

Life Def

Life Defense Fund Pushes Back Against Judge's Ruling to Dismiss

SIOUX FALLS, SD (July 15, 2024) – In the Minnehaha County Court today, Judge John Peckas ruled to dismiss Life Defense Fund's case in *Life Defense Fund and Leslee Unruh vs. Dakotans for Health*.

Leslee Unruh, co-chair of Life Defense Fund, issued the following statement:

"Today, the judge dismissed our case that challenged the Dakotans for Health (DFH) abortion petition signatures. The case was brought because we have a mountain of evidence and hours of video footage showing that DFH deceived and tricked South Dakotans into signing their petition. The avoidant judge, however, made the outlandish claim out of nowhere, blindsiding both parties, that our case should have been a 'writ of quo warranto' against the Secretary of State, and therefore should be dismissed.

"However, there are no legal grounds for this dismissal as Life Defense Fund clearly followed the appropriate procedures. This unexpected dismissal further plays into their motive to delay our case and refuse to answer our documented allegations. We will follow the judge's invitation to appeal this case."

Read the statutes below. The "writ of quo warranto," which the court thought was applicable, clearly does not apply. However, Life Defense Fund properly followed the direction of the statute 2-1-18, in bringing its court challenge to the petition.



21-28-1. Civil action available in lieu of writ and proceedings by information.

The remedies formerly attained by a writ of scire facias, writ of quo warranto, and proceedings by information in the nature of quo warranto, may be obtained by civil actions under the provisions of this chapter.

Source: CCivP 1877, § 531; CL 1887, § 5345; RCCivP 1903, § 570; RC 1919, § 2781; SL 1919, ch 289, § 1; SDC 1939 & Supp 1960, § 37.0501.

21-28-2. Persons entitled to bring action--Grounds for action.

An action may be brought by any state's attorney in the name of the state, upon his own information or upon the complaint of a private party, or an action may be brought by any person who has a special interest in the action, on leave granted by the circuit court or judge thereof, against the party offending in the following cases:

- (1) When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within this state, or any office in a corporation created by the authority of this state;
- (2) When any public officer, civil or military, shall have done or suffered an act which, by the provisions of law, shall make a forfeiture of his office;
- (3) When any association or number of persons shall act within this state as a corporation, without being duly incorporated.

Source: CCivP 1877, § 534; CL 1887, § 5348; RCCivP 1903, § 573; RC 1919, § 2784; SL 1919, ch 289, § 4;

2-1-18. Court challenge to petition.

Nothing in §§ 2-1-15 to 2-1-18, inclusive, prohibits any interested person who has researched the signatures contained on a validated petition from challenging in circuit court the validity of any signature, the veracity of the petition circulator's attestation, or any other information required on a petition by statute or administrative rule, including any deficiency that is prohibited from challenge under § 2-1-17.1. The results of the process of signature verification by the Office of the Secretary of State under chapter 2-1 shall be presumed valid as applied to all signatures for purposes of considering any additional ground for disqualifying petition signatures, including any ground listed in subdivisions 2-1-17.1(1) to 2-1-17.1(4), inclusive, and cumulating total valid signatures to determine the results of an appeal under § 2-1-17.1. The summons and complaints for a challenge under this section shall be served on each petition sponsor as a party defending the validated petition being challenged. Any appearance by the attorney general at a challenge under this section shall be limited to the process of signature verification by the Office of the Secretary of State under chapter 2-1. For purposes of determining whether a sufficient number of valid signatures has been submitted, the interested person may elect to proceed with a challenge limited to the sample generated in accordance with § 2-1-16, with the resulting valid sample percentage applied to the entirety of the petition signatures.

Sources: SL 2007, ch 16, § 4; SL 2017, ch 12, § 2; SL 2018, ch 24, § 2; SL 2019, ch 15, § 3.

To schedule an interview with Life Defense Fund, please contact Caroline Woods at caroline@woodstrat.com or 404-345-9321.

###

From: "Lehrkamp, Christine" <Christine.Lehrkamp@state.sd.us>
Date: May 16, 2024 at 3:15:11 PM CDT
To: "Rick Weiland (Dakotans for Health)" <rick@dakotans4health.com>, Rick Weiland
<rick@rickweiland.com>
Cc: Elections <Elections@state.sd.us>
Subject: Abortion Rights - Constitutional Amendment G

Hello Rick-

Per our phone conversation, the Abortion Rights constitutional amendment (G) was filed and certified by our office at 9:15am CT this morning. I've attached the press release we sent out a few minutes ago.

Below are stats and these will be included in the letter that will go out tomorrow via certified mail.

