IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

LONNIE PROVOST, Plaintiff, v. JASON GANT, in his official capacity as Charles Mix County Auditor; and CHARLES MIX COUNTY, SOUTH DAKOTA, Defendants.	Civil No. _____ **PLAINTIFF LONNIE PROVOST'S COMPLAINT FOR EMERGENCY DECLARATORY AND INJUNCTIVE RELIEF**

Preliminary Statement

1. Plaintiff Lonnie Provost brings this action to challenge Charles Mix County's policy and practice of denying voters a ballot unless voters remove or conceal nonpartisan Native Vote apparel.
2. During the November 2024 general election, Provost, a member of the Yankton Sioux Tribe, went to the Wagner National Guard Armory to vote while wearing a shirt bearing the message "Natives VOTE." Election officials refused to provide him with a ballot unless he removed his shirt. Provost refused to remove it and did not cast a ballot.
3. Provost observed multiple Native voters wearing nonpartisan Native Vote t-shirts being told by county officials they needed to remove or cover their shirts before being given ballots.
4. For the past two years Plaintiff's counsel repeatedly notified state and county officials this policy and practice violated Native voters' constitutional rights, provided photographs of the nonpartisan shirts in question, and requested corrective instructions and training before the 2026 election.

5. Defendant Charles Mix County Auditor Jason Gant maintains Native Vote shirts violate South Dakota electioneering statute SDCL § 12-18-3 which prohibits persons from "display[ing] campaign posters, signs, or other campaign materials or by any like means solicit any votes for or against any person or political party or position on a question" within 100 feet of a polling place.
6. Deputy Secretary of State Tom Deadrick declined to clarify whether the shirts were permissible. He cited SDCL § 12-18-3 and its criminal penalty and stated that enforcement rested with prosecutors.
7. Provost intends to vote at the Wagner National Guard Armory on Tuesday, November 3, 2026, while wearing the same "Natives VOTE" shirt. Based on Defendants' prior enforcement of the restriction, he fears that election workers will again refuse to allow him to vote unless he removes or conceals it and he fears criminal penalty.
8. Plaintiff seeks declaratory and permanent injunctive relief against Defendants' policy requiring voters to remove or conceal nonpartisan Native Vote apparel to receive a ballot and exercise their constitutional right to vote.

Jurisdiction

9. This Court has subject matter jurisdiction over Plaintiff's federal constitutional claim under 28 U.S.C. §§ 1331 and 1343(a)(3). Plaintiff brings that claim under 42 U.S.C. § 1983.
10. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over the related state constitutional claims because they arise from the same events as the federal constitutional claim.

11. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202. Injunctive relief is available pursuant to the Court's equitable authority and Federal Rule of Civil Procedure 65. Attorneys' fees are sought under 42 U.S.C. § 1988(b).

12. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Plaintiff's claims occurred in Charles Mix County, South Dakota, which lies within the Southern Division under 28 U.S.C. § 122(2).

Parties

13. Plaintiff Lonnie Provost is an adult member of the Yankton Sioux Tribe, a resident of Wagner in Charles Mix County, South Dakota, and a registered voter eligible to vote in the November 3, 2026 general election. His assigned polling place is the Wagner National Guard Armory. He has voted in almost every election.

14. For five years, including during the 2024 election, Provost worked for an organization that supports organizing and leadership development in Native communities. In 2026, Provost continues supporting Native electoral participation as a contractor, helping distribute microgrants to tribes and organizations conducting Native get-out-the-vote efforts in South Dakota.

15. Encouraging Native people to vote is deeply important to Provost. His nonpartisan Natives VOTE shirt expresses his commitment to Native electoral participation and to ensuring that Native communities have a voice in decisions affecting them.

16. Defendant Jason Gant is the elected Auditor of Charles Mix County, South Dakota, and is sued in his official capacity. The auditor is an elected county officer under SDCL § 7-7-1.1 and the person charged with conducting the general election under SDCL § 12-1-3(10). In

2024, Gant directed poll workers to require voters wearing Native Vote shirts to remove or conceal those shirts as a condition of voting.

17. Defendant Charles Mix County, South Dakota, is a political subdivision of the State of South Dakota and a body corporate capable of suing and being sued under SDCL § 7-18-1. The County administers elections within its jurisdiction through its county officials. County precinct election officials implemented the challenged restriction at the Wagner National Guard Armory pursuant to Gant's express instructions.

18. In administering the County's election, Gant established and directed the County's policy requiring voters to remove or conceal nonpartisan Native Vote shirts before receiving a ballot. On information and belief, Gant exercised final county policymaking authority concerning the challenged apparel determination. Election workers implemented that determination at his direction, and he reaffirmed the policy with Plaintiff's counsel.

Factual Allegations

19. South Dakota law prohibits displaying campaign posters, signs, or other campaign materials in and around polling places, as well as soliciting votes for or against a person, political party, or position on a question submitted or potentially submitted to voters. SDCL § 12-18-3. Defendants treated Plaintiff's nonpartisan Native Vote shirt as prohibited campaign material under that provision.

20. The Native Vote shirts at issue featured Native artwork and messages including "Native Vote," "Natives Vote," and "Get Out the Native Vote." They encourage Native people to participate in elections without advocating for or against a candidate, political party, or ballot measure.

21. Plaintiff's peaceful wearing of his "Natives VOTE" shirt, without accompanying campaign advocacy or disruptive conduct, does not constitute displaying campaign material or soliciting votes for or against a person, political party, or ballot question under SDCL § 12-18-3.

22. During the November 2024 general election, the Native American Rights Fund ("NARF") received reports that poll workers at the Wagner Armory were prohibiting voters from wearing Native Vote shirts.

23. Reports received by NARF indicated that approximately five to twenty voters were affected. Poll workers told voters to cover their shirts or go to the restroom to remove them or turn them inside out before voting.

24. According to the reports, Gant instructed poll workers to treat the shirts as prohibited campaign materials and not to provide ballots to voters who continued wearing them.

25. The other affected voters removed or concealed their shirts and cast their ballots. Provost refused to remove his shirt and did not vote.

26. Provost wore a shirt bearing the message "Natives VOTE," with a blue check mark and yellow and white geometric designs. Poll workers told him that he could not vote unless he removed the shirt and returned. He refused to remove it and did not cast a ballot in the November 2024 general election.

