

**FILED**

JAN 13 2012

  
CLERK

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

CHRIS BROOKS, FRANCIS RENCOUNTRE,  
GLORIA RED EAGLE, SHARON CONDEN,  
JACQUELINE GARNIER, JENNIFER RED OWL,  
EDWINA WESTON, MICHELLE WESTON,  
MONETTE TWO EAGLE, MARK A. MESTETH,  
STACY TWO LANCE, HARRY BROWN,  
ELEANOR WESTON, DAWN BLACK BULL,  
CLARICE MESTETH, DONOVAN L. STEELE,  
EILEEN JANIS, LEONA LITTLE HAWK, EVAN  
RENCOUNTRE, CECIL LITTLE HAWK, SR.,  
LINDA RED CLOUD, LORETTA LITTLE HAWK,  
FAITH TWO EAGLE, EDMOND MESTETH, and  
ELMER KILLS BACK, JR.

Plaintiffs,

v.

JASON GANT, in his official capacity as SOUTH  
DAKOTA SECRETARY OF STATE, SHANNON  
COUNTY, SOUTH DAKOTA, FALL RIVER  
COUNTY, SOUTH DAKOTA, SHANNON  
COUNTY BOARD OF COMMISSIONERS, FALL  
RIVER COUNTY BOARD OF COMMISSIONERS,  
JOE FALKENBUERG, ANNE CASSENS,  
MICHAEL P. ORTNER, DEB RUSSELL, and JOE  
ALLEN in their official capacity as members of the  
County Board of Commissioners for Fall River  
County, South Dakota, BRYAN J. KEHN, DELORIS  
HAGMAN, EUGENIO B. WHITE HAWK,  
WENDELL YELLOW BULL, and LYLA  
HUTCHISON in their official capacity as members  
of the County Board of Commissioners for Shannon  
County, South Dakota, SUE GANJE, in her official  
capacity as the County Auditor for Shannon and Fall  
River Counties, and JAMES SWORD, in his official  
capacity as Attorney for Shannon and Fall River  
Counties,

Defendants.

Civ.No. 12-5003

COMPLAINT

**NATURE OF THE CASE**

1. This action is initiated by enrolled members of the Oglala Sioux Tribe and qualified voters of the State of South Dakota, pursuant to the Voting Rights Act of 1965, as amended, and other federal and South Dakota authority as specified below. At issue is the action of Defendants in failing to establish polling stations that are open for a six (6) week period at locations within Shannon County which lies wholly within the boundaries of the Pine Ridge Indian Reservation. This failure has a significant disparate impact on Indians' voting power, denies the Plaintiffs' voting rights and is an apparent effort to dilute Indian voting strength within Shannon County. Plaintiffs allege that this action, if allowed, would reestablish the "history of official racial discrimination in voting" in Shannon County previously investigated by the United States.

2. Unless such action by the Defendants is reversed, the ability of Indians within Shannon County to effectively participate in the political process will be hindered. Plaintiffs seek declaratory and injunctive relief, both temporary and permanent, prohibiting the Defendants from abusing their power by carrying out their refusal to establish polling places in Shannon County within the Pine Ridge Reservation for a six (6) week period as enjoyed by every other resident of the State of South Dakota. This relief is sought on the grounds that failure to open polling stations for the six (6) week time period is a denial of the right to vote and will dilute the voting strength of the Tribe's members, such elimination would have a disparate impact upon Indians, and that the policy of not opening the polling stations for the full six (6) week period was adopted for a discriminatory purpose.

3. The failure to establish voting stations within the Pine Ridge Reservation for a full six (6) week period will result in Indian citizens within Shannon County having less opportunity than non-Indian citizens located outside of Shannon County to participate in the political process and elect candidates of their choice for federal, state, and county offices.

#### **AUTHORITY**

4. This action is brought by the Plaintiffs pursuant to Sections 2, 5 and 12(d) of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973 and 1973j(d); 42 U.S.C. § 1983, providing for civil action for deprivation of rights; the Indian Citizenship Act, 8 U.S.C. § 1401(a)(2)(1924); 28 U.S.C. §§2201-2202 providing for declaratory relief; and Article II, Section 1 of the Constitution of the State of South Dakota. This Court has supplemental jurisdiction under 28 U.S.C. §1367(a) to hear claims under the Constitution and laws of the State of South Dakota.

#### **JURISDICTION AND VENUE**

5. This Court has original jurisdiction over this matter pursuant to 42 U.S.C. §1973j(f); 28 U.S.C. §1362; 28 U.S.C. §1331; 28 U.S.C. §1343(a)(3) and (4); and 28 U.S.C. §2201, along with Article III of the United States Constitution.

6. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

7. Venue is proper in the District of South Dakota pursuant to 28 U.S.C. § 1391 (b), because this action is predicated upon a federal question and a substantial part of the events or omissions giving rise to the claims alleged herein occurred, and will continue to occur, in this district.

8. Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973, prohibits the enforcement of any voting qualification or prerequisite to voting or any standard, practice or procedure that results in the denial or abridgment of the right to vote on account of race or color.

9. The Indian Citizenship Act, 8 U.S.C. §1401(a)(2), was enacted by Congress in 1924 to extend full rights of citizenship to Indians including, but not limited to, the right to vote in federal, state and local elections.

#### **PARTIES**

10. Plaintiff Chris Brooks is an enrolled member of the Oglala Sioux Tribe and a resident of Porcupine, South Dakota, located in Shannon County. He is a qualified and registered voter within the State of South Dakota.

11. Plaintiff Francis Rencountre is an enrolled member of the Oglala Sioux Tribe and a resident of Pine Ridge, South Dakota, located in Shannon County. She is a qualified and registered voter within the State of South Dakota.

12. Plaintiff Gloria Red Eagle is an enrolled member of the Oglala Sioux Tribe and a resident of Porcupine, South Dakota, located in Shannon County. She is a qualified and registered voter within the State of South Dakota.

13. Plaintiff Sharon Conden is an enrolled member of the Oglala Sioux Tribe and a resident of Pine Ridge, South Dakota, located in Shannon County. She is a qualified and registered voter within the State of South Dakota.

14. Plaintiff Jacqueline Garnier is an enrolled member of the Oglala Sioux Tribe and a resident of Wounded Knee, South Dakota, located in Shannon County. She is a qualified and registered voter within the State of South Dakota.

15. Plaintiff Jennifer Red Owl is an enrolled member of the Oglala Sioux Tribe and a resident of Porcupine, South Dakota, located in Shannon County. She is a qualified and registered voter within the State of South Dakota.

16. Plaintiff Edwina Weston is an enrolled member of the Oglala Sioux Tribe and a resident of Porcupine, South Dakota, located in Shannon County. She is a qualified and registered voter within the State of South Dakota.

17. Plaintiff Michelle Weston is an enrolled member of the Oglala Sioux Tribe and a resident of Pine Ridge, South Dakota, located in Shannon County. She is a qualified and registered voter within the State of South Dakota.

18. Plaintiff Monette Two Eagle is an enrolled member of the Oglala Sioux Tribe and a resident of Porcupine, South Dakota, located in Shannon County. She is a qualified and registered voter within the State of South Dakota.

19. Plaintiff Mark A. Mesteth is an enrolled member of the Oglala Sioux Tribe and a resident of Porcupine, South Dakota, located in Shannon County. He is a qualified and registered voter within the State of South Dakota.

20. Plaintiff Stacy Two Lance is an enrolled member of the Oglala Sioux Tribe and a resident of Porcupine, South Dakota, located in Shannon County. She is a qualified and registered voter within the State of South Dakota.

21. Plaintiff Harry Brown is an enrolled member of the Oglala Sioux Tribe and a resident of Pine Ridge, South Dakota, located in Shannon County. He is a qualified and registered voter within the State of South Dakota.

22. Plaintiff Eleanor Weston is an enrolled member of the Oglala Sioux Tribe and a resident of Porcupine, South Dakota, located in Shannon County. She is a qualified and registered voter within the State of South Dakota.

23. Plaintiff Dawn Black Bull is an enrolled member of the Oglala Sioux Tribe and a resident of Porcupine, South Dakota, located in Shannon County. She is a qualified and registered voter within the State of South Dakota.

24. Plaintiff Clarice Mesteth is an enrolled member of the Oglala Sioux Tribe and a resident of Porcupine, South Dakota, located in Shannon County. She is a qualified and registered voter within the State of South Dakota.

25. Plaintiff Donovan L. Steele is an enrolled member of the Oglala Sioux Tribe and a resident of Manderson, South Dakota, located in Shannon County. He is a qualified and registered voter within the State of South Dakota.

26. Plaintiff Eileen Janis is an enrolled member of the Oglala Sioux Tribe and a resident of Pine Ridge, South Dakota, located in Shannon County. She is a qualified and registered voter within the State of South Dakota.

27. Plaintiff Leona Little Hawk is an enrolled member of the Oglala Sioux Tribe and a resident of Pine Ridge, South Dakota, located in Shannon County. She is a qualified and registered voter within the State of South Dakota.

28. Plaintiff Evan Rencountre is an enrolled member of the Oglala Sioux Tribe and a resident of Pine Ridge, South Dakota, located in Shannon County. He is a qualified and registered voter within the State of South Dakota.

29. Plaintiff Cecil Little Hawk, Sr. is an enrolled member of the Oglala Sioux Tribe and a resident of Pine Ridge, South Dakota, located in Shannon County. He is a qualified and registered voter within the State of South Dakota.

