

APPEAL NO. # 27510

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IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

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STATE OF SOUTH DAKOTA

v.

ANNETTE BOSWORTH

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APPEAL FROM THE SIXTH CIRCUIT COURT OF  
HUGHES COUNTY, SOUTH DAKOTA  
SIXTH JUDICIAL CIRCUIT

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HONORABLE JOHN L. BROWN,  
Circuit Court Judge

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**APPELLANT'S BRIEF**

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## **PRELIMINARY STATEMENT**

Defendant/Appellant Annette Bosworth is referred to in this brief as “Dr. Bosworth.” Plaintiff/Appellee is referred to as “the State.” References to the trial transcript will be cited as “TR.” References to the appellate record docket entries will be designated “DE.” Dr. Bosworth requests oral argument due to the importance of the questions of law raised in this appeal, which involve statutory interpretation of criminal statutes.

## **JURISDICTIONAL STATEMENT**

This is an appeal from a final judgment after a jury trial. Final judgment was entered on July 1, 2015. The notice of appeal was filed on July 27, 2015. This Court has jurisdiction of this appeal pursuant to SDCL §15-26A-3(1) and §23A-32-9.

## **STATEMENT OF LEGAL ISSUES**

### **1.**

Dr. Bosworth was convicted of perjury for falsely stating in the circulator’s verification on six voters’ nominating petitions that she had circulated the petitions and that each signer had signed the petition in her presence.

**Are statements made in a circulator’s verification on a voters’ nominating petition made in a “state or federal proceeding or action” within the meaning of the perjury statute, SDCL §22-29-1?**

The trial court ruled that Dr. Bosworth made statements in a state “proceeding or action” when she signed the circulator’s verification on a voters’ nominating petition.

*Molzoff v. United States*, 502 U.S. 301, 112 S.Ct. 711 (1992)

*State v. Sondreal*, 459 N.W.2d 435 (S.D. 1990)



SDCL §22-29-1

SDCL §2-14-4

SDCL § 2-1-10

**2.**

Dr. Bosworth's campaign filed numerous voters' nominating petitions with the Secretary of State. Six of those petitions contained untrue statements in the circulator's verification on those petitions—specifically, that Dr. Bosworth had circulated the petitions and each of the voters signed the petitions in her presence.

**Do untrue statements in a genuine legal document make that document a “false or forged instrument” under SDCL §22-11-28.1 if the untrue statements do not make the document devoid of legal authority?**

The trial court ruled that untrue statements in the circulator's verifications on the petitions made the petitions false instruments under SDCL §22-11-28.1.

*State v. Paulsen*, 2015 S.D.12, 861 N.W.2d 504

*Spiska Engineering, Inc. v. SPM Thermo-Shield, Inc.*, 2004 S.D. 44,  
678 N.W.2d 804

*State v. Jones*, 222 Ariz. 555, 218 P.3d 1012 (Arizona 2009)

SDCL §22-11-28.1

**3.**

Dr. Bosworth did not file the six petitions in question. A campaign consultant filed the petitions. The trial court instructed the jury that, to convict, the evidence had to prove “the defendant” offered a false instrument for filing. The trial court did not instruct the jury that it could find Dr. Bosworth guilty for an act committed by another person.

**If the defendant did not file the petitions, was the evidence legally insufficient to support the convictions for offering false or forged instruments for filing?**

The trial court ruled that the evidence was sufficient to find Dr. Bosworth guilty, even if she did not personally offer or file the documents, if the person who offered the petitions for filing was acting as her agent.

*State v. Brende*, 2013 S.D. 56, 835 N.W.2d 131

SDCL §22-11-28.1

SDCL §23A-25-2

**STATEMENT OF THE CASE**

After a jury trial, Dr. Bosworth was convicted of six counts of perjury in violation of SDCL §22-29-1 and six counts of offering false or forged instruments for filing in violation of SDCL §22-11-28.1. All twelve convictions are Class VI felonies. The Honorable John L. Brown sentenced Dr. Bosworth to two years of imprisonment which was suspended on condition that she complete three years of probation and 500 hours of community service.<sup>1</sup>

The perjury charges were not based on any false testimony given in a judicial or quasi-judicial proceeding. The Attorney General's theory of prosecution was that Dr. Bosworth made false statements in a "state or federal proceeding or action" when she signed the circulator's verifications on six voters' nominating petitions. It was the Attorney General's theory that Dr. Bosworth offered false instruments for filing when a

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<sup>1</sup> As a result of these convictions, the South Dakota Board of Medical and Osteopathic Examiners revoked Dr. Bosworth's license to practice medicine. That revocation is currently on appeal to the Circuit Court of the Second Judicial Circuit, with the revocation suspended, pending the outcome of this criminal appeal. *Annette Bosworth, M.D. v. Board of Medical and Osteopathic Examiners of the State of South Dakota* (CIV 15-2502).

campaign consultant filed voters' nominating petitions which contained untrue statements.

### **STATEMENT OF FACTS**

In 2014, Dr. Annette Bosworth was a practicing physician in Sioux Falls, South Dakota. [TR 598: 1-20] Although she had never before run for political office, she campaigned for the Republican nomination for United States Senate. She hired political professionals, including campaign consultant Patrick Davis, to advise her and help her navigate the political election process. [TR 533: 25-534: 15] She retained South Dakota attorney Joel Arends, who held himself out as an attorney with substantive experience in election law, to act as her lawyer and provide her with legal advice during the campaign. [TR 386: 9-12; 387: 19-21; 388: 5-9; 599: 1-18]

To qualify to have Dr. Bosworth's name appear on the ballot in the primary election, state law required the Bosworth campaign to submit at least 1995 signatures on voters' nominating petitions to the Secretary of State by March 25, 2014. [TR 388: 23-389: 7; 538: 6-10] State law required the signatures to be on a state-prescribed nominating petition, containing the candidacy being petitioned, the declaration of candidacy, voters' signatures, and the verification of the circulator. SDCL §12-1-3(8). ARSD §5:02:08:00.01 provides that no signature on a petition can be counted if the circulator's verification is "not completed or is improperly completed, according to subdivision 5:02:08:00.03. . ."<sup>1</sup> ARSD §5:02:08:00.03 requires that the circulator's verification must state: "I, under oath, state that I circulated the above petition, that each signer personally signed this petition in my presence, and that either the signer or I added

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<sup>1</sup> Appendix 4.

the printed name, the residence address of the signer, the date of signing, and the county of voter registration.”<sup>2</sup>

Dr. Bosworth signed the circulator’s verification on each of the six petitions in question [Appendix 2: Exhibits 1-A through 1-F], although she did not personally circulate those six petitions and all of the voters who signed the petitions did not do so in her presence. [TR 618: 2-18; 636: 14-17; 669:12-670:13] In January 2014, when voters signed the six petitions, Dr. Bosworth was on a medical mission providing treatment and medical care to hurricane victims in the Philippines. [TR 607: 1-7]

After she returned from her medical mission, Dr. Bosworth signed two of the circulator’s verifications, which were notarized by Corina Bittner, on January 20, 2014. [Appendix 2: Exhibits 1-C and 1-D] She signed two circulator’s verifications, which were notarized by Rodney Fitts, on February 11, 2014. [Appendix 2: Exhibits 1-A and 1-B] Her attorney Joel Arends notarized two of her signatures on the circulator’s verifications on March 24, 2014. [Appendix 2: Exhibits 1-E and 1-F] None of the notaries who notarized her signature on the circulator’s verifications ever administered an oath to Dr. Bosworth before she signed the verifications. [TR 214:13-215:10; 339:10-341:13; 347:1-352:15; 341:10-13; 352:8-15; 401:16-24; 611:7-612:17]

On March 25, 2014, Dr. Bosworth’s campaign consultant, Patrick Davis, accompanied by her husband Chad Haber, delivered numerous voters’ petitions, including the six in question, to the office of the Secretary of State. [TR 482: 1-15; 195:24-196:6] Dr. Bosworth was not present when the petitions were filed. [TR 197: 22-199:12] Mr. Davis delivered the petitions at Dr. Bosworth’s request.

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<sup>2</sup> Appendix 6.

In accordance with state law, after the petitions were submitted to the Secretary of State, that office conducted a signature validation process to determine whether each petition, on its face, had been properly completed. ARSD §5:02:08:00<sup>3</sup>; ARSD §5:02:08:00.01<sup>4</sup>. [TR 166:3 -19] In that process, the Secretary's authority is limited to reviewing the petitions to determine whether, on their face, they meet the legal requirements for certification as set forth in ARSD §5:02:08:00.03. [TR 182: 183:10] In determining whether to certify a petition and count the signatures on a petition, the Secretary of State determines whether the petitions are complete, not whether the facts recited in the petitions are truthful.

Former Secretary of State Chris Nelson, who testified as an expert witness for the State, testified as follows:

Q. And in the signature validation process, which involves determining whether the circulator's verification is complete, it's true, isn't it, that the Secretary of State acts only in a ministerial capacity?

A. That is correct.

Q. And when such a petition is presented to him in due form of law, he has no legal power to inquire into or determine the facts recited in the petition to ascertain their truth or falsity?

A. Nothing beyond what is on the face of the petition, correct.

Q. So am I right, sir, that when the Secretary of State's office looks at this petition and it says, I witnessed these signatures or whatever the fact might be, they don't ask is that true or false?

A. That is correct.

Q. If a signature is on there and the circulator's verification is complete, it gets filed?

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<sup>3</sup> Appendix 3.

<sup>4</sup> Appendix 4.

A. And all of the signature's information is there, we would consider that signature valid, correct.

Q. So the duties of the state election supervisor and Secretary of State are limited to matters apparent on the face of the petition; right?

A. That is correct.

Q. And the Secretary of State is without authority to exercise discretion to decline to file the petitions if all of the requirements for a petition are met on its face?

A. That is correct.

[TR 190: 7 – 191: 11]

After the petitions nominating Dr. Bosworth were reviewed, Secretary of State Gant certified the voters' nominating petitions, including the six petitions in question, as having met the legal requirements for valid petitions, which meant signatures on the petitions were counted. After counting the signatures on the petitions, the Secretary determined that there were a sufficient number of valid signatures to place Dr. Bosworth's name on the ballot.

After Dr. Bosworth was defeated in the primary election, a grand jury indicted Dr. Bosworth on six counts of perjury and six counts of offering false or forged instruments for filing.

At trial, Dr. Bosworth admitted that she had not been present when each of the signers signed the petitions and she had not personally circulated all six petitions, but denied that she knowingly made false statements. [TR 618: 2-18; 636: 14-17; 669:12-670:13] She testified that she believed that she could sign as the circulator because she was the one who gave the petitions to her volunteers and directed them to get signatures on the petitions. [TR 618:2- 619:4] Dr. Bosworth testified that she had misunderstood the substance of the circulator's verifications, mistakenly believing that she was verifying

that the signers were registered South Dakota Republicans and that their signatures were genuine. [TR 642:1-643:18] She explained that her mistaken understanding was due, in part, to the legal advice that her attorney Arends had, and had not, given her. Dr. Bosworth testified that throughout the weeks of gathering signatures, attorney Arends' legal advice focused on making sure that signers of petitions were registered South Dakota Republican voters, with no regard to witnessing the actual signatures. [TR 611:7-612:17; 648:19-22]

In her trial, attorney Arends was a prosecution witness against his former client. He denied advising Dr. Bosworth that she could sign the verifications if she had not been present when the petitions were signed. [TR 362:8-464:5] Arends admitted, however, that he had notarized his client's signatures on circulators' verifications on fifty to one hundred petitions, without asking her if she had in fact circulated the petitions or if she had witnessed each of the signers sign the petitions, and without advising her that she might be violating the law if the signers had not signed in her presence. [TR 399:4-8; 400:24-401; 411:1- 13]

Of the six petitions in question, the petitions all contained genuine voters' signatures, except for one petition (Appendix 2: Exhibit 1-E) which, in addition to containing genuine signatures of voters, also contained several signatures of voters that were signed by Leonard Waldner, the lead minister and leader for the Hutterite religious colony near Miller, South Dakota. [TR 329: 14-16] Mr. Waldner testified that he "signed for" several members of his Hutterite colony, mistakenly believing he had the authority to do so as the colony's leader. [TR 322:13-17; 324:21-25; 330:12-16] It was undisputed that Dr. Bosworth did not ask Mr. Waldner to sign anyone's name other than his own and

she did not know that he had signed other colonists' names until after she was charged with these offenses. [TR 331:5-7; 332:3-5; 634:20-25] With that one exception, there was no evidence that any of the voters' signatures on Dr. Bosworth's petitions were anything other than genuine signatures of voters.

The defense made motions for judgments of acquittal on all charges on the grounds that (1) a voters' nominating petition is not a "state or federal proceeding or action" under the perjury statute; (2) false statements in a circulator's verification in a voters' nominating petition do not make the petition a "false or forged instrument" under SDCL §22-11-28.1; and (3) there was no evidence that Dr. Bosworth offered or filed any of the six petitions in question. [TR 570:18-577:23; 762:15-24]

The trial court denied the motions for judgments of acquittal. [TR 580:20-582:24; 762:25-763:1] The jury found Dr. Bosworth guilty on all twelve charges.

## **ARGUMENT**

### **I.**

#### **THE WORDS "PROCEEDING" AND "ACTION" IN THE PERJURY STATUTE ARE LEGAL TERMS OF ART WHICH ARE INTENDED TO INVOKE THEIR ESTABLISHED AND SPECIFIC LEGAL MEANINGS.**

"The denial of a motion for judgment of acquittal is a question of law, and thus our review is de novo." *State v. Jensen*, 2007 S.D. 76, ¶ 7, 737 N.W.2d 285, 288.

This appeal concerns the meaning of the words "state or federal proceeding or action" in SDCL §22-29-1. The issue is whether statements made in the circulator's verification on a voters' nominating petition are made in a state "proceeding or action" under the perjury statute. Dr. Bosworth contends that her statements were not made in



any state or federal proceeding or action, and therefore the evidence was insufficient to support her convictions for perjury.

“Statutory interpretation and application are questions of law, and are reviewed by this Court under the de novo standard of review.” *State v. Miranda*, 2009 S.D. 105, ¶14, 776 N.W.2d 77, 81 (citation omitted).

SDCL §22-29-1, titled “ ‘Perjury’ defined,” provides:

Any person who, having taken an oath to testify, declare, depose, or certify truly, before any competent tribunal, officer, or person, in any state or federal proceeding or action in which such an oath may by law be administered, states, intentionally and contrary to the oath, any material matter which the person knows to be false, is guilty of perjury.

