

FILED

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IN THE UNITED STATES
DISTRICT COURT FOR SOUTH DAKOTA

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF SOUTH DAKOTA; WILLIAM J.
JANKLOW in his official capacity as
Governor of the State of South
Dakota; HAROLD HALVERSON in his
official capacity as the President
Pro Tempore of the Senate of the
State of South Dakota; ROGER HUNT in
his official capacity as the Speaker
of the House of Representatives of
the State of South Dakota; MARK W.
BARNETT in his official capacity as
the Attorney General of the State of
South Dakota; JOYCE HAZELTINE in her
official capacity as the Secretary of
State of the State of South Dakota;
and the COUNTY AUDITORS for BUTTE,
CORSON, DEWEY, HARDING, PERKINS, and
ZIEBACH COUNTIES, in their official
capacities,

Defendants.

Civil Action No.

00-3015

COMPLAINT

The United States of America, plaintiff herein, alleges:

1. This action is brought on behalf of the United States by the Attorney General pursuant to Sections 2 and 12(d) of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973 and 1973j(d), and pursuant to 28 U.S.C. § 2201, to enforce rights guaranteed by Section 2 of the Voting Rights Act.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 1973j(f). Venue properly lies in this Court under 28 U.S.C. § 1391(b)(1), (2), as State

House of Representatives District 28 lies within this Judicial District and all individual defendants perform their official duties in this Judicial District.

3. 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 abridgement of the right to vote on account of race or color.

4. Defendant WILLIAM J. JANKLOW is the Governor of the State of South Dakota and in that capacity serves as the head of the Executive Branch of State government. Defendant Janklow is charged with the responsibility of enforcing compliance with the laws of the state. Defendant Janklow is sued in his official capacity.

5. Defendant HAROLD HALVERSON is the President Pro Tempore of the Senate of the State of South Dakota and in that capacity exercises legislative powers of the state. Defendant Halverson is sued in his official capacity.

6. Defendant ROGER HUNT is the Speaker of the House of Representatives of the Senate of the State of South Dakota and in that capacity exercises legislative powers of the state. Defendant Hunt is sued in his official capacity.

7. Defendant MARK W. BARNETT is the Attorney General of the State of South Dakota and in that capacity oversees the enforcement of the laws of the state. Defendant Barnett is sued in his official capacity.

8. Defendant JOYCE HAZELTINE is the Secretary of State of the State of South Dakota and in that capacity oversees the election processes throughout the state. Defendant Hazeltine is sued in her official capacity.

9. Defendants COUNTY AUDITORS in BUTTE, CORSON, DEWEY, HARDING, PERKINS, and ZIEBACH COUNTIES oversee the election processes within their respective counties. Defendants County Auditors are sued in their official capacities.

10. Defendant STATE OF SOUTH DAKOTA is charged with the responsibility of ensuring that South Dakota election laws, as applied, comply with the provisions of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973 to 1973bb-1.

11. State House of Representatives District 28 is comprised of Dewey, Corson, Harding, Perkins, a portion of Butte, and Ziebach counties. Each county is a political and geographical subdivision of the State of South Dakota.

12. State House of Representatives District 28 is composed of two members who are elected at large by all of the voters in the district. The term of the members of the State House of Representatives is two years.

13. In 1991, the State Legislature of South Dakota enacted South Dakota Codified Laws § 2-2-28 which created two single-member State House of Representative districts for House District 28, designated as District No. 28A and District No. 28B. The Act stated that the provision was developed "in order to protect minority voting rights." SDCL § 2-2-28 (1991).

14. District No. 28A was comprised of Dewey and Ziebach counties and that portion of Corson county consisting of Bullhead, Kenel, Liberty, Little Oak, Little Eagle, McLaughlin, Ridgeland and Wakpala precincts.

15. District No. 28B was comprised of Harding and Perkins counties and that portion of Corson county consisting of Delaney, Grand Valley, Lincoln, McIntosh, Morrystown and Wautauga precincts, and the cities of McIntosh, McLaughlin and Morrystown, and that portion of Butte County west of U.S. Highway 85, north of U.S. Highway 212 and east of S.D. Highway 79, excluding the cities of Belle Fourche and Nisland.