30. Plaintiff Linda Red Cloud is an enrolled member of the Oglala Sioux Tribe and a resident of Pine Ridge, South Dakota, located in Shannon County. She is a qualified and registered voter within the State of South Dakota.

31. Plaintiff Loretta Little Hawk is an enrolled member of the Oglala Sioux Tribe and a resident of Pine Ridge, South Dakota, located in Shannon County. She is a qualified and registered voter within the State of South Dakota.

32. Plaintiff Faith Two Eagle is an enrolled member of the Oglala Sioux Tribe and a resident of Porcupine, South Dakota, located in Shannon County. She is a qualified and registered voter within the State of South Dakota.

33. Plaintiff Edmond Mesteth is an enrolled member of the Oglala Sioux Tribe and a resident of Porcupine, South Dakota, located in Shannon County. He is a qualified and registered voter within the State of South Dakota.

34. Plaintiff Elmer Kills Back, Jr. is an enrolled member of the Oglala Sioux Tribe and a resident of Kyle, South Dakota, located in Shannon County. He is a qualified and registered voter within the State of South Dakota.

35. The Plaintiffs desire to participate in the electoral and political processes of South Dakota on an equal basis with other residents.

36. Defendant Jason Gant is the South Dakota Secretary of State.

37. Defendant Shannon County, South Dakota, is a political and geographical subdivision of the State of South Dakota.

38. Defendant Fall River County, South Dakota, is a political and geographical subdivision of the State of South Dakota.

39. Defendant the Shannon County Board of Commissioners, is the official governing authority of Shannon County established under the laws of the State of South Dakota, consists of five (5) members, and exercises the legislative and executive powers in the county.

40. Defendant the Fall River County Board of Commissioners, is the official governing authority of Fall River County established under the laws of the State of South Dakota, consists of five (5) members, and exercises the legislative and executive powers in the county.

41. Individual Defendants Bryan J. Kehn, Deloris Hagman, Eugenio B. White Hawk, Wendell Yellow Bull, and Lyla Hutchison are members of the Shannon County Board of Commissioners. Each of the Defendants is a resident of Shannon County and is sued in his or her official capacity.

42. Individual Defendants Joe Falkenburg, Anne Cassens, Michael P. Ortner, Deb Russell, and Joe Allen are members of the Fall River County Board of Commissioners. Each of the Defendants is a resident of Fall River County and is sued in his or her official capacity.

43. Defendant Sue Ganje is the Shannon and Fall River County Auditor and in that capacity exercises responsibility associated with elections for the County. Upon information and belief, Defendant Ganje is a resident of Fall River County and is sued in her official capacity.



44. Defendant James Sword is the attorney for Shannon and Fall River County and is sued in his official capacity.

45. The Defendants, both personally and through the conduct of their agents, servants and employees, were and are acting under color of state law at all times relevant to this action.

#### **APPLICABLE LAW**

46. Article VII, Section 2 of the Constitution of the State of South Dakota sets forth the qualifications to vote in elections as follows:

Every United States citizen eighteen years of age or older who has met all residency requirements shall be entitled to vote in all elections and upon all questions submitted to the voters of the state unless disqualified by law for mental incompetence or the conviction of a felony. Each elector who qualified to vote within a precinct shall be entitled to vote in that precinct until he establishes another voting residence. An elector shall never lose his residency for voting solely by reason of his absence from the state.

47. SDCL §12-14-1 provides that “[t]he board of county commissioners shall by resolution provide for election precincts throughout its county and shall designate polling places within such precincts.”

48. SDCL §12-14-9 provides that “[p]olling places shall be selected with reference to the convenience of the voters in the various election precincts, and should be as near the center of the election precincts as practicable but if in their judgment the convenience of the voters will be served thereby or if communication can be thereby made available, the polling place may be located outside the boundaries of the precinct.”

49. SDCL §12-19-1 provides that “[a] registered voter who is not otherwise disqualified by law from voting in the election may vote by absentee ballot.”

50. SDCL § 12-16-1 provides that “[a]bsentee voting shall begin no earlier and no later than forty- six days prior to the election.”

51. SDCL §12-19-53 provides that “[i]f a county contracts for the services of a county auditor from another county, that county auditor shall make absentee ballots available in the contracting county if the contracting county requests that absentee ballots be provided. The contracting county shall reimburse the county auditor for the costs incurred pursuant to this section.”

### **THE OGLALA SIOUX TRIBE**

52. The Pine Ridge Indian Reservation was established by the Fort Laramie Treaty in 1868. It currently embraces approximately 2.8 million acres, making it the second largest reservation in the United States. The reservation includes all of Shannon County and part of Jackson County. Its southern boundary borders Nebraska, and its western boundary is approximately 50 miles east of Wyoming.