This Court must decide whether the legislature intended the words “proceeding or action” to invoke their established, specific meanings as legal terms of art, meaning a judicial or quasi-judicial adjudicative proceeding or an action in a court of law, or whether the legislature intended to expand the meanings of the words “proceeding” and “action” beyond their established meanings as legal terms of art so that they would include documents that are not part of any judicial or quasi-judicial legal proceeding.

#### **A.**

##### **The Words “Proceeding” and “Action” Are Legal Terms of Art With Established and Specific Meanings in the Law.**

A term of art is a “word or phrase having a specific, precise meaning in a given specialty, apart from its general meaning in ordinary contexts.” *Black’s Law Dictionary* 1700 (10<sup>th</sup> ed., 2014). Although not in the context of statutory interpretation, this Court has often recognized that certain words or phrases are legal terms of art that have

established, specific meanings in the law and have used those terms' established legal meanings in interpreting phrases or words used in contracts and other legal documents.<sup>5</sup>

The words “proceeding” and “action” are legal terms of art with specific and established meanings in the law. The term “proceeding” means: “1. The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment. 2. Any procedural means for seeking redress from a tribunal or agency. 3. An act or step that is part of a larger action. 4. The business conducted by a court or other official body; a hearing. 5. *Bankruptcy*. A particular dispute or matter arising within a pending case – as opposed to the case as a whole.” *Black’s Law Dictionary* 1700 (10<sup>th</sup> ed., 2014). The term “action” means: “A civil or criminal judicial proceeding.” *Black’s Law Dictionary* 35 (10<sup>th</sup> ed., 2014).

The established and specific meanings that these terms have in the law was set forth in the definitions of those terms that the trial court gave the jury in its instructions:

“A proceeding is any act or event that takes place in the progression of a lawsuit, or in the regular business of a court or other official body.

An action is a civil or criminal judicial proceeding.”

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<sup>5</sup> See, e.g.: *Niemi v. Fredlund Township*, 2015 S.D.62, ¶ 31, 867 N.W.2d 725, 733 (“dedication” is a term of art); *In re Estate of Meland*, 2006 S.D. 22, ¶ 10, 712 N.W.2d 1, 4 (“transfer” and “assignment” are terms of art); *McClafflin v. John Morrell & Co.*, 2001 S.D. 86, n.5, 631 N.W.2d 180, n. 5 (the “favored work” doctrine is a legal term of art); *1st American Systems v. Rezatto*, 311 N.W.2d 51, 59 (S.D. 1981)(“the rule of reason” is a term of art in the law); *State v. Seiler*, 1996 S.D. 114, ¶ 32, 554 N.W.2d 477, 484 (J. Sabers, dissenting)(“separate transactions” is a legal term of art); *Midwest Railcar Repair, Inc. v. South Dakota Dept. of Revenue*, 2015 S.D. 92, ¶ 48, 872 N.W.2d 79, 91 (“shipper” is a legal term of art); *Pete Lien & Sons, Inc. v. Zellmer*, 2015 S.D. 30, ¶ 12, 865 N.W.2d 451, 454 (“locate” is a term of art within mining law); *South Dakota State Cement Plant Commission v. Wausau Underwriters Ins. Co.*, 2000 S.D. 116, ¶ 39, 616 N.W.2d 397, 410 (J. Gilbertson, dissenting)(“discharge,” “dispersal,” “release” and “escape” are terms of art in environmental law).

[Jury instructions, #44, DE 609 *et seq.*]

Neither the established legal meanings of those terms of art or the trial court's definitions of "proceeding" and "action" would encompass a document not related to a judicial or quasi-judicial proceeding.

**B.**

**When the Legislature Uses Legal Terms of Art in a Statute, It Is Presumed to Have Intended Those Terms to Invoke Their Established Specific Meanings in the Law.**

"A cardinal rule of statutory construction holds that:

'[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them.'"

*Molzoff v. United States*, 502 U.S. 301, 307, 112 S.Ct. 711 (1992) (*quoting Morissette v. United States*, 342 U.S. 246, 263, 72 S.Ct. 240, 250 (1952) ).

This rule of statutory construction is the term-of-art canon.<sup>6</sup>

"[W]hen the legislature uses technical terminology – so-called 'terms of art' – drawn from a specialized trade or field . . . we look to the meaning and usage of those terms in the discipline from which the legislature borrowed them. So, for example, when a term is a legal one, we look to its established legal meaning as revealed by, for starters at least, legal dictionaries." *Comcast Corp. v. Department of Revenue*, 356 Or. 282, 296, 337 P.3d 768, 776 (Oregon 2014)(*en banc*)(internal quotations omitted).

According to this cardinal rule of statutory interpretation, it is presumed that when the legislature used the terms of art "proceeding" and "action" in SDCL §22-29-1, the

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<sup>6</sup> **"term-of-art canon.** (1994) In statutory construction, the principle that if a term has acquired a technical or specialized meaning in a particular context, the term should be presumed to have that meaning if used in that context." *Black's Law Dictionary* 1700 (10<sup>th</sup> ed., 2014).

legislature intended to invoke the established legal meanings of those terms in the statute. There is nothing in the language of the perjury statute that expresses a legislative intent to invoke a meaning for those words other than their established meanings in the law.

Other states and Congress have expressly made false sworn statements in a non-judicial document a form of perjury.<sup>7</sup> If the South Dakota legislature had intended SDCL §22-29-1 to apply to false sworn statements in non-judicial documents, the South Dakota legislature could have done what Congress and other legislatures have done and expressly made false statements in non-judicial documents a form of perjury under the general perjury statute. But the South Dakota legislature has not done so.

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<sup>7</sup> The federal perjury statute, 18 U.S.C. §1621, provides:

“Whoever—

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.”

In New York, swearing falsely in a document is perjury in the second degree under Penal Law §210:

“A person is guilty of perjury in the second degree when he swears falsely and when his false statement is (a) made in a subscribed written instrument for which an oath is required by law, and (b) made with intent to mislead a public servant in the performance of his official functions, and (c) material to the action, proceeding or matter involved.”

There being no statutory language to indicate a contrary intention, this Court should presume that the legislature intended the words “proceeding or action” to invoke their established meanings in the law: an “action” is a civil or criminal judicial action and a “proceeding” is a judicial or quasi-judicial legal proceeding. There being no discernible reason from the text of SDCL §22-29-1 to think that the legislature intended to expand the meanings of “proceeding” or “action” beyond their established meanings as legal terms of art, this Court should hold that a voters’ nominating petition is not a state or federal proceeding or action under this statute.

**C.**

**The Statutory Definitions of “Proceeding” and “Action” Are Applicable to the Perjury Statute.**

SDCL §2-14-4, titled “Application of statutory definitions”, provides:

Whenever the meaning of a word or phrase is defined in any statute such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears.

The terms “proceeding” and “action” are not defined in SDCL §22-29-1, but those terms are defined in other statutes.

The term “proceeding” is defined in SDCL §19-13A-2(7):

“Proceeding” means:

- (A) a judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery; or
- (B) a legislative hearing or similar process.

SDCL §47-1A-140(32) defines a “proceeding” as a “civil suit and criminal, administrative, and investigatory action.”

The word “action” is defined in SDCL §15-1-1(1):

An action is an ordinary proceeding in a court of justice, by which a party prosecutes another party for the enforcement, determination, or protection of a

right, the redress or prevention of a wrong, or the punishment of a public offense. Every other remedy is a special proceeding [.]

The word “action” is defined in SDCL §15-12-20(1) as “any action or special proceeding in the trial court, whether civil or criminal or quasi-criminal.”

Pursuant to SDCL §2-14-4, this Court “is bound by these definitions unless evidence exists to suggest that the legislature intended a different meaning.” *State v. Sondreal*, 459 N.W.2d 435, 439-440 (S.D. 1990).

No contrary intention appears in SDCL §22-29-1 or anywhere else in Chapter 22-29. Therefore, the definitions of “action” that appear in SDCL §15-1-1 and §15-12-20 and the definitions of “proceeding” that appear in SDCL §19-13A-2 and §47-1A-140 transfer to the perjury statute.

These statutory definitions of “proceeding” and “action” are entirely in accord with those terms’ established meanings as terms of art. Neither the established meanings of those terms of art, or the trial court’s instructions defining those terms, or the statutory definitions of those terms would apply to a voters’ petition to nominate a candidate for an election.

#### **D.**

#### **When Read With a View to Its Place in the Overall Statutory Scheme, SDCL §22-29-1 Does Not Demonstrate a Legislative Intent to Make False Sworn Statements in Written Documents a Violation of the Perjury Statute.**

“It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *Davis v. Michigan Dept. of Treasury*, 489 U. S. 803, 809, 109 S.Ct. 1500 (1989).

Legislative intent to invoke the established legal meanings of “proceeding” and “action” in the perjury statute, rather than the expansive interpretation of those terms proposed by the State, is also evidenced when reading the statute within the context of the overall statutory scheme, including the many South Dakota statutes that expressly criminalize making false statements under oath in documents. Making false sworn statements in documents that are not part of any legal proceeding is a crime under many South Dakota statutes, but SDCL §22-29-1 is not one of them.

For example, SDCL §22-29-9.1 provides that any person who signs a petition seeking state benefits, knowing that statements in the petition are false, is guilty of perjury under that statute.<sup>8</sup> If the legislature intended false sworn statements in a document to be a violation of the general perjury statute, §22-29-1, there would have been no need to enact SDCL §22-29-9.1, since such false swearing would already be punishable as perjury under §22-29-1. If, as the State contends, false swearing in non-judicial documents is perjury under §SDCL 22-29-1, then SDCL §22-29-9.1 would be mere surplusage. This Court must “assume that the legislature intended that no part of its statutory scheme be rendered mere surplusage.” *Faircloth v. Raven Industries, Inc.*, 2000 S.D. 158, ¶ 6, 620 N.W.2d 198, 201.

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<sup>8</sup> SDCL §22-29-9.1 provides: “Any person who submits any petition, application, information, or other document for the purpose of obtaining benefits or any other privilege from the State of South Dakota shall verify, under oath, that such petition, application, or information is true and correct. However, it is sufficient if the claimant, in lieu of verification under oath, signs a statement printed or written thereon in the form following: ‘I declare and affirm under the penalties of perjury that this claim (petition, application, information) has been examined by me, and to the best of my knowledge and belief, is in all things true and correct.’ Any person who signs such statement as provided for in this section, knowing the statement to be false or untrue, in whole or in part, is guilty of perjury.”

Similarly, SDCL §22-29-19, which was enacted in 2012, makes one who makes “any material false statement” on a loan application to a state agency guilty of a felony.<sup>9</sup> If the legislature had intended to make false statements in a document required by state law a violation of the general perjury statute, there would have been no need for the legislature to enact SDCL §22-29-19. That statute would be mere surplusage.

The legislature has expressly made the making of false statements under oath in a document punishable as crimes in many other statutes, all of which would be superfluous and unnecessary if the making of a false sworn statement in a document was intended by the legislature to be perjury under SDCL §22-29-1.<sup>10</sup> This is further evidence of a

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<sup>9</sup> SDCL §22-29-19 provides: “Any person who knowingly makes any material false statement or report, or willfully overvalues any land, property or other security, for the purpose of influencing an action of the Board of Economic Development, the Economic Development Finance Authority, any other loan or grant administered by the Governor's Office of Economic Development, the Value Added Finance Authority, the Department of Agriculture, the Department of Environment and Natural Resources, or any other agency, instrumentality, board, commission, or authority of or created by the State of South Dakota, upon any application for a loan, grant, or other financial assistance for a business or agricultural purpose, or the renewal, extension, or modification thereof, is guilty of a Class 6 felony.”

<sup>10</sup> See, e.g., SDCL §58-37A-36: “Any person who willfully makes a false or fraudulent statement in any verified report or declaration under oath required or authorized by this chapter or of any material fact or thing contained in a sworn statement concerning the death or disability of an insured for the purpose of procuring payment of a benefit named in the certificate is guilty of perjury.” SDCL §35-1-7 provides: “Any person who, in any application, report, or statement filed with the secretary, knowingly makes a false statement as to any matter required by any provision of this title to be set forth in the application, report, or statement, is guilty of a Class 6 felony.” SDCL §10-39-52 criminalizes false statements made under oath on a document with regard to the mineral severance tax: “A person who intentionally makes or files, under oath, a statement required by this chapter which is false, is guilty of a Class 6 felony.” SDCL §4-6-23, which requires a state depository to file sworn financial statements with the state treasure, provides, in relevant part: “Any person who shall make any false statement in any affidavit required by this section, shall be guilty of perjury, and upon conviction thereof, shall be punished as provided by law.” With regard to taxes, SDCL §10-39A-20



legislative intent to restrict the meaning of “any state or federal proceeding or action” in the general perjury statute to judicial and administrative adjudicative proceedings, and not to extend those terms’ meanings to include documents unrelated to such legal proceedings.

If the State’s expansive interpretation of “state or federal proceeding or action” in the general perjury statute were correct, then any false sworn verification on a voters’ petition would be perjury and a Class VI felony, regardless of the type of voters’ petition. But that cannot be the legislature’s intent, because the legislature enacted SDCL §2-1-10, which expressly makes a false circulator’s verification in a voters’ initiative or referendum petition a Class I misdemeanor.

SDCL §2-1-10, titled “Verification of persons circulating initiative or referendum petitions—Form and content—Violation as misdemeanor,” provides:

Each person, who circulates and secures signatures to a petition to initiate a constitutional amendment or other measure or to refer legislation to the electors, shall sign a verification before filing the petition with the officer in whose office it is by law required to be filed. The verification shall prescribe that the circulator made reasonable inquiry and, to the best of the circulator's knowledge, each person signing the petition is a qualified voter of the state in the county indicated on the signature line and that no state statute regarding the circulation of petitions was knowingly violated. The State Board of Elections shall prescribe the form for the verification. The verification shall be complete and the affixing of the circulator's signature shall be witnessed and notarized by a notary public commissioned in South Dakota or other officer authorized to administer oaths pursuant to §18-3-1. Any person who falsely swears to the verification provided for in this section is guilty of a Class 1 misdemeanor.

SDCL §2-1-10 makes it a misdemeanor for a voters’ petition circulator to commit the same acts that Dr. Bosworth was prosecuted for committing, the only difference being

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provides: “Any person, required by this chapter to make or file a statement or to verify it under oath, who intentionally makes or verifies under oath a false statement is guilty of perjury with punishment, upon conviction, as provided by law.”

that Dr. Bosworth made untrue statements in the circulator's verification on a voters' petition to nominate a candidate, rather than on a voters' initiative or referendum petition. There is no rational reason why the legislature would expressly make an untrue statement by a circulator in a voters' initiative or referendum petition a separate misdemeanor and intend to make an untrue statement by a circulator in a voters' nominating petition a violation of the perjury statute and a felony.