2024 Abortion Rights (CA) Random Sample Stats

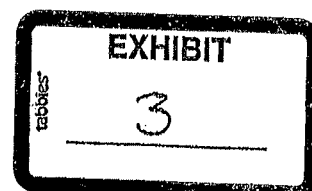
Signature Lines Checked	723
Invalid Signatures	109
Valid Signatures (Sample)	614
Valid Signatures divided by Signature Lines Checked	614 723
Percentage Calculation	0.849239281
Percent Valid	84.9239%
Signatures Submitted	54281
Total Valid Signatures	46098
Signatures Needed	35,017

Petition Status

Date and Time Summary Completed

CERTIFIED

May 16, 2024 at 9:15am CT



Christine Lehrkamp

Deputy Director, Division of Elections
Office of the Secretary of State
500 East Capitol Ave., Ste. 204
Pierre, SD 57501
Phone 605.773.3537 (Main) / Fax 605.773.6580
Email: Christine.Lehrkamp@state.sd.us
Website: <http://sdsos.gov>

#TrustedInfo is a public education effort to promote election officials as the trusted sources of election information.

Confidentiality Notice

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INITIATED CONSTITUTIONAL AMENDMENT PETITION

WE, THE UNDERSIGNED qualified voters of the state of South Dakota, petition that the following section and article of the South Dakota Constitution be amended and that this proposal be submitted to the voters of the state of South Dakota at the general election on November 5, 2024 for their approval or rejection.

Title: An Initiated Amendment Establishing a Right to Abortion in the State Constitution.

Attorney General Explanation: This initiated amendment establishes a constitutional right to an abortion and provides a legal framework for the regulation of abortion. This framework would override existing laws and regulations concerning abortion.

The amendment establishes that during the first trimester a pregnant woman's decision to obtain an abortion may not be regulated nor may regulations be imposed on the carrying out of an abortion.

In the second trimester, the amendment allows the regulation of a pregnant woman's abortion decision, and the regulation of carrying out an abortion. Any regulation of a pregnant woman's abortion decision, or of an abortion, during the second trimester must be reasonably related to the physical health of the pregnant woman.

In the third trimester, the amendment allows the regulation or prohibition of abortion except in those cases where the abortion is necessary to preserve the life or health of the pregnant woman. Whether an abortion is necessary during the third trimester must be determined by the pregnant woman's physician according to the physician's medical judgment.

Judicial clarification of the amendment may be necessary. The Legislature cannot alter the provisions of a constitutional amendment.

Amendment Text: *That Article VI of the Constitution of the State of South Dakota be amended by adding a NEW SECTION:*

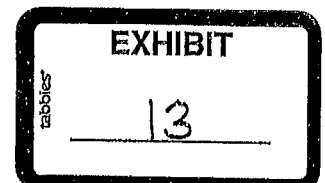
Before the end of the first trimester, the State may not regulate a pregnant woman's abortion decision and its effectuation, which must be left to the judgment of the pregnant woman.

After the end of the first trimester and until the end of the second trimester, the State may regulate the pregnant woman's abortion decision and its effectuation only in ways that are reasonably related to the physical health of the pregnant woman.

After the end of the second trimester, the State may regulate or prohibit abortion, except when abortion is necessary, in the medical judgment of the woman's physician, to preserve the life or health of the pregnant woman.

INSTRUCTIONS TO SIGNERS:

1. Signers of this petition must individually sign their names in the form in which they are registered to vote or as they usually sign their names.
2. Before the petition is filed, each signer or the circulator must add the residence address of the signer and the date of signing. If the signer is a resident of a second or third class municipality, a post office box may be used for the residence address.
3. Before the petition is filed, each signer or the circulator must print the name of the signer in the space provided and add the county of voter registration.
4. Abbreviations of common usage may be used. Ditto marks may not be used.
5. Failure to provide all information requested may invalidate the signature.



Received by SD Secretary of State on May 1, 2024 000002799

NAME	RESIDENCE	DATE/COUNTY
1. SIGN Harley Young PRINT Harley Young	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 39 Wariyata Rd CITY OR TOWN Kyle SD 57752	DATE OF SIGNING 3-2-24 COUNTY OF REGISTRATION Oglala Lakota County
2. SIGN Eli Conroy PRINT Eli Conroy	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER Box 18 CITY OR TOWN Wamblee SD 57577	DATE OF SIGNING 3/2/24 COUNTY OF REGISTRATION Jackson
3. SIGN John Martinez PRINT John Martinez	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER Wamblee SD 57577 CITY OR TOWN PO Box 54	DATE OF SIGNING Jackson COUNTY OF REGISTRATION 3/2/24
4. SIGN Arless Wilcox PRINT Arless Wilcox	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER PO Box 381 CITY OR TOWN Wamblee SD 57577	DATE OF SIGNING 3.2.24 COUNTY OF REGISTRATION Jackson
5. SIGN Alvena Pickov PRINT Alvena Pickov	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER Wamblee SD 57577 CITY OR TOWN PO Box 71	DATE OF SIGNING 3.2.24 COUNTY OF REGISTRATION Jackson
6. SIGN Carlene Red Blunt PRINT Carlene Red Blunt	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER Box 284 CITY OR TOWN Wamblee SD 57577	DATE OF SIGNING 3-1-24 COUNTY OF REGISTRATION Jackson
7. SIGN Henny Yellow Elk PRINT Henny Yellow Elk	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER Box 164 CITY OR TOWN Wamblee SD 57577	DATE OF SIGNING 3-1-24 COUNTY OF REGISTRATION Jackson
8. SIGN Heather Red Willow PRINT Heather Red Willow	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER PO Box 142 CITY OR TOWN Wamblee SD 57577	DATE OF SIGNING Jackson COUNTY OF REGISTRATION 3-1-24
9. SIGN James Brown PRINT James Brown	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER PO Box 9 CITY OR TOWN Wamblee SD 57577	DATE OF SIGNING Jackson COUNTY OF REGISTRATION 3-2-24
10. SIGN Grady C. To Heart PRINT Grady C. To Heart	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER Box 123 CITY OR TOWN Wamblee S.D. 57577	DATE OF SIGNING 3-2-24 COUNTY OF REGISTRATION Jackson