53. The Oglala Sioux Tribe has a tribal enrollment of approximately 38,000 enrolled members who reside within the boundaries of the Pine Ridge Reservation. There are approximately 6,935 eligible voters within the Pine Ridge Reservation, most of who are Tribal members or are eligible for Tribal enrollment.

54. The Oglala Sioux Tribe is plagued by many of the same economic and social problems as most other Tribes. Social problems occur well beyond state and national levels and include low educational completion rates, lower education performance rates, and general health problems. The infant mortality rate is five (5) times higher than the national average. See Ex. 1, A Brief History of the Lakota and the Pine Ridge Reservation Red Cloud Indian School,

<http://www.redcloudschool.org/history/lakota.htm> (last visited January 10, 2012). Death rates due to diabetes are three (3) times higher than the general population. Id. Indeed, life expectancy on the Pine Ridge Reservation is the second lowest in the western hemisphere – male life expectancy is 48 years and female expectancy is 52 years of age. Id.

55. On the Pine Ridge reservation, per-capita income is \$7,880. The median income is even lower at \$3,500. See Ex. 2, Statistics for Pine Ridge, [http://www.backpacksforpineridge.com/Stats\\_About\\_Pine\\_Ridge.html](http://www.backpacksforpineridge.com/Stats_About_Pine_Ridge.html) (last visited January 10, 2012). Forty-nine percent (49%) of residents live below the federal poverty line while sixty one percent (61%) of residents below the age of eighteen (18) live below the poverty line. See Ex. 3, South Dakota: Pine Ridge Reservation, American Indian Relief Council, [http://www.nrcprograms.org/site/PageServer?pagename=airc\\_res\\_sd\\_pineridge](http://www.nrcprograms.org/site/PageServer?pagename=airc_res_sd_pineridge) (last visited January 10, 2012). The history of poverty extends to the Tribe itself. If the Oglala Sioux Tribe were to equally dispense revenues from its gaming enterprise, the Prairie Wind Casino, to all enrolled members, each resident would receive 15 cents. According to the 2000 U.S. Federal Census, Shannon County, located within the reservation, is the third poorest county in the nation. See Ex. 4, Testimony of the Honorable John Yellow Bird Steele, President of the Oglala Sioux Tribe, Oversight Hearing on Indian Housing, Before the Senate Committee on Indian Affairs, March 22, 2007, [http://indian.senate.gov/public/\\_files/Steele032207.pdf](http://indian.senate.gov/public/_files/Steele032207.pdf) (last visited January 10, 2012).

56. According to the 2000 U.S. Federal Census, 26.6% of all people living in Shannon County have no high school diploma; only 7.2% had obtained a bachelor's or college degree.

57. Other indicators of poor economic development include a severe housing shortage and sub-standard housing, leaving many homeless and thousands in inadequate housing. According to a statistical brief by the Bureau of the Census, nearly 21 percent of Indian American households lack complete plumbing facilities; over 12 percent lack plumbing and are crowded, having more residents than rooms. U.S. Department of Commerce, Economics and Statistics Administration. Housing of American Indians on Reservations (April 1995) (last visited January 10, 2011) [http://www.census.gov/apsd/www/statbrief/sb95\\_9.pdf](http://www.census.gov/apsd/www/statbrief/sb95_9.pdf)

58. One estimate suggests that there is an average of 17 people living in each family home (in perhaps two to three rooms). See Ex. 2. This is not always reflected in HUD reports because families, fearing eviction for violating HUD guidelines, sometimes hide additional residents when officials conduct surveys. See Ex. 4.

#### **BACKGROUND OF VOTING HISTORY IN SHANNON COUNTY**

59. Shannon and Todd County are the only two counties in the State of South Dakota that are unincorporated.

60. Shannon County falls entirely within the boundaries of the Pine Ridge Indian Reservation.

61. Shannon County contracts with Fall River County for the duties of auditor, treasurer, state's attorney, director of equalization, and register of deeds.

62. In 2002, the voters of Shannon County were required to request an absentee ballot from the Shannon County auditor. However, because the Shannon County auditor position was contracted out to the Fall River auditor located in Hot Springs, South Dakota, Shannon County voters would only receive an absentee ballot after mailing the application to Hot Springs. The Shannon County voter would then have to conduct a second mailing to cast their vote unless they drove to Hot Springs to deliver it personally. Ex. 5, Healy Aff. 2