27. Plaintiff wore the shirt while seeking to vote peacefully. He did not solicit votes, distribute campaign materials, approach other voters to influence their votes, or otherwise disrupt voting. Election workers nevertheless required him to remove or conceal the shirt before they would permit him to vote. Their stated objection concerned the shirt's message, not any disruptive conduct by Plaintiff.

28. While at the Wagner Armory on November 5, 2024, Provost saw "I Voted" stickers on a table next to the ballot box.

29. During that election, NARF attorney Samantha Blencke spoke directly with Gant about the restriction. She explained that the shirts encouraged Native electoral participation without advocating for any candidate, political party, or ballot measure. Gant nevertheless maintained that the shirts were prohibited campaign materials.

30. On June 5, 2025, NARF sent South Dakota Secretary of State Monae L. Johnson a letter documenting the Wagner incidents and requesting training for county auditors and poll workers, clear written guidance distinguishing nonpartisan apparel from campaign material, and measures to prevent a recurrence.

31. After receiving no response, NARF followed up with Johnson and Elections Director Rachel Soulek on November 3, 2025.

32. Johnson responded on November 5, 2025. She questioned whether the shirts said "Native Vote" or "Vote Native," requested photographs and the names of voters denied the opportunity to vote, and explained that her office shared electioneering statutes with auditors and election workers.

33. Johnson further explained that auditors were advised to consult their state's attorney when questions about apparel arose. Her response supplied links to the precinct manual and election-worker training.

34. On May 27, 2026, NARF provided the Secretary of State's office with photographs showing shirts bearing the messages "Native Vote," "Natives Vote," and "Get Out the Native Vote." NARF identified Provost as a voter who had been denied the opportunity to vote and renewed its requests for guidance and training before the 2026 election.

35. On October 27, 2026, Deputy Secretary of State Tom Deadrick responded on behalf of the Secretary of State's office. He cited SDCL § 12-18-3 and its criminal penalty and stated that the office considered it inappropriate to discuss permissible apparel because enforcement rested with prosecutors. His response did not identify any corrective guidance issued to Charles Mix County election workers or assure Plaintiff that he could vote while wearing his shirt.

36. On October 28, 2026, Blencke wrote directly to Gant and Charles Mix County State's Attorney Steven R. Cotton, copying Johnson and Deputy Secretary of State Tom Deadrick.

37. The October 28 correspondence described the 2024 restrictions and the nonpartisan shirts, explained the applicable statutory and First Amendment protections, and requested that the County instruct election workers to permit the apparel without requiring voters to remove, cover, or turn it inside out as a condition of voting.

38. The correspondence also advised that NARF would consider legal action if the County again imposed the restriction.

39. As of filing, Defendants have not confirmed that Plaintiff may vote while wearing his 'Natives VOTE' shirt without removing or concealing it, or that corrective instructions have been communicated to County election workers.

40. As of the filing of this Complaint on November 2, 2026, Provost has not voted in the 2026 general election. He intends to vote in person at the Wagner National Guard Armory on Tuesday, November 3, 2026, while wearing the same "Natives VOTE" shirt he wore in 2024. He does not want to remove or conceal its message as a condition of voting. He also intends to wear this shirt or similar nonpartisan Native Vote apparel when voting in future elections administered by Defendants. He wants to do so without fear or threat of prosecution.

41. When voting on November 3, Provost intends to wear his shirt while peacefully casting his ballot. He does not intend to solicit votes for or against any candidate, political party, or ballot measure, distribute campaign materials, or disrupt voting.

42. Provost faces a credible threat that election workers will again require him to remove or conceal his shirt before permitting him to vote. To obtain a ballot under the challenged restriction, he must conceal the nonpartisan message he wishes to express. If he refuses, he risks being denied the opportunity to vote, as occurred in 2024, and being subject to criminal penalties. Plaintiff seeks to cast his ballot without surrendering that expression. Once voting concludes, a later judgment cannot restore that opportunity in this election.

43. Provost faces a credible threat that he will be prosecuted for his speech under SDCL § 12-18-3. By being turned away under SDCL § 12-18-3, he was informed that the County considers his speech to violate the statute. The Secretary of State's office declined to clarify whether his shirt was permissible, and Defendants have not provided assurance that his planned conduct will not subject him to criminal enforcement.

44. Native Americans have endured a long history of exclusion from the franchise and continue to face discriminatory practices and substantial barriers to registering, casting a ballot, and having their votes counted. Those barriers include distant polling places, unequal access to registration and early voting, restrictive identification and address requirements, inadequate language assistance, and voter intimidation. Against that history and those continuing obstacles, nonpartisan messages encouraging Native people to vote promote equal participation in a political process from which Native communities have too often been excluded.

45. Native Americans comprise approximately 36.5% of Charles Mix County's population and 31.1% of its voting-age population. Despite that substantial presence, Native voters have repeatedly faced barriers to equal electoral participation in the County.

46. In *Blackmoon v. Charles Mix County*, Native voters successfully challenged Charles Mix County's commission districts as violating the Fourteenth Amendment's one-person, one-vote requirement. No. Civ. 05–4017, 2005 WL 2738954 (D.S.D. Oct. 24, 2005). After the court approved remedial districts, the court permitted the voters' separate racial-discrimination claims to proceed, rejecting the County's argument that redistricting rendered those claims moot. *Blackmoon v. Charles Mix Cnty.*, 505 F. Supp. 2d 585, 592–93 (D.S.D. 2007).

47. In February 2008, the United States Department of Justice objected to the County's proposed expansion of its Commission from three to five members and accompanying redistricting plan, concluding that the County had not demonstrated the absence of discriminatory purpose. DOJ explained that the changes would reduce Native voters' opportunity to elect their candidate of choice from one of three districts to one of five. DOJ also cited commissioners' knowing maintenance of districts that denied Native voters that opportunity, reports of racially discriminatory statements by commissioners, and the timing of the expansion effort following the primary victory of the County's first Native American commissioner. DOJ further reported that the County Sheriff and deputies actively circulated the petition supporting the expansion, reportedly collecting signatures while in uniform. Letter from Grace Chung Becker, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to Sara Frankenstein (Feb. 11, 2008) https://www.justice.gov/crt/voting-determination-letter-14 [https://perma.cc/TE9C-8AZR].