VERIFICATION BY PERSON CIRCULATING PETITION INSTRUCTIONS TO CIRCULATOR:

This section **must** be completed following circulation and before filing.

Aimee White Pipe Pbx 825 Pine Ridge SD 57770
 Print name of the circulator Residence Address City State

I, under oath, state that I circulated the above petition, that each signer personally signed this petition in my presence, that I am not attesting to any signature obtained by any other person, that I am a resident of South Dakota, that I made reasonable inquiry and to the best of my knowledge each person signing the petition is a qualified voter in the county indicated on the signature line, that no state statute regarding petition circulation was knowingly violated, and that either the signer or I added the printed name, the residence address of the signer, the date of signing, and the county of voter registration.

Circulator ID Number (paid circulator only)

Signature of Circulator

Sworn to before me this 4 day of March, 2024.

Signature of Officer Administering Oath

My Commission Expires 2/26/29

Title of Officer Administering Oath

Form Revised 2020 5:02:08:09

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

LIFE DEFENSE FUND, and LESLEE
UNRUH,

Civil No. 49CIV24-002366

Plaintiffs,

**PLAINTIFFS' BRIEF IN OPPOSITION
TO MOTION TO DISMISS**

v.

DAKOTANS FOR HEALTH,

Defendant.

Plaintiffs Life Defense Fund and Leslee Unruh ("Life Defense"), by and through their undersigned counsel, respectfully submit this brief in opposition to Motion to Dismiss filed by Defendant Dakotans for Health.

FACTUAL BACKGROUND

Dakotans for Health collected 54,281 signatures on the abortion constitutional measure petition and submitted them to the Secretary of State. Pursuant to the random sampling process provided by State law, the Secretary of State reviewed 723 of those signatures. SDCL § 2-1-16; ARSD 5:02:08:00.05(8). The Secretary of State determined 614 signatures of the 723 were valid.

During the petition gathering process, Dakotans for Health ("DFH") failed to submit the residency affidavits required by SDCL 2-1-1.4. Complaint, ¶¶ 43, 44. A petition circulator's failure to submit the affidavits, in accordance with SDCL § 2-1-1.4, disqualifies each of the petition forms, including every signature thereon, from consideration by the Secretary of State. SDCL § 2-1-1.4 ("Failure to substantially comply with the provisions of this section shall disqualify the petitions from a circulator not in compliance with this section from being



South Dakota Secretary of State

Monae L. Johnson
Secretary of State

Thomas J. Deadrick
Deputy Secretary of State

For Immediate Release: Monday, May 13, 2024
Contact: SOS.Media@state.sd.us

Telephone Scam – Secretary Johnson Warns Citizens of fake groups claiming to be making calls on behalf of SOS Office

(Pierre, S.D.) – Secretary of State Monae L. Johnson is warning South Dakotans to be aware of scammers after citizens have reported receiving calls, coming from random numbers with a 605-area code, where the caller is claiming they are with the Secretary of State's office. Scammers are pushing the voters to challenge the Abortion Rights ballot measure petitions.

The Secretary of State's office has alerted law enforcement as to these groups impersonating themselves as SOS staff. The groups have stated they are the South Dakota Integrity Committee or the Petition Integrity Commission. It appears that the calls are trying to pressure voters into asking that their name be removed from the Abortion Rights petitions. "Citizens In South Dakota, by law, have the right to petition and people like these scammers are eroding public trust in the election process," stated Secretary Johnson.

People who receive such calls are encouraged to contact the Secretary of State's Office, the Division of Elections at elections@state.sd.us or call 605-773-3537. Please pass along any information that you receive.

A group did form a campaign finance committee this morning named South Dakota Petition Integrity. We are unaware if this group is affiliated with the calls.

More information on specific ballot questions can be found on the Secretary of State's website: <https://sdsos.gov/elections-voting/upcoming-elections/general-information/2024/2024-ballot-questions.aspx>. For more information on the ballot measure signature withdrawal

500 EAST CAPITOL AVENUE, PIERRE, SD 57501-5070 | TELEPHONE: (605) 773-3537 | FAX:

WWW.SDSOS.GOV | SDSOS@STATE.SD.US

DFH Appendix 9
Filed: 6/20/2024 10:32 AM CST Minnehaha County, South Dakota 49CIV 4-002366

EXHIBIT

tabbies

2

process may be found here: <https://sdsos.gov/elections-voting/upcoming-elections/ballot-question-information/Ballot-Measure-Signature-Withdrawal-Information.aspx>.

