

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

EILEEN JANIS and KIM COLHOFF,)	Civ. 09-5019
)	
Plaintiffs,)	
)	
v.)	
)	
CHRIS NELSON, in his individual)	SETTLEMENT AGREEMENT
and official capacity as)	AND RELEASE IN FULL
Secretary of State of South)	OF ALL CLAIMS
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)	
individual and official)	
capacities as members of the)	
State Board of Elections; SUE)	
GANJE, in her individual and)	
official capacity as Auditor)	
for Shannon County,)	
)	
Defendants.)	
)	

SETTLEMENT AGREEMENT AND RELEASE IN FULL OF ALL CLAIMS

I. Introduction

1. On March 10-11, 2010, the Parties entered into mediation before the Honorable Magistrate Judge John E. Simko and reached a Mediation Agreement as that term is defined in Documents 134 and 135.

2. This Settlement Agreement is hereby entered into by Plaintiffs and the State Defendants and is intended to settle and resolve all claims and Covered Matters in the above-entitled

Action relative to Plaintiffs and State Defendants. This Agreement has been negotiated by the Parties in good faith to avoid the costs and risks of prolonged and complicated litigation and to resolve their differences. In the respective opinions of the Parties, this Agreement and the settlement embodied herein is fair, reasonable, and in the public interest. The Plaintiffs and the County Defendant have executed a separate settlement agreement which has not been filed.

3. By entry into this Agreement, State Defendants do not admit the truth or accuracy of any allegations in the Action, and do not admit any liability to any Plaintiff or any third party for or as a result of the acts, actions, or conduct alleged in the Action, or that may be related to or arise out of the allegations contained therein.

II. Definitions

4. Unless otherwise expressly provided for herein, the terms used in this Agreement shall have the meaning provided below:

A. "Agreement" shall mean this Settlement Agreement and Release in Full of All Claims.

B. "Action" shall mean the action entitled Janis, et. al. v. Nelson, et. al., in the United States District Court, District of South Dakota, Western Division, Civil No. 09-5019.

C. "Covered Matters" shall mean all claims brought in the Action, and all claims that the Plaintiffs have or could have made arising from or out of the facts alleged in the Action.

D. "Date of Entry" or "Entry" shall be the date on which this Agreement is signed by the last Party executing the Agreement.

E. "Plaintiffs" shall mean Eileen Janis and Kim Colhoff.

F. "State Defendants" shall mean Chris Nelson, in his individual and official capacity as Secretary of State of South Dakota, and as a member of the State Board of Elections, and Matt McCaulley, Cindy Schultz, Christopher W. Madsen, Richard Casey, Karen M. Layher, and Linda Lea M. Viken, in their individual and official capacities as members of the State Board of Elections.

G. "County Defendant" shall mean Sue Ganje, in her individual and official capacity as Auditor of Shannon County. Defendant La Fawn Conroy has already been dismissed with prejudice from this Action by stipulation of the parties.

H. "Parties" shall mean the Plaintiffs and State Defendants.

III. Release

5. Release. In consideration of State Defendants' agreement to undertake the actions described in this Agreement, Plaintiffs release and discharge State Defendants from all claims, demands, actions and causes of action arising from, out of, or related to the allegations in the Action, Covered Matters, and all other claims, demands, actions and/or causes of action, whether now known or arising in the future, related to or arising from the factual allegations made in the Action. Plaintiffs also release State Defendants from the class action lawsuit they initiated as part of this action.

IV. Settlement

6. Each Party to this Agreement shall bear its own costs and attorney's fees, except as specifically provided herein.

7. The State Defendants, in their official capacity, shall pay twenty-five thousand dollars (\$25,000) in attorney's fees and costs to Plaintiffs' attorneys.

8. State Defendants shall not retaliate in any way against Plaintiffs as a result of the filing of this Action.

9. The Parties have agreed upon the impact of state and federal felony convictions on voting rights under state law as it exists on the Date of Entry. This agreement is documented in the attached Exhibit A.

10. The agreement referenced in Paragraph 9 is subject to modification by changes in state law, or an interpretation of

state law by a court of competent jurisdiction, which conflicts with any part of Exhibit A.

11. Within 45 days of the Date of Entry, Secretary of State Chris Nelson will advocate that the South Dakota Board of Elections, hereinafter "Board," vote to make changes to the following Administrative Rules of South Dakota:

a. A.R.S.D. 5:02:05:02, as documented in the attached Exhibit B at page 2.

b. A.R.S.D. 5:02:05:02.01, as documented in the attached Exhibit C at page 2.