Causes of Action

COUNT I
Violation of the First Amendment
42 U.S.C. § 1983

48. Plaintiff incorporates the preceding factual allegations into this Count.

49. The First Amendment, applicable to state and local officials through the Fourteenth Amendment, protects Plaintiff's expression through his nonpartisan Native Vote shirt.

50. Defendants acted under color of state law in the administration of the challenged restriction. Defendants implemented the prohibition through Gant's instructions and the actions of county election workers.

51. Restrictions on expression inside a polling place must be reasonable in light of the forum's purpose and viewpoint neutral. Officials must administer apparel restrictions using objective, workable standards. *Minn. Voters All. v. Mansky*, 585 U.S. 1, 4 (2018).

52. Plaintiff's shirt expresses support for Native electoral participation. It does not identify or advocate for or against any candidate, political party, or ballot measure.

53. Defendants nevertheless classified that message as prohibited campaign material and conditioned Plaintiff's receipt of a ballot on removal or concealment of the shirt.

54. As applied to Plaintiff's shirt, the restriction is unreasonable in light of the polling place's purpose. The shirt encourages participation in the electoral process without urging a vote for or against any candidate, political party or ballot measure, and Plaintiff wore it without campaigning, intimidating voters, or disrupting voting. Defendants nevertheless treated its message as prohibited campaign advocacy. Their application of the restriction supplies no objective, workable standard connecting the shirt's nonpartisan participation message to the conduct the electioneering prohibition addresses.

55. The restriction must also be viewpoint neutral. To the extent Defendants classify Plaintiff's shirt as campaign material because it expresses support for Native electoral participation or because of political views they attribute to Native voters, their application discriminates against Plaintiff's viewpoint.

56. Plaintiff challenges Defendants' policy of treating nonpartisan Native Vote apparel as prohibited campaign material, including its application to his "Natives VOTE" shirt. Gant's instructions and election workers' implementation of that policy directly caused Plaintiff's injury in 2024 and threaten its recurrence when he votes on November 3, 2026.

57. Defendants enforced the restriction against Plaintiff in 2024, preventing him from voting while wearing his shirt. The threatened application of that same policy burdens his planned expression in the November 3, 2026, election and future elections administered by Defendants. Plaintiff seeks declaratory and permanent injunctive relief against the challenged policy.

COUNT II
Violation of the South Dakota Constitution
Article VI Section 19 and Article VII Section 1

58. Plaintiff incorporates the preceding factual allegations into this Count.

59. Article VII, section 1 of the South Dakota Constitution provides: "Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Article VI, section 19 contains the same protection.

60. By conditioning Plaintiff's access to the ballot on removal or concealment of his nonpartisan Native Vote shirt, Defendants interfered with his free exercise of suffrage. Their threatened enforcement of the same condition in the November 3, 2026, election violates article VI,

section 19 and article VII, section 1 of the South Dakota Constitution. Plaintiff seeks declaratory and prospective injunctive relief against that condition.

61. Plaintiff's shirt did not advocate for or against any candidate, political party, or ballot measure, and his conduct did not disrupt voting. Requiring removal or concealment of the shirt bears no reasonable relationship to preventing electioneering, protecting voters from intimidation, or preserving orderly voting. Defendants nevertheless enforced that condition, resulting in Plaintiff leaving without casting a ballot in 2024, and threaten to impose it again.

COUNT III
Violation of the South Dakota Constitution
Article VI Section 5

62. Plaintiff incorporates the preceding factual allegations into this Count.

63. Article VI, section 5 of the South Dakota Constitution independently protects freedom of speech.

64. Plaintiff's peaceful wearing of his "Natives VOTE" shirt expresses support for Native electoral participation without advocating for or against any candidate, political party, or ballot measure.

65. By treating that expression as prohibited campaign material and requiring Plaintiff to remove or conceal it before receiving a ballot, Defendants infringed his freedom of speech under article VI, section 5.

66. Defendants' threatened enforcement of the same restriction burdens Plaintiff's intended expression in the November 3, 2026, election and future elections administered by Defendants. Plaintiff seeks declaratory and prospective injunctive relief.

Request for Relief

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Declare that Defendants' policy of requiring voters to remove or conceal nonpartisan Native Vote apparel as a condition of voting violates the First Amendment, applicable through the Fourteenth Amendment;

B. Declare that Defendants' enforcement of that policy interferes with the free exercise of suffrage in violation of article VI, section 19 and article VII, section 1 of the South Dakota Constitution;

C. Declare that Defendants' application of the challenged apparel restriction to Plaintiff violates article VI, section 5 of the South Dakota Constitution;

D. Declare that Plaintiff's peaceful wearing of the "Natives VOTE" shirt described above, without accompanying campaign advocacy or disruptive conduct, does not violate SDCL § 12-18-3;

E. Permanently enjoin Defendants, their officers, agents, servants, employees, attorneys, and other persons bound under Federal Rule of Civil Procedure 65(d)(2) from denying any otherwise eligible voter access to voting in Charles Mix County, withholding a ballot, or requiring removal, covering, or alteration of apparel solely because it displays "Native Vote," "Natives Vote," "Get Out the Native Vote," or a substantially similar nonpartisan message encouraging Native electoral participation, where the apparel does not advocate for or against any candidate, political party, or ballot measure;

F. Require Defendants promptly to communicate the injunction to all precinct election officials and other personnel administering voting throughout Charles Mix County;

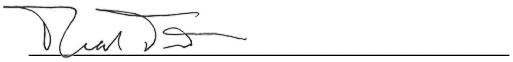
G. Require Defendants to rescind instructions directing election workers to prohibit the nonpartisan Native Vote apparel covered by the injunction;

H. Award Plaintiff his costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

I. Grant such other relief as the Court deems just and proper.

DATED: November 2, 2026.