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4. Abbreviations of common usage may be used. Ditto marks may not be used.
5. Failure to provide all information requested may invalidate the signature.

S.D. SEC. OF STATE

EXHIBIT

SECRETARY OF STATE

NAME	RESIDENCE	DATE/COUNTY
SIGN 1 _____ PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER _____ CITY OR TOWN	DATE OF SIGNING _____ COUNTY OF REGISTRATION
SIGN 2 _____ PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER _____ CITY OR TOWN	DATE OF SIGNING _____ COUNTY OF REGISTRATION
SIGN 3 _____ PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER _____ CITY OR TOWN	DATE OF SIGNING _____ COUNTY OF REGISTRATION
SIGN 4 _____ PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER _____ CITY OR TOWN	DATE OF SIGNING _____ COUNTY OF REGISTRATION
SIGN 5 _____ PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER _____ CITY OR TOWN	DATE OF SIGNING _____ COUNTY OF REGISTRATION
SIGN 6 _____ PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER _____ CITY OR TOWN	DATE OF SIGNING _____ COUNTY OF REGISTRATION
SIGN 7 _____ PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER _____ CITY OR TOWN	DATE OF SIGNING _____ COUNTY OF REGISTRATION
SIGN 8 _____ PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER _____ CITY OR TOWN	DATE OF SIGNING _____ COUNTY OF REGISTRATION
SIGN 9 _____ PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER _____ CITY OR TOWN	DATE OF SIGNING _____ COUNTY OF REGISTRATION
SIGN 10 _____ PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER _____ CITY OR TOWN	DATE OF SIGNING _____ COUNTY OF REGISTRATION

VERIFICATION BY PERSON CIRCULATING PETITION INSTRUCTIONS TO CIRCULATOR:
This section **must** be completed following circulation and before filing.

Print name of the circulator _____ Residence Address _____ City _____ State _____

I, under oath, state that I circulated the above petition, that each signer personally signed this petition in my presence, that I am not attesting to any signature obtained by any other person, that I am a resident of South Dakota, that I made reasonable inquiry and to the best of my knowledge each person signing the petition is a qualified voter in the county indicated on the signature line, that no state statute regarding petition circulation was knowingly violated, and that either the signer or I added the printed name, the residence address of the signer, the date of signing, and the county of voter registration.

Circulator ID Number (paid circulator only) _____

Signature of Circulator _____

Sworn to before me this _____ day of _____, 20____.
(Seal)

Signature of Officer Administering Oath _____

My Commission Expires _____

Title of Officer Administering Oath _____

Form Revised 2020 - 5:02:08:09

STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA

S.D. Codified Laws § 2-1-18

Current through the 2024 Regular Session of the 99th South Dakota Legislative Assembly.

LexisNexis® South Dakota Codified Laws Annotated > Title 2 Legislature and Statutes (Chs. 2-1 — 2-17) > Chapter 2-1 Initiative (§§ 2-1-1 — 2-1-21)

2-1-18. Challenge in circuit court to validity of signatures or other required information.

Nothing in §§ 2-1-15 to 2-1-18, inclusive, prohibits any interested person who has researched the signatures contained on a validated petition from challenging in circuit court the validity of any signature, the veracity of the petition circulator's attestation, or any other information required on a petition by statute or administrative rule, including any deficiency that is prohibited from challenge under § 2-1-17.1. The results of the process of signature verification by the Office of the Secretary of State under chapter 2-1 shall be presumed valid as applied to all signatures for purposes of considering any additional ground for disqualifying petition signatures, including any ground listed in subdivisions 2-1-17.1(1) to 2-1-17.1(4), inclusive, and cumulating total valid signatures to determine the results of an appeal under § 2-1-17.1. The summons and complaint for a challenge under this section shall be served on each petition sponsor as a party defending the validated petition being challenged. Any appearance by the attorney general at a challenge under this section shall be limited to the process of signature verification by the Office of the Secretary of State under chapter 2-1. For purposes of determining whether a sufficient number of valid signatures has been submitted, the interested person may elect to proceed with a challenge limited to the sample generated in accordance with § 2-1-16, with the resulting valid sample percentage applied to the entirety of the petition signatures.

History

SL 2007, ch 16, § 4; 2017 ch 12, § 2, effective July 1, 2017; 2018 ch 24, § 2, effective July 1, 2018; 2019 ch 15, § 3, effective July 1, 2019.

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End of Document

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT

SECOND JUDICIAL CIRCUIT

LIFE DEFENSE FUND, and LESLEE
UNRUH,

Plaintiffs,

v.

DAKOTANS FOR HEALTH,

Defendant.