63. Other South Dakota citizens can simply go to the courthouse in their respective counties to obtain and cast an absentee ballot in one trip. Although these voters are actually casting an absentee ballot in-person, this is commonly known as “early voting.” Additionally, South Dakota residents can register to vote, request an absentee ballot, receive the absentee ballot, and cast their ballot for the first four (4) weeks of the absentee ballot voting period from six (6) weeks prior to the election up until two (2) weeks prior to the election. Ex. 5, Healy Aff. 2-3. Thereafter, except for Shannon County voters, registered voters are able to go to their respective courthouse and request and complete an absentee ballot for the final two (2) weeks of the absentee ballot period, including up until 3:00 p.m. on Election Day. Id. This simplified means of casting a vote simply was not available to Shannon County residents. In fact, it required significant costly travel from the reservation. For example, from Oglala, South Dakota, to Hot Springs it would take a minimum of 53 minutes depending on the route taken; from Pine Ridge, South Dakota to Hot Springs, it would take anywhere from 1 hour 9 minutes to 1 hour and 55 minutes; from Kyle, South Dakota, to Hot Springs anywhere from 2 hours 14 minutes to 2 hours and 34 minutes; from Wounded Knee, South Dakota to Hot Springs it

would take 1 hour 26 minutes; from Manderson, South Dakota to Hot Springs anywhere between 1 hour 40 minutes and 2 hours 29 minutes; from Potato Creek, South Dakota to Hot Springs anywhere from 2 hours 39 minutes to 2 hours 45 minutes; from Grass Creek, South Dakota to Hot Springs anywhere from 2 hours 10 minutes to 2 hours 28 minutes; from Slim Buttes, South Dakota to Hot Springs anywhere from 1 hour 21 minutes to 2 hours 28 minutes; from Wakpamni, South Dakota to Hot Springs anywhere from 1 hour 41 minutes to two hours 15 minutes; from Porcupine, South Dakota to Hot Springs anywhere from 1 hour 41 minutes to 2 hours 29 minutes; from Rockyford, South Dakota to Hot Springs anywhere from 2 hours 4 minutes to 2 hours 6 minutes; from Red Shirt, South Dakota to Hot Springs anywhere from 1 hour 7 minutes to 1 hour 40 minutes; and finally, from Batesland, South Dakota to Hot Springs 1 hour 37 minutes. Combined with the amount of gas and time it would take to travel from within the Pine Ridge Indian Reservation to Hot Springs, many voters residing on the reservation do not own an automobile and do not have ready access to transportation. Because of the high poverty level, many of the voters must conserve gas money. These impediments presented disparate impacts affecting Indian voters within Shannon County.

64. Many members of the Oglala Sioux Tribe do not regard voting by mail as being a viable option. In light of past discrimination and hostilities, many do not feel confident that ballots that are mailed to a county official will be appropriately placed within the ballot box by the recipient and thereafter counted. Individuals feel more confident when they can deliver the ballot in person.

65. In 2004, the Fall River County auditor failed to establish a location geographically located within Shannon County where eligible voters could register to vote and request and complete an absentee ballot. See Ex. 5, Healy Aff 3.

66. In 2004, the Shannon County Board of Commissioners asked that the Fall River County Board of Commissioners establish polling places within the confines of Shannon County for the 2004 election. Id. at 4. The approval process for early voting includes the Shannon County Board of Commissioners, the Fall River County Board of Commissioners, the Fall River County Auditor, the United States Department of Justice, and the Shannon County State's attorney. Id. The Fall River County Board of Commissioners agreed – but only after donations were promised to allay the costs of the additional polling places. Id. All required approvals for alternative voting locations in Shannon County were obtained in early October of 2004. Id.

67. To maintain the alternative polling locations for a mere three (3) week period, Four Directions paid \$15,000 to Shannon County who in turn reimbursed Fall River County for services rendered. Id.

68. In 2004, an early voting location was alternated between Kyle, South Dakota and Pine Ridge, South Dakota for approximately four (4) hours per day for that three (3) week period. Id.

69. The early voting locations contributed to voter turnout more than doubling in Shannon County from 2000 to 2004. Id. Indeed, of the 6,520 registered voters residing in Shannon County 56.98 % cast their ballots and 1673 were cast by absentee ballot. See Ex. 6, South Dakota Secretary of State 2004 Absentee Ballot Records,

[http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections\\_electioninfo04\\_absenteeballotnumbers.shtm](http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections_electioninfo04_absenteeballotnumbers.shtm) (last visited on December 29, 2011).

70. In the 2004 general election in Shannon County, 36.78% of the votes cast were absentee ballots, compare to 23.96% statewide. See Ex. 6, South Dakota Secretary of State 2004 Absentee Ballot Records,

[http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections\\_electioninfo04\\_absenteeballotnumbers.shtm](http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections_electioninfo04_absenteeballotnumbers.shtm) (last visited on December 29, 2011).