Respectfully submitted,



Thad A. Titze

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*Pro hac vice applications forthcoming

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS Lonnie Provost

(b) County of Residence of First Listed Plaintiff Charles Mix County, SD
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Robins Kaplan LLP
150 E. 4th Pl., STE 704 605.335.1300
Sioux Falls, SD 57014

DEFENDANTS Jason Gant, in his official capacity as Charles Mix County Auditor; Charles Mix County, South Dakota

County of Residence of First Listed Defendant Charles Mix County, SD
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☒ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
42 U.S.C. § 1983

Brief description of cause:
Voting rights case under federal and state law.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 11/02/2026

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

LONNIE PROVOST, Plaintiff, v. JASON GANT, in his official capacity as Charles Mix County Auditor; and CHARLES MIX COUNTY, SOUTH DAKOTA, Defendants.	Civil No. 4:26cv-04211 **PLAINTIFF LONNIE PROVOST'S MOTION FOR EMERGENCY TEMPORARY RESTRAINING ORDER**

Pursuant to Federal Rule of Civil Procedure 65(b), Plaintiff Lonnie Provost moves this Court for an emergency temporary restraining order enjoining Defendants Jason Gant, in his official capacity as Charles Mix County Auditor, and Charles Mix County, South Dakota, their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them from prohibiting Plaintiff and other voters from wearing nonpartisan Native Vote apparel at Charles Mix County polling places, including the Wagner Armory, or requiring them to remove, cover, or turn such apparel inside out as a condition of voting.

The requested relief concerns apparel bearing nonpartisan messages such as "Native Vote," "Natives Vote," and "Get Out the Native Vote," without advocating for or against any candidate, political party, or ballot measure. As set forth in the accompanying Complaint and Memorandum, Defendants' restriction violates the First Amendment to the United States Constitution. Immediate relief is necessary because Plaintiff intends to vote on Tuesday, November 3, 2026, while wearing the same "Natives VOTE" shirt that election workers required

him to remove as a condition of voting in 2024. He seeks relief because his speech is currently chilled. This matter must be resolved before going to vote so that he can cast his ballot without removing or concealing his protected message and without risk of criminal penalty.

This motion is supported by Plaintiff's Complaint for Emergency Declaratory and Injunctive Relief, and concurrently filed Memorandum in Support of Motion for Emergency Temporary Restraining Order and accompanying declarations and exhibits, which are incorporated herein by reference.

Plaintiff requests an immediate telephone or video hearing at the Court's earliest availability. If the Court cannot hear Defendants before Plaintiff suffers immediate and irreparable injury, Plaintiff alternatively requests issuance of a temporary restraining order on the supporting declarations and counsel's certification, subject to an expedited opportunity for Defendants to seek dissolution or modification.

DATED this 2nd day of November, 2026.

Respectfully submitted,
/s/ Thad A. Titze

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* Pro hac vice application forthcoming

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

LONNIE PROVOST, Plaintiff, v. JASON GANT, in his official capacity as Charles Mix County Auditor; and CHARLES MIX COUNTY, SOUTH DAKOTA, Defendants.	Civil No. 4:26cv-04211 **ORDER GRANTING PLAINTIFF'S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER**

The Court has considered Plaintiff's Emergency Motion for a Temporary Restraining Order, supporting memorandum, the declarations of Lonnie Provost and Samantha Blencke, counsel's certification regarding notice, and the accompanying exhibits.

On November 2, 2026, Plaintiff's counsel emailed Auditor Gant and Charles Mix County State's Attorney Steven R. Cotton to notify them of the intended complaint and emergency TRO motion, describe the requested relief, and request their position and counsel's availability for an expedited hearing. Counsel subsequently called Cotton's office and left a message requesting a return call. Later that day, Plaintiff's counsel spoke by telephone with Sara Frankenstein regarding the requested relief.

Upon consideration of the record, the Court finds:

1. Plaintiff intends to vote at the Wagner National Guard Armory on November 3, 2026, while wearing the same nonpartisan "Natives VOTE" shirt that poll workers required him to remove or conceal in 2024. Auditor Gant defended that restriction during the 2024

election, and as of the Court's consideration of this motion, Defendants have not confirmed that Plaintiff may vote while wearing that shirt without removing or concealing it or that corrective instructions have been communicated to County election workers. On the present record, Plaintiff faces an imminent risk of again being required to conceal his protected expression as a condition of voting and faces risk of prosecution under SDCL § 12-18-3.

2. Absent relief, Plaintiff faces the choice between concealing his protected expression and forgoing his ballot while risking criminal penalty. Once voting concludes, subsequent relief cannot restore those opportunities. The injury is therefore irreparable.
3. Plaintiff intends to vote on November 3, 2026. Prompt relief is necessary to prevent the threatened injury before he votes and to permit timely communication of this Order to election workers.
4. Plaintiff has demonstrated a likelihood of success on his First Amendment claim. His shirt conveys a nonpartisan Native voter participation message without advocating for or against a candidate, political party, or ballot measure. On the present record, Defendants' treatment of that message as prohibited campaign material lacks an objectively reasonable basis consistent with the First Amendment.
5. The balance of harms favors relief. Permitting the nonpartisan apparel described below and communicating that instruction to election workers imposes a minimal burden compared with the threatened constitutional injury.
6. The public interest favors protecting constitutional expression and qualified voters' access to the ballot while preserving lawful restrictions on campaign advocacy, intimidation, and disruption.

Accordingly, IT IS ORDERED:

1. Plaintiff's Emergency Motion for a Temporary Restraining Order is GRANTED as to Defendants Jason Gant, in his official capacity as Charles Mix County Auditor, and Charles Mix County, South Dakota.
2. Defendants, their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them who receive actual notice of this Order, are temporarily restrained from:
    a. Denying Plaintiff or any other eligible voter a ballot or access to voting at any Charles Mix County polling place because the voter wears nonpartisan apparel expressing support for Native electoral participation, including apparel bearing the messages "Native Vote," "Natives Vote," or "Get Out the Native Vote," subject to paragraph 3; and
    b. Requiring any such voter to remove, cover, or turn the protected apparel inside out as a condition of receiving or casting a ballot.
3. Paragraph 2 protects shirts and other apparel expressing support for Native electoral participation that do not also advocate for or against a candidate, political party, or ballot measure. Differences in artwork or wording alone do not remove apparel from this protection. This Order does not excuse compliance with otherwise lawful voter qualifications and voting procedures or authorize campaigning, intimidation, or disruptive conduct.
4. Immediately upon receiving actual notice of this Order, Gant shall communicate its operative terms to the election superintendent and election workers at each Charles Mix County polling place. Gant shall instruct them that eligible voters must be permitted to

receive and cast ballots while wearing the nonpartisan Native Vote apparel described above, subject to otherwise lawful voting requirements.

