Native Americans, also allege that "Native Americans are disproportionately represented in South Dakota's criminal justice system," and, therefore, Defendant Ganje's unlawful actions have a negative and disproportionate effect on Native Americans in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1971. D.E. 1 at ¶¶ 26-27.

In their Prayer for Relief, Plaintiffs seek the following injunctive relief against all of the defendants: (1) an order prohibiting Defendants from continuing these unlawful voting practices and procedures until they have complied with Section 5 of the Voting Rights Act; (2) an order directing Defendants to adopt procedures to prevent future disfranchisement of Plaintiffs and other individuals convicted of felonies who are on probation; (3) an order authorizing the appointment of federal observers pursuant to 42

U.S.C. § 1973a(a) to enforce the voting rights of Plaintiffs and other people with felony convictions who retain the right to vote; and (4) an order directing Defendants to educate the public about the voting rights of people with felony convictions in South Dakota, including the preparation and distribution of public service announcements and educational materials regarding the voting rights of people with felony convictions. Id., Prayer for Relief. Plaintiffs also seek compensatory and nominal monetary damages for each denial of their right to vote.

On March 25, 2009, Plaintiffs filed a “Motion for a Temporary Restraining Order or Preliminary Injunction,” requesting that their names be immediately restored to the voter rolls in time for the June 2009 elections in Shannon County and Defendants be enjoined from removing their names from voter rolls until this litigation is resolved. D.E. 24. In response, Defendant Ganje stated that Plaintiff Janis was registered to vote as of November 4, 2008, and Plaintiff Colhoff was registered to vote as of April 8, 2009. D.E. 41. Defendant Ganje also attached an affidavit to her response attesting that Plaintiffs’ names are now back on the county voter registration list and will not be removed absent a court order. Id., Ex. A.

On May 4, 2009, Plaintiffs filed a motion to amend the complaint to add La Fawn Conroy, a Shannon County poll worker, as a defendant, and to sue all of the defendants individually and in their official capacities. D.E. 49. The proposed amended complaint also contains additional allegations regarding the denial of Plaintiff Janis’ right to cast a regular ballot and a provisional ballot on November 4, 2008 by poll workers, and cites more provisions of HAVA and the NVRA which Defendants violated. Id. This Court has not ruled on Plaintiffs’ motion to amend the complaint.

On July 16, 2009, Defendant Ganje filed a motion to dismiss the case against her, arguing that Plaintiffs' request for injunctive relief is moot because their names are back on the county's voter registration lists. She also contends that Plaintiffs lack standing to raise claims under the Voting Rights Act because any relief afforded Plaintiffs would benefit non-parties to the lawsuit. For the foregoing reasons, Defendant Ganje's arguments are without merit and her motions should be denied.

### III. APPLICABLE LEGAL STANDARDS

When ruling on a Fed. R. Civ. P. 12(b)(6) motion to dismiss for failure to state a claim, a court must accept all of the factual allegations in the complaint as true and review the complaint in the light most favorable to the plaintiff. Schaaf v. Residential Funding Corp., 517 F.3d 544, 549 (8<sup>th</sup> Cir. 2008). The federal rules do not require plaintiffs to provide all of the specific facts which support their claim, but the complaint must contain sufficient factual information to support the grounds upon which their claims rest. Id. (citing Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007) (a plaintiff's allegations must "raise a right to relief above a speculative level")). See also Drobnak v. Andersen Corp., 561 F.3d 778, 783 (8<sup>th</sup> Cir. 2009) ("[Fed. R. Civ. P. 12(b)(6)] does not require great detail, but the facts alleged 'must be enough to raise a right to relief above the speculative level' and must 'state a claim to relief that is plausible on its face.'" (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007))).

Courts review a Fed. R. Civ. P. 12(c) motion for judgment on the pleadings under the same standard used for analyzing a Fed. R. Civ. P. 12(b)(6) motion to dismiss. Waldron v. Boeing Co., 388 F.3d 591, 593 (8<sup>th</sup> Cir. 2004). When ruling on a Fed. R. Civ. P. 12(c) motion, the court must assume that the complaint's factual allegations are

true and should construe all inferences from them in the non-moving party's favor. *Id.* The court must not look at whether the plaintiff will "ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). A court should only grant a motion for judgment on the pleadings when there is no material fact in dispute and the moving party is entitled to judgment as a matter of law. *Wishnatsky v. Rovner*, 433 F.3d 608, 610 (8<sup>th</sup> Cir. 2006); *Syverson v. FirePond, Inc.*, 383 F.3d 745, 749 (8<sup>th</sup> Cir. 2004).

