

SOUTH DAKOTA VOTING RIGHT CASE (CIV 12-5003)

Plaintiffs only had access to the following number of partial days of in-person absentee voting in Shannon County during the 2004, 2006, 2008 and 2010 election cycles:

- 0 2004 primary election
- 16 2004 general election
- 0 2006 primary election
- 0 2006 general election
- 2 2008 primary election
- 2 2008 general election
- 0 2010 primary election
- 22 2010 general election.

Sandven Aff. Ex. 5 S. Ganje Answer to Interrogatory 2.

For all other South Dakota registered voters, in-person early voting was available in the county of residence for approximately 32 days before the primary election and 32 days before the general elections – with the exception of Todd County and Shannon County. When Shannon County voters wrote to Secretary of State Gant on November 16, 2011, November 26, 2011 and December 19, 2011 seeking assistance with a Shannon County location, he did not respond. Sandven Aff. Ex. 17-19 Indeed, he didn't even undertake an investigation to ascertain whether the Plaintiffs' claims were viable. *JG 38:7-11*.¹ Instead, he gave the documents to his attorney thereby making it a "legal" issue. *JG 99:18-102:10*. Despite being the chief state election officer for South Dakota,² when asked to explain why he never made an effort to work with the Shannon County Commission to improve the administration of in-person early voting (hereinafter "early voting") in Shannon County, Secretary of State Gant responded that it was not his responsibility to ensure elections run smoothly.³ *JG 92:3-5*.

Neither could Plaintiffs obtain relief from their Shannon County elected officials.⁴ Plaintiffs requested early voting in their requests to Shannon County Commission dated November 14 and

¹ Herein the following abbreviations are used for deposition transcripts (relevant portions) attached to the Sandven Affidavit:

- Ex. 1 - JG for Jason Gant (Secretary of State)
- Ex. 2 - CN for Chris Nelson (Former Secretary of State)
- Ex. 3 - SG for Sue Ganje (Shannon County Auditor)
- Ex. 4 - LH for Lyla Hutchinson (Chairperson of Shannon County Commission)
- Ex. 25 - OS for Oliver J. Semans (Four Directions)
- Ex. 26 - RB for Richard Braunstein (Plaintiffs' Expert)

² See SDCL §§ 12-4-33, 1-8-1, 1-8-1.1, 12-1-5 (2010).

³ On his website, Secretary of State Gant holds himself out to the public as direction all statewide election. Available at http://sdsos.gov/content/viewcontent.aspx?cat=secretary&pg=/secretary/officeduties_chiefelectionsofficer.ssh (accessed on January 9, 2011).

⁴ Defendant Sword showed Oliver J. Semans, Four Directions, a draft notice of termination of Shannon County auditor and states attorney services (signature lines for himself and Sue Ganje) on August 3, 2011

November 26, 2011. Sandven Aff. Ex. 10 and 11. The Oglala Sioux Tribe requested early voting in Shannon County in 2010. Sandven Aff. Ex. 15. Defendant Shannon County Commissioner Lyla Hutchinson stated they did not seek funding for an early voting location in Shannon County because they did not know if they could make such a request. *LH 179:01-12*. In fact, they never even bothered to investigate the issue. *SG 43:11-44:07*. Defendant Ganje was informed on May 1, 2008 before the primary election and October 10, 2008 before the general elections that HAVA funding could be used for an early voting location in Shannon County. Sandven Aff. Ex. 13 and 14. However, she never even bothered to report the same to the Shannon County Commission. *SG 52:24-53:03*. Again, there were only 2 days of early voting in Shannon County before the 2008 primary election and 2 days of early voting before the general election despite the notices of available funding. Not surprisingly, a survey of Shannon County residents found widespread distrust of both Fall River County and Shannon County employees. Sandven Aff. Ex. 12, ¶ 23.

and 30 days before he formally presented same at a Shannon County Commission meeting. OS 84:21-87:20. *See also* Sandven Aff. Ex. 27 Affidavit of Oliver J. Semans.