5. Within 30 minutes after receiving actual notice of this Order, Gant shall confirm to Plaintiff's counsel that the instructions required by paragraph 4 have been communicated. Defendants shall promptly file written confirmation of compliance.
6. Plaintiff's counsel shall immediately transmit this Order and the papers supporting the motion to Gant, the Charles Mix County State's Attorney, and any counsel known to represent Defendants, using the most expeditious available means. Plaintiff's counsel shall promptly file a certification identifying the recipients, methods, and times of transmission.
7. The Court fixes security under Federal Rule of Civil Procedure 65(c) at $0 because the limited relief ordered presents no demonstrated risk of compensable monetary loss to the Defendants.
8. This Order takes effect immediately upon entry and expires upon completion of voting at all Charles Mix County polling places on November 3, 2026, including voting by eligible persons in line when polls close.
9. Defendants may request immediate dissolution or modification of this Order, and the Court will consider any such request on shortened notice. [A hearing is set for _____ Central Time on November _____, 2026, by telephone/video.] Counsel may appear on behalf of Defendants. Gant's personal attendance is not required unless separately ordered.

ISSUED November _____, 2026, at _____ [a.m./p.m.] Central Time.

_____
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

LONNIE PROVOST, Plaintiff, v. JASON GANT, in his official capacity as Charles Mix County Auditor; and CHARLES MIX COUNTY, SOUTH DAKOTA, Defendants.	Civil No. 4:26cv-04211 **PLAINTIFF LONNIE PROVOST'S MEMORANDUM IN SUPPORT OF MOTION FOR EMERGENCY TEMPORARY RESTRAINING ORDER**

INTRODUCTION

Plaintiff Lonnie Provost seeks emergency relief to prevent Defendants from denying him the opportunity to vote while wearing his "Natives VOTE" shirt. The shirt encourages Native electoral participation. It does not identify or advocate for or against any candidate, political party, or ballot measure. [Provost Decl. ¶ 8; Ex. A.] Defendants' restriction violates the First Amendment.

In 2024, poll workers at the Wagner Armory polling place, acting under Defendant Gant's direction, refused to allow Plaintiff to vote unless he removed his Natives VOTE shirt. Despite repeated notice and requests for corrective action, neither Gant nor the County has assured Plaintiff that the restriction has been rescinded. The shirt encourages Native people to participate in elections. It neither supports nor opposes any candidate, political party, or ballot measure and conveys no message associated with a particular electoral campaign. Plaintiff intends to return to the same polling place on Tuesday, November 3, 2026, wearing the same

shirt but fears criminal penalty. He seeks relief before voting to prevent a recurrence of the restriction that prevented him from casting his ballot in 2024.

Plaintiff seeks protection as he currently must choose between concealing his nonpartisan message to obtain a ballot or preserving his expression and risk another denial of the opportunity to vote at risk of criminal penalty. His intended conduct is definite—he plans to return to the same polling place on November 3, 2026, wearing the same shirt. He requests an expedited hearing and relief before that vote.

STATEMENT OF FACTS

During the November 2024 general election, Native voters at the Wagner National Guard Armory in Charles Mix County were required to remove or cover nonpartisan Native Vote shirts as a condition of casting a ballot. The shirts featured Native artwork and messages including "Native Vote," "Natives Vote," and "Get Out the Native Vote." None referenced a candidate, political party, or ballot measure. [Blencke Decl. ¶¶ 9, 15; Exs. A, C-1, C-2, C-3, and C-4.]

Poll workers imposed these restrictions under the direction of Defendant Jason Gant, the Charles Mix County Auditor. Approximately five to twenty voters were affected. The other affected voters removed or concealed their shirts and cast their ballots. Provost refused to remove his shirt and was not allowed to vote. [Blencke Decl. ¶ 3.]

Plaintiff Lonnie Provost is a Yankton Sioux tribal member who has voted in almost every election since he became eligible. In 2024, he worked for an organization that supports organizing and leadership development in Native communities. Provost worked for the organization for five years. This year, he continues supporting Native electoral participation as a contractor, helping distribute microgrants to tribes and organizations conducting Native get-out-the-vote efforts in South Dakota. Encouraging Native people to vote is deeply important to

Provost and reflects his longstanding commitment to ensuring that Native communities have a voice in decisions affecting them. [Provost Decl. ¶¶ 2-6.]

Provost was among the voters subjected to the restriction at the Wagner Armory in 2024. He wore a shirt that said "Natives VOTE," expressing his support for Native participation in elections. Poll workers told him he could not vote unless he removed the shirt or turned it inside out. He refused and was not allowed to cast a ballot. [Provost Decl. ¶¶ 11-16.]

Native American Rights Fund (NARF) attorney Samantha Blencke spoke directly with Gant during the 2024 election. She explained that the shirts conveyed nonpartisan voter participation messages and were not campaign materials. Gant nevertheless maintained that the shirts were prohibited. [Blencke Decl. ¶ 4.]

NARF repeatedly sought corrective action before the next general election. On June 5, 2025, NARF sent Secretary of State Monae L. Johnson a letter documenting the Wagner incidents and requesting training for county auditors and poll workers, clear written guidance on permissible nonpartisan apparel, and measures to prevent further improper restrictions. After receiving no response, NARF followed up on November 3, 2025. [Blencke Decl. ¶ 5; Ex. B.]

Secretary Johnson responded on November 5, 2025. She questioned whether the shirts said "Native Vote" or "Vote Native" and requested photographs and the names of affected voters. She explained that her office shared election statutes with auditors and election workers and advised county auditors to consult their state's attorney when questions about apparel arose. [Blencke Decl. ¶ 7; Ex. D.]