Civil No. 49CIV24-002366

**PLAINTIFFS' MOTION FOR
EXPEDITED SCHEDULING ORDER
AND TIMING OF DISCOVERY,
EXPEDITED RULING REQUESTED**

Plaintiffs Life Defense Fund and Leslee Unruh, by and through their counsel, Sara Frankenstein and Jon Hansen, respectfully move the Court for a Scheduling Order to include Timing of Discovery, and an Expedited Ruling is Requested. In support of this motion, Plaintiffs have filed a contemporaneous brief. Plaintiffs respectfully move the Court for an Expedited Scheduling Order to include the following:

1. The parties shall respond to discovery requests within 14 days after being served with the discovery requests;
2. The deadline to complete non-expert discovery is July 10, 2024;
3. The deadline for any party to identify any and all experts is July 26, 2024;
4. The deadline for any party to identify any and all rebuttal experts is July 31, 2024;
5. Deadline to file any dispositive motions, unless previously filed, is July 12, 2024;
 - a. Opposing party's response to motions are due July 19, 2024.
 - b. Moving party's reply to motions are due July 24, 2024.
 - c. Dispositive motions to be heard by July 26, 2024.
6. The trial to be completed prior to August 9, 2024 (to start at least by August 5, 2024).
7. A court ruling to be issued by August 12, 2024, so the Secretary of State has time to comply with the ruling before issuing a certified copy to the county auditors of

each initiated measure to be voted on at the election by the deadline of August 13, 2024.

Dated this 19th day of June, 2024.

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

By: /s/ Sara Frankenstein
Sara Frankenstein
506 Sixth Street
P.O. Box 8045
Rapid City, SD 57709-8045
Phone: (605) 342-1078
Fax: (605) 342-9503
Email: sfrankenstein@gpna.com

Jon Hansen
Jon Hansen Law Office
509 West 4th Street
Dell Rapids, SD 57022
Phone: (605) 215-0585
Email: jon@jonhansenlawoffice.com

*Attorneys for Plaintiffs Life Defense Fund
and Leslee Unruh*

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June 2024, a true and correct copy of the foregoing was filed through Odyssey File and Serve System and served by e-mail on the following:

James D. Leach
1617 Sheridan Lake Rd
Rapid City, SD 57702
Email: jim@southdakotajustice.com
Attorney for Dakotans for Health

South Dakota Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501
Email: atgservice@state.sd.us

/s/ Sara Frankenstein

Sara Frankenstein

STATE OF SOUTH DAKOTA)
)
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT

SECOND JUDICIAL CIRCUIT

LIFE DEFENSE FUND and)
LESLEE UNRUH,)

Plaintiffs,)

v.)

DAKOTANS FOR HEALTH,)

Defendant.)
_____)

No. 49 CIV 24-2366

**Dakotans for Health's Response to
Plaintiffs' Motion for Scheduling Order**

If the Court denies the Motion to Dismiss, Dakotans for Health requests a Scheduling Order as follows, consistent with August 13 being the final day for the Secretary of State to certify to county auditors the initiated measures that will appear on the ballot, in accordance with SDCL § 12-13-1.

1. If the Court enters an order denying the Motion to Dismiss, Dakotans for Health will file an Answer within five days.
2. The deadline to complete discovery is July 29.

3. The deadline for plaintiffs to disclose their experts is July 29; the deadline for defendant to disclose its experts is August 1. Any expert not disclosed by those dates will not be allowed to testify. All expert disclosures by both sides must include:

- a. The information required by S.D.C.L. § 15-6-26(b)(4)(A)(i), namely the subject matter on which the expert is expected to testify; the substance of every fact and opinion to which the expert is expected to testify; and a summary of the grounds for each opinion; and
- b. The information allowed by S.D.C.L. § 15-6-26(b)(4)(C), namely the compensation to be paid for the expert's study or testimony, the facts or data that the party's attorney provided and that the expert considered in forming the opinion to be expressed, and all assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

4. The deadline for plaintiffs to identify all witnesses they will call at trial, with a fair summary of each witness's testimony, and to provide defendant with a complete list and copies of exhibits to be offered at trial in its case in chief, is August

2 at Noon. By the same time and date, plaintiffs will inform the Court and counsel how long they expect to need to present their case at trial.

5. The deadline for defendant to identify all witnesses it will call at trial, with a fair summary of each witness's testimony, and to provide defendant with a complete list and copies of exhibits to be offered at trial in its case in chief, is August 5 at Noon. By the same time and date, defendant will inform the Court and counsel how long they expect to need to present their case at trial.

6. Any witness not timely disclosed will not be allowed to testify, and any exhibit not timely disclosed will not be received.

7. Any witness to be called solely for the purposes of impeachment, and any exhibit to be offered solely for impeachment, need not be disclosed.

8. Plaintiffs may file a trial brief by August 2.

9. Defendant may file a trial brief by August 5.

10. Trial will begin as scheduled by the Court on or after August 7.

Dated: July 3, 2024

Respectfully submitted,

/s/ James D. Leach

James D. Leach

Attorney at Law

1617 Sheridan Lake Rd.

Rapid City, SD 57702

(605) 341-4400
jim@southdakotajustice.com
Attorney for Dakotans for Health

Certificate of Service

I certify that on July 3, 2024, I served this document on all other parties who have appeared in this lawsuit by submitting it to the Odyssey system and designating it for filing and service.