16. According to the 1990 Census, House District 28A had an approximate total population of 10,760, of whom 7,033 (65.36%) were Native American. The approximate voting age population was 6,353 persons, of whom 3,639 (57.28%) were Native American. House District 28A had a majority Native American total population and voting age population.

17. In 1996, the State Legislature of South Dakota enacted House Bill 1282 which amended South Dakota Codified Laws § 2-2-28 to eliminate the two single-member State House of Representative districts for House District 28, designated as District No. 28A and District No. 28B.

18. The result of the passage of House Bill 1282 was the abolition of the majority-minority, single-member district designated as House District 28A and the creation of an at-large, multi-member method of election for State House of

Representatives District 28. SDCL § 2-2-28 (1996).

19. The intent of House Bill 1282 and the abolition of the majority-minority, single-member district in House District 28A was to discriminate against Native American voters in House District 28.

20. The result of House Bill 1282 and the abolition of the majority-minority, single-member district in House District 28A was to discriminate against Native American voters in House District 28.

21. The Native American population of State House of Representatives District 28 is sufficiently numerous and geographically compact that, if members of the House of Representatives from District 28 were elected from two properly apportioned single-member districts, Native Americans voters would constitute a voting age majority in at least one of the voting districts.

22. Racially polarized voting patterns prevail in elections in State House of Representatives District 28. Native American voters in the district are politically cohesive, and white voters vote sufficiently as a bloc usually to defeat the Native American voters' candidate of choice in state elections.

23. Native Americans in South Dakota have suffered from a history of official discrimination and continue to bear the effects of past discrimination in voting and other areas, such as education, employment, and housing.

24. The socioeconomic status of Native American citizens in

State House of Representatives District 28 is lower than the socioeconomic status of the white citizens of the district. The depressed socioeconomic status of the Native American population of the district is related to the effects of past racial discrimination. These effects of past discrimination hinder the current ability of Native American citizens to participate effectively in the political process in South Dakota.

25. No Native American person has served as a member of the State House of Representatives from District 28.

26. The use of single-member districts, instead of an at-large method of election, for the members of the State House of Representatives from District 28 is specifically allowed by Section 5 of the South Dakota State Constitution.

27. The present method of electing the members of the State House of Representatives from District 28, assessed under the totality of the circumstances, is intended to provide Native American citizens less opportunity than white citizens to participate in the political process and to elect representatives of their choice in violation of Section 2 of the Voting Rights Act.

28. The present method of electing the members of the State House of Representatives from District 28, assessed under the totality of the circumstances, results in Native American citizens having less opportunity than white citizens to participate in the political process and to elect representatives of their choice in violation of Section 2 of the Voting Rights

Act.

29. Unless enjoined by an order of this Court, the Defendants will continue to administer, implement and conduct future elections for the State House of Representatives from District 28 under the present method of election that denies Native American citizens the opportunity to participate equally with white citizens in the state political process and to elect candidates of their choice in violation of Section 2 of the Voting Rights Act.

WHEREFORE, the United States of America prays that this Court enter an order:

- (1) Declaring that the existing at-large method of electing members of the State House of Representatives from District 28 violates Section 2 of the Voting Rights Act;
- (2) Enjoining defendants, their successors in office, their agents and all persons acting in concert or participation with them, both preliminarily and permanently, from administering, implementing, or conducting any future elections for members for the State House of Representatives from District 28 under the at-large method of election;
- (3) Ordering the defendants promptly to develop and present a district election plan that remedies the Section 2 violation. If the defendants fail to develop and present such a plan, the Court should order into effect

districting and election plans of its own design to remedy the Section 2 violation;

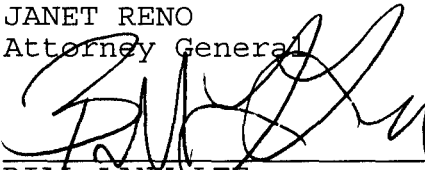
- (4) Ordering the defendants to set immediately a qualifying time for candidates and hold special elections soon thereafter for the members of the State House of Representatives from District 28 under a lawful district election plan; and
- (5) Granting such additional relief as the interests of justice may require.

Respectfully submitted,



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