71. In the 2004 general election in Shannon County, turnout was 56.98% compared to a statewide average of 78.63%. See Ex. 7, South Dakota Secretary of State 2004 Voter Turnout Records,

[http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections\\_electioninfo06\\_voteturnoutbycounty.shtm](http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections_electioninfo06_voteturnoutbycounty.shtm) (last visited on December 29, 2011).

72. For the 2006 election, there was no early voting in Shannon County. Of the 2459 registered voters in Shannon County, 31.34% cast their ballots and only 69 did so by absentee ballot through the mail or by voting early at the Fall River County Auditor's Office. Only 2.81% of Shannon County's votes were absentee or early votes in 2006, compared to a statewide average of 27.35%. See Ex. 8, South Dakota Secretary of State 2006 Absentee Ballot Records,

[http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections\\_electioninfo06\\_absenteeballotnumbers.shtm](http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections_electioninfo06_absenteeballotnumbers.shtm) (last visited on December 29, 2011).

73. In the 2006 general election in Shannon County, turnout was 31.34% compared to 67.26% statewide. See Ex. 9, South Dakota Secretary of State 2006 Voter Turnout Records,



[http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections\\_electioninfo06\\_voterturnoutbycounty.shtml](http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections_electioninfo06_voterturnoutbycounty.shtml) (last visited on December 29, 2011).

74. In the 2008 general election, of the 8,042 registered voters in Shannon County, 3425 cast their ballots, for a turnout rate of 42.59%.

[http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections\\_electioninfo08\\_generaltoctypct.shtml](http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections_electioninfo08_generaltoctypct.shtml) (last visited January 12, 2012). Only 448 did so by absentee ballot. See Ex. 11, South Dakota Secretary of State 2008 Absentee Ballot Records,

[http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections\\_electioninfo08\\_generalabsentee.shtml](http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections_electioninfo08_generalabsentee.shtml) (last visited on December 29, 2011).

75. In Shannon County in 2008, 13.1% of the votes were absentee ballots, either by mail, early voting in Shannon County, or early voting at the Fall River County Auditor's Office. The statewide average was 26.02% in South Dakota in the 2008 general election. See Ex. 11, South Dakota Secretary of State 2008 Absentee Ballot Records Available at

[http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections\\_electioninfo08\\_generalabsentee.shtml](http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections_electioninfo08_generalabsentee.shtml) (last visited on December 29, 2011).

76. In the 2008 election, Shannon County had just two days of early voting in the general election, with shorter hours than in Fall River County. See Ex. 12, Charles Michael Ray, In S.D., Native Americans Face Voting Roadblocks, NPR transcript at 1 (October 26, 2008). In the 2008 general election, turnout was 42.59% in Shannon County compared to 73.02% statewide. See Ex. 10, South Dakota Secretary of State 2008 Voter Turnout Records Available at

[http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections\\_electioninfo08\\_generaltoctypct.shtm](http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections_electioninfo08_generaltoctypct.shtm) (accessed on December 29, 2011).

77. For the 2010 election, there was approximately twenty-two (22) days early voting in Shannon County. However, unlike other counties in the State of South Dakota, there was no in person absentee voting in Shannon County on Election Day. See Exhibit 5, Healy Aff. 6.

78. Of the 7,530 registered voter in Shannon County, 2,628 voters, or 34.90%, voted in 2010 and 488 of those did so by absentee ballot. 18.57% of the ballots were absentee in the 2010 general election in Shannon County, compared to a statewide average of 19.71%. See Ex. 13, South Dakota Secretary of State 2010 Absentee Ballot Records,

[http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections\\_general2010\\_abs.shtm](http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections_general2010_abs.shtm) (last visited December 29, 2011). See also Ex. 14.

79. In the 2010 midterm general election, Shannon County turnout was 34.9% compared to 62.27% statewide. See Ex. 14, South Dakota Secretary of State 2010 Voter Turnout Records,

[http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections\\_general2010\\_turnout.shtm](http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections_general2010_turnout.shtm) (last visited December 29, 2011).

80. In the 2004-2010 elections, residents of every other county besides Shannon and Todd County had access to convenient early voting in their local county auditors' offices starting 46 days before the primary and general elections. See Ex. 5, Healy Aff.

#### **FACTUAL BACKGROUND OF EVENTS**

81. The Defendants have a lengthy history of attempting to circumvent the Indians' right to vote and participate in the political process. By letter dated September 28, 2009, the United States informed Shannon County and its Auditor that it had authority to file suit alleging violations of the Voting Rights Act of 1965.

82. In response to the threat made by the United States, James Sword, Fall River States Attorney, complained to Senator Tim Johnson that "Shannon County and [County Auditor Sue Ganje] are willing to work with DOJ to improve the voting process, but we won't be threatened/intimidated into signing any settlement agreement." Ex. 15, Letter from James G. Sword to Senator Tim Johnson (October 21, 2009).