12. Within 30 days of the Date of Entry, Secretary of State Nelson will advocate that the Board vote to adopt a new administrative rule, as documented in the attached Exhibit D.

13. The proposals referenced in Paragraphs 11 and 12 must go through the rulemaking process required in SDCL Chapter 1-26 before they are adopted as South Dakota Administrative Rules. This process includes but is not limited to a public hearing and comment period, approval for legality and form and style by the South Dakota Legislative Research Council, and final approval by the South Dakota Legislature's rules review committee. Although Secretary of State Nelson will advocate strongly on behalf of the rule changes referenced in Paragraphs 11 and 12, the Secretary of State cannot control whether the changes as proposed above will be accepted or modified by the Board.

Neither the Secretary of State nor the Board controls whether the proposals referenced in Paragraphs 11 and 12 will be rejected or modified by the Legislative Research Council or the Legislature's rules review committee.

14. Within 20 days of the Date of Entry, Secretary of State Nelson will send the letter attached as Exhibit E to all county auditors in the State of South Dakota at their last known address.

15. Within 20 days of the Date of Entry, the Secretary of State's Office will post the information in Exhibits A and F on the Secretary of State's website.

16. Exhibits B, C, D, and F are subject to modification by changes in state law, or an interpretation of state law by a court of competent jurisdiction, which conflicts with any part of these exhibits.

17. Within 20 days of the Date of Entry, the Secretary of State's Office will make the changes to the South Dakota Polling Place Voter Key documented on Exhibit G and Exhibit H, page 1, number 21.

18. Secretary of State Nelson will recommend and advocate to the Board that it propose an amendment of SDCL 12-18-10 to the 2011 Legislature. The proposed amendment is documented in the attached Exhibit I. Neither the Secretary of State nor the

Board have control over whether the South Dakota Legislature chooses to make such amendment.

19. Secretary of State Nelson will make training available to state auditors regarding which felons are disqualified from voting. The training will occur in May of 2010. Secretary of State Nelson will then recommend that his successor incorporate this training into the biennial training session scheduled prior to each election year, which is next scheduled for November or December of 2011.

20. Secretary of State Nelson will make training available to county auditors for purposes of training poll workers in their county regarding felony disqualification. Secretary of State Nelson will then recommend that his successor continue this training. However, county auditors, not the State Defendants, are responsible for training poll workers.

21. Beginning on the Date of Entry, for the period of time required by its normal document retention policy established by the South Dakota Bureau of Administration, the Secretary of State's Office will retain an electronic copy of the weekly e-mails sent to state auditors through the Electronic Voter Registration System (EVRS) regarding state felony disqualifications.

22. Beginning on the Date of Entry, for the period of time required by its normal document retention policy established by

the South Dakota Bureau of Administration, but in no event less than two years, the Secretary of State's Office will retain an electronic copy of the Notice of Convicted Felons received from the U.S. Attorney's Office pursuant to the National Voter Registration Act of 1993, 42 U.S.C. § 1773gg-6.

23. Within 20 days of Date of Entry, Secretary of State Chris Nelson will provide to Plaintiffs' counsel the following documents: (1) the software source code for the algorithm used by the EVRS to conduct matches between the statewide voter registration database and disqualifying felonies in the South Dakota Unified Judicial System database; (2) the system design document (in the most current form available at the Date of Entry) and any emails, memoranda, or other documents not already produced in the above captioned matter that reflect any changes to the system design; and (3) to the extent available, the data dictionaries or other explanations of database variables regarding potential exclusions for felony convictions for the statewide voter registration database and the South Dakota Unified Judicial System database. The South Dakota Unified Judicial System database includes state felony information only.

24. Plaintiffs' counsel will review the information provided pursuant to Paragraph 23. Secretary of State Nelson will encourage persons from the South Dakota Bureau of Telecommunications and South Dakota Unified Judicial System,

with knowledge of how the algorithm operates, to answer questions from Plaintiffs' counsel. However, the Secretary of State has no authority to require or force such persons to cooperate with Plaintiffs' counsel.

25. Neither the State Defendants nor the State of South Dakota will pay Plaintiffs' attorney's fees or costs of any person to review the information provided pursuant to Paragraph 23, including the costs of state employees outside the employment of the Secretary of State's Office.