Plaintiffs have alleged that Defendants failed to comply with Section 5 of the Voting Rights Act, that their names were improperly removed from the voter registration rolls, that they were denied the right to cast regular or provisional ballots, and that the actions of Defendants deny or dilute the voting strength of Native Americans in violation of Section 2 of the Voting Rights Act. Thus, they clearly state a claim within the meaning of Fed. R. Civ. P. 12(b)(6) and 12(c).

Also, as the Auditor for Shannon County, Defendant Ganje is responsible for maintaining and safeguarding the voter registration records for the county. S.D.C.L. § 12-4-2. In her Answer to the Complaint, Defendant Ganje admitted Plaintiff Eileen Janis registered to vote in September 1984 and was removed from the county voter registration list on or about February 8, 2008, and that a member of the precinct election board should have informed Plaintiff Janis that she could cast a provisional ballot. Def. Ganje's Answer at ¶¶ 5, 13, 47. Aside from the allegations in the complaint, Defendant Ganje's answer shows that Plaintiffs have stated a claim for which relief can be granted, and that Defendant Ganje is not entitled to judgment on the pleadings.

#### **IV. ARGUMENT AND CITATION OF AUTHORITIES**

##### **A. Plaintiffs Have Standing To Assert Claims Under The Voting Rights Act.**

In order to establish standing, a plaintiff must show that: (1) she has suffered an “injury in fact” that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendants; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. Jones v. Gale, 470 F.3d 1261, 1265 (8<sup>th</sup> Cir. 2006). The Supreme Court has emphasized that a plaintiff must assert a violation of her own legal rights and the alleged injury should involve more than just a generalized grievance shared by many people. Valley Forge Christian Coll. v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 471-77 (1982); Allen v. Wright, 468 U.S. 737, 751-52 (1984).

##### **1. Plaintiffs’ Section 5 Claim**

Defendant Ganje claims that Plaintiff’s Section 5 claim is moot because “Plaintiffs did not seek an injunction affecting them, as both Plaintiffs’ names are currently on the voter registration rolls.” D.E. 63 at 3. While Plaintiffs’ names may be on the voter registration rolls now, defendants have implemented an unprecleared voting change in violation of Section 5. That violation is ongoing, and Plaintiffs, as voters and residents of Shannon County, seek an injunction against further enforcement of the voting change absent preclearance. Plaintiffs’ Section 5 claim is therefore not moot.

In addition, a claim is not moot if the injury complained of – non-compliance with Section 5 - is “capable of repetition, yet evading review.” Southern Pac. Terminal Co. v. ICC, 219 U.S. 498, 515 (1911). Accord Moore v. Ogilvie, 394 U.S. 814, 816 (1969) (a

challenge to an election practice is not mooted if it “remains and controls future elections”); Morse v. Republican Party of Virginia, 517 U.S. 186, 235 n.48 (1996) (a challenge to an electoral practice is not moot if “it is capable of repetition, yet evading review”). Here, the strong public interest in maintaining confidence in the electoral process, the voluntary post-litigation nature of the actions undertaken by the Defendants to provide temporal relief to Plaintiffs, and the ability of Defendants to resume the challenged felon disqualification practice all weigh heavily against a finding of mootness.

Defendant Ganje further argues that Plaintiffs lack standing because they “are requesting ‘relief’ for other speculative persons who are non-parties to this lawsuit.” Id. at 3, 11. To the contrary, and as noted above, Plaintiffs seek further relief on their own behalf in the form of a declaratory judgment and injunction prohibiting Defendant from enforcing an unprecleared voting change. Plaintiffs’ claim is thus not limited to getting themselves returned to the voter rolls but also requiring Defendant to comply with Section 5. Plaintiffs clearly have standing to raise such a claim.