On May 27, 2026, NARF provided photographs of the shirts received following the 2024 election at the Wagner location. Those photographs showed shirts bearing the messages "Native Vote," "Natives Vote," and "Get Out the Native Vote." NARF also identified Provost as a voter

who had been denied the opportunity to vote and renewed its requests for clear statewide guidance and training before the 2026 election. [Blencke Decl. ¶¶ 8, 9; Exs. C-1, C-2, C-3, C-4, D.]

On October 27, 2026, Deputy Secretary of State Tom Deadrick responded on behalf of the Secretary of State's office. He cited SDCL § 12-18-3 and its criminal penalty and declined to discuss permissible apparel, claiming enforcement rested with prosecutors. His response did not clarify whether Plaintiff could vote while wearing his shirt. [Blencke Decl. ¶¶ 11-12; Ex. D.]

On October 28, 2026, NARF again sought to prevent a recurrence, writing directly to Gant and Charles Mix County State's Attorney Cotton, and copying Secretary Johnson and Deputy Secretary Tom Deadrick. NARF described the shirts and the prior restrictions, and requested that the county instruct election workers to permit the nonpartisan apparel. Specifically, NARF requested that voters not be required to remove, cover, or turn their apparel inside out as a condition of voting. NARF also advised that it would consider legal action if the restrictions recurred. [Blencke Decl. ¶ 13; Ex. E.]

The challenged restriction arises against a documented history of barriers to Native electoral participation in Charles Mix County. Native voters successfully challenged the County's malapportioned commission districts in *Blackmoon v. Charles Mix Cnty.*, No. Civ. 05–4017, 2005 WL 2738954 (D.S.D. Oct. 24, 2005). In 2008, the United States Department of Justice ("DOJ") objected to the County's proposed commission expansion and redistricting plan because the County had not demonstrated the absence of discriminatory purpose. DOJ cited reduced Native electoral opportunity, reports of racially discriminatory statements by commissioners, and the timing of the expansion effort following the primary victory of the County's first Native American commissioner. Letter from Grace Chung Becker, Acting

Assistant Att'y Gen., U.S. Dep't of Justice, to Sara Frankenstein (Feb. 11, 2008), https://www.justice.gov/crt/voting-determination-letter-14 [https://perma.cc/TE9C-8AZR]. This history underscores the significance of Plaintiff's nonpartisan message encouraging Native electoral participation and the harm of requiring him to conceal that message as a condition of voting.

As of this filing on November 2, 2026, Provost has not voted in the 2026 general election. He intends to vote at the Wagner National Guard Armory on Tuesday, November 3, while wearing the same "Natives VOTE" shirt he wore in 2024. [Provost Decl. ¶¶ 17-18; Ex. A]. He does not want to remove, cover, or turn the shirt inside out because doing so would conceal the message he wishes to express. Based on his prior experience, he fears that election workers will again refuse to permit him to vote while wearing it and he will be denied the right to vote. [Provost Decl. ¶¶ 23-24; Blencke Decl. ¶ 15.] He also fears prosecution under SDCL § 12-18-3. [Provost Decl. ¶ 25.]

On November 2, 2026, Plaintiff's counsel spoke by telephone with Sara Frankenstein regarding the requested relief. As of filing, Defendants have not confirmed that Plaintiff may vote wearing his shirt without removing or concealing it or that corrective instructions have been communicated to County election workers. Plaintiff seeks relief before his intended Tuesday vote. [Blencke Decl. ¶¶ 13-16.]

ARGUMENT

Plaintiff Lonnie Provost faces a Hobson choice: either forfeit his First Amendment right to express his view encouraging and promoting Native American civic participation, or be denied his fundamental right to vote while risking criminal penalty. A temporary restraining order should issue enjoining Defendants from prohibiting nonpartisan Native Vote apparel at polling

places in Charles Mix County during the November 2026 election. Courts apply the same substantive standard to motions for temporary restraining orders and preliminary injunctions. *See S.B. McLaughlin & Co., Ltd. v. Tudor Oaks Condo. Project*, 877 F.2d 707, 708 (8th Cir. 1989). In determining whether preliminary injunctive relief is warranted, courts consider "(1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest." *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981) (en banc). The inquiry is equitable and requires consideration of the particular circumstances of the case. *Id.*

Irreparable injury must be likely, not merely possible. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Here, the threatened injury is grounded in Defendants' actual enforcement against Plaintiff in 2024, Gant's defense of that restriction, and the absence of any communicated rescission despite counsel's requests for corrective action. Plaintiff has definite plans to return to the same polling place wearing the same shirt on November 3.

Each factor favors immediate relief. Plaintiff is likely to succeed on his claim under the First Amendment because Defendants have prohibited him from voting while wearing a shirt conveying a nonpartisan Native voter participation message that does not violate South Dakota's electioneering prohibitions. Without immediate relief, Plaintiff will be forced to choose between exercising his right to free speech and exercising his right to vote while at risk of criminal penalty—injuries that cannot be remedied after the election. The balance of harms favors Plaintiff because permitting his nonpartisan apparel imposes no comparable injury on Defendants. The public interest likewise favors protecting constitutional expression and ensuring that eligible voters can cast their ballots.

I. Plaintiff Is Likely to Prevail on His First Amendment Claim

Defendants have conditioned Plaintiff's access to the ballot on his removal of a shirt expressing a nonpartisan message about Native electoral participation. Plaintiff is likely to establish that this restriction violates the First Amendment.

South Dakota's electioneering statute protects the polling place from campaign advocacy and disruption; it does not expressly prohibit general encouragement to vote that neither advocates an electoral choice nor promotes a particular campaign. SDCL § 12-18-3 (prohibiting the display of "campaign posters, signs, or other campaign materials" or solicitation of "votes for or against any person or political party or position on a question submitted or which may be submitted").

The Supreme Court's decision in *Minn. Voters All. v. Mansky*, 585 U.S. 1 (2018), supplies the governing framework. Although the interior of a polling place is a nonpublic forum, restrictions on speech there must be reasonable in light of the forum's purpose and must not discriminate on the basis of viewpoint. *Id.* at 11-13. A State may protect voters from campaigning and partisan discord within the polling place, but its restrictions must draw a reasoned, administrable boundary between prohibited and permissible expression. *Id.* at 15-16.