/s/ James D. Leach
James D. Leach

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT

SECOND JUDICIAL CIRCUIT

LIFE DEFENSE FUND, and LESLEE
UNRUH,

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Plaintiffs,

**PLAINTIFFS' REPLY BRIEF IN
SUPPORT OF MOTION FOR
EXPEDITED SCHEDULING ORDER
AND TIMING OF DISCOVERY**

v.

DAKOTANS FOR HEALTH,

Defendant.

Plaintiffs Life Defense Fund and Leslee Unruh (collectively “Life Defense”), by and through their counsel, respectfully submit this reply brief in support of their Motion for Expedited Scheduling Order and Timing of Discovery.

ARGUMENT

An expedited scheduling order is necessary in this case. Defendant Dakotans for Health (“DFH”) does not dispute that there is a need for an expedited scheduling order. Both parties agree that August 13, 2024 is the absolute deadline for the disposition of this case. On August 13, the Secretary of State must know what questions will appear on the 2024 general election ballots. SDCL § 12-13-1¹ (requiring the Secretary of State to certify ballot questions at least 12 weeks prior to the general election). If there is no resolution by August 13, this case may disrupt the 2024 general election. The disagreement between the parties for the expedited scheduling

¹ SDCL § 12-13-1. Delivery of proposed questions to county auditors—Attorney general’s explanation. The secretary of state, at least twelve weeks prior to the general election, shall deliver to each county auditor a certified copy of each initiated measure, referred law, or proposed amendment to the Constitution to be voted on at the election, together with a statement, title, explanation, and recitation as written pursuant to § 12-13-9 or 12-13-25.1 to be published preceding the text of the initiated measure, referred law, or proposed amendment. The attorney general shall prepare each statement, title, explanation, and recitation.

order rest solely on what dates should serve as the deadlines, not whether this Court is authorized to modify the deadlines.

A. This Court has the authority to order an expedited scheduling order.

This Court is authorized to order an expedited scheduling order. Pursuant to SDCL § 15-6-26(d), the Court can set new deadlines distinct from the default discovery rules in SDCL § 15-6.

Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by depositions or otherwise, shall not operate to delay any other party's discovery.

Id. This statute has been interpreted to grant this Court board authority relating to pre-trial deadlines. *See Klynsma v. Hydradyne, LLC*, 2015 WL 2372686, at * 1 (D.S.D. May 18, 2023) (Civ. No. 13-5016-JLV) (“A district court has broad powers of case management, including the power to limit discovery to relevant subject matter and to adjust discovery as appropriate to each phase of litigation.”). Courts may “control the timing and sequence of discovery pursuant to Federal Rule of Civil Procedure Rule 26(d).” *Id.* (quoting *Johnson v. New York Univ. Scho. of Educ.*, 205 F.R.D. 433, 434 (S.D.N.Y. 2002)). “Though federal interpretations of federal civil and appellate procedural rules are not binding on us in an interpretation of like rules in our State’s courts, it is appropriate to ‘turn to the federal court decisions for guidance in their application and interpretation.’” *Sander v. Geib, Elston, Frost Professional Ass’n*, 506 N.W.2d 107, 122-23 (S.D. 1993) (citing *Wilson v. Great N. Ry. Co.*, 83 S.D. 207, 211, 157 N.W.2d 19, 21 (1968); *Brasel v. Myers*, 89 S.D. 114, 116, 229 N.W.2d 569, 570 (1975)).

Election cases are unique because they require courts to utilize its power to truncate the judicial proceedings. Elections have hard and fast statutory deadlines. These statutory requirements usually do not correspond to the Rules of Civil Procedure. Thus, the Courts

implement litigation deadlines to conform to statutory election deadlines. A list of the election deadlines can be found on the Secretary of State's Election calendar. Monae Johnson, Secretary of State, South Dakota Primary and General Election Calendar, 2024, <https://sdsos.gov/elections-voting/assets/2024%20Assets/2024ElectionCALENDAR.pdf> (last visited July 10, 2024).

The Secretary of State is required by law to deliver to each county auditor a certified copy of each initiated measure, referred law, or proposed amendment to the Constitution to be voted on at the election at least twelve weeks prior to the general election. SDCL § 12-13-1. This requirement does not change because a petition was challenged according to SDCL § 2-1-18. Thus, the petition challenge must be fully resolved – appeal and everything – before August 13, 2024.² In order to judicially determine this case, the Court must ensure that 1) discovery is complete; 2) dispositive motions have been filed, briefed, argued, and ruled upon, and if not decided on in a dispositive motion; 3) a trial scheduled, held, and a decision rendered; and finally, 4) an opportunity for an appeal. All of this is required before August 13, 2024.