In Allen v. State Board of Elections, 393 U.S. 544, 555 (1969), the Court held that a “private party has standing to obtain an injunction against further enforcement, pending the State’s submission of the legislation pursuant to §5.” This rule has been consistently applied by the Supreme Court and lower federal courts. See Morse v. Republican Party of Virginia, 517 U.S. at 231 (“private parties may enforce § 5 of the Voting Rights Act”); Perkins v. Matthews, 400 U.S. 379, 382 (1971) (accord); Cannon v. University of Chicago, 441 U.S. 677, 690 (1979) (“private parties within that class [described by Section 5] were implicitly authorized to seek a declaratory judgment against a covered state”); McCain v. Lybrand, 465 U.S. 236, 241 (1984) (exercising

jurisdiction over a Section 5 enforcement action brought by “black voters”); Young v. Fordice, 520 U.S. 273, 280 (1997) (exercising jurisdiction over a Section 5 enforcement action brought by “four private citizens”); Bone Shirt v. Hazeltine, 200 F. Supp. 2d at 1152 (exercising jurisdiction over a Section 5 enforcement claim brought by “[f]our Native American qualified voters”). These cases make clear that whether or not Plaintiffs were removed from or restored to the voter rolls, they have standing to seek an injunction against further use of an unprecleared voting change.

In Quick Bear Quiver v. Nelson, 387 F. Supp. 2d 1027, 1031 (D. S.D. 2005), the court applied the rule in Allen v. State Board of Elections, and held that “residents of a jurisdiction covered by § 5 have ‘standing to obtain an injunction against further enforcement, pending the State’s submission of the legislation pursuant to Section 5.’” The court further held that the injury to the plaintiffs was “denial of their right to live in a county without ongoing violations of the VRA.” Id. at 1032. By the same token, and whether or not their names appear on the voter lists, Plaintiffs are suffering a cognizable injury, *i.e.*, Defendants ongoing violations of Section 5 of the Voting Rights Act. Plaintiffs accordingly have standing to seek enforcement of the preclearance requirement. Plaintiffs meet the other requirements for standing. Their injury is fairly traceable to the challenged action of the Defendants, and it is likely that the injury will be redressed by a favorable decision. Jones v. Gale, 470 F.3d at 1265.

At no time during the course of this litigation has Defendant Ganje offered an explanation as to why Plaintiffs – who were both convicted of felonies and sentenced to probation – were removed from the voter registration lists. Defendant Ganje admits that Shannon County is a Section 5 covered jurisdiction and she has never asserted that she

complied with the law prior to systematically removing Plaintiffs' names from the county voter registration list. Thus, Plaintiffs, who were directly affected by Defendant Ganje's violations, may assert a claim under Section 5, and the fact that other similarly situated individuals also will be allowed to vote pending such preclearance does not affect Plaintiffs' standing to assert their Section 5 claim.

## 2. Plaintiffs' Section 2 Claim

Plaintiffs' Section 2 claim is also not moot. Plaintiffs specifically allege that Native Americans: (1) are disproportionately represented in South Dakota's criminal justice system; (2) represent a disproportionate number of those who are sentenced to probation; and (3) are disproportionately and negatively impacted, or disfranchised, by the manner in which Defendant Ganje has been enforcing the state's felon disfranchisement law. D.E. 1 at ¶¶ 26-27. Section 2 by its terms prohibits the use of any voting practice or procedure "which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color [or membership in a language minority]." 42 U.S.C. § 1973(a). Accord Thornburg v. Gingles, 478 U.S. 30, 43 (1986). Plaintiffs contend that their voting strength, as well as that of other Native Americans, is both denied and abridged by the state's felon disfranchisement system. To resolve this claim, "a court must assess the impact of the contested structure or practice on minority electoral opportunities 'on the basis of objective factors.'" Gingles, 478 U.S. at 44 (quoting S.Rep. No. 97-417, 97<sup>th</sup> Cong., 2<sup>nd</sup> Sess. 27 (1982)). Whether there has been a Section 2 violation "depends upon a searching practical evaluation of the 'past and present reality' . . . and on a 'functional' view of the political process." Id. at 45 (citations omitted). As the Court held, "[t]he essence of a § 2 claim is that a certain

electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.” Id. at 47. Plaintiffs allege that the state felon disfranchisement system has such an effect, and clearly state a claim under Section 2.