83. The United States did not relent and Senator Johnson did not intercede, and so Mr. Sword proceeded to threaten the United States Attorney that "[i]f a voting rights complaint is filed I will resign. Sue will resign. Fall River County is not obligated to sign any contract with Shannon County, especially in light of lawsuits now pending. DOJ, the State of South Dakota and the tribe can argue about who is going to run the 2010 elections." Ex. 16, Letter from James G. Sword to United States Attorney Brendan Johnson at 2 (December 31, 2009).

84. On or about April 23, 2010 the United States, the Shannon County Board of County Commissioners and the Shannon County Auditor entered a memorandum of agreement that required the County to provide Lakota translators at each of the polling locations and to provide applicable training to same. Ex. 17, Memorandum of Agreement (April 23, 2010).

85. On or about August 3, 2010, Mr. Sword informed interested parties that he intended to advise against the establishment of absentee voting locations in Shannon

County. He gave as his rationale that they had been sued by the US Department of Justice (DOJ) and the American Civil Liberties Union on voting rights matters in Shannon County and that they were tired of it. He further claimed to be upset because neither US Attorney Brendon Johnson nor US Senator Tim Johnson would help with the US DOJ matter. See Ex. 5, Healy Aff. 5-6.

86. Mr. Sword also claimed that one of the reasons he held this view is because Patrick Duffy, an attorney for the ACLU, had not “picked up the phone and called him” and had instead proceeded with the lawsuit and had sued the Fall River County Auditor in her personal capacity. Id. at 5.

87. Mr. Sword further claimed that both he and the Fall River County Auditor had a contract with Shannon County and that this contract had a 30 day termination clause. Id.

88. Mr. Sword claimed that if a request for absentee voting locations during the six (6) week absentee voting period in Shannon County were to be made by the Shannon County Commission, he would exercise the termination clause in his agreement with the Shannon County Commission and advise the Fall River County Auditor to do the same and that Shannon County would have no one to conduct the 2010 election. Id. at 5-6.

89. Mr. Sword further claimed that he had already spoken to South Dakota Attorney General Marty Jackley and that he had been advised that Fall River County had no obligation to provide election services to Shannon County. Id. at 6.

90. On or about August 18, 2010, the Oglala Sioux Tribe President requested two satellite offices at Pine Ridge Village and Kyle. See Ex. 18, Letter from President Theresa Two Bulls to Shannon County Commissioners (August 18, 2010).

91. Despite Mr. Sword's threats, Shannon County registered voters were allowed approximately twenty-two (22) days in which to cast an early vote in 2010.

92. Native Americans in Shannon County and in South Dakota have common socioeconomic characteristics, a common and distinct history, a common and distinct quasi-sovereign tribal status, a unique political status under the treaties, laws, and executive orders of the United States, and a special trust relationship with the United States.

93. Historically, Native American residents of Shannon County have been subject to private as well as official discrimination on the basis of race, tribal, and language minority status, including discrimination in attempting to exercise their right of franchise and to participate equally with other residents in the political process.

94. Native American residents of Shannon County and South Dakota bear the effects of discrimination on the basis of race and tribal status in education, housing, employment, and health services which have resulted in a lower socioeconomic status which hinders their ability to participate effectively in the political process.

95. Section 1973(b) of the Voting Rights Act, in relevant part, states that it is a violation of the Voting Rights, if,

based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the state or political subdivision are not equally open to participation by members of a class of citizens protected... in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

Thus, Section 2 of the Voting Rights Act, as amended, protects Indians from voting practices which have a disparate impact on their right to vote.

96. In Spirit Lake Tribe v. Benson County, et al., CIV 2:10-cv-095 (D.N.D. 2010), the Court noted the following:

The County asserts that no right to vote in person has ever been recognized under the Constitution. Additionally, the County asserts that the mail-in procedure actually solves the transportation problems and will increase voter participation. While such an argument is tenable in communities with stable housing arrangements, poverty and transience of the Reservation makes mail balloting more difficult for tribal members. The evidence suggests that Indians are more likely to have not received a ballot application, which when coupled with a decreased ability to vote in person, creates a disparate impact. (internal citations omitted)

97. The legitimate interests of the Defendants will not be undermined in the event that the Court grants the relief prayed for herein.

98. Plaintiffs have no adequate remedy at law.

99. Plaintiffs will suffer irreparable harm as a result of the violations complained of herein, and that harm will continue unless Defendants' failure to allow early voting for a six (6) week period is declared unlawful and enjoined by this Court.

100. Plaintiffs desire to vote early at an in-person absentee voting location in Shannon County in the spring 2012 primary election and fall 2012 general election, at some point during the 46 day early vote period authorized by South Dakota law

101. Plaintiffs have requested that Shannon County, Fall River County and the State of South Dakota provide at least one early voting location in Shannon County in the 2012 primary and general elections.

