

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION**

ROSEBUD SIOUX TRIBE and their members; OGLALA SIOUX TRIBE and their members; LAKOTA PEOPLE'S LAW PROJECT; KIMBERLY DILLON; and HOKSILA WHITE MOUNTAIN,

Plaintiffs,

v.

Civ. No. 5:20-cv-05058-LLP

STEVE BARNETT, in his official capacity as Secretary of State for the State of South Dakota and Chairperson of the South Dakota State Board of Elections; LAURIE GILL, in her official capacity as Cabinet Secretary for the South Dakota Department of Social Services; MARCIA HULTMAN, in her official capacity as Cabinet Secretary for the South Dakota Department of Labor and Regulation; and CRAIG PRICE, in his official capacity as Cabinet Secretary for the South Dakota Department of Public Safety,

Defendants.

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Under Rule 56.1 of the Federal Rules of Civil Procedure and Local Civil Rule 56.1, Plaintiffs Rosebud Sioux Tribe and its members, Oglala Sioux Tribe and its members, Lakota People's Law Project, Kimberly Dillon, and Hoksila White Mountain ("Plaintiffs") respectfully move for summary judgment on their claims under the National Voter Registration Act of 1993, as set forth in Plaintiffs' Amended Complaint, ECF No. 44.

Specifically, pursuant to 28 U.S.C. § 2201 and 52 U.S.C. § 20510(b)(2), Plaintiffs move the Court for a declaratory judgment that:

- (1) Defendant Steve Barnett, in his official capacity as the South Dakota Secretary of State and Chairperson of the South Dakota State Board of Elections, and Defendant Craig Price, in his official capacity as Cabinet Secretary of the South Dakota Department of Public Safety, have violated and continue to violate Section 5 of the NVRA, 52 U.S.C. § 20504, by failing to provide required voter registration services during driver's license and identification application and renewal processes and change of address transactions; and
- (2) Defendant Barnett; along with Defendant Laurie Gill, in her official capacity as the Cabinet Secretary of the South Dakota Department of Social Services ("DSS"); and Defendant Marcia Hultman, in her official capacity as Cabinet Secretary of the South Dakota Department of Labor and Regulation ("DLR"), have violated and continue to violate Section 7 of the NVRA, 52 U.S.C. § 20506, by failing to provide required voter registration services through all South Dakota state agencies that provide public assistance, including DSS and DLR.

As stated in Plaintiffs' Amended Complaint, should the Court grant this motion, Plaintiffs will be entitled to a permanent injunction barring Defendants from implementing policies, practices, and procedures that violate or fail to ensure compliance with their obligations under Sections 5 and 7 of the NVRA, to other equitable relief necessary to ensure that compliance and remedy past violations, and to an award of their reasonable attorneys' fees, including litigation expenses, and costs, as permitted by 52 U.S.C. § 20510(c).

Upon the Court's grant of this motion for summary judgment, Plaintiffs respectfully request separate briefing on the appropriate remedy for Defendants' longstanding and continuing violations of the NVRA, which, as Plaintiffs request in their Amended Complaint, should include

a permanent injunction barring Defendants from implementing policies, practices, procedures that violate or fail to ensure compliance with Sections 5 and 7 of the NVRA, as well as a court-ordered remedial plan to ensure Defendants' NVRA compliance.

Accordingly, Plaintiffs respectfully request that, upon entry of summary judgment for Plaintiffs, the Court permit Plaintiffs to submit a proposed remedial plan to the Court within 30 days, describing the appropriate injunctive and equitable relief needed to cure and prevent Defendants' NVRA violations, and, if necessary, to set an appropriate briefing schedule on that proposed plan. Plaintiffs also request that, upon entry of summary judgment in this case, the Court enter a schedule for Plaintiffs to submit a motion for attorneys' fees and costs at the appropriate juncture.

In support of this motion, Plaintiffs concurrently submit a memorandum of law, statement of undisputed material facts, and attorney declaration of Samantha Kelty attaching the documentary exhibits Plaintiffs referenced in the statement of undisputed material facts.

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this motion for summary judgment and order supplemental proceedings on the appropriate remedy for Defendants' violations of the NVRA. Plaintiffs request oral argument if it would assist the Court in deciding this motion.

DATED: February 9, 2022

Respectfully submitted,

/s/ Terry Pechota

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on February 9, 2022, I electronically filed and served on all counsel of record the foregoing Plaintiffs' Motion for Summary Judgment using the Court's CM/ECF system.

/s/ Terry Pechota
Terry Pechota

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