Plaintiffs, as members of a covered language minority, also have standing to raise a Section 2 claim. In Gingles, the plaintiffs were “black citizens of North Carolina who are registered to vote.” Gingles v. Edmisten, 590 F.Supp. 345, 349 (E.D. N.C. 1984). The Supreme Court affirmed the decision of the three-judge court invalidating legislative districts in North Carolina as diluting minority voting strength. Gingles, 478 U.S. at 80. See also Roberts v. Wamser, 883 F.2d 617, 624 (8<sup>th</sup> Cir. 1989) (a citizen may assert a claim under Section 2 if that person is an “aggrieved voter” seeking to enforce his or her right to vote); League of United Latin American Citizens, Council No. 4434 v. Clements, 999 F.2d 831, 845 (5<sup>th</sup> Cir. 1993) (judges have standing “as voters” to intervene in Section 2 challenge to method of judicial elections); Black v. McGuffage, 209 F. Supp. 2d 889, 894-95 (N.D. Ill. 2002) (minority voters have standing to challenge the alleged discriminatory use of punch card voting systems under Section 2 of the Voting Rights Act). Defendant, it should be noted, does not cite a single case in which a court has held that minority voters directly affected by an allegedly discriminatory voting practice lack standing to challenge it under Section 2.

In other cases the Court has similarly recognized that persons claiming injury from a voting practice have standing to contest it. See, e.g., Shaw v. Hunt, 517 U.S. 899, 904 (1996) (“a plaintiff who resides in a district which is the subject of a racial-gerrymander claim has standing to challenge the legislation which created that district”);

Reynolds v. Sims, 377 U.S. 533, 537, 554-561 (1964) (residents and voters injured by population inequality among districts have standing to challenge the districting system); Dunn v. Blumstein, 405 U.S. 330, 333 n.2 (1972) (plaintiff, “as a member of the class of people affected by the presently written statute,” had standing to challenge a state’s durational residency requirement). Plaintiffs, who claim that their voting strength, as well as that of other Native Americans, is both denied and abridged by the state’s felon disfranchisement system, have standing in this case.

**B. Plaintiffs’ Lawsuit Against Defendant Ganje Is Not Moot Because The Issue of Damages Has Not Been Resolved.**

Defendant Ganje argues that all of Plaintiffs’ claims against her are moot because Plaintiffs’ names are back on the voter registration rolls. D.E. 63 at 6-9. Yet, in the original and amended complaints, Plaintiffs assert claims for monetary damages related to the unlawful denial of their right to vote. D.E. 1, Prayer for Relief; D.E. 63 at 6-9. Because Plaintiffs’ claims for monetary damages have not been resolved, their case against Defendant Ganje clearly is not moot.

The law is well settled that even when total injunctive relief has been granted – which it has not in this case – a case is not moot when there are outstanding claims for monetary damages. See Mississippi River Revival, Inc. v. City of Minneapolis, 319 F.3d 1013, 1016 n.3 (8<sup>th</sup> Cir. 2003) (“[C]laims for money damages [are] not [ ] mooted by subsequent events that mooted companion claims for injunctive relief.”); Lupiani v. Wal-Mart Stores, Inc., 435 F.3d 842, 847 (8<sup>th</sup> Cir. 2006) (ruling that even though injunctive relief was granted, the case was not moot because the issues of damages and attorneys fees which the plaintiffs sought remain unaddressed); Martin v. Sargent, 780 F.2d 1334, 1337 (8<sup>th</sup> Cir.1985) (although inmate’s transfer to another prison rendered his request for

injunctive relief related to poor living conditions at the former prison moot, he could still pursue his claim for monetary damages).

Defendant Ganje relies upon McFarlin v. Newport Special School District, 980 F.2d 1208 (8<sup>th</sup> Cir. 1992), in which the court determined that a former high school student's challenge to her removal from the school's basketball team became moot when she graduated. D.E. 63 at 8. However, the court also ruled that the plaintiff could proceed with her claim for monetary damages related to the alleged civil rights violations. Id. at 1211. Thus, the McFarlin case actually reinforces Plaintiffs' position.