26. If Plaintiffs' counsel conclude that any felonies produced by the matching algorithm do not meet the criteria for disqualifying state felonies agreed upon by the Parties in the attached Exhibit A, then Plaintiffs' counsel will suggest changes to the algorithm to Secretary of State Nelson. Secretary of State Nelson will determine whether, and in what manner, changes are necessary for the matching algorithm to meet the criteria for disqualifying state felonies agreed upon by the Parties in the attached Exhibit A.

27. The County Defendant and the Board shall not be made a party to any dispute described in Paragraph 26 above.

28. After the review process described above, and provided Plaintiffs' counsel concludes that any felonies produced by the matching algorithm meet the criteria for disqualifying state felonies agreed upon by the Parties in the attached Exhibit A,

Plaintiffs' counsel will submit a letter in support of preclearance of the software source code for the algorithm to the Secretary of State's Office and United States Department of Justice.

29. Secretary of State Nelson will submit, along with Plaintiffs' letter of support, the software source code for the algorithm for preclearance to the United States Department of Justice on behalf of Todd County and Shannon County only. If the review process described above extends beyond Chris Nelson's term as Secretary of State, then the Secretary of State's Office shall not be responsible for submitting the algorithm for preclearance on behalf of Todd County, Shannon County or any other county.

30. Plaintiffs will not object to Todd County or Shannon County's use of the information generated from the algorithm through the EVRS for purposes of removing persons with disqualifying state felonies from the statewide voter registration list prior to algorithm's preclearance.

31. Secretary of State Nelson agrees to submit for preclearance, on behalf of Todd County and Shannon County only, any changes made to the algorithm. If any changes to the algorithm occur after Chris Nelson's term as Secretary of State, the Secretary of State's Office is not bound by this Agreement

to submit the changes to the algorithm for preclearance on behalf of Todd County, Shannon County, or any other county.

32. Indemnification - Plaintiffs agree to hold harmless and indemnify State Defendants from any and all claims against Defendants for loss, injury or damage resulting from, related to, or arising from the factual allegations made in this Action.

33. Except as stated herein, this Agreement shall be binding on any heirs, successors and assigns. Parties sued in their official capacity will notify their successors in office of the existence of this Agreement and provide a copy thereof.

34. Dismissal of Action. Upon Date of Entry, the Parties will submit a Stipulation of Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1) which dismisses the pending Action against the State Defendants with prejudice, including the pending motion for class certification.

35. Modification. The terms of this Agreement may be modified only by a subsequent written agreement signed by the Parties, and their respective heirs, representatives, executors, administrators, successors and assigns.

36. Signatories. Each undersigned representative of the Parties to this Agreement certifies that he or she is fully authorized to enter into this Agreement and each of the terms and conditions hereof, and to execute and legally bind such Party to it. The Plaintiffs and their counsel represent and

warrant that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this action, and that they have the sole and exclusive right to receive the sums specified in this agreement.

37. Entire Agreement. This Agreement and exhibits shall constitute the entire agreement between the Parties. This Agreement supersedes any other written or oral agreements between the Parties. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable or invalid provisions shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement.

38. The United States District Court for the District of South Dakota shall retain jurisdiction to resolve issues regarding enforcement of this Agreement. The costs and attorney fees as provided above are capped for the purpose of settling this action. However, if a dispute arises regarding the enforcement of this Agreement, the Parties reserve their rights to request attorney's fees if determined to be the prevailing party.

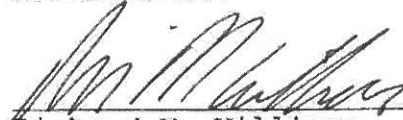
39. Effective Date. This Agreement shall be effective upon the Date of Entry, which is the day on which the last signing Party executes this Agreement.

Dated this 24th day of May, 2010.



Chris Nelson, in his official capacity as Secretary of State and Chairman of the State Board of Elections

APPROVED BY:

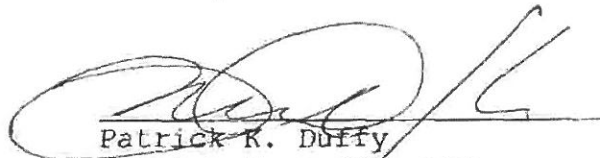


Richard M. Williams
Assistant Attorney General
Counsel for State Defendants




Bobbi J. Rank
Assistant Attorney General
Counsel for State Defendants

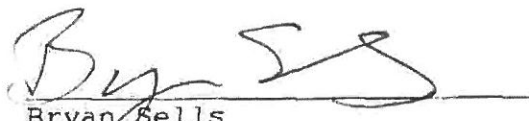
Dated this _____ day of _____, 2010.