B. Life Defense's proposed expedited scheduling order.

Life Defense realizes that some of its initially proposed deadlines will now be infeasible due to opposing counsel's unwillingness to stipulate to any deadlines. Therefore, Life Defense respectfully moves the Court for an Expedited Scheduling Order to include the following:

1. The parties shall respond to discovery requests within three days after being served with the discovery requests;
2. The deadline to complete discovery is July 19, 2024;
3. The deadline to file dispositive motions, unless previously filed, is July 22, 2024;
 - a. Opposing party's response to motions are due July 24, 2024;
 - b. Moving party's reply to motions are July 25, 2024;
 - c. Dispositive motions to be heard by July 29, 2024;

² The general election is November 5, 2024. Twelve weeks before November 5 is August 13. Therefore, August 13 is the latest this case can be resolved according to statute.

4. Trial to be complete before August 7, 2024 (and to start by August 2, 2024);
 - a. If a party wishes to submit a trial brief, the briefs are due simultaneously on July 29, 2024;
5. A court ruling to be issued by August 10, 2024, so the Secretary of State has time to comply with the ruling before issuing a certified copy to the county auditors of each initiated measure to be voted on at the election by the deadline of August 13, 2024.

C. DFH have placed itself in the untenable situation by not agreeing to early discovery or a workable scheduling order.

Life Defense realizes how aggressive its proposed expedited scheduling order appears. However, DFH has placed the parties in this situation by ignoring Life Defense's attempts to promptly calendar this case and by engaging in unnecessary federal litigation. On June 13, 2024, the Life Defense provided DFH its proposed scheduling order by email to counsel for DFH. *See* Affidavit of Sara Frankenstein filed herewith. The same email also provided the Summons, Complaint, Admission of Service, and Life Defense's Brief in Support of Motion for Expedited Scheduling Order. On June 17, 2024, DFH's counsel emailed the signed Admission of Service and advised that he would be filing a motion to dismiss and if it is denied, then he would discuss scheduling. On this same, Life Defense followed-up with a response on the proposed scheduling order indicating that deadlines could be worked into the scheduling order for their motion to dismiss. DFH did not respond to this inquiry until June 19, 2024. In its response, DFH did not wish to discuss the proposed expedited scheduling order until the following day. On June 18, 2024, however, DFH filed a motion in federal court to enjoin Life Defense from attempting to obtain a court order in this state court action. *See Dakotans for Health v. Noem*; 4:21-cv-04045 (Dockets 65 – 67). Additional filings in federal court occurred on July 1 (Dockets 74 – 76) and July 2 (Dockets 78 & 80). The Federal District Court ultimately held DFH's motion in abeyance on July 5. (Docket 84). These federal filings wasted valuable time.

A scheduling order could have been mutually agreed to by the Parties. And both Parties could have been exchanging discovery during the pendency of this Motion to Dismiss to keep this current litigation moving forward in an expedient manner. Further, on June 24, 2024, DFH also emphatically objected to having a hearing on the proposed scheduling order prior to this Court's decision on the Motion to Dismiss. DFH's unwillingness to stipulate to a scheduling order or to engage in discovery while the Motion to Dismiss was pending requires all of the deadlines to be adjusted.

The application of SDCL § 12-13-1 to this matter requires an expedited schedule. As a result, the default deadlines found in SDCL §§ 15-6-56(c) and 15-6-6(d) are unworkable. Expedited schedules are the norm in election matters. For example, with regard to election contests, the election statutes also recognize the need for expedited court ordered deadlines. *See* SDCL § 12-22-10.

Whenever it shall appear that substantial rights may be lost or impaired by delay, *the court may*, at any time after the contest is commenced, upon application of any party, and upon reasonable notice to the other party or parties, *make such order or orders as the court deems necessary to bring about the expeditious and just determination of the contest*, including the shortening of the time for answer, the time, manner, and method of taking depositions, reference to a referee or referees, including power to appoint different referees for different purposes, and directing that when feasible the taking of evidence on depositions or before referees may proceed simultaneously, safeguarding the right of each party to be represented, if he so desires, in all such proceedings.

Id. (emphasis added). Evident from above statute is that election cases generally authorize the court to deviate from the standard rules of civil procedure. *Id.*

Such a deviation is required in this case. Under SDCL § 15-6-56, a motion for summary judgment – and all accompanying documents – must be filed 28-days before the hearing. However, according to § 15-6-56(c), a court may order new deadlines shorter than the required 28-day default rule. Likewise, SDCL § 15-6-6(d) states that:

A written motion, other than one which may be heard ex parte and notice of the hearing thereof or an order to show cause shall be served not later than ten days before the time specified for the hearing, unless a different period is fixed by this chapter or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit or brief, the affidavit or brief shall be served with the motion and, except as otherwise provided in § 15-6-59(b), opposing affidavits or briefs may be served not later than five days before the hearing, unless the court permits them to be served at some other time. A reply brief or affidavit may be served by the movant not later than two days before the hearing, unless the court permits them to be served at some other time.