Mansky addressed a facial challenge to Minnesota's political-apparel prohibition. Plaintiff brings a narrower, as-applied challenge to Defendants' treatment of his nonpartisan, unaligned "Natives VOTE" shirt as prohibited campaign material under SDCL § 12-18-3. He does not ask the Court to invalidate that statute on its face. Mansky's nonpublic-forum framework nevertheless governs the challenged application. *See Ostrewich v. Tatum*, 72 F.4th 94, 104-05 (5th Cir. 2023) (applying Mansky to an as-applied apparel challenge and upholding

the restriction where undisputed evidence connected the shirt to a campaign supporting a ballot proposition).

In *Mansky*, the Court invalidated Minnesota's prohibition on political apparel because its indeterminate scope failed to provide a workable basis for enforcement. 585 U.S. at 16-21. The Court rejected an interpretation encompassing issue-oriented messages and organizations with recognizable political views because those categories required election workers to make subjective judgments about the political significance of a voter's clothing. *Id.* at 17-19. Officials' discretion must instead be guided by "objective, workable standards." *Id*. at 21. *See also Ctr. for Investigative Reporting v. Se. Pa. Transp. Auth.*, 975 F.3d 300, 315-17 (3d Cir. 2020) (applying *Mansky* and holding that restrictions on political advertising in a nonpublic forum were incapable of reasoned application because they lacked objective standards constraining officials' discretion).

Defendants' application of South Dakota's electioneering restriction to Plaintiff's shirt raises the same concern about subjective, unbounded enforcement. Plaintiff's shirt encourages Native people to vote. It does not identify or advocate for or against any candidate, political party, or ballot measure. [Provost Decl. ¶ 9; Ex. A.] The shirt's general encouragement of Native civic participation supplies no objective connection to advocacy for any candidate, political party, or ballot measure. Defendants have identified no other feature of the shirt that reasonably makes it campaign material.

The statutory text reinforces the distinction. Section 12-18-3 prohibits campaign materials and solicitation of votes for or against a person, political party, or position on a ballot question. Plaintiff's shirt expresses none of those electoral choices. Plaintiff does not contend that all nonpartisan apparel is necessarily permissible. Campaign advocacy can concern a ballot

measure or a nonpartisan candidate. His claim is that this particular shirt encourages participation without advocating an electoral outcome or otherwise conveying a campaign message. Defendants treated the shirt as prohibited campaign material in 2024, and Gant defended that determination to Plaintiff's counsel during that election. Although Plaintiff's counsel spoke with Sara Frankenstein regarding the requested relief on November 2, 2026, Defendants have not confirmed that Plaintiff may vote wearing his shirt without removing or concealing it or that corrective instructions have been communicated to County election workers. [Blencke Decl. ¶ 14.] Their application transforms a restriction on campaign advocacy into a broader prohibition on expression that election officials perceive as political—the exact kind of indeterminate boundary that *Mansky* rejected.

Preserving an orderly polling place does not, by itself, establish that this restriction is reasonable. *Mansky* permits States to adopt reasonable apparel restrictions without waiting for an actual disruption, but those restrictions must still draw a sensible distinction connected to the polling place's purpose. 585 U.S. at 14-16. Nothing in the message or design of Plaintiff's shirt reasonably connects it to campaign advocacy or interference with the orderly administration of voting.

Independently, Defendants' application must be viewpoint neutral. A facially reasonable and neutral policy may violate the First Amendment when officials apply it selectively. *InterVarsity Christian Fellowship/USA v. Univ. of Iowa*, 5 F.4th 855, 864-65 (8th Cir. 2021). Even in a nonpublic forum, officials may not deny access solely to suppress a speaker's perspective on an otherwise permissible subject. *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993). *See also Reed v. Purcell*, No. CV 10-2324, 2010 WL 4394289, at *3-4 (D. Ariz. Nov. 1, 2010) (finding likely viewpoint discrimination and granting a

temporary restraining order where officials prohibited Tea Party shirts while permitting comparable AFL-CIO apparel).

The Eighth Circuit directs courts to examine whether the speaker's ideology, opinion, or perspective supplied the rationale for the restriction. That inquiry requires consideration of officials' purposes and motives. *Gerlich v. Leath*, 861 F.3d 697, 705 (8th Cir. 2017). If viewpoint discrimination is established, the government must demonstrate that its restriction is narrowly drawn and necessary to accomplish a compelling state interest. *Id.* In 2024, Plaintiff observed "I Voted" stickers displayed on a table next to the ballot box at the same polling place. [Provost Decl. ¶ 15.] Their presence illustrates that messages affirming electoral participation are consistent with the polling place's function. Plaintiff's shirt likewise affirms participation, with a focus on Native voters.

Plaintiff's shirt expresses support for Native electoral participation without endorsing an electoral choice. To the extent Defendants prohibited it because they disfavored that perspective or assumed partisan preferences to Native voters, their application constitutes viewpoint discrimination. A general interest in preventing electioneering does not explain why that particular perspective must be suppressed.

Plaintiff does not seek permission to campaign for a candidate, political party, or ballot measure inside the polling place. He seeks to cast his ballot while wearing a shirt whose message encourages Native electoral participation without supporting or opposing any candidate, political party, or ballot measure. Because Defendants have prohibited that expression without an objectively reasonable basis tied to campaign advocacy or the polling place's function, Plaintiff is likely to succeed on his First Amendment claim.

II. Plaintiff Will Suffer Irreparable Harm in the Absence of a Temporary Restraining Order

Voting is a fundamental right. "There is no right more basic in our democracy than the right to participate in electing our political leaders." *McCutcheon v. FEC*, 572 U.S. 185, 191 (2014) (plurality opinion); *see also Reynolds v. Sims*, 377 U.S. 533, 562 (1964) (citation modified) (recognizing voting as a "fundamental political right" that is "preservative of all rights"). The "right to vote freely for the candidate of one's choice is of the essence of a democratic society." *Id.* at 555.

Defendants' restriction inflicts an immediate First Amendment injury. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion). The Eighth Circuit likewise recognizes that a likely violation of protected speech rights establishes a threat of irreparable injury warranting preliminary relief. *Kirkeby v. Furness*, 52 F.3d 772, 775 (8th Cir. 1995).