Patrick K. Duffy
Patrick K. Duffy, LLC
Counsel for Plaintiffs

Dated this 18 day of May, 2010.


Nancy Abuadu
American Civil Liberties Union
Counsel for Plaintiffs

Dated this 18th day of May, 2010.


Bryan Sells
American Civil Liberties Union
Counsel for Plaintiffs

Impact of State and Federal Felony Convictions on Voting Rights

Federal

1. Individuals who are convicted of a felony in federal court and sentenced only to probation retain the right to vote.
2. Individuals who are convicted of a felony in federal court and sentenced only to pay a fine or restitution retain the right to vote.
3. Individuals who are convicted of a felony in federal court and sentenced to a term of imprisonment lose the right to vote. The loss of voting rights continues for as long as the individual is serving a term of imprisonment including supervised release.

State

1. Individuals who are convicted in State court of a felony and sentenced only to probation retain the right to vote. A sentence of probation only may include fines, fees, restitution and other conditions associated with the sentence of probation.
2. Individuals who are convicted of a felony in State court and sentenced only to pay a fine or restitution retain the right to vote.
3. Individuals who receive a suspended imposition of sentence on a felony in State court retain the right to vote.
4. Individuals who are convicted in State court of a felony and receive a suspended execution of sentence to the adult state penitentiary system lose the right to vote during the term of the suspended sentence.
5. Individuals who are convicted in State court of a felony and receive a sentence to the adult state penitentiary system lose the right to vote during the term of imprisonment. The loss of voting rights continues as long as the individual is physically incarcerated or on parole.
6. Juveniles adjudicated as delinquent or as a child in need of supervision and sentenced to incarceration in a juvenile detention facility retain the right to vote once they have reached eighteen years of age.

5:02:05:02. Instructions to the voters using hand-counted paper ballots.

The instructions to be posted in two locations in the polling place in at least 48 point type for paper ballots must be in the following form:

INSTRUCTIONS TO THE VOTERS

TO MARK THE BALLOT

Use a cross (X) or a check mark (✓) for each vote.
Do not make any marks other than a cross (X) or check mark (✓).
Do not erase anything on your ballot.
Do not rip your ballot or make holes in it.
Do not write in a name.

IF YOU MAKE A MISTAKE

If you make a mistake, give the ballot back and get a new one.

If you cast more votes than allowed in a race, give the ballot back and get a new one.

TO RETURN THE BALLOT(S) AFTER VOTING

Fold each ballot so the ballot stamp shows and take to the ballot box.

IF YOU NEED HELP, ASK.

PROVISIONAL BALLOT

You may vote a provisional ballot if your name is not on the voter list but you registered in this precinct by the deadline. You must complete both the envelope and ballot.

VOTING RIGHTS

Any voter who can't mark a ballot because the voter has a physical disability or can't read, may ask any person they choose to help them vote.
Any voter may ask for instruction in the proper procedure for voting.
Any voter at the polling place prior to 7:00 p.m. is allowed to cast a ballot.

ELECTION CRIMES

Anyone who makes a false statement when they vote, tries to vote knowing they are not a qualified voter, or tries to vote more than once has committed an election crime.

OTHER INFORMATION

The polls are open from 7:00 a.m. to 7:00 p.m. If your voting rights have been violated, you may call the person in charge of the election at _____, the Secretary of State at 888-703-5328, or your state's attorney.

The instructions to be posted in each voting booth for paper ballots must be in the following form:

INSTRUCTIONS TO THE VOTERS

TO MARK THE BALLOT

Use a cross (X) or a check mark (✓) for each vote.
Do not make any marks other than a cross (X) or check mark (✓).
Do not erase anything on your ballot.
Do not rip your ballot or make holes in it.
Do not write in a name.

IF YOU MAKE A MISTAKE

If you make a mistake, give the ballot back and get a new one.

If you cast more votes than allowed in a race, give the ballot back and get a new one.

TO RETURN THE BALLOT(S) AFTER VOTING

Fold each ballot so the ballot stamp shows and take to the ballot box.

IF YOU NEED HELP, ASK.