102. Defendant Shannon County has agreed to provide only 6 days of early voting for the 2012 primary and general elections. See Ex. 23, Shannon Co. Comm.

Minutes at 6 (December 2, 2011). See also Ex. 19, Andrea J. Cook, Shannon Commission approves limited early voting in 2012, Rapid City Journal, Dec. 10, 2011.

103. Secretary of State Gant has not agreed to provide funding from HAVA or any other source to assist with early voting for the full 46 days authorized by South Dakota law in Shannon County, and has only indicated a willingness to consider reimbursement requests for early voting in Shannon County. Ex. 20, Letter from Secretary of State Gant to Steven D. Sandven (December 30, 2011).

104. Shannon County is one of the poorest counties in the nation, with a limited private property tax base, and has had to make sacrifices to provide even six days of early voting. See Ex. 19.

105 Unless this Court issues an injunction ordering the Defendants to establish and fund at least one early voting location in Shannon County for the full time period authorized by South Dakota law, starting 46 days before the primary and general elections, Plaintiffs, along with all Indians within Shannon County, will be denied their right to vote on an equal basis as non-Indian citizens and would suffer irreparable harm.

**CLAIM ONE**  
**VIOLATION OF THE 14TH AMENDMENT OF THE UNITED STATES**  
**CONSTITUTION AND 42 U.S.C. § 1983**

106. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

107. Section 1 of the Fourteenth Amendment of the United States Constitution provides: “No...State shall . . . deny to any person within its jurisdiction the equal protection of the law.”

108. The Defendants have acted under color of state law to deprive the voters of Shannon County of the equal protection of the laws by arbitrarily failing to establish early voting polling places within Shannon County for a full six (6) week period as enjoyed by almost every other registered voter in the State of South Dakota in violation of the Fourteenth Amendment and 42 U.S.C. § 1983

**CLAIM TWO  
VIOLATION OF THE VOTING RIGHTS ACT OF 1965**

109. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

110. The South Dakota Constitution provides: "Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." S.D. Const. Art. VII, 1; S.D. Const. Art. VI, § 19.110.

111. The Defendants have acted under color of state law to deprive the voters of Shannon County equal elections by arbitrarily failing to establish early voting polling places within Shannon County for a full six (6) week period as enjoyed by almost every other registered voter in the State of South Dakota in violation of the Constitution of the State of South Dakota.

**CLAIM THREE  
VIOLATION OF THE VOTING RIGHTS ACT OF 1965**

112. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

113. Section 2 of the Voting Rights Act provides: "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner 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 group. 42 U.S.C. § 1973(a).

114. Defendants’ failure to establish early voting polling places within Shannon County for a full six (6) week period has resulted in Indians, including the Plaintiffs, having less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice, in violation of Section 2 of the Voting Rights Act.

#### RELIEF

WHEREFORE, Plaintiffs pray that the Court enter judgment in their favor as follows:

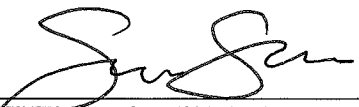
1. That this court assume jurisdiction;
2. That this court declare that the Defendant’s failure to provide an early voting polling place in Shannon County for the full 46-day time period authorized by South Dakota law violates existing law, including, but not limited to, § 2 of the Voting Rights Act, as amended, the Indian Citizenship Act, the Fourteenth Amendment to the United States Constitution, and the South Dakota Constitution;
3. Declare that the policy requiring unincorporated counties to submit for reimbursement of HAVA funds, rather than allowing unincorporated counties to use HAVA funds for election expenses when needed violates the Voting Rights Act;
4. Grant preliminary and permanent injunctive relief by ordering the Defendants to establish and fund with HAVA or other state funds at least one early voting location in Shannon County for the full 46-day time period authorized by South Dakota law for all future elections, and further relief as the interest of justice may require;

5. Grant plaintiffs reasonable attorneys' fees, litigation expenses and costs pursuant to 42 U.S.C. § 1973(e) and § 1988; and
6. Grant the Plaintiffs any further relief which may in the discretion of the Court be necessary and proper to ensure that the voting rights of Indians within Shannon County are properly respected in accordance with the Orders of this Court;

January 13, 2012

STEVEN D. SANDVEN, Law Office

By:

  
\_\_\_\_\_  
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Telephone: 605 332-4408  
ATTORNEY FOR PLAINTIFFS

**VERIFICATION**

DAWN BLACK BULL declares pursuant to 28 U.S.C. § 1746:

I am one of the plaintiffs in this case. I have read the foregoing complaint and the contents thereof are true to the best of my knowledge, information and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.  
Executed on January \_\_, 2012.

Dawn Black Bull  
Dawn Black Bull