Plaintiff's intended expression is specific and imminent: he plans to vote on November 3, 2026 while wearing the same shirt that election workers prohibited in 2024. Plaintiff has already been denied under SDCL § 12-18-3 and therefore been notified that the County believes his shirt violates the statute. Gant defended that restriction, and Defendants have not informed Plaintiff that this understanding has been rescinded. The Secretary of State's office has also declined to rescind the restriction, and has reminded Plaintiff of the threat of criminal penalty. The threatened recurrence presently burdens Plaintiff's expression by placing him at risk of again having to choose between his First Amendment rights and his voting rights or risk criminal penalty. [Provost Decl. ¶¶ 17-25; Blencke Decl. ¶¶ 4, 13-16.]

Removing the shirt does not avoid the injury; it requires Plaintiff to surrender the expression he seeks to protect. The challenged restriction presents him with two alternatives:

conceal his message to obtain a ballot, or preserve that message and risk being denied the opportunity to vote again and potentially face criminal penalties. The ability to submit to an otherwise unconstitutional condition does not cure it. *See Perry v. Sindermann*, 408 U.S. 593, 597 (1972). Whether the apparel restriction is constitutional remains governed by *Mansky*.

The approaching close of polls makes immediate relief essential. Once voting ends, a later judgment cannot restore Plaintiff's opportunity to cast his ballot in this election while wearing his protected message. As the Tenth Circuit explained, "[b]ecause there can be no 'do-over' or redress of a denial of the right to vote after an election, denial of that right weighs heavily in determining whether plaintiffs would be irreparably harmed absent an injunction." *Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016).

The threatened harm is concrete and imminent. Plaintiff personally encountered the restriction in 2024 and intends to engage in the same expression at the same polling place on November 3. Relief after the election cannot restore his opportunity to vote in this election while displaying that message. The irreparable harm factor therefore favors relief before his intended Tuesday vote.

III. The Balance of Harms Favors Plaintiff

Absent a temporary restraining order, Plaintiff faces the choice between concealing his protected expression to cast his ballot and maintaining that expression at the risk of being denied a ballot. In 2024, poll workers refused to allow him to vote while wearing his nonpartisan Native Vote shirt. Unless the Court intervenes before polls close, Plaintiff will lose the opportunity to vote in this election without submitting to that unconstitutional restriction and without the risk of criminal penalty.

In contrast, the requested relief imposes minimal burdens on Defendants. It requires them to permit nonpartisan, unaligned Native Vote apparel and communicate that instruction to election workers. Defendants remain free to enforce lawful restrictions on campaign advocacy, voter intimidation, and disruptive conduct. The requested order does not alter voter qualifications, ballot procedures, or polling hours.

The balance therefore weighs decisively in Plaintiff's favor. The limited administrative burden of correcting election workers' instructions does not outweigh the immediate loss of Plaintiff's protected expression and his opportunity to cast a ballot while wearing his nonpartisan shirt.

Plaintiff seeks relief before his intended November 3 vote, following repeated efforts to prevent recurrence of the 2024 restriction. NARF raised the issue during that election, pursued corrective guidance afterward, and wrote directly to the County before this election. Although Plaintiff's counsel spoke with Sara Frankenstein regarding the requested relief on November 2, 2026, Defendants have not confirmed that Plaintiff may vote wearing his shirt without removing or concealing it or that corrective instructions have been communicated to County election workers. The requested order addresses a discrete apparel restriction and can be implemented through a prompt instruction from Gant to precinct officials.

IV. The Public Interest Favors the Issuance of a Temporary Restraining Order

The public has a compelling interest in protecting constitutional rights and ensuring that qualified voters can cast their ballots. "[T]here is the highest public interest in the due observance of all the constitutional guarantees." *United States v. Raines*, 362 U.S. 17, 27 (1960). That interest encompasses both the freedom of expression and the fundamental right to vote. *See Reynolds v. Sims*, 377 U.S. at 562.

The requested relief advances both interests. It would prevent Defendants from conditioning access to the ballot on the removal or concealment of nonpartisan Native Vote apparel. Native voters should be able to express pride in electoral participation without being required to choose between that expression and casting a ballot. Permitting them to do so protects constitutional freedoms and promotes public confidence that election rules are administered fairly.

The public also has a legitimate interest in orderly polling places free from campaigning, intimidation, and disruption. The requested order preserves those protections. It would permit nonpartisan Native voter participation messages while leaving Defendants free to enforce lawful restrictions on campaign advocacy and disruptive conduct. Protecting Plaintiff's expression therefore does not require sacrificing the interests that electioneering restrictions properly serve.

Finally, immediate relief would preserve an opportunity that cannot be restored after polls close. Courts recognize that the public interest favors ensuring that qualified voters can successfully exercise the franchise. *See Obama for Am. v. Husted*, 697 F.3d 423, 436-37 (6th Cir. 2012). An order allowing Plaintiff to vote while wearing his nonpartisan Native Vote shirt would serve that interest without changing voter qualifications, ballot procedures, or polling hours. The public-interest factor therefore strongly favors issuance of a temporary restraining order.

V. Security

Plaintiff requests that the Court set security under Rule 65(c) at $0 or, alternatively, a nominal amount. The requested order concerns peaceful, unaligned nonpartisan apparel and requires only prompt communication of the Court's instruction to election workers. It does not require changes to ballots, voting equipment, staffing, or polling hours. No identifiable monetary loss would result from permitting the apparel during the remaining voting period.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests a temporary restraining order prohibiting Defendants from withholding a ballot, denying access to voting, or requiring removal, covering, or alteration of apparel solely because it displays "Native Vote," "Natives VOTE," "Get Out the Native Vote," or a substantially similar, unaligned nonpartisan message encouraging Native electoral participation, where the apparel does not advocate for or against any candidate, political party, or ballot measure. Plaintiff requests an expedited hearing and issuance of the requested temporary restraining order before he votes on Tuesday, November 3, 2026. Plaintiff requests that the order protect him and all otherwise eligible voters in Charles Mix County until voting concludes on November 3, 2026, including voting by eligible voters who joined the line before polls closed. Plaintiff further requests that Defendants promptly communicate the order to all County precinct election officials and personnel administering voting.

DATED this 2nd day of November, 2026.

Respectfully submitted,
/s/ Thad A. Titze

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* Pro hac vice application forthcoming