The instructions to be published with the facsimile ballot for primary and general elections must be in the following form:

INSTRUCTIONS TO THE VOTERS

VOTING RIGHTS

Any voter who can't mark a ballot because the voter has a physical disability or can't read, may ask any person they choose to help them vote.
Any voter may ask for instruction in the proper procedure for voting.
Any voter at the polling place prior to 7:00 p.m. is allowed to cast a ballot.
If your voting rights have been violated, you may call the person in charge of the election at _____, the Secretary of State at 888-703-5328, or your state's attorney.

A felon who receives a sentence of imprisonment to the adult penitentiary system, including a suspended execution of sentence, loses the right to vote. Felons so sentenced may register to vote following completion of their sentence. Further information is available at www.sdsos.gov.

ELECTION CRIMES

Anyone who makes a false statement when they vote, tries to vote knowing they are not a qualified voter, or tries to vote more than once has committed an election crime.

5:02:05:02.01 Instructions to the voters using optical scan ballots.

The instructions to be posted in two locations in the polling place in at least 48 point type for optical scan ballots must be in the following form:

INSTRUCTIONS TO THE VOTERS

TO MARK THE BALLOT

Fill in the oval (●) next to the name or ballot question. Use only the pencil or marker given to you!

Do not make any marks other than filling the oval.

Do not erase anything on your ballot.

Do not rip your ballot or make holes in it.

Do not write in a name.

IF YOU MAKE A MISTAKE

If you make a mistake, give the ballot back and get a new one.

If you cast more votes than allowed in a race, give the ballot back and get a new one.

TO RETURN THE BALLOT AFTER VOTING

Put the ballot in the holder so the ballot stamp shows and take to the ballot box.

IF YOU NEED HELP, ASK.

PROVISIONAL BALLOT

You may vote a provisional ballot if your name is not on the voter list but you registered in this precinct by the deadline. You must complete both the envelope and ballot.

VOTING RIGHTS

Any voter who can't mark a ballot because the voter has a physical disability or can't read, may ask any person they choose to help them vote.

Any voter may ask for instruction in the proper procedure for voting.

Any voter at the polling place prior to 7:00 p.m. is allowed to cast a ballot.

ELECTION CRIMES

Anyone who makes a false statement when they vote, tries to vote knowing they are not a qualified voter, or tries to vote more than once has committed an election crime.

OTHER INFORMATION

The polls are open from 7:00 a.m. to 7:00 p.m. If your voting rights have been violated, you may call the person in charge of the election at _____, the Secretary of State at 888-703-5328, or your state's attorney.

The instructions to be posted in each voting booth for optical scan ballots must be in the following form:

INSTRUCTIONS TO THE VOTERS

TO MARK THE BALLOT

Fill in the oval (●) next to the name or ballot question. Use only the pencil or marker given to you!

Do not make any marks other than filling the oval.

Do not erase anything on your ballot.

Do not rip your ballot or make holes in it.

Do not write in a name.

IF YOU MAKE A MISTAKE

If you make a mistake, give the ballot back and get a new one.

If you cast more votes than allowed in a race, give the ballot back and get a new one.

TO RETURN THE BALLOT AFTER VOTING

Put the ballot in the holder so the ballot stamp shows and take to the ballot box.

IF YOU NEED HELP, ASK.

The instructions to be published with the facsimile ballot for primary and general elections must be in the following form:

INSTRUCTIONS TO THE VOTERS

VOTING RIGHTS

Any voter who can't mark a ballot because the voter has a physical disability or can't read, may ask any person they choose to help them vote.

Any voter may ask for instruction in the proper procedure for voting.

Any voter at the polling place prior to 7:00 p.m. is allowed to cast a ballot.

If your voting rights have been violated, you may call the person in charge of the election at _____, the Secretary of State at 888-703-5328, or your state's attorney.

A felon who receives a sentence of imprisonment to the adult penitentiary system, including a suspended execution of sentence, loses the right to vote.

Felons so sentenced may register to vote following completion of their sentence. Further information is available at www.sdsos.gov.

ELECTION CRIMES

Anyone who makes a false statement when they vote, tries to vote knowing they are not a qualified voter, or tries to vote more than once has committed an election crime.

5:02:03:24. Notice to removed felons.

Any person who is removed from the voter registration list due to a disqualifying state felony shall be notified by the County auditor. The notice shall be sent by forwardable mail in the following form:

State Felony Conviction Voter Registration Cancellation Notice

We have been notified by the Unified Judicial System that you have been convicted of a state felony.

