

## Judge Hears Arguments In S.D. Ballot Access Case

BY CHET BROKAW  
Associated Press Writer

PIERRE — A federal judge refused Thursday to order South Dakota officials to put the fledgling Constitution Party's candidate for governor on the November ballot, but said there's some chance a solution can be found in the legal dispute.

The party filed a lawsuit challenging what it argues are discriminatory state laws that have prevented it from collecting enough signatures to qualify a gubernatorial candidate for the ballot.

After a hearing in Pierre, U.S. District Judge Roberto Lange said he will delay a final decision in the Constitution Party's lawsuit until after additional written arguments are filed.

The judge said the party so far has not demonstrated it is likely to succeed in its challenge of state election laws, and he doesn't intend to order the state to accept its candidate for governor. However, Lange said there's a small chance some

other way might be found to give the party an opportunity to qualify a candidate, perhaps through a quick collection of voter signatures to nominate a candidate.

The Constitution Party was initially formed in South Dakota in 2004, but it lost its party status after the 2006 election because its candidate for governor failed to get at least 2.5 percent of the vote. Its candidate, Steven J. Willis, got only 4,010 votes, or 1.2 percent.

The party then refilled and regained party status in 2008. Because it is considered a new party under state law, it had to obtain the signatures of 250 party members to nominate a candidate for governor. One party member tried but failed to collect enough signatures.

The lawsuit argues the law is unconstitutional as applied to the Constitution Party because 250 signatures would represent about 80 percent of the party's 315 registered voters in South Dakota.

The party convention last month nominated its chairwoman, Joy Howe

of Brandon, to be its gubernatorial candidate. But Secretary of State Chris Nelson said he couldn't put Howe on the ballot because state law does not authorize party conventions to choose gubernatorial candidates. South Dakota law requires gubernatorial candidates to be chosen in primary elections after qualifying through a collection of nominating signatures, Nelson said.

The lawsuit asked the judge to order Nelson to recognize Howe as the Constitution Party's candidate for governor.

Lange said the case must be decided quickly because Nelson faces an Aug. 17 deadline for certifying the candidates who will appear on the fall ballot.

After the hearing, Nelson said he hopes laws aren't changed midway through the election year.

"One of the reasons we have integrity in the election process is we lay out our rules at the beginning," Nelson said. "You play by those rules through the election year."

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## MIDWEST DIGEST

### Large Swath Of Neb. Declared Disaster Area

LINCOLN, Neb. (AP) — President Obama has issued a federal disaster declaration for a large part of Nebraska that sustained damage from heavy flooding and storms in June.

The declaration announced Thursday will trigger the release of federal funding to help recover from flooding, storms and tornadoes. The funds will be used for public infrastructure such as roads and bridges.

Fifty-three of the state's 93 counties are in the disaster area. Gov. Dave Heineman requested the federal aid to help communities recover from storms and flooding that caused more than \$16 million in damage to public infrastructure alone.

Actual costs will exceed that estimate, because assessment teams stop tallying damage in individual counties once the threshold to qualify for aid is met.

### Way Cleared For Protest At Omaha Funeral

OMAHA, Neb. (AP) — A member of a Kansas church challenging Nebraska's ban on flag mutilation will be exempt from that law for a protest outside an Omaha soldier's funeral.

But state Attorney General Jon Bruning says he'll arrest Megan Phelps-Roper if she violates another law that prohibits picketing within 300 feet of a funeral or memorial service.

U.S. District Judge Richard Kopf on Thursday granted Phelps-Roper's request for permission for two Omaha protests, including one Saturday morning near Pfc. Edwin Wood's funeral service. The ruling came after state and local authorities agreed to an extension of a previous injunction of the flag law that applied only to Phelps-Roper.

Phelps-Roper is a member of Westboro Baptist Church, which is known for protesting at soldiers' funerals.

### Suspect In S.D. Killing Arrested In Drug Case

HURON (AP) — A Sturgis man facing trial in a Huron killing has been arrested on suspicion of drug offenses.

Meade County state's attorney Jesse Sondreal says John LeGrand is suspected of several felonies, including possession and distribution of marijuana. A grand jury will meet later this month to decide on the charges.

LeGrand was arrested Wednesday night after a search of his home.

LeGrand faces an Oct. 11 trial in a 2009 shooting death of Ricardo Hein at a Huron mobile home park. LeGrand has pleaded not guilty to alternate counts of second-degree murder and first-degree manslaughter.

Authorities say the men fought over money LeGrand allegedly owed Hein for construction work and LeGrand shot Hein four times with a shotgun.

No number was listed for LeGrand.

### Firearms Experts Under Fire For S.D. Murder

PARKER (AP) — Attorneys in the Ethan Johns murder case sought to discredit the other side's firearms expert at a motions hearing Thursday because their theories and opinions could be used in next month's trial.

The 21-year-old Johns is accused of killing a deputy sheriff. Testimony focused largely on two rifle shots fired through a bathroom window that struck deputy Chad Mechels' patrol car. The judge will take more testimony before ruling on the admissibility of their reports and conclusions.

Johns could face the death penalty for a first-degree murder conviction. The 32-year-old Mechels was shot and killed when sent to Johns' farm to check on his well-being in March 2009.

### S.D. Congresswoman Runs First TV Ad

PIERRE (AP) — Democratic Rep. Stephanie Herseth Sandlin has begun running her first television campaign advertisements, touting three-term congresswoman's willingness to work with both parties to do what's best for South Dakota.

The 30-second spot, which began running Tuesday on local network affiliates, has drawn a swift response from her Republican opponent, state Rep. Kristi Noem, who posted an Internet video claiming Herseth Sandlin helped Democratic congressional leaders run up huge budget deficits.

Herseth Sandlin's ad starts with a clip from a commercial she ran in 2004, when she first won the House seat. In the earlier ad, she said no political party has a monopoly on good ideas and she would always vote for what's right for South Dakota.

The ad continues with Herseth Sandlin standing in a field near the Black Hills, saying she continues to be an independent voice for South Dakota and voted against the health care reform bill and bailout measures but supported expanding renewable energy and improving veterans' benefits.

"I'm Stephanie Herseth Sandlin and I approved this message because a lot's changed since then, but not how I stand up for South Dakota," she said. The ad ends with a shot of Herseth Sandlin in the field with her husband, Max, and their young son.

Noem's response disputes Herseth Sandlin's ad sentence by sentence. When Herseth Sandlin calls herself an independent voice for South Dakota, the Republican candidate's video says the Democratic congresswoman votes with House Speaker Nancy Pelosi 93 percent of the time according to the *Washington Post*. The *Washington Post* rating on its website actually says Herseth Sandlin as of Thursday has voted with the Democratic Party 92.2 percent of the time in 1,376 votes during the current congressional session, counting all votes including procedural matters and uncontroversial issues such as naming post offices. The average Democrat in the House votes with the party 92.3 percent of the time, while the average Republican votes with the GOP 88.4 percent of the time, according to the frequently updated tally.

The analysis also shows Herseth Sandlin voted with the Democratic Party less frequently than about 230 of the House Democrats, and just 30 Democrats were less loyal to the party line than Herseth Sandlin. In other words, nearly nine of 10 of the House's Democrats have voted with their party more often than Herseth Sandlin.

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