In the instant case, Plaintiffs requested several forms of injunctive relief, one of which was that Defendants place their names back on the voter registration rolls. Plaintiffs have not been afforded all of the injunctive relief they seek. However, even assuming that Plaintiffs are not entitled to any additional injunctive relief – which they maintain they are – their claim for monetary damages must still be decided before the entire case is resolved. See Curtis Indus., Inc. v. Livingston, 30 F.3d 96, 97 (8<sup>th</sup> Cir.1994) (ruling that, although an appeal from a denial of preliminary injunctive relief may become moot by the passage of time, a claim for damages remains viable). Therefore, the case against Defendant Ganje is not moot.

**C. Plaintiffs Are Not Seeking Additional Relief On Behalf Of Nonparties.**

Defendant contends, in addition to Plaintiffs' Section 5 claim, that the other relief Plaintiffs seek is improper because it is on behalf of "speculative persons who are non-parties to this lawsuit." D.E. 63 at 3. The additional relief Plaintiffs seek includes: the adoption of procedures to prevent future disfranchisement of individuals convicted of felonies who are on probation; the appointment of federal observers to enforce the voting

rights of Plaintiffs and other people with felony convictions who retain the right to vote; and educating the public about the voting rights of people with felony convictions D.E. 1, Prayer for Relief. Plaintiffs seek this relief on their own behalf so that they will not again be subject to disfranchisement. The fact that the relief may also have a beneficial impact on other Native Americans does not render it improper.

Courts have held that a plaintiff may seek injunctive relief which has a broader impact on non-parties to a lawsuit as long as the relief sought directly addresses an injury the plaintiff has suffered. Professional Ass'n of Coll. Educators v. El Paso County Cmty. Coll. Dist., 730 F.2d 258, 274 (5<sup>th</sup> Cir. 1984), cert. denied, 469 U.S. 881 (1984) (recognizing that a court may grant injunctive relief which benefits non-parties provided the named plaintiffs are entitled to the same relief in their own right); Williams v. Owens, 937 F.2d 609 (6<sup>th</sup> Cir. 1991) (“An injunction may not be overbroad because it protects nonparties if such breadth is necessary to give the prevailing parties the relief to which they are entitled.”). In Lujan v. National Wildlife Federation, 497 U.S. 871, 913 (1990), Justice Blackmun, in his dissenting opinion, stated:

I agree with much of the Court's discussion, at least in its general outline. The Administrative Procedure Act permits suit to be brought by any person “adversely affected or aggrieved by agency action.” [ ]. In some cases the “agency action” will consist of a rule of broad applicability; and if the plaintiff prevails, the result is that the rule is invalidated, not simply that the court forbids its application to a particular individual. Under these circumstances a single plaintiff, so long as he is injured by the rule, may obtain “programmatic” relief that affects the rights of parties not before the court.

When a court rules that certain governmental actions are unlawful, it is only logical and reasonable that any relief a court awards benefits others who also were affected by the government’s illegal activities even if those individuals are not parties to the lawsuit. See

e.g., Nat'l Min. Ass'n v. U.S. Army Corp of Engineers, 145 F.3d 1399, 1409 (D.C. Cir. 1998) (“We have made clear that when a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated – not that their application to the individual petitioners is proscribed.”) (internal quotations omitted). Such an outcome is also in the judicial system’s best interest because it helps to avoid multiple challenges to the same unlawful conduct. See id. (“Issuance of a broad injunction obviates such repetitious filings.”).

As the Auditor for Shannon County, Defendant Ganje is best suited to enforce an award of injunctive relief and to ensure that her enforcement of the law not only protects Plaintiffs’ right to vote, but is uniformly applied so that anyone convicted of a felony who retains the right to vote may freely exercise that right without fear of governmental intrusion. Defendant Ganje is both an appropriate and necessary party for Plaintiffs to get the relief to which they are entitled.

#### IV. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that this Court deny Defendant Ganje’s motion to dismiss the complaint against her and her motion for judgment on the pleadings.

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](mailto:lmcdonald@aclu.org)  
[nabudu@aclu.org](mailto:nabudu@aclu.org)  
[bsells@aclu.org](mailto:bsells@aclu.org)  
\*Admitted pro hac vice

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

ATTORNEYS FOR PLAINTIFFS