Under South Dakota law, a person convicted of a felony in state court who is sentenced to imprisonment in the adult penitentiary system loses the right to vote even if the execution of that sentence is suspended. SDCL 23A-27-35 and 12-4-18. You will be eligible to register to vote upon completion of your entire sentence. A person sentenced only to probation or to pay a fine or restitution does not lose the right to vote.

Further information is available at www.sdsos.gov.

If you have any questions or believe this to be an error, please contact our office at _____ (phone number).

Any person who is removed from the voter registration list due to a disqualifying state felony shall be notified by the County auditor. The notice shall be sent by forwardable mail in the following form:

Federal Felony Conviction Voter Registration Cancellation Notice

This office has been notified by the U.S. Department of Justice that you have been convicted of a federal felony.

Under South Dakota law, a person convicted of a felony in federal court loses the right to vote if sentenced to a term of imprisonment in the adult penitentiary system. SDCL 12-4-18. You will be eligible to register to vote upon completion of your term of imprisonment, including supervised release. A person sentenced only to probation or to pay a fine or restitution does not lose the right to vote.

Further information is available at www.sdsos.gov.

If you have any questions or have received this letter in error, please contact our office at _____ (phone number).

Dear _____:

During our training sessions over the past year, we have visited with you regarding removal of felons from the voter registration list. This letter is to strongly request that you once again review your records of federal felony removals.

Please review each notice of a federal felony conviction which you have retained in your records. Identify whether any felons were removed from your voter registration list who were sentenced only to probation or only received a court order to pay a fine or restitution.

If you find any such felons which were removed from the voter registration list, you must place those individuals back on the voter registration list. You should send them a voter registration acknowledgement notice (ARSD 5:02:03:15). I also encourage you to send a letter with the acknowledgement notice in the following form:

It has come to our attention that you were removed from the voter rolls even though you are eligible to vote. Therefore, we have placed your name back on the county and state voter registration lists. If you have any questions, please contact our office at _____ (phone number).

If you have any questions regarding this review, feel free to contact Kea or myself.

Sincerely,

Chris Nelson
Secretary of State

EXHIBIT E

**New Section for General Information on Election Pamphlet and
Secretary of State Website**

Felony Convictions:

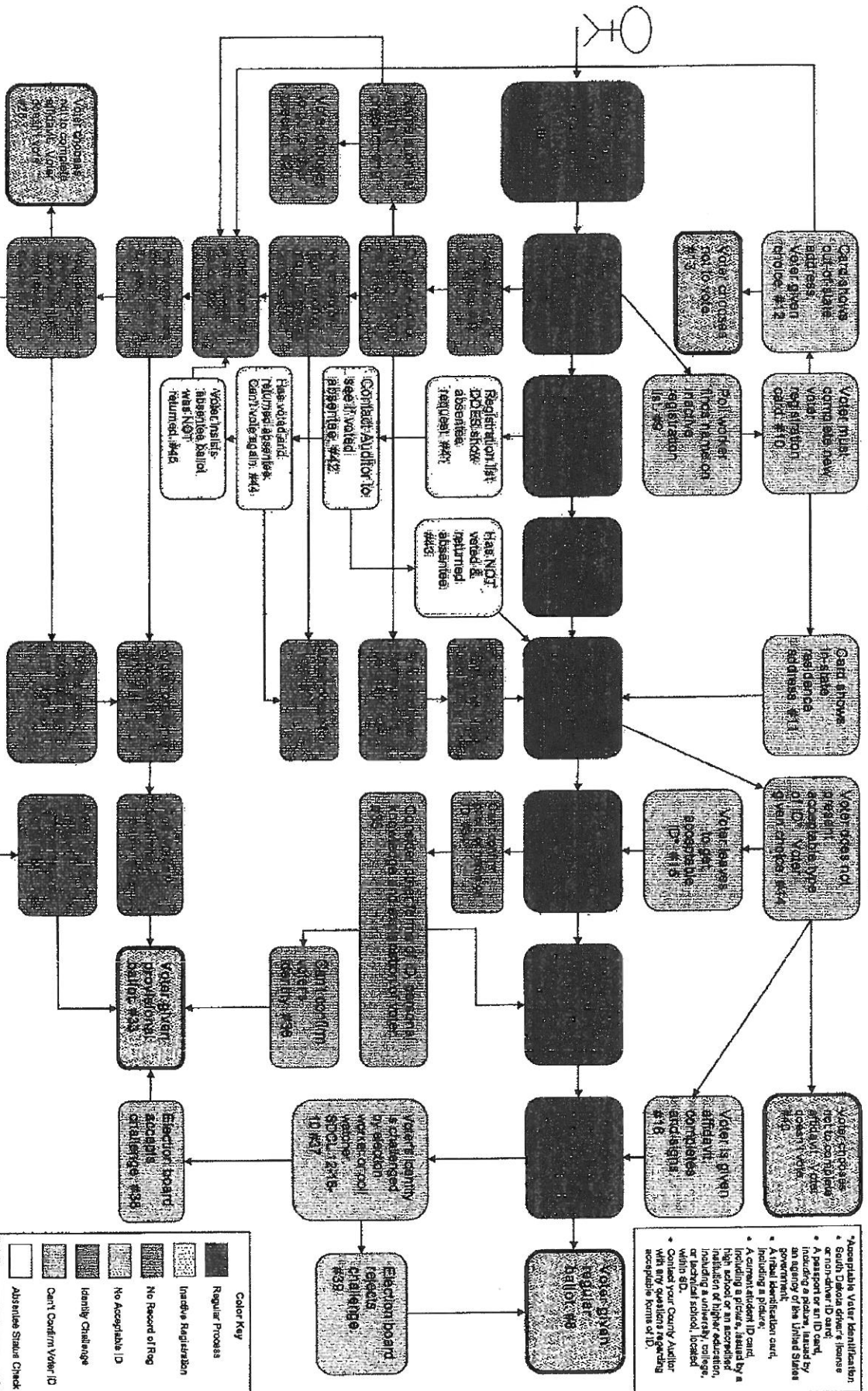
Under South Dakota law, a person convicted of a felony in federal court loses the right to vote if sentenced to a term of imprisonment in the adult penitentiary system and must complete his or her term of imprisonment, including supervised release, before becoming eligible to vote. SDCL 12-4-18. A person sentenced only to probation or only ordered to pay a fine or restitution for a federal felony does not lose the right to vote.