“[I]n construing statutes together it is presumed that the legislature did not intend an absurd or unreasonable result.” *Dale v. Young*, 2015 S.D. 96, ¶ 6, 873 N.W.2d 72, 74 (citation omitted). If false swearing to a circulator's verification on a voter's petition to change the law is a Class I misdemeanor, and not perjury, but false swearing to a circulator's verification on a voters' petition to nominate a candidate is perjury and a Class 6 felony, the result would be unreasonable and absurd. It would mean that a voters' petition is a state “proceeding or action” if it is a nominating petition, but a voters' petition is not a state “proceeding or action” if it is an initiative or referendum petition. When this Court interprets SDCL §2-1-10 and §22-29-1 together, it must presume that the legislature did not intend that absurd, unreasonable, and unjust result.

By reason of the legislature's enactment of SDCL §2-1-10, this Court can reasonably conclude that the legislature did not intend the verification on a voters' nominating petition to be deemed a state “proceeding or action” for purposes of the perjury statute.

In summary, there is abundant evidence—in the established meanings of “proceeding” and “action” as legal terms of art, in the statutory definitions of those terms, and in comparisons of the general perjury statute with other statutes in the overall

statutory scheme—that the legislature intended to invoke the established legal meanings of “proceeding” and “action” when it used those terms in SDCL §22-29-1: a “proceeding” is meant to refer to a judicial or quasi-judicial adjudicative proceeding and an “action” is an action in a court of law. Neither the established legal meanings of those terms of art, nor their statutory definitions, nor the legal definitions of those terms that the trial judge gave the jury would apply to a voters’ nominating petition.

Therefore, the evidence was insufficient to prove that Dr. Bosworth violated SDCL §22-29-1. The perjury convictions should be reversed.

## **II.**

### **A LEGAL DOCUMENT THAT CONTAINS UNTRUE STATEMENTS IS NOT A FALSE INSTRUMENT UNDER SDCL §22-11-28.1 UNLESS THE DOCUMENT ITSELF IS COUNTERFEIT, INAUTHENTIC, AND DEVOID OF LEGAL AUTHORITY.**

“The denial of a motion for judgment of acquittal is a question of law, and thus our review is de novo.” *State v. Jensen*, 2007 S.D. 76, ¶ 7, 737 N.W.2d 285, 288. To determine the sufficiency of evidence in this case, this Court must interpret SDCL §22-11-28.1, which makes it a felony crime to offer a false or forged instrument for filing. This Court’s review of statutory interpretation is de novo, giving no deference to the circuit court’s conclusions of law. *State v. Ducheneaux*, 2007 S.D. 78, ¶ 2, 738 N.W.2d 54, 55.

The question of law to be decided is whether false statements in a genuine legal document make that document a false instrument under SDCL §22-11-28.1 if the false statements do not make the document devoid of legal authority. In the context of the specific facts of this case, this Court must determine whether SDCL §22-11-28.1 is violated by the filing of an authentic, genuine voters’ nomination petition which was

certified as having the force of law by the Secretary of State, if there are false statements in the petition?

Dr. Bosworth contends that untrue statements of fact within the text of a legal document do not make that document a false instrument under SDCL §22-11-28.1 unless the instrument itself is counterfeit, inauthentic, and devoid of lawful authority. Within the context of the facts of this case, Dr. Bosworth contends that untrue statements in a voters' petition do not make the petition a false instrument if the petition itself is not counterfeit or inauthentic or devoid of legal authority.

A.

**The Six Voters' Petitions That Were Filed With, and Certified By,  
the Secretary of State Were Genuine Legal Documents.**

SDCL §22-11-28.1, titled "Offering false or forged instrument for filing, registering, or recording", provides:

Any person who offers any false or forged instrument, knowing that the instrument is false or forged, for filing, registering, or recording in a public office, which instrument, if genuine, could be filed, registered, or recorded under any law of this state or of the United States, is guilty of a Class 6 felony.

The trial court instructed the jury that the word "instrument" in the statute means "a formal or legal document."<sup>11</sup> Thus, the terms "instrument" and "legal document" are used interchangeably in this brief. Ultimately, this Court will have to determine whether the six petitions at issue were false legal documents under this statute.

SDCL §22-11-28.1 prohibits offering any false or forged legal document for filing when a genuine legal document could be filed under law. Thus, the statute contemplates two universes of legal documents: genuine legal documents and false or forged legal

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<sup>11</sup> Jury instructions, # 36 (DE 206 *et seq.*)

documents. The answer to the legal question before this Court turns on the meanings of the words “false” and “genuine” in the statute.

SDCL §22-11-28.1 does not define a “false” instrument, but its statutory meaning can be derived from the fact that the term is contrasted with a “genuine” instrument: a false instrument is an instrument that is not genuine.

“Words and phrases in a statute must be given their plain meaning and effect.” *Goetz v. State*, 2001 S.D. 138, ¶16, 636 N.W.2d 675, 681 (citation omitted). The words “genuine” and “false” have plain, ordinary, commonly understood meanings. “Genuine” means “possessing the claimed or attributed character, quality, or origin; not counterfeit; authentic; real.” *Random House Webster’s Unabridged Dictionary* 798 (Deluxe 2d ed. 2001). In the context of legal instruments, a genuine instrument is one that is “free of forgery or counterfeiting.” *Black’s Law Dictionary* 801 (10<sup>th</sup> ed. 2014).<sup>12</sup>

## **B.**

### **To Be a False Instrument under SDCL §22-11-28.1, a Document Must Be a Counterfeit Document Devoid of Legal Authority.**

In defining the term “false instrument,” the trial judge instructed the jury: “A false instrument is a counterfeit written legal document: one that is not genuine, but which is made to appear to be a [sic] genuine and purporting on its face to be genuine.”<sup>13</sup>

In the law, the word “counterfeit” means “[m]ade to look genuine in an effort to deceive; produced by fakery, esp. with an intent to defraud.” *Black’s Law Dictionary* 427

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<sup>12</sup> “**genuine** . . . **1.** (Of a thing) authentic or real; having the quality of what a given thing purports to be or to have . . . **2.** (Of an instrument) free of forgery or counterfeiting.”

<sup>13</sup> Jury instructions, # 37 (DE 609 *et seq.*)

(10<sup>th</sup> ed., 2014). Thus, a false instrument is a counterfeit document that is designed to deceive people into believing it to be an actual legal document invested with legal authority.

Giving the words “genuine” and “false” their ordinary meanings, the six petitions in this case were genuine legal documents. They were in fact what they appeared to be: petitions signed by voters nominating a candidate for public office. The petitions were all authentic voters’ nominating petitions, printed in the form prescribed by law (Appendix 5 and 6), with genuine signatures of voters. Each of the six petitions were vested with legal authority, which is conclusively established by the fact that they were certified by the Secretary of State as meeting all the requirements of state law, which meant the petitions were entitled to be given the force of law, which they were: signatures on the petitions were counted. The petitions were authentic voters’ petitions and their legal authority was recognized and affirmed by the Secretary of State. Therefore, the petitions were genuine legal documents.

The statutory meaning of a “false” instrument as a counterfeit legal document can also be derived from the coupling of the word “false” with the word “forged” in SDCL §22-11-28.1.

The “common sense canon of *noscitur a sociis* . . . counsels that a word is given more precise content by the neighboring words with which it is associated.” *United States v. Williams*, 553 U.S. 285, 294, 128 S.Ct. 1830, 1839 (2007) (citations omitted). “[T]he maxim means ‘it is known from its associates’ and in practical application means that a word may be defined by an accompanying word, and ordinarily the coupling of words denotes an intention that they should be understood in the same general sense.” *Spiska*

*Engineering, Inc. v. SPM Thermo-Shield, Inc.*, 2004 S.D. 44, ¶ 6, 678 N.W.2d 804, 806, quoting *Sutherland Statutory Construction*, Sixth Edition, §47:16.

In this statute, the coupling of the word “false” with “forged” denotes a legislative intention that the term “false instrument” should be understood in the same general sense as the term “forged instrument.” A document does not have to be a forged instrument to be a false instrument, but this canon of statutory interpretation counsels that a false instrument is similar to a forged instrument in the same general sense, in that both are counterfeit documents that are designed to appear to be something they are not—genuine legal documents invested with legal authority.

The language of the statute expresses a legislative intent to criminalize the filing of counterfeit legal documents that are devoid of genuine legal authority, whether they be false, sham documents or forged documents. And just as a false statement within a genuine document does not make that document a forged document (*Gilbert v. United States*, 370 U.S. 650, 658, 82 S.Ct. 1399, 1404 (1962)), neither does a false statement within a genuine legal document make the document a false legal document. “Where the falsity lies in the misrepresentation of facts, not in the genuineness of execution, it is not forgery.” *Id.*, 370 U.S. at 658, 82 S.Ct. at 1404 (citation and internal quotations omitted). Similarly, in this case, where the falsity lies in the misrepresentation of facts stated in the petition, not in the genuineness of the petition itself, the petition is not a false instrument.

The statutory language of §22-11-28.1 expresses a legislative intent to criminalize the filing of counterfeit documents that are actually devoid of legal authority but which are fraudulently designed to appear to be genuine legal documents. *State v. Paulsen*, 2015 S.D. 12, 861 N.W.2d 504, illustrates this point. In that case, this Court was called upon to

decide whether the evidence was sufficient to support a conviction under §22-11-28.1. The issue was whether the defendant offered a false instrument for filing when he submitted phony court orders from a fictitious court to the clerk of the circuit court. The phony orders, which were signed by Paulsen, were designed to appear to be court orders to vacate genuine foreclosure orders issued by the circuit court. Paulsen submitted an “order to vacate void judgment” signed by thirteen people whom he claimed comprised a Seventh Amendment “jury/court” and by a fourteenth person titled “appointed justice.” The document was affixed with a seal of “Our One Supreme Court—Justices’ Court—United States of America.”

This Court ruled that the purported court order filed by Paulsen was a false instrument under the statute because it was a “sham order” that was intended to appear to be a genuine court document. In reaching that conclusion, Justice Severson’s opinion noted that Paulsen took pains to make the “sham order” look official, which included proper formatting, a fabricated seal, a notary endorsement, and seemingly official titles given to its signatories. *Id.*, 2015 S.D. 12, ¶23. This Court ruled that the document submitted by Paulsen was a false instrument under the statute because it was not issued by a real court and any document generated by that fictitious court was “invalid and anyone intending these documents to have the force of law to induce another to act was committing fraud.” *Id.*, 2015 S.D.12 at ¶23. Therefore, “the order was a false instrument, devoid of authority, yet it mimicked a genuine court order.” *Ibid.*

Paulsen’s fictitious court order was not a forgery (Paulsen signed his own name to the order), but it was a false instrument because it was a counterfeit legal document, devoid of legal authority, that was designed to appear to be a genuine legal document.



Here, in contrast, the six voters' nominating petitions that were filed by the Bosworth campaign, although they contained false statements in the texts of the documents, were not counterfeit legal documents. They were real voters' nominating petitions, completed on the forms required by the State of South Dakota. Most importantly, unlike Paulsen's false legal documents, these voters' petitions had the force of law: the Secretary of State, whose inquiry was limited by law to examining the face of the petitions, determined that the petitions in question were properly completed, valid petitions that met all the requirements of law, and therefore, he was required by law to count the signatures on the petitions. Therefore, these voters' petitions were not invalid, in spite of untrue statements in the circulator's verifications, nor were they devoid of legal authority. The petitions themselves were not counterfeit. They were valid petitions whose legal authority was recognized and enforced by the Secretary of State. Therefore, they were not false instruments under the statute.

In *State v. Jones*, 222 Ariz. 555, 218 P.3d 1012 (2009), the Court of Appeals of Arizona addressed the very issue that is now before this Court—whether a false circulator's verification in a voters' nominating petition made that petition a false instrument. The Arizona Court of Appeals held that it did not.

Jones was charged with violating an Arizona statute making it a felony crime to knowingly present a false or forged instrument for filing, in connection with false verifications on voters' nominating petitions. The language of that Arizona statute is very similar to the statutory language in SDCL §22-11-28.1.<sup>14</sup> The theory of prosecution was

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<sup>14</sup> Arizona statute A.R.S. §39-161 provides:

“A person who acknowledges, certifies, notarizes, procures or offers to be filed, registered or recorded in a public office in this state an instrument he knows to be

that Jones had knowingly presented a false instrument for filing because he falsely verified that the petitioners' signatures were made in his presence. The trial court granted the defendant's motion to dismiss, ruling that false verifications did not make the petitions false instruments under the statute. The State appealed. The Arizona Court of Appeals affirmed the dismissal. "We conclude an instrument that contains an untrue statement falls within A.R.S. §39-161 only if the instrument is counterfeit, inauthentic or otherwise not genuine. In this case, even if Jones falsely verified the petitions, he did not violate the statute because his verification did not render the petitions not genuine." *State v. Jones*, 218 P.3d at 1013-1014, 222 Ariz. at 556-557.

This Court should apply its reasoning in *Paulsen* and the Arizona Court of Appeals' reasoning in *State v. Jones* to this case and hold that SDCL §22-11-28.1 does not "encompass an instrument that contains a false statement that does not cause the instrument to be something other than genuine." *State v. Jones*, 222 Ariz. at 560-561, 218 P.3d at 1017-1018. The petitions nominating Dr. Bosworth were not counterfeit petitions, even though they contained false statements. Therefore, they were not false instruments under the statute.

### C.

#### **When Read in the Context of the Overall Statutory Scheme, SDCL §22-11-28.1 Was Not Intended to Apply to False Statements In a Genuine Legal Document.**

"It is a fundamental canon of statutory construction that the words of a

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false or forged, which, if genuine, could be filed, registered or recorded under any law of this state or the United States, or in compliance with established procedure is guilty of a class 6 felony."

statute must be read in their context and with a view to their place in the overall statutory scheme.” *Davis v. Michigan Dept. of Treasury*, 489 U. S. 803, 809 (1989).