SDCL § 15-6-6(d). Establishing good cause is a case-by-case determination. *See Lamar Advertising of South Dakota, Inc. v. Heavy Constructors, Inc.*, 2010 S.D. 77, ¶ 14, 790 N.W.2d 45, 49 (defining good cause in the failure to prosecute context). Good cause can arise from “fraud, accident, mistake, or some extraordinary circumstance for which the plaintiff is not responsible.” *Id.* (citations omitted). Without a doubt, determining a petition challenge before the upcoming election constitutes an extraordinary circumstance. *See Brendtro v. Nelson*, 2006 S.D. 71, 720 N.W.2d 670, 674 fn. 1 (“For this very reason we granted the right to proceed directly to this Court and are adjudicating it in an expedited manner prior to the election.”).

Strict compliance with either SDCL §§ 15-6-5(d) or 15-6-56 becomes impossible in this type of litigation. The general Rules of Civil Procedure conflict with the election deadlines. If there are two conflicting statutes, the statute of more specific application controls. *Schafer v. Deuel County Bd. of Com'rs*, 2006 S.D. 106, ¶ 14, 725 N.W.2d 241, 247 (“Therefore, the specific statute governs over the general and SDCL 11-2-18 controls amendments to zoning ordinances rather than SDCL 7-18A-13, the general initiative law governing counties.”). The Rules of Civil Procedure apply to all civil cases and cannot be applied to this type of election matter in a meaningful way. In this instance, the specific application of SDCL § 12-13-1 requires that the generally applicable statutes found in SDCL § 15-6 be amended to fit the needs of the

case. It is necessary, therefore, to conform the scheduling order to meet abbreviated deadlines found within general election's requirements.

CONCLUSION

Plaintiffs Life Defense respectfully request that the Court grant their Motion for Expedited Scheduling Order and Timing of Discovery and order deadlines consistent with the proposed Scheduling Order attached as Exhibit A to the Affidavit of Sara Frankenstein filed herewith.

Dated this 11th day of July, 2024.

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& ASHMORE, LLP

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*Attorneys for Plaintiffs Life Defense Fund and
Leslee Unruh*

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of July 2024, a true and correct copy of the foregoing was filed and served through Odyssey File and Serve System, on the following:

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/s/ Sara Frankenstein
Sara Frankenstein

STATE OF SOUTH DAKOTA)
)
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT

SECOND JUDICIAL CIRCUIT

LIFE DEFENSE FUND and)
LESLEE UNRUH,)

Plaintiffs,)

v.)

DAKOTANS FOR HEALTH,)

Defendant.)
_____)

No. 49 CIV 24-2366

Objection to Plaintiffs' New July 11 Proposed Schedule

The essential requirement to a fair trial is that Dakotans for Health (DFH) knows who the witnesses will be and what they will testify about, and that it has a list and copies of the exhibits that will be offered. Without this DFH will face trial by ambush.

Accordingly, DFH proposed a schedule with deadlines before trial for both sides to disclose experts and their testimony; identify witnesses with a fair summary of each witness's testimony; and exchange exhibits. For the Court's convenience, a copy is attached as Exhibit 1.

Plaintiffs responded on July 11 by proposing that there be *no* deadlines to identify experts, *no* deadlines to identify witnesses, and *no* deadlines to exchange exhibits. In other words, they want to show up at trial and ambush DFH with experts and witnesses DFH has never heard of, testifying about matters unknown to DFH, and introducing exhibits that DFH has never seen.

This would decimate DFH's right to due process of law, because it would deny DFH notice of the allegations and an opportunity to prepare to meet them.

And it would give LDF a completely unfair advantage, because DFH would have no opportunity to prepare a defense.

No other trial, civil or criminal, is conducted under such chaotic circumstances, and this one should not be either.

Other parts of LDF's proposed scheduling order are unworkable. (1) LDF proposes that parties must respond to discovery requests within three days after service. That's realistically impossible. Any written discovery is realistically impossible. (2) LDF proposes responses to dispositive motions within two days after service, which is realistically impossible. (3) And LDF proposes simultaneous trial briefs, which is impossible because DFH will not know what LDF's allegations are.

LDF blames the short time frame on DFH. But LDF caused the problem by delaying a full month—from May 16, when the Secretary of State certified the *Roe v. Wade* petition for the ballot, until June 13—to file this lawsuit. LDF blames DFH for not going ahead with discovery while its motion to dismiss was pending, but DFH was entitled to move to dismiss, and LDF has no right to discovery unless the Court denies the motion. LDF accuses DFH of having wasted time by filing a federal court motion, but that is false: the federal court motion did not delay anything.

Deadlines before trial for both sides to disclose experts and their testimony, identify witnesses with a fair summary of each witness's testimony, and exchange exhibits are foundational to a fair trial. DFH has a due process right to know what claims it must prepare to meet. The trial should not be chaos.

Dated: July 12, 2024

Respectfully submitted,

/s/ James D. Leach

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Certificate of Service

I certify that on July 12, 2024, I served this document on all other parties who have appeared in this lawsuit by submitting it to the Odyssey system and designating it for filing and service.

/s/ James D. Leach

James D. Leach