Under South Dakota law, a person convicted of a felony in state court who is sentenced to imprisonment in the adult penitentiary system loses the right to vote even if the execution of that sentence is suspended. SDCL 23A-27-35 and 12-4-18. A person so disqualified becomes eligible to register to vote upon completion of his or her entire sentence. A person who receives a suspended imposition of sentence or a sentence that does not include a term of imprisonment in the adult penitentiary system does not lose the right to vote.

[Exhibit A will also be included on the Secretary of State Website]

South Dakota Polling Place Voter Key

EXHIBIT G



If you have any questions, call your County Auditor

South Dakota Polling Place Voter Key

Box Number	Code Cite	Suggested Response
1	12-18-6.3	"Your name, please."
2, 3 and 3B	12-18-7.1	
4	12-18-6.3	"Do you have a photo ID?"
5	12-18-6.1	Check to see if the ID is on this list of acceptable IDs. (1) A South Dakota driver's license or nondriver identification card; (2) A passport or an identification card, including a picture, issued by an agency of the United States government; (3) A tribal identification card, including a picture; or (4) An identification card, including a picture, issued by a high school or an accredited institution of higher education, including a university, college, or technical school, located within the State of South Dakota.
6	12-18-6.3	Check to see that the photo matches the voter and that the name on the ID matches the name on the voter registration list.
7	12-18-12	Stamp ballot and hand to voter.
8	12-18-14	"Thank you for voting today!"
9	12-18-7.4	"Your name is on the inactive voter registration list."
10	12-18-7.4	"Because you are on the inactive registration list, you must complete a new voter registration card before voting. Here is that card to complete."
11	12-18-7.4	"Thank you for completing your voter registration card."
12	12-18-7.4	"You have provided an out-of-state residence address. You will not be able to cast a regular ballot. You may choose to not vote or you may cast a provisional ballot. The provisional ballot will be kept separate from the regular ballots and will only be counted if the auditor can verify that your name should not be on the inactive list. Your provisional ballot may not be secret. It is your choice whether to vote."
13		
14		"Because you are not able to present an acceptable photo ID, you now have an option. You may leave the polling place to retrieve an acceptable ID or you may sign this personal identification affidavit."
15		
16	12-18-6.2	Observe voter complete affidavit. Be sure that it is fully completed and legible.
17	12-18-7.1 12-18-7.2	"I'm sorry, your name does not appear on the voter registration list. I will contact the county auditor to determine if you are registered at some other location or been mistakenly left off this list. Please wait while I make that call."
18	12-18-7.2	Auditor will tell you how to proceed with this voter.
19		"You are registered to vote in precinct 'X'. That polling place is located at _____. You may go to that polling place and cast a regular ballot which will be counted or if you are willing to swear that you registered to vote in this precinct you may cast a provisional ballot at this precinct. The provisional ballot will be kept separate from the regular ballots and will only be counted if the auditor can find your voter registration card for this precinct. Your provisional ballot may not be secret. It is your choice which ballot to vote."
20		
21	12-18-7.2	"The auditor has no record of your being registered to vote or your registration was cancelled because _____. You may choose to not vote or if you are willing to swear that you registered to vote and should remain registered to vote in this precinct, and you may cast a provisional ballot at this precinct. The provisional ballot will be kept separate from the regular ballots and will only be counted if the