The legislative intent of SDCL §22-11-28.1 can be discerned not only from what the statute says, but also from what it does not say. SDCL §22-11-28.1 does not address the truth or falsity of any fact stated in an instrument, nor does it refer to a “false statement” in the text of the instrument. If the South Dakota legislature had intended SDCL §22-11-28.1 to extend to legal documents that contain a false statement, it could have expressed that intention in the language of the statute, as it has done in a dozen other statutes that expressly impose criminal penalties for filing legal documents that contain false statements of fact.<sup>15</sup> “That the legislature expressly imposed consequences for the

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<sup>15</sup> See, e.g., SDCL §47-30-9 (a corporate officer who participates in making a financial statement “containing a material statement that is false” is guilty of a Class 2 misdemeanor); SDCL §58-4A-2 (making it a crime if a person intentionally “makes any false entry of a material fact in or pertaining to any document or statement filed with or required by the Division of Insurance”); SDCL §12-27-34 (“Any person who intentionally makes any false, fraudulent, or misleading statement or entry in any statement of organization, campaign finance disclosure statement, other statement, or amendment filed pursuant to this chapter” is guilty of a Class 5 felony); SDCL §35-1-7 (“Any person who, in any application, report, or statement filed with the secretary, knowingly makes a false statement as to any matter required by any provision of this title to be set forth in the application, report, or statement, is guilty of a Class 6 felony”); SDCL §39-5-39 (10) and (12) (“Knowingly making any false statement in any shipper’s certificate or other nonofficial or official certificate provided for in the regulations prescribed by the secretary” or “willfully making any false entry or any statement of fact in any report required to be made under this chapter” is a Class 1 misdemeanor); SDCL §10-47B-187 (Any person who “[m]akes false or deceptive statements in applying for a license issued pursuant to this chapter” is guilty of a Class 6 felony); SDCL §34A-11-21 (“Any person who . . . makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained or used for purposes of ensuring compliance with this chapter is guilty of a Class 4 felony”); SDCL §51A-17-41 (“Any person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this chapter or that intentionally makes a false entry or omits a material entry in such a record is guilty of a Class 6 felony”); SDCL §22-29-19 (“Any person who knowingly makes any material

filing of documents containing false statements in the many statutes cited in the notes, but did not specifically address instruments containing false statements in [the filing false instruments statute] is strong evidence that it did not intend the latter statute to encompass an instrument that contains a false statement that does not cause the instrument to be something other than genuine.” *Jones, supra*, 222 Ariz. at 560-561, 218 P.3d at 1017-1018.

The twelve South Dakota statutes referenced in footnote 14, along with the absence of any language in SDCL §22-11-28.1 that refers to the making of false statements, provide further reasons to conclude that the legislature intended to draw a distinction between a false instrument and a false statement in a genuine legal instrument.

Of course, this Court cannot condone any false verification or the filing of an instrument that contains a false statement. But if this Court were to adopt the interpretation of the statute urged upon it by the State, it would extend the punitive reach of the statute far beyond what the legislature intended.

SDCL §22-11-28.1 is not violated by the false verification on a voters’ nomination petition because false statements in the circulator’s verification do not cause

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false statement or report, or willfully overvalues any land, property or other security . . . upon any application for a loan, grant, or other financial assistance for a business or agricultural purpose, or the renewal, extension, or modification thereof, is guilty of a Class 6 felony”); SDCL §50-11-31 (in making an affidavit in support of an application to receive a duplicate of a lost registration certificate, “[a] person who knowingly makes a false statement of a material fact in the affidavit is guilty of a Class 5 felony”); SDCL §37-25A-44 (making it a Class 5 felony to “make or cause to be made, in any document filed with the director of the Division of Securities or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect \* \* \*”); SDCL §42-7B-41 (“Any person who knowingly makes a false statement in any application for a license or in any statement attached to the application \* \* \* is guilty of a Class 6 felony”).

the petition itself to be something other than genuine or strip the petition of legal authority.

The six convictions for offering a false or forged instrument for filing should be reversed.

### III.

#### **THE EVIDENCE WAS INSUFFICIENT TO SUPPORT CONVICTIONS FOR OFFERING A FALSE INSTRUMENT FOR FILING BECAUSE THE DEFENDANT DID NOT FILE THE PETITIONS IN QUESTION.**

“The denial of a motion for judgment of acquittal is a question of law, and thus our review is de novo.” *State v. Jensen*, 2007 S.D. 76, ¶ 7, 737 N.W.2d 285, 288.

Evidence is insufficient to support a conviction when no rational trier of fact could find guilt beyond reasonable doubt. *State v. Brende*, 2013 S.D. 56, ¶ 21, 835 N.W.2d 131, 140. Here, applying the law that was given to the jury by the trial judge, no rational jury could have found Dr. Bosworth guilty of violating SDCL §22-11-28.1 because it was undisputed that she did not offer or file any of the petitions in question.

When she testified before the grand jury, State’s witness Ashley Klapperich testified that she was working at the front desk at the Secretary of State’s office on March 25, 2014 and that Dr. Bosworth herself came into the office and was there when a stack of voters’ petitions were delivered for filing. [TR196:10-197:12] Based on that testimony, the grand jury charged Dr. Bosworth with six counts of offering false or forged instruments for filing. At trial, Ms. Klapperich changed her testimony. She testified at trial that she had been mistaken when she testified before the grand jury that Dr. Bosworth had come to the Secretary of State’s office. [TR 196: 10-197: 12] Ms. Klapperich testified at trial that the only person whom she knew was there that day was

Patrick Davis. [TR 195:24-196:6] She testified unequivocally that Dr. Bosworth was not present at the Secretary of State's office when Patrick Davis delivered the petitions.<sup>16</sup> [TR 197: 22-199:12] Thus, it was undisputed that Patrick Davis, and not Dr. Bosworth, offered the petitions in question for filing and Dr. Bosworth was not even present when the petitions were presented to the Secretary of State's office.

At the conclusion of the evidence, the defense moved for a judgment of acquittal on the grounds that the evidence was undisputed that Dr. Bosworth did not file the petitions. [TR 577: 11-18] The trial judge denied that motion, stating that although Dr. Bosworth had not herself offered the petitions, "I think it's clear that they were filed if not directly by her, certainly on her behalf and by her agents." [TR 582:14-24]

That Mr. Davis had been requested by Dr. Bosworth to deliver the petitions was not disputed. However, the State did not request, and the trial court did not give, any instruction to the jury that would have allowed the jury to find Dr. Bosworth guilty if a person who was acting as her agent offered a false instrument for filing. On the contrary, the court charged the jury that to find her guilty, the evidence had to prove that "the defendant" had offered a false or forged instrument for filing:

"The elements of the crime of offering a false instrument for recording, each of which the state must prove beyond a reasonable doubt, are that at the time and place alleged:

1. The defendant knowingly offered a false or forged instrument for filing, registering or recording in a public office.
2. The instrument, if genuine, could be filed, registered or recorded under a law of this state." <sup>17</sup>

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<sup>16</sup> There was no evidence in the trial that Patrick Davis was aware of any false statements in the petitions.

<sup>17</sup> Jury instructions, # 26 (DE 609 *et seq.*)

The jury was bound by that instruction. SDCL §23A-25-2 provides:

Although jurors have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law that which is laid down as such by the court.

In view of the court's instruction, which the jury was bound to receive as the law, that the evidence had to prove "the defendant" had offered false instruments for filing, and the undisputed fact that the defendant did not offer or file the six petitions in question, the evidence was insufficient as a matter of law to prove that Dr. Bosworth offered false instruments for filing.

### **CONCLUSION**

This Court should reverse the six convictions for perjury and the six convictions for offering false or forged instruments for filing and remand the case with directions to enter judgments of acquittal.

Dated this 23<sup>rd</sup> day of May, 2016.

Respectfully submitted,

By: /s/ Dana L. Hanna  
Dana L. Hanna  
Hanna Law Office, P.C.  
P.O. Box 3080  
629 Quincy Street, Suite 105  
Rapid City, SD 57709  
T: (605) 791-1832  
Attorney for Appellant Annette Bosworth

Dated this 12<sup>th</sup> day of May, 2016.

/s/ A.B.  
Annette Bosworth, Appellant



**CERTIFICATE OF COMPLIANCE**

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A using Times New Roman typeface in 12 point type. Appellant's Brief contains 8,030 words.
2. I certify that the word processing software used to prepare this brief is Microsoft Word 2013.

Dated this 23<sup>rd</sup> day of May, 2016.

/s/ Dana L. Hanna  
Dana L. Hanna

## APPENDIX

1.	Judgment of Conviction and Order Suspending Execution of Sentence.....	A1 – A4
2.	Exhibits 1A through 1F.....	B1 – B12
3.	ARSD §5:02:08:00.....	C1
4.	ARSD §5:02:08:00.01.....	D1
5.	ARSD §5:02:08:01.....	E1
6.	ARSD §5:02:08:00.03.....	F1 – F2

## APPENDIX 1.

STATE OF SOUTH DAKOTA )  
COUNTY OF HUGHES ) : SS

IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, )  
Plaintiff, )  
v. )  
ANNETTE MARIE BOSWORTH, )  
Defendant. )

Crim. No. 14-305

JUDGMENT OF CONVICTION  
AND ORDER SUSPENDING  
EXECUTION OF SENTENCE

An Indictment was filed with this Court on the 17th day of June, 2014, charging the Defendant with the crimes of Counts 1A-1F: Offering a False or Forged Instrument for Filing (SDCL 22-11-28.1, Class 6 Felonies and Counts 2A-2F: Perjury (SDCL 22-29-1, 22-29-8, and 22-29-10), Class 6 Felonies. The Defendant was arraigned on said Indictment on the 30th day of June, 2014. The Defendant, the Defendant's attorney, Brandon Taliaferro and Robert Mayer, prosecuting attorney appeared at the Defendant's arraignment. The Court advised the Defendant of her constitutional and statutory rights pertaining to the charges filed against her. The Defendant plead not guilty to the Indictment. The Defendant requested a jury trial on the Indictment.

A jury trial commenced on May 18, 2015. At the time of trial, the Defendant was represented by her attorneys, Robert Van Norman and Dana Hanna and the State of South Dakota was represented by Robert Mayer, Deputy Attorney General and Brent Kempema, Assistant Attorney General. On May 27, 2015, a Hughes County jury found the Defendant "Guilty" of each count of the Indictment.

It is the determination of this Court that the Defendant has been regularly held to answer for said offenses; that said plea was voluntary, knowing and intelligent; that the Defendant has represented by competent counsel; and that the Defendant understood the nature and consequences of the plea at the time said plea was entered. It is therefore, the

JUDGMENT of this Court that the Defendant is guilty of six counts of Offering a False or Forged Instrument for Filing (SDCL 22-11-28.1, Class 6 Felonies and six counts of Perjury (SDCL 22-29-1, 22-29-8, and 22-29-10), Class 6 Felonies, which occurred on or about the 25th day of March, 2014.

#### SENTENCE

On the 1<sup>st</sup> day of July, 2015, the Defendant Annette Marie Bosworth, the Defendant's attorneys Robert Van Norman and Dana Hanna and the prosecuting attorneys, Robert Mayer, Deputy Attorney General and Brent Kempema, Assistant Attorney General, appeared for Defendant's sentencing. The Court asked whether any legal cause existed to show why sentence should not be pronounced. There being no cause offered, the Court thereupon pronounced the following sentence:

ORDERED that as to Counts 1A-1F Offering a False or Forged Instrument for Filing and Counts 2A-2F, Perjury, the Defendant Annette Marie Bosworth be sentenced to serve two (2) years in the South Dakota State Penitentiary on each count, it is further

ORDERED that two (2) years on each count of the above sentence be suspended on the following conditions:



1. That the Defendant be on probation for a period of three years.
2. That the Defendant pay court costs of \$104.00 on each count to the Hughes County Clerk of Courts.
3. That the Defendant pay prosecution costs in the total amount of \$10,697.10.
4. That the Defendant complete a total of 500 hours of community service within the State of South Dakota.

IT IS FURTHER ORDERED that the penitentiary sentence on each count shall run concurrently.

IT IS FURTHER ORDERED that this Court expressly reserves control and jurisdiction over the Defendant for the period of period of three (3) years or until the above conditions are satisfactorily completed whichever is longer, and that this Court may revoke the suspension during that time and reinstate the sentence without diminishment or credit for any of the time that the Defendant was on probation.

IT IS FURTHER ORDERED that the Court reserves the right to amend any or all the terms of this Order at any time.

Dated this 7<sup>th</sup> day of July, 2015.

BY THE COURT:



John Brown  
Circuit Court Judge

ATTEST:



Clerk of Courts  
(SEAL)



A3

STATE OF SOUTH DAKOTA  
CIRCUIT COURT, HUGHES CO.

**FILED**

JUL 07 2015

 Clerk  
By \_\_\_\_\_ Deputy

### NOTICE OF RIGHT TO APPEAL

You, Annette Marie Bosworth, are hereby notified that you have a right to appeal as provided by SDCL 23A-32-15, which you must exercise by serving a written notice of appeal upon the Attorney General of South Dakota and the State's Attorney of Hughes County and by filing a copy of the same, together with proof of such service with the Clerk of this Court within thirty (30) days from the date that this Judgment of Conviction and Order Suspending Execution of Sentence was signed, attested and filed.

## APPENDIX 2.



## NOMINATING PETITION FOR PARTISAN ELECTION

Republican

PARTY

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

WE, THE UNDERSIGNED qualified voters of \_\_\_\_\_ State \_\_\_\_\_ (here insert the jurisdiction in which the office is sought: name of county, number of legislative district, or "state") of South Dakota and members of the \_\_\_\_\_ Republican Party, nominate Annette Bosworth, MD, of Minnehaha County, South Dakota, whose mailing address is 2601 S. Minnesota Ave, Ste 105-129 Sioux Falls, SD 57105, and whose principal residence address is 909 East 14th Street Sioux Falls, SD 57104, as a candidate for the office of US Senate at the Primary Election to be held June 3, 20 14.

## DECLARATION OF CANDIDATE

I, Dr Annette Bosworth (print name here exactly as you want it on the election ballot), under oath, declare that I am eligible to seek the office for which I am a candidate, that I am registered to vote as a member of the Republican party, and that if I am a legislative or county commission candidate I reside in the district from which I am a candidate. If nominated and elected, I will qualify and serve in that office.

Sworn to before me this Jan. 20 14.

(Signed)

Rodney E. Fitts

Signature of Officer Administering Oath

Rodney E. Fitts

Title of Officer Administering Oath

My Commission Expires

9/23/2015

## 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.
2. Before the petition is filed, each signer or the circulator must add the residence address of the signer and the date of signing.
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 date of signing.
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.

STATE'S  
TRIAL EXHIBIT

1A

NAME	RESIDENCE	DATE/COUNTY
SIGN 1. <u>John C. Waldner</u> PRINT <u>John C. Waldner</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>40361 200th St</u> CITY OR TOWN <u>Huron S.D. 57350</u>	DATE OF SIGNING <u>1-15-14</u> COUNTY OF REGISTRATION <u>Beadle</u>
SIGN 2. <u>Susan Waldner</u> PRINT <u>Susan Waldner</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>40361 200th St</u> CITY OR TOWN <u>Huron S.D. 57350</u>	DATE OF SIGNING <u>1-15-14</u> COUNTY OF REGISTRATION <u>Beadle</u>
SIGN 3. <u>Kenneth Waldner</u> PRINT <u>Kenneth Waldner</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>40361 200th St</u> CITY OR TOWN <u>Huron S.D. 57350</u>	DATE OF SIGNING <u>1-15-14</u> COUNTY OF REGISTRATION <u>Beadle</u>
SIGN 4. <u>Eva D. Waldner</u> PRINT <u>EVA D. WALDNER</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>40361 200th St</u> CITY OR TOWN <u>Huron S.D. 57350</u>	DATE OF SIGNING <u>1-15-14</u> COUNTY OF REGISTRATION <u>Beadle</u>
SIGN 5. <u>Maria S. Waldner</u> PRINT <u>Maria S. Waldner</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>40361 200th St</u> CITY OR TOWN <u>Huron S.D. 57350</u>	DATE OF SIGNING <u>1-15-14</u> COUNTY OF REGISTRATION <u>Beadle</u>
SIGN 6. <u>Mary D. Waldner</u> PRINT <u>MARY D. WALDNER</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>40361 200th St</u> CITY OR TOWN <u>Huron S.D. 57350</u>	DATE OF SIGNING <u>1-15-14</u> COUNTY OF REGISTRATION <u>Beadle</u>
SIGN 7. <u>John C. Waldner</u> PRINT <u>John C. Waldner</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>40361 200th St</u> CITY OR TOWN <u>Huron S.D. 57350</u>	DATE OF SIGNING <u>1-15-14</u> COUNTY OF REGISTRATION <u>Beadle</u>

- Print on reserve side -









4-24-14

NOMINATING PETITION FOR PARTISAN ELECTION Republican PARTY

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

WE, THE UNDERSIGNED qualified voters of \_\_\_\_\_ State \_\_\_\_\_ (here insert the jurisdiction in which the office is sought: name of county, number of legislative district, or "state") of South Dakota and members of the Republican Party, nominate Annette Bosworth, MD, of Minnehaha County, South Dakota, whose mailing address is 2601 S. Minnesota Ave, Ste 105-129 Sioux Falls, SD 57105, and whose principal residence address is 909 East 14th Street Sioux Falls, SD 57104, as a candidate for the office of US Senate at the Primary Election to be held June 3, 20 14.

## DECLARATION OF CANDIDATE

I, Dr Annette Bosworth (print name here exactly as you want it on the election ballot), under oath, declare that I am eligible to seek the office for which I am a candidate, that I am registered to vote as a member of the Republican party, and that if I am a legislative or county commission candidate I reside in the district from which I am a candidate. If nominated and elected, I will qualify and serve in that office.

Sworn to before me this 18th day of Jan, 20 2014

RODNEY E. FITTS  
NOTARY PUBLIC  
SOUTH DAKOTA  
My Commission Expires 9-23-2015

(Signed)

Rodney E. Fitts

Signature of Officer Administering Oath

Rodney E. Fitts  
Title of Officer Administering Oath

## 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 use.
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 date of signing.
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.

STATE'S  
TRIAL EXHIBIT

18

NAME	RESIDENCE	DATE/COUNTY
SIGN 1. <u>Becky Hofer</u> PRINT <u>Becky Hofer</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>42021 268th St</u> CITY OR TOWN <u>Parkston S.D. 57346</u>	DATE OF SIGNING <u>1-2-14</u> COUNTY OF REGISTRATION <u>Hutchinson</u>
SIGN 2. <u>Simon Hofer</u> PRINT <u>Simon Hofer</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>42021 268th St</u> CITY OR TOWN <u>Parkston So Dak 57346</u>	DATE OF SIGNING <u>1-2-14</u> COUNTY OF REGISTRATION <u>Hutchinson</u>
SIGN 3. <u>Elmer Wollman</u> PRINT <u>Elmer Wollman</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>42021 268th St</u> CITY OR TOWN <u>Parkston S.D. 57346</u>	DATE OF SIGNING <u>1-11-14</u> COUNTY OF REGISTRATION <u>Hutchinson</u>
SIGN 4. <u>Anna Wollman</u> PRINT <u>Anna Wollman</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>42021 268th St</u> CITY OR TOWN <u>Parkston S.D. 57346</u>	DATE OF SIGNING <u>1-11-14</u> COUNTY OF REGISTRATION <u>Hutchinson</u>
SIGN 5. <u>Angela Wollman</u> PRINT <u>Angela Wollman</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>42021 268th St</u> CITY OR TOWN <u>Parkston S.D. 57346</u>	DATE OF SIGNING <u>1-11-14</u> COUNTY OF REGISTRATION <u>Hutchinson</u>
SIGN 6. <u>DeAnn Wollman</u> PRINT <u>DeAnn Wollman</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>42021 268th St</u> CITY OR TOWN <u>Parkston S.D. 57346</u>	DATE OF SIGNING <u>1-12-14</u> COUNTY OF REGISTRATION <u>Hutchinson</u>

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NAME	RESIDENCE	DATE/COUNTY
1 SIGN Darwin Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING 1-12-14
PRINT Darwin Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION Hutchinson
2 SIGN Leonard Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Leonard Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION
3 SIGN Wayne Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Wayne Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION
4 SIGN Wayne Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Wayne Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION
5 SIGN Wayne Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Wayne Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION
6 SIGN Wayne Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Wayne Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION
7 SIGN Wayne Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Wayne Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION
8 SIGN Wayne Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Wayne Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION
9 SIGN Wayne Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Wayne Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION
10 SIGN Wayne Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Wayne Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION
11 SIGN Wayne Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Wayne Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION
12 SIGN Wayne Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Wayne Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION
13 SIGN Wayne Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Wayne Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION
14 SIGN Wayne Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Wayne Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION
15 SIGN Wayne Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Wayne Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION
16 SIGN Wayne Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Wayne Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION
17 SIGN Wayne Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Wayne Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION
18 SIGN Wayne Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Wayne Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION
19 SIGN Wayne Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Wayne Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION
20 SIGN Wayne Wallman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St	DATE OF SIGNING
PRINT Wayne Wallman	CITY OR TOWN Parkston SD 57366	COUNTY OF REGISTRATION

# VERIFICATION BY PERSON CIRCULATING PETITION

INSTRUCTIONS TO CIRCULATOR: This section must be completed following circulation and before filing.

Annette Bosworth 909 E 14th St Cambridge SD  
 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, 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.

Sworn to before me this 11 day of Feb, 20 14.



Signature of Circulator

Signature of Officer Administering Oath

Title of Officer Administering Oath





**NOMINATING PETITION FOR PARTISAN ELECTION** Republican **PARTY**

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

WE, THE UNDERSIGNED qualified voters of State (here insert the jurisdiction in which the office is sought: name of county, number of legislative district, or "state") of South Dakota and members of the Republican Party, nominate Annette Bosworth, MD, of Minnehaha County, South Dakota, whose mailing address is 2601 S. Minnesota Ave, Ste 105-129 Sioux Falls, SD 57105, and whose principal residence address is 909 East 14th Street Sioux Falls, SD 57104, as a candidate for the office of US Senate at the Primary Election to be held June 3, 2014.

**DECLARATION OF CANDIDATE**

I, Dr Annette Bosworth (print name here exactly as you want it on the election ballot), under oath, declare that I am eligible to seek the office for which I am a candidate, that I am registered to vote as a member of the Republican party, and that if I am a legislative or county commission candidate I reside in the district from which I am a candidate. If nominated and elected, I will qualify and serve in that office.

(Signed) [Signature]

Sworn to before me this 10th day of Jan, 2014.

My Commission Expires 9-23-2015.

Rodney E. Fitts  
Signature of Officer Administering Oath  
Rodney E. Fitts  
Title of Officer Administering Oath

**INSTRUCTIONS TO SIGNERS:**

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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 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.

**STATE'S  
TRIAL EXHIBIT**

1C

NAME	RESIDENCE	DATE/COUNTY
<u>Richard W. Brandy</u>	<u>709 S. COYNE AVE</u> CITY OR TOWN <u>SIOUX FALLS</u> SD <u>57104</u>	DATE OF SIGNING <u>1/1/14</u> COUNTY OF REGISTRATION <u>MINNEHAHA</u>
<u>DAVID H. AUCH</u>	<u>45978 268th Street</u> CITY OR TOWN <u>CHANCELLOR</u> SD <u>57015</u>	DATE OF SIGNING <u>1 JAN 2014</u> COUNTY OF REGISTRATION <u>MINNEHAHA</u>
<u>Teri D Auch</u>	<u>45978 268th St</u> CITY OR TOWN <u>CHANCELLOR</u> SD <u>57015</u>	DATE OF SIGNING <u>1/1/14</u> COUNTY OF REGISTRATION <u>MINNEHAHA</u>
<u>Thomas Wallman</u>	<u>41844 269th St</u> CITY OR TOWN <u>ETHAN</u> SD <u>57347</u>	DATE OF SIGNING <u>1-1-14</u> COUNTY OF REGISTRATION <u>Hutchinson</u>
<u>Joseph Wipf</u>	<u>43221 268th St</u> CITY OR TOWN <u>Parkston S.D</u> <u>57344</u>	DATE OF SIGNING <u>1-1-14</u> COUNTY OF REGISTRATION <u>Hutchinson</u>
<u>Joseph W. Wipf</u>	<u>2609 Hickory RD</u> CITY OR TOWN <u>ALBERTA S.D</u> <u>57311</u>	DATE OF SIGNING <u>1-1-14</u> COUNTY OF REGISTRATION <u>Hutchinson</u>
<u>Levi Hafer</u>	<u>28748 386th Ave</u> CITY OR TOWN <u>Lake Andes S.D</u> <u>57350</u>	DATE OF SIGNING <u>1-01-14</u> COUNTY OF REGISTRATION <u>Charles Mix County</u>

- Print on reserve side -





NAME	RESIDENCE	DATE/COUNTY
SIGN Wade C. Thomas PRINT Wade C. Thomas	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 27206 Springdale Cr. CITY OR TOWN Harrisburg, SD 57032	DATE OF SIGNING 1-3-14 COUNTY OF REGISTRATION Lincoln
SIGN Marc Rasmussen PRINT Marc Rasmussen	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 6800 S. Audie Dr. CITY OR TOWN Sioux Falls, SD 57108	DATE OF SIGNING 1-3-14 COUNTY OF REGISTRATION Lincoln
SIGN E. Alburt PRINT E. Alburt	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 4055 Valley View Dr. CITY OR TOWN Rapid City, SD 57131	DATE OF SIGNING 1-3-14 COUNTY OF REGISTRATION Pennington
SIGN Ruth Audiss PRINT Ruth Audiss	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 820 Ohio Ave. CITY OR TOWN Pierre, SD 57501	DATE OF SIGNING 1-3-14 COUNTY OF REGISTRATION Charles Mix
SIGN Jochiel R. Valencia PRINT Jochiel R. Valencia	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 5004 E. 22nd St. CITY OR TOWN Sioux Falls, SD 57110	DATE OF SIGNING 1-4-14 COUNTY OF REGISTRATION Minnehaha
SIGN Lynell E. Hansen PRINT Lynell E. Hansen	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 2004 E. 51st St. CITY OR TOWN Sioux Falls, SD 57103	DATE OF SIGNING 1-4-14 COUNTY OF REGISTRATION Minnehaha
SIGN Elizabeth Hansen PRINT Elizabeth Hansen	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 2004 E. 51st St. CITY OR TOWN Sioux Falls, SD 57103	DATE OF SIGNING 1-4-14 COUNTY OF REGISTRATION Minnehaha
SIGN Dawn Aspaas PRINT Dawn Aspaas	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 27115 Ridgeway Way CITY OR TOWN Sioux Falls, SD 57103	DATE OF SIGNING 1-5-14 COUNTY OF REGISTRATION Minnehaha
SIGN Angela M. Callahan PRINT Angela Callahan	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 1320 Lincoln St. CITY OR TOWN Vermillion, SD 57069	DATE OF SIGNING 1/7/14 COUNTY OF REGISTRATION Clay
SIGN Brenda Medill PRINT Brenda Medill	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 3900 S. Ellis Rd. CITY OR TOWN Sioux Falls, SD 57106	DATE OF SIGNING 1/20/14 COUNTY OF REGISTRATION Minnehaha
SIGN Myra Eben PRINT Myra Eben	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 2005 S. Monticello CITY OR TOWN Sioux Falls, SD 57106	DATE OF SIGNING 1-20-14 COUNTY OF REGISTRATION Minnehaha
SIGN Beverly Lefers PRINT Beverly Lefers	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 22135 882nd Ave CITY OR TOWN Corsica, S.D. 57328	DATE OF SIGNING 2-12-14 COUNTY OF REGISTRATION Douglas
SIGN Laurie Lefers PRINT Laurie Lefers	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 24135 882nd Ave CITY OR TOWN Corsica, S.D. 57328	DATE OF SIGNING 2-12-14 COUNTY OF REGISTRATION Douglas

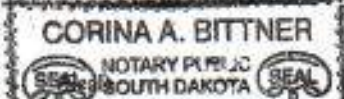
# VERIFICATION BY PERSON CIRCULATING PETITION

INSTRUCTIONS TO CIRCULATOR: This section must be completed following circulation and before filing.

Print name of the circulator Annette Bosworth Residence Address 5000 S. Main Ave #700 City Sioux Falls State SD

I, under oath, state that I circulated the above petition, that each signer personally signed this petition in my presence, 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.

Sworn to before me this 20th day of Jan, 20 14.



My Commission Expires 4-26-19

Form Revised 2008 - 5/02/08/01

Signature of Circulator

Signature of Officer Administering Oath

Title of Officer Administering Oath





*[Signature]*  
4-24-14

4-24-14  
Bx

# NOMINATING PETITION FOR PARTISAN ELECTION Republican PARTY

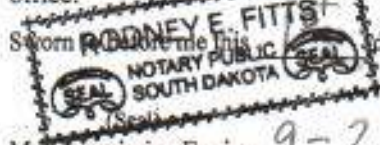
INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

WE, THE UNDERSIGNED qualified voters of \_\_\_\_\_ State \_\_\_\_\_ (here insert the jurisdiction in which the office is sought: name of county, number of legislative district, or "state") of South Dakota and members of the Republican Party, nominate Annette Bosworth, MD, of Minnehaha County, South Dakota, whose mailing address is 2601 S. Minnesota Ave, Ste 105-129 Sioux Falls, SD 57105, and whose principal residence address is 909 East 14th Street Sioux Falls, SD 57104, as a candidate for the office of US Senate at the Primary Election to be held June 3, 2014.

## DECLARATION OF CANDIDATE

I, Dr Annette Bosworth (print name here exactly as you want it on the election ballot), under oath, declare that I am eligible to seek the office for which I am a candidate, that I am registered to vote as a member of the Republican party, and that if I am a legislative or county commission candidate I reside in the district from which I am a candidate. If nominated and elected, I will qualify and serve in that office.

I, Dr Annette Bosworth (print name here exactly as you want it on the election ballot), under oath, declare that I am eligible to seek the office for which I am a candidate, that I am registered to vote as a member of the Republican party, and that if I am a legislative or county commission candidate I reside in the district from which I am a candidate. If nominated and elected, I will qualify and serve in that office.



My Commission Expires 9-23-2015

(Signed) *[Signature]*

Rodney E. Fitts

Signature of Officer Administering Oath

Rodney E. Fitts

Title of Officer Administering Oath

## 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.
2. Before the petition is filed, each signer or the circulator must add the residence address of the signer and the date of signing, 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 date of 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.

STATE'S  
TRIAL EXHIBIT

1D

NAME	RESIDENCE	DATE/COUNTY
SIGN 1. <u>Joseph Wipf</u> PRINT <u>Joseph Wipf</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>42021 268th St</u> CITY OR TOWN <u>Parkston, SD 57366</u>	DATE OF SIGNING <u>1-2-14</u> COUNTY OF REGISTRATION <u>Hutchinson</u>
SIGN 2. <u>Gemma Wipf</u> PRINT <u>Gemma Wipf</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>42021 268th St</u> CITY OR TOWN <u>Parkston, SD 57366</u>	DATE OF SIGNING <u>1-2-14</u> COUNTY OF REGISTRATION <u>Hutchinson</u>
SIGN 3. <u>Tommy Wipf</u> PRINT <u>Tommy Wipf</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>42021 268th St</u> CITY OR TOWN <u>Parkston, SD 57366</u>	DATE OF SIGNING <u>1-2-14</u> COUNTY OF REGISTRATION <u>Hutchinson</u>
SIGN 4. <u>James Hofer</u> PRINT <u>James Hofer</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>42021 268th St</u> CITY OR TOWN <u>Parkston, SD 57366</u>	DATE OF SIGNING <u>1-2-11</u> COUNTY OF REGISTRATION <u>Hutchinson</u>
SIGN 5. <u>Tim Hofer</u> PRINT <u>Tim Hofer</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>42021 268th St</u> CITY OR TOWN <u>Parkston, SD 57366</u>	DATE OF SIGNING <u>1-2-11</u> COUNTY OF REGISTRATION <u>Hutchinson</u>
SIGN 6. <u>Dennis Wipf</u> PRINT <u>Dennis Wipf</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>42021 268th Street</u> CITY OR TOWN <u>Parkston, SD 57366</u>	DATE OF SIGNING <u>1-2-11</u> COUNTY OF REGISTRATION <u>Hutchinson</u>
SIGN 7. <u>Travis Wollman</u> PRINT <u>Travis Wollman</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>42021 268th St</u> CITY OR TOWN <u>Parkston, SD 57366</u>	DATE OF SIGNING <u>1-2-14</u> COUNTY OF REGISTRATION <u>Hutchinson</u>

- Print on reserve side -





NAME	RESIDENCE	DATE/COUNTY
1 SIGN Silva Elizabeth Wipt PRINT Elizabeth Wipt	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St CITY OR TOWN Parkston SD 57366	DATE OF SIGNING 1-2-14 COUNTY OF REGISTRATION Hutchinson
9 SIGN Roseanne Hofer PRINT Roseanne Hofer	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St CITY OR TOWN Parkston SD 57366	DATE OF SIGNING 1-2-14 COUNTY OF REGISTRATION Hutchinson
10 SIGN Rhonda Wellman PRINT Rhonda Wellman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021-268th St CITY OR TOWN Parkston SD 57366	DATE OF SIGNING 1-2-14 COUNTY OF REGISTRATION Hutchinson
11 SIGN Annette Hofer PRINT Annette Hofer	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St CITY OR TOWN Parkston SD 57366	DATE OF SIGNING 1-2-14 COUNTY OF REGISTRATION Hutchinson
12 SIGN Patricia Hofer PRINT Patricia Hofer	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St CITY OR TOWN Parkston SD 57366	DATE OF SIGNING 1-2-14 COUNTY OF REGISTRATION Hutchinson
13 SIGN Sarah Wipt PRINT Sarah Wipt	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St CITY OR TOWN Parkston SD 57366	DATE OF SIGNING 1-2-14 COUNTY OF REGISTRATION Hutchinson
14 SIGN Kathy Hofer PRINT Kathy Hofer	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St CITY OR TOWN Parkston SD 57366	DATE OF SIGNING 1-2-14 COUNTY OF REGISTRATION Hutchinson
15 SIGN Andrea Wellman PRINT Andrea Wellman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St CITY OR TOWN Parkston SD 57366	DATE OF SIGNING 1-3-2014 COUNTY OF REGISTRATION Hutchinson
16 SIGN Bertha Wellman PRINT Bertha Wellman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St CITY OR TOWN Parkston SD 57366	DATE OF SIGNING 1-3-2014 COUNTY OF REGISTRATION Hutchinson
17 SIGN Becky Wellman PRINT Becky Wellman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St CITY OR TOWN Parkston SD 57366	DATE OF SIGNING 1-3-2014 COUNTY OF REGISTRATION Hutchinson
18 SIGN Susan Wellman PRINT Susan Wellman	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St CITY OR TOWN Parkston SD 57366	DATE OF SIGNING 1-3-2014 COUNTY OF REGISTRATION Hutchinson
19 SIGN Sandra Hofer PRINT Sandra Hofer	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St CITY OR TOWN Parkston SD 57366	DATE OF SIGNING 1-4-2014 COUNTY OF REGISTRATION Hutchinson
20 SIGN Annette Wipt PRINT Annette Wipt	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 42021 268th St CITY OR TOWN Parkston SD 57366	DATE OF SIGNING 1-4-2014 COUNTY OF REGISTRATION Hutchinson

# VERIFICATION BY PERSON CIRCULATING PETITION

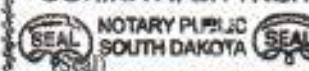
INSTRUCTIONS TO CIRCULATOR: This section must be completed following circulation and before filing.

Print name of the circulator Annette Bosworth Residence Address 5000 S. 4th St City Sioux Falls State SD

I, under oath, state that I circulated the above petition, that each signer personally signed this petition in my presence, 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.

Sworn to before me this 1st day of Jan, 20 14.

**CORINA A. BITTNER**



My Commission Expires 1-2-19

Form Revised 2008 - 5-02-08-01

Signature of Circulator

Signature of Officer Administering Oath

Title of Officer Administering Oath





NOMINATING PETITION FOR PARTISAN ELECTION Republican PARTY

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

WE, THE UNDERSIGNED qualified voters of \_\_\_\_\_ State \_\_\_\_\_ (here insert the jurisdiction in which the office is sought: name of county, number of legislative district, or "state") of South Dakota and members of the Republican Party, nominate Annette Bosworth, MD of Minnehaha County, South Dakota, whose mailing address is 2601 S. Minnesota Ave, Ste 105-129 Sioux Falls, SD 57105, and whose principal residence address is 909 East 14th Street Sioux Falls, SD 57104, as a candidate for the office of US Senate at the Primary Election to be held June 3, 20 14.

## DECLARATION OF CANDIDATE

I, Dr Annette Bosworth (print name here exactly as you want it on the election ballot), under oath, declare that I am eligible to seek the office for which I am a candidate, that I am registered to vote as a member of the Republican party, and that if I am a legislative or county commission candidate I reside in the district from which I am a candidate. If nominated and elected, I will qualify and serve in that office.

Sworn to before me this 1st day of Jan. 20 2014

(Signed)

Rodney E. Fitts

My Commission Expires 9-23-2015

Signature of Officer Administering Oath

Rodney E. Fitts  
Title of Officer Administering Oath

## 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
2. Before the petition is filed, each signer or the circulator must add the residence address of the signer and the date of signing. 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 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.

STATE'S  
TRIAL EXHIBIT

1E

SIGN	NAME	RESIDENCE	DATE/COUNTY
1	<u>Leonard Waldner</u>	<u>35350 206th St</u>	<u>2/21/14</u>
PRINT	<u>Leonard Waldner</u>	<u>Miller</u>	<u>Hand</u>
2	<u>Mike Waldner</u>	<u>35350 206th St.</u>	<u>2/21/14</u>
PRINT	<u>Mike Waldner Jr</u>	<u>Miller</u>	<u>Hand</u>
3	<u>Robert Waldner</u>	<u>Miller 35350 206th St</u>	<u>2/21/14</u>
PRINT	<u>Robert Waldner</u>	<u>Miller</u>	<u>Hand</u>
4	<u>George Hofer</u>	<u>35350 206th St.</u>	<u>2/21/14</u>
PRINT	<u>George Hofer</u>	<u>Miller</u>	<u>Hand</u>
5	<u>Joseph Waldner</u>	<u>35350 206th St</u>	<u>2/19/14</u>
PRINT	<u>Joseph Waldner</u>	<u>Miller</u>	<u>Hand</u>
6	<u>Jonathan Waldner</u>	<u>35350 206th St</u>	<u>2/20/14</u>
PRINT	<u>Jonathan Waldner</u>	<u>Miller</u>	<u>Hand</u>
7	<u>Dan Waldner</u>	<u>35350 206th St.</u>	<u>2/21/14</u>
PRINT	<u>Daniel Waldner</u>	<u>Miller</u>	<u>Hand</u>

- Print on reserve side -





NAME	RESIDENCE	DATE/COUNTY
SIGN 8 Mike Waldner PRINT Mike Waldner Sr.	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 9 Joe Stahl PRINT Joe Stahl	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 10 John Waldner PRINT John Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 11 Josh Hofer PRINT Josh Hofer	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 12 Zack Waldner PRINT Zack Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 13 David Waldner PRINT David Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 14 Sam Waldner PRINT Sam Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 15 Martin Waldner PRINT Martin Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 16 Jerry Waldner PRINT Jerry Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 17 George Waldner PRINT George Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 18 Ronnie Waldner PRINT Ronnie Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 19 Philip Waldner PRINT Philip Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/21/14 COUNTY OF REGISTRATION Hand
SIGN 20 Brian Waldner PRINT Brian Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/21/14 COUNTY OF REGISTRATION Hand

# VERIFICATION BY PERSON CIRCULATING PETITION

INSTRUCTIONS TO CIRCULATOR: This section must be completed following circulation and before filing.

Print name of the circulator And B... Residence Address 909 E 14th St City Sioux Falls State SD

I, under oath, state that I circulated the above petition, that each signer personally signed this petition in my presence, 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.

Sworn to before me this 24 day of Mar 2014.

JOEL A. AREND

(Seal)

NOTARY PUBLIC

My Commission Expires 20 Mar 14

Form Revised 2008 - 5-02-08-01

Signature of Circulator

Signature of Officer Administering Oath

Title of Officer Administering Oath





Brendan Johnson  
3/1/15 05-19-14

5-19-14  
BEN

# NOMINATING PETITION FOR PARTISAN ELECTION Republican PARTY

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

WE, THE UNDERSIGNED qualified voters of \_\_\_\_\_ State \_\_\_\_\_ (here insert the jurisdiction in which the office is sought: name of county, number of legislative district, or "state") of South Dakota and members of the Republican Party, nominate Annette Bosworth, MD, of Minnehaha County, South Dakota, whose mailing address is 2601 S. Minnesota Ave, Ste 105-129 Sioux Falls, SD 57105, and whose principal residence address is 909 East 14th Street Sioux Falls, SD 57104, as a candidate for the office of US Senate at the Primary Election to be held June 3, 20 14.

## DECLARATION OF CANDIDATE

I, Dr Annette Bosworth (print name here exactly as you want it on the election ballot), under oath, declare that I am eligible to seek the office for which I am a candidate, that I am registered to vote as a member of the Republican party, and that if I am a legislative or county commission candidate I reside in the district from which I am a candidate. If nominated and elected, I will qualify and serve in that office.

Sworn to before me this 1st day of Jan, 20 14.

(Signed) Rodney E. Fitts

Rodney E. Fitts  
Signature of Officer Administering Oath

Rodney E. Fitts  
Title of Officer Administering Oath

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

STATE'S  
TRIAL EXHIBIT

1F

NAME	RESIDENCE	DATE/COUNTY
<u>1</u> SIGN <u>[Signature]</u> PRINT <u>Robert M. Anderson</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>3624 Atterant View Drive</u> CITY OR TOWN <u>Brookings</u>	DATE OF SIGNING <u>01/05/2014</u> COUNTY OF REGISTRATION <u>Brookings</u>
<u>2</u> SIGN <u>[Signature]</u> PRINT <u>Benjamin G. Lamp</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>2204 E Davis Drive</u> CITY OR TOWN <u>Sioux Falls, South Dakota</u>	DATE OF SIGNING <u>01/05/2014</u> COUNTY OF REGISTRATION <u>Minnehaha</u>
<u>3</u> SIGN <u>[Signature]</u> PRINT <u>Steven D. Weiler</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>5804 S. Grand Prairie Dr.</u> CITY OR TOWN <u>Sioux Falls, SD 57108</u>	DATE OF SIGNING <u>01/05/2014</u> COUNTY OF REGISTRATION <u>Lincoln</u>
<u>4</u> SIGN <u>[Signature]</u> PRINT <u>Benjamin D. Smetan</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>4412 South Judy Avenue</u> CITY OR TOWN <u>Sioux Falls SD 57103</u>	DATE OF SIGNING <u>01/05/2014</u> COUNTY OF REGISTRATION <u>Minnehaha</u>
<u>5</u> SIGN <u>[Signature]</u> PRINT <u>Rose E. Auer</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>101 W. Astor Trail</u> CITY OR TOWN <u>Brandon, SD 57005</u>	DATE OF SIGNING <u>01/28/2014</u> COUNTY OF REGISTRATION <u>Minnehaha</u>
<u>6</u> SIGN <u>[Signature]</u> PRINT <u>[Signature]</u>	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER <u>1701 W. 1st Avenue</u> CITY OR TOWN <u>Sioux Falls SD 57105</u>	DATE OF SIGNING <u>1-19-2014</u> COUNTY OF REGISTRATION <u>Minnehaha</u>
<u>7</u> SIGN PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER CITY OR TOWN	DATE OF SIGNING COUNTY OF REGISTRATION

- Print on reserve side -





NAME		RESIDENCE	DATE/COUNTY
SIGN		STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
8 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
9 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
10 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
11 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
12 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
13 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
14 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
15 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
16 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
17 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
18 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
19 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
20 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION

# VERIFICATION BY PERSON CIRCULATING PETITION

INSTRUCTIONS TO CIRCULATOR: This section must be completed following circulation and before filing.

Annette B. BROWN 909 E 14th Street Falls, SD  
 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, and that either the signer or I filled in the printed name, the residence address of the signer, the date of signing, and the county of voter registration.

Sworn to before me this 14 day of MAY, 2014.

(Seal)

My Commission Expires 20 MAR 19

Form Revised 2008 - 5-02-08-01

Signature of Circulator

Signature of Officer Administering Oath

Title of Officer Administering Oath



### APPENDIX 3.

**5:02:08:00. Guidelines for acceptance of petitions.** When a petition is presented for filing, the person or governing board authorized to accept the petition for filing shall determine if it meets the following requirements for acceptance:

(1) The petition is in the form required by this chapter;

(2) The petition contains the minimum number of valid signatures, counted according to § 5:02:08:00.01. One or more invalid signatures on a petition section do not disallow other valid signatures on the section;

(3) Each section of the petition contains an identical heading and is verified by the circulator. The circulator may add the addresses of the petitioners and the dates of signing before completing the verification. The circulator may also add the printed name of the signer and the county of voter registration. Residence addresses may be abbreviated. The verification was completed and signed before an officer authorized to administer oaths;

(4) The declaration of candidacy contains the original signature of the candidate. Additional sections may have an original or photocopied signature of the candidate;

(5) If a petition is for a ballot question to be voted on statewide, the signatures were obtained after a copy of the text of the petition was filed with the secretary of state;

(6) The governing board or person authorized by statute to accept the petition shall, if requested, allow a petition circulator the opportunity to add missing information on the signature lines or circulator's verification on his or her petition provided the filing deadline has not passed; and

(7) Following the presentation of the petition for filing, names may not be removed from the petition.

Except for petitions to nominate candidates for school boards, the person who is authorized to accept petitions for filing need not check for voter registration of the signers. Petitions containing signatures in excess of the minimum number may be filed, but the excess signatures will be disregarded.

**Source:** 2 SDR 46, effective December 30, 1975; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 10 SDR 27, effective September 26, 1983; 14 SDR 19, effective August 9, 1987; 16 SDR 20, effective August 10, 1989; 16 SDR 203, effective May 28, 1990; 28 SDR 99, effective January 17, 2002; 35 SDR 48, effective September 8, 2008.

**General Authority:** SDCL 12-1-9(6).

**Law Implemented:** SDCL 2-1-2, 2-1-2.1, 2-1-4, 9-13-11, 12-1-1, 12-1-1.1, 12-1-2, 12-6-8, 13-7-6.

**Cross-Reference:** Sections of petition, § 5:02:08:00.02.

#### APPENDIX 4.



**5:02:08:00.01. Requirements for counting signatures on petitions.** Requirements for counting signatures on a petition sheet are as follows:

(1) No signature on a petition sheet may be counted if one of the following conditions is present:

- (a) The form of the petition does not meet the requirements of this chapter;
- (b) The circulator's verification is not completed or is improperly completed, according to subdivision 5:02:08:00(3) unless the missing information is completed elsewhere on the petition sheet. A completed circulator's verification must include the printed name of the circulator, the circulator's residence address as provided in subdivision 5:02:08:00.01(2)(c), and complete date;
- (c) The declaration of candidacy has not been completed on or after the first date authorized by statute to circulate the petition, and signed by the candidate and the signature witnessed by an official empowered to administer oaths in South Dakota; or
- (d) The circulator's verification was signed by more than one circulator; and

(2) An individual signature on a petition sheet may not be counted if one of the following conditions is present:

- (a) It was signed prior to the signing of the candidate's declaration of candidacy or, if for a ballot question, it was signed before a copy of the text was filed with the secretary of state;
- (b) It was signed after the circulator completed the verification;
- (c) The residence address does not include a street and house number or a rural route and box number and the town. If the signer is a resident of a second or third class municipality, a post office box number may be used. If the signer does not have a residence address or post office box number, a description of the residence location must be provided. If the signer is a resident of a building with a publicly known name, the building name may be used;
- (d) The date of signing, including month and day, is not indicated;
- (e) The signer's name is not printed and legible; or
- (f) The signer's county of voter registration is not provided.

**Source:** 10 SDR 27, effective September 26, 1983; 12 SDR 43, effective September 23, 1985; 14 SDR 19, effective August 9, 1987; 16 SDR 20, effective August 10, 1989; 19 SDR 12, effective August 5, 1992; 21 SDR 77, effective October 24, 1994; 26 SDR 168, effective June 25, 2000; 33 SDR 230, effective July 1, 2007; 35 SDR 48, effective September 8, 2008.

**General Authority:** SDCL 12-1-9(6).

**Law Implemented:** SDCL 2-1-2, 2-1-2.1, 2-1-4, 9-13-11, 12-1-1, 12-1-1.1, 12-1-2, 12-6-8, 13-7-6.



## APPENDIX 5.

**5:02:08:01. Form of nominating petition -- Partisan election.** Nominating petitions for a partisan election must be in the following form:

**NOMINATING PETITION FOR PARTISAN ELECTION**

\_\_\_\_\_ Party

**INSTRUCTIONS TO CANDIDATE:** The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

WE, THE UNDERSIGNED qualified voters of \_\_\_\_\_ (here insert the jurisdiction in which the office is sought; name of county, number of legislative district, or "state") of South Dakota and members of the \_\_\_\_\_ Party, nominate \_\_\_\_\_ of \_\_\_\_\_ County, South Dakota, whose mailing address is \_\_\_\_\_, \_\_\_\_\_, SD \_\_\_\_\_, and whose principal residence address is \_\_\_\_\_, \_\_\_\_\_, SD \_\_\_\_\_, as a candidate for the office of \_\_\_\_\_ at the primary election to be held June \_\_\_\_\_, 20\_\_\_\_.

**DECLARATION OF CANDIDATE**

I, \_\_\_\_\_ (print name here exactly as you want it on the election ballot), under oath, declare that I am eligible to seek the office for which I am a candidate, that I am registered to vote as a member of the \_\_\_\_\_ party, and that if I am a legislative or county commission candidate I reside in the district from which I am a candidate. If nominated and elected, I will qualify and serve in that office.

(Signed) \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Seal)

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Signature of Officer Administering Oath

\_\_\_\_\_  
Title of Officer Administering Oath

The balance of this petition form is prescribed in § 5:02:08:00.03.

**Source:** 2 SDR 5, effective July 30, 1975; 2 SDR 46, effective December 30, 1975; 5 SDR 31, effective November 1, 1978; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 10 SDR 27, effective September 26, 1983; 16 SDR 20, effective August 10, 1989; 16 SDR 203, effective May 28, 1990; 25 SDR 8, effective August 3, 1998; 33 SDR 230, effective July 1, 2007; 35 SDR 48, effective September 8, 2008.

**General Authority:** SDCL 12-1-9(7).

**Law Implemented:** SDCL 12-6-5, 12-6-8.

## APPENDIX 6.

**5:02:08:00.03. Form of petition.** Each type of petition must contain the applicable heading as prescribed in this chapter and the following instructions to signers, signature blanks, and verification unless otherwise prescribed for a specific petition:

**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.

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

**VERIFICATION BY PERSON CIRCULATING PETITION**

**INSTRUCTIONS TO CIRCULATOR:** This section (**bold**) **must** (**unbold**) 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, 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.

\_\_\_\_\_  
Signature of Circulator

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Signature of Officer Administering Oath

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Title of Officer Administering Oath

**Source:** 16 SDR 20, effective August 10, 1989; 16 SDR 203, effective May 28, 1990; 19 SDR 12, effective August 5, 1992; 23 SDR 115, effective January 22, 1997; 26 SDR 168, effective June 25, 2000.

**General Authority:** SDCL 12-1-9(7).

**Law Implemented:** SDCL 12-1-3(14).

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IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA

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No. 27510

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STATE OF SOUTH DAKOTA,

*Plaintiff and Appellee,*

v.

ANNETTE MARIE BOSWORTH,

*Defendant and Appellant.*

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APPEAL FROM THE CIRCUIT COURT  
6<sup>th</sup> JUDICIAL CIRCUIT  
HUGHES COUNTY, SOUTH DAKOTA

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THE HONORABLE JOHN L. BROWN  
Circuit Court Judge

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**APPELLEE'S BRIEF**

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Notice of Appeal Filed July 27, 2015

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## **JURISDICTIONAL STATEMENT**

This court has jurisdiction pursuant to SDCL 15-26A-3(1) and SDCL 23A-32-9.

## **STATEMENT OF LEGAL ISSUES**

IS FILING A NOMINATING PETITION FOR ELECTIVE PUBLIC OFFICE WITH THE SOUTH DAKOTA SECRETARY OF STATE UPON A FALSE OATH PERJURY IN A STATE “PROCEEDING OR ACTION” WITHIN THE MEANING OF SDCL 22-29-1?

SDCL 22-29-1

*Larson v. Hazeltine*, 1996 SD 100, 552 N.W.2d 830

The trial court ruled that qualifying for placement on an elective ballot entailed a state proceeding and action within the meaning of the perjury statute.

IS A NOMINATING PETITION FOR ELECTIVE OFFICE FILED WITH THE SOUTH DAKOTA SECRETARY OF STATE UPON A FALSE OATH A “FALSE INSTRUMENT” WITHIN THE MEANING OF 22-11-28.1?

SDCL 21-11-28.1

*State v. Hayes*, 159 N.W. 108 (S.D. 1916)

*State v. Shilvock-Havird*, 472 N.W.2d 773 (S.D. 1991)

The trial judge ruled that a nominating petition filed upon a false oath is a false instrument.

WAS EVIDENCE THAT BOSWORTH DIRECTED CAMPAIGN PERSONNEL TO FILE NOMINATING PETITIONS FOR ELECTIVE OFFICE WITH THE SOUTH DAKOTA SECRETARY OF STATE THAT SHE HAD COMPLETED UPON A FALSE OATH SUFFICIENT TO CONVICT HER OF OFFERING A FALSE INSTRUMENT FOR FILING IN A PUBLIC OFFICE?

SDCL 22-11-28.1

*State v. Johnson*, 2009 S.D. 67, 771 N.W.2d 360

The jury found Bosworth guilty of filing a false instrument, though she filed the subject petitions through agents rather than personally.

## **PRELIMINARY STATEMENT**

The trial transcript will be cited as TRANSCRIPT followed by a reference to the corresponding page/line. Trial exhibits will be cited as EXHIBIT followed by reference to its assigned number in the record.

## **STATEMENT OF THE CASE AND FACTS**

Annette Marie Bosworth threw her hat in the political ring to be the Republican nominee in the 2014 race for a seat in the United States Senate. Fearing she was short on sufficient signatures for her name to appear on the primary ballot, and contrary to the advice of her lawyer, she filed at least six nominating petitions with the Office of the Secretary of State for the State of South Dakota upon a false oath that she had personally circulated and witnessed the signatures of voters who had signed the petitions. TRANSCRIPT at 167/9, 171/4, 175/18, 204/25, 338/20, 370/3, 373/10, 374/20, 380/14, 440/9, 451/11, 526/14, 527/25, 538/21, 539/3, 554/18.

In fact, she had been half a continent and an ocean away in the Philippines on the days that voters in South Dakota had signed the subject petitions. TRANSCRIPT at 661/24, 670/5-675-8. Unaware of this flaw in the subject petitions, the Secretary of State accepted these legally invalid petitions for filing. TRANSCRIPT at 182/2, 183/24, 185/8-13, 190/17, 192/2, 193/2, 581/15.

Subsequent to losing the race for the nomination, the South Dakota Division of Criminal Investigation (DCI) investigated allegations that certain of Bosworth's petitions had been filed upon a false oath. The investigation focused on six petitions signed by voters during Bosworth's trip to the Philippines between January 5 through 15 of 2014. EXHIBIT 6; TRANSCRIPT at 238/17, 240/1; EXHIBITS 1A-1F. Since Bosworth could not have been in two places at the same time, it was obvious that her sworn certification that she had witnessed the subject signatures was false. Bosworth admitted as much during a television news interview; "[D]id I go to the Philippines like my Facebook shows? Yes, I went to the Philippines" on the dates that she swore she witnessed people in South Dakota signing her petitions. EXHIBIT 3.

And because she had not personally witnessed the signatures of the ostensible voters who ostensibly supported her candidacy, she was oblivious or indifferent to the fact that (in addition to the inherent invalidity of all six petitions) one petition contained at least eleven forged signatures, and a pair of petitions contained either a forged signature on one or the signature of a voter who had impermissibly signed twice on the other. TRANSCRIPT at 185/8-13, 231/2, 269/2, 269/20, 274/24, 284/21, 286/14, 287/8, 291/20, 298/16, 301/2, 304/4, 306/19, 312/14, 322/21, 324/3-23, 325/25-328/4, 332/8, 568/20, 687/2, 694/11; EXHIBIT 1E; EXHIBITS 1C and 1D.

Bosworth was charged with six counts of perjury in violation of SDCL 22-29-1 and six counts of filing a false instrument in violation of SDCL 22-11-28.1. A jury convicted her of all counts. Bosworth now appeals.

## **ARGUMENT**

Bosworth raises three issues challenging her convictions. She claims that the administrative process for securing one's name on a ballot for elective office is not a "proceeding" or "action" within the contemplation of the perjury statute, that nominating petitions filed upon a false oath are not "false instruments," and that she did not offer her falsely-sworn nominating petitions for filing because the act of filing was performed by her agents. Bosworth is wrong.

### **A. Securing One's Name On The Ballot For Elective Office Entails A Proceeding Or Action Within The Meaning Of The Perjury Statute**

Citing to BLACK'S LAW DICTIONARY, Bosworth argues that, within the context of the perjury statute, the terms "proceeding or action" should assume their meanings as terms of art of the legal profession, *i.e.* a lawsuit in a judicial or quasi-judicial forum. According to Bosworth, this construction is dictated by the "term-of-art canon."

At the outset, it should be noted that Bosworth's appellate argument regarding the meaning of "proceeding or action" is framed differently than it was below, and hence, is not preserved for review in the form made here. SDCL 23A-44-13; *State v. Boston*, 2003 SD 71, ¶

26, 665 N.W.2d 100, 109 (defendant must “give the trial court the opportunity to rule on [an] issue” or he will have “waived th[e] argument on appeal”), citing *State v. Corey*, 2001 SD 53, ¶ 9, 624 N.W.2d 841, 844; *State v. Handy*, 450 N.W.2d 434, 435 (S.D. 1990)(defendant did not preserve his challenge to alleged prosecutorial misconduct when he did not timely object). One could even say that Bosworth’s argument here is the exact opposite of her argument as framed below. Below she claimed that the terms “proceeding or action” were unconstitutionally vague;<sup>1</sup> here Bosworth claims they are definitionally precise. APPENDIX at 001-006. Below Bosworth argued that “proceeding or action” should be interpreted according to their “commonly accepted usage;” here Bosworth argues for their interpretation as terms of art. APPENDIX at 003, 005. Nowhere below did Bosworth argue that the “term-of-art canon” requires that the terms “proceeding or action” be strictly interpreted in the judicial sense. APPENDIX at 001-006. Bosworth did not make below, or preserve for review, the form of her argument that she now appeals.

But even if one accepts Bosworth’s premise that SDCL 22-29-1 contemplates “proceeding or action” as terms of art, one finds that, even

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<sup>1</sup> This court’s vagueness analysis uses the “ordinary and popular” or “everyday” meanings of words. *State v. Dale*, 439 N.W.2d 98, 107 (S.D. 1989)(“words the legislature use[s] are presumed to convey their ordinary and popular meaning”); *State v. Crell*, 313 N.W.2d 455, 456 (S.D. 1981)(the word “obscene” has an “everyday meaning” that is not vague). According to *Webster’s New Collegiate Dictionary* (1976), a “proceeding” encompasses “procedure,” “events” or “happenings,” an “affair,” or a “transaction.” “Action,” according to *Webster’s*, encompasses both “a proceeding in a court of justice by which one demands or enforces one’s rights” and “something done or effected,” as in action by an agency.

within the field of law, the terms are not confined to a singular definition. In addition to the meaning of “action” in the judicial sense promoted by Bosworth, BLACK’S LAW DICTIONARY (9<sup>th</sup> Edition) also defines “action” as “[t]he process of doing something.” APPENDIX at 009. It also defines “proceeding” as “[a]ny procedural means for seeking redress from a tribunal or *agency*.” APPENDIX at 010 (*italics added*). BLACK’S LAW DICTIONARY (5<sup>th</sup> Edition) defines “proceeding” to include “[a]n act which is done by the authority or direction of the court, *agency*, or tribunal.” APPENDIX at 012 (*italics added*). “‘Proceeding’ means any *action*, hearing, investigation, inquest, or inquiry (whether conducted by a court, *administrative agency*, hearing officer, arbitrator, legislative body, or other person authorized by law) in which, pursuant to law, testimony can be compelled to be given.” APPENDIX at 012 (*italics added*). These definitions reveal that the terms “proceeding” or “action” coexist in both the administrative and judicial senses in the legal lexicon. SDCL 19-13A-2(7)’s definition of “proceeding” likewise encompasses “administrative” process. Even the authorities cited by Bosworth for her narrow definitions of “proceeding or action” do not confine their meanings to judicial or quasi-judicial forums.

Bosworth’s claim that perjury is only sanctionable when committed in “a judicial or quasi-judicial case” is out of step with the times. The old version of South Dakota’s perjury statute was limited to oaths administered in “cases:”

R.C. § 3745. Perjury Defined. Every person who, having taken an oath that he will testify, declare, depose or certify truly before any competent tribunal, officer or person, in any of the cases in which such an oath may by law be administered, willfully and contrary to such oath, states any material matter which he knows to be false, is guilty of perjury.

South Dakota Compiled Laws 1929 (emphasis added); *State v. Reidt*, 222 N.W. 677 (S.D. 1929)(R.C. § 4723). However, this archaic, narrow definition of perjury – limiting oaths to judicial “cases” – was repealed in the contemporary version of the statute.

In 2002, the legislature replaced the term “cases” with “state or federal proceeding or action.” APPENDIX at 18. For purposes of ascertaining the legislature’s reason for broadening the perjury statute from “cases” to any state “proceedings or action,” this court must assume that the legislature had in mind previously enacted statutes relating to the same subject matter, and the judicial constructions given to those statutes. *State v. Hirsch*, 309 N.W.2d 832, 835 (S.D. 1981); 2A *Sutherland Statutory Construction*, § 45.12 at 55 (4<sup>th</sup> Edition). And when the legislature chooses new words for a statute, it is generally presumed that lawmakers intend to alter the meaning of the statute. *State v. Heisinger*, 252 N.W.2d 899, 903 (S.D. 1977); *Rosander v. Board of County Commissioners of Butte County*, 336 N.W.2d 160, 161 (S.D. 1983).

It is a cardinal principle of statutory construction to give effect to the legislative intent where possible. It is further an established principle of statutory construction that, where the wording of an act is changed by amendment, it is evidential of an intent that the word shall have a different meaning.

*In re Dwyer*, 207 N.W. 210, 212 (S.D. 1926).



In the construction of amendments to statutes, the body enacting the amendment will be presumed to have had in mind existing statutory provisions and their judicial construction, touching the subject dealt with. The amendatory and the original statute are to be read together in seeking to discover the legislative will and purpose, and if they are fairly susceptible to two constructions one of which gives effect to the amendatory act, while the other will defeat it, the former construction should be adopted.

*LaFargue v. Waggoner*, 75 S.W.2d 235, 238 (Ark. 1934). Thus, by expanding the scope of perjury from simply “cases” before judicial or public officers to “any state . . . action,” it cannot be presumed, as Bosworth does, that the new statute is no broader than the old one. If the legislature had meant “in any state or federal judicial or quasi-judicial proceeding,” it could have said so.

It didn't. SDCL 22-29-1 criminalizes perjury in any state “proceeding” or “action.” *State v. Hayes*, 159 N.W. 108, 110 (S.D. 1916)(use of the disjunctive “or” in statute created two distinct offenses, one of creating and passing false instruments by a corporate officer and another of passing authentic instruments without approval of corporate board). This disjunctive phrasing reflects a legislative purpose to broaden the scope of SDCL 22-29-1 beyond the old forums of judicial or quasi-judicial cases. For one, if “proceeding” means “judicial or quasi-judicial cases,” and “action” means the same thing, there would be no need for both words in the statute. For another, a broader scope to the statute better protects the integrity of public processes and governmental actions

because agency actions can no more be predicated upon perjury than judicial actions.

The legislature created the State Board of Elections in 1974 and conferred upon it the right to make rules “providing for uniformity of election procedures (SDCL § 12-1-9).” *Thorsness v. Daschle*, 285 N.W.2d 590, 591 (S.D. 1979).

As is true in other areas of statutorily delegated rulemaking authority, the legislature no doubt could have spelled out in greater detail the guidelines or standards to be followed by the Board. The fact that the details of the forms, rules and regulations were left to be resolved by a bipartisan board does not render those forms, rules and regulations *ipso facto* invalid, but rather can be interpreted as reflecting the legislative determination that those details are best left to a board who’s duty it is to concentrate its efforts in this area.

*Thorsness*, 285 N.W.2d at 591. SDCL 12-1-9(6) and (7) give the board specific rulemaking authority to establish procedures to accept a petition and verify petition signatures. The board has seen fit to require the circulator of the petition to state “under oath” that each signer personally signed the petition in the circulator’s presence. SDCL 12-1-9(7); ARSD 5:02:08:00:03, APPENDIX at 016. The board’s administrative rules stand on equal footing with statutes enacted by the legislature. *Larson v. Hazeltine*, 1996 SD 100, ¶¶ 12, 22, 552 N.W.2d 830, 834, 836 (“The Secretary of State is correct when she argues that the oath is a substantial requirement and without it, the petition is invalid”).

Thus, the fact that an “oath” is “administered” as a predicate to the agency *action* of authorizing a candidate’s name to appear on a ballot for

public office, applying SDCL 22-29-1 to this case requires no strained, artificial or tortured interpretation. The legislature and the board have enacted a *procedure* for candidates to “declare” and “certify” their eligibility before agency officers by filing their petitions under oath, and for the board to examine and verify and, if appropriate, accept petitions. For example, when the *Larson* court was contemplating whether to enter a writ of mandamus with respect to certain referendum petitions, it described the purpose of the requested writ as one ordering the Secretary of State “to *proceed* with the signature validation *process*.” *Larson*, 1996 SD 100 at ¶¶ 9, 11, 25, 26, 552 N.W.2d at 833, 836. Thus, *Larson* apparently views petition validation by the South Dakota Secretary of State as a proceeding and process before a state agency.

Finally, Bosworth argues that false verification of a nominating petition is governed by SDCL 2-1-10, which is a misdemeanor. That statute, by its terms, is limited to verifications of “petition[s] to initiate a constitutional amendment or other measure or to refer legislation to the electors.” SDCL 2-1-10 does not encompass nominating petitions. Because the circulators of petitions to refer measures or to effect a constitutional amendment are not seeking to hold or nominate a candidate for public office, and because the legislature might fear that felony liability in such circumstances could chill the exercise of certain core 1<sup>st</sup> Amendment rights, it is logical to subject amendment and referendum petitions to a lower level of accountability. And, as reflected

in the “Law Implemented” sections of the rules governing this case – ARSD 5:02:08:00:00, ARSD 5:02:08:00:01, ARSD 5:02:08:00:03 – they do not implement SDCL 2-1-10. APPENDIX at 014-16. Again, if the legislature had intended to make false verification of a nominating petition a misdemeanor, it would have said so.

**B. A Nominating Petition Verified By A False Oath Is A “False Instrument”**

Bosworth claims that her petitions sheets were not false instruments because SDCL 22-11-28.1’s criminal liability is limited to the filing of a forged document. According to Bosworth, an authentic petition form which merely contains a false oath or statement is not a “false instrument” because it is not a forgery. Bosworth’s argument is contrary to South Dakota case authorities that have found that ostensibly-authentic documents which contain false statements are “false instruments” for purposes of the laws of this state.

The principle case Bosworth relies on is the Arizona case of *State v. Jones*, 218 P.3d 1012 (Ct.App.Ariz. 2010). Even if *Jones* is a correct interpretation of Arizona law, which is doubtful, it is neither correct nor prudent to interpret South Dakota’s statute as narrowly as *Jones* in light of (1) the definition and usage of the term “false instrument” in reported cases in this state and (2) SDCL 22-11-28.1’s important purpose.

**1. *Jones***

Before discussing South Dakota authorities on what constitutes a “false instrument,” it is useful to examine *Jones*’ shortcomings. First,

since *Jones* is a decision of an intermediate court of appeals, it is not a definitive statement of Arizona law. Second, *Jones* pointedly did not address the state's position in this case that the "false instruments" statute "is implicated because the false verifications rendered the petitions void." *Jones*, 218 P.3d at 1019, n. 11. Axiomatically, a void petition is not genuine. *Larson*, 1996 SD 100 at ¶¶ 12, 22, 552 N.W.2d 830, 834, 836 ("If the circulator's verification is . . . improperly completed, the signatures on the petitions may not be counted").

Third, *Jones* departs from the interpretation given to the model statute on which Arizona's statute is based. As noted in *Jones*, Arizona's statute "was copied from California." *Jones*, 218 P.3d at 1019, n. 12. In its effort to resolve a question of first impression in Arizona, *Jones* referenced two "California cases [that] have affirmed convictions for filing instruments that contain false statements." *Jones*, 218 P.3d at 1019, n. 12, citing *People v. Powers*, 11 Cal.Rptr.3d 619 (Cal.App.4<sup>th</sup> 2004) and *People v. Tate*, 64 Cal.Rptr.2d 206 (Cal.App.4<sup>th</sup> 1997). *Jones* did "not find [*Powers* and *Tate*] persuasive," however, because they allegedly did not address "whether a false statement in a document renders the document 'false' within the meaning of the statute." *Jones*, 218 P.3d at 1019, n. 12.

This assertion is not entirely correct with respect to *Powers*. In *Powers*, a magistrate judge dismissed nine counts of filing a false instrument. *Powers*, 11 Cal.Rptr.3d at 622. The instruments in

question were fishing activity reports, which were to accurately log the number of species caught, the fishing method used, and other information used for the state's management and protection of marine resources and habitat. *Powers*, 11 Cal.Rptr.3d at 623. *Powers*' analysis of what "instruments" were contemplated by the statute differentiated "mundane" public filings, like a will or bond affecting mainly private interests, from those "which the state considered important enough to make the instrument a public record" in the performance of "vital" government functions. *Powers*, 11 Cal.Rptr.3d at 623. *Powers* found that "legally mandated" filings affecting vital public interests so strongly implicate the concerns of the false instrument statute that the fishery reports in question were "instruments" simply by virtue of the necessity that they *be* truthful. *Powers*, 11 Cal.Rptr.3d at 623. *Jones* was, thus, incorrect in believing that *Powers* had not addressed whether a false statement in a legally-mandated public filing renders the document a "false instrument."

But if *Powers*' reasoning was a bit too circular for the *Jones* court's liking, *Jones* could have researched the model statute beyond *Powers* before jumping to erroneous conclusions about Arizona's statute. For example, *Generes v. Redding Judicial District*, 165 Cal.Rptr. 222, 225 (Cal.App. 3<sup>rd</sup> 1980), explicitly found that a false statement in a publicly-filed document, without any attending act of forgery, was sufficient to make the document a "false instrument." The document in question in

*Generes* was a deed purporting to convey an easement from *Generes* to herself. Except for the false representation in the deed that *Generes* owned the land for which she purported to grant the easement, the deed, like Bosworth's petitions, "appear[ed] valid on its face." *Generes*, 165 Cal.Rptr. at 224. Like Bosworth, *Generes*' deed did not represent herself, or anyone else, to be someone other than who they really were. *Generes*, 165 Cal.Rptr. at 225. But since "Generes did not own the interest she purported to convey, the instrument she filed was clearly false." *Generes*, 165 Cal.Rptr. at 225. *Generes*' deed, like Bosworth's petitions, was "genuine" in appearance but a fraud in effect. *Generes*, 165 Cal.Rptr. at 225.

## **2. South Dakota Authorities**

*Powers*' and *Generes*' readings of California's "false instrument" statute are consistent with South Dakota case authorities that have defined or applied the term "false instrument" as it is used in related statutes in different contexts. In *State v. Hayes*, 159 N.W. 108 (S.D. 1916), the court examined whether a certificate of deposit which falsely stated that a relative of the defendant had deposited \$2,000 at defendant's bank was a false instrument for purposes of a statute criminalizing the issuance of any false evidence of debt by a corporate officer. *Hayes*, 159 N.W. at 109. Like Bosworth, Hayes attempted to draw "a distinction between a false instrument and one which contains false statements." *Hayes*, 159 N.W. at 110. Like Bosworth, Hayes

argued that, since the instrument – the certificate of deposit – itself was a “genuine act,” albeit one that falsely stated a \$2,000 deposit had been made, “it was not a false instrument.” *Hayes*, 159 N.W. at 110.

The *Hayes* court was not beguiled by such sophistry. *Hayes* did not require the instrument to have been forged to consider it false. To the *Hayes* court it was “clear” that issuing “a certificate of deposit in an amount in excess of the actual deposit renders the instrument a false evidence of debt.” *Hayes*, 159 N.W. at 110.

This court examined the meaning of the term “false instrument” again in *Reaser v. Reaser*