		auditor can verify your registration in this precinct. Your provisional ballot may not be secret. It is your choice whether to vote.”
22	12-18-39	
23		
24	12-18-7.2	“An error has been made and your name should have been on the voter registration list.”
25	12-18-7.2	“Please complete this emergency voting card and you will be able to vote.”
26	12-18-6.3	“Do you have a photo ID?”
27	12-18-6.2	“Because you are not able to present an acceptable photo ID, you now have an option. You may leave the polling place to retrieve an acceptable ID or you may sign this personal identification affidavit or you may choose to not vote.”
28	12-18-6.2	
29		
30	12-18-6.2	“Please complete this personal identification affidavit.” Observe voter complete affidavit. Be sure that it is fully completed and legible.
31	12-18-6.1	Check to see if the ID is on the list of acceptable IDs.
32	12-18-6.3	Check to see that the photo matches the voter and that the name on the ID matches the name on the voter registration list.
33	12-18-39	Have voter complete the provisional ballot envelope and provide the voter with the “Notice to Provisional Voter.”
34	12-18-6.3	“The ID you have presented does not appear to be you and/or the name on the ID does not match the name on the voter registration list.”
35	12-18-6.3	“You may explain why the photo and/or name does not match and you may present other forms of identification to assist us in confirming your identity.”
36	12-18-6.3	“Based on the identification you have presented and your explanation of why this identification does not appear to be you, you will not be allowed to cast a regular ballot. You may, however, cast a provisional ballot. The provisional ballot will be kept separate from the regular ballots and will only be counted if the auditor can later verify your identity. Your provisional ballot may not be secret. It is your choice whether to vote.”
37	12-18-10	Election worker or poll watcher challenges the voter as to the voter’s identity not being who they claim or that the voter has been convicted of a felony or declared mentally incompetent in the last 15 days. The challenger would present whatever evidence they have to the election board to support their claim that the person is ineligible to vote. “Your identity (or other cause) has been challenged. What explanation or evidence can you provide to rebut this challenge and prove your identity.”
38	12-18-10	“By majority vote, this election board has determined that the challenge is accepted and that you are not who you claim to be. You may, however, cast a provisional ballot. The provisional ballot will be kept separate from the regular ballots and will only be counted if the auditor can later verify your identity. Your provisional ballot may not be secret. It is your choice whether to vote.”
39	12-18-10	“By majority vote, this election board has rejected the challenge. You may vote.”
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41		“The registration list shows you have voted absentee.”
42		“I will contact the county auditor to determine if your absentee ballot has been voted and returned.”
43		“Your absentee ballot has not been returned. You may vote in person today.”
44	12-26-8	“Your absentee ballot has been voted and returned. You may not vote a second time.”
45	12-18-39	“If you insist that you have not voted and returned your absentee ballot, you may choose to vote a provisional ballot. It is a crime to vote an absentee ballot and then vote a provisional ballot. The provisional ballot will be kept separate from the

		regular ballots and will only be counted if the auditor can later verify that you have not voted an absentee ballot. Your provisional ballot may not be secret.”
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12-18-10 : If a person makes an application for ballots, or if an absentee ballot has been cast, the person's right to vote at that poll and election may be challenged only as to the person's identity as the person registered whom the person claims to be or on grounds that within fifteen days preceding the election the person ~~has been convicted of a felony~~ received a disqualifying sentence for a felony conviction or has been declared by proper authority to be mentally incompetent. The proceedings shall be conducted before the precinct superintendent and precinct deputies who shall determine from the evidence presented whether or not the person is permitted to vote and the members of the precinct election board shall indicate beside the name on the registration list the ground stated and the result of the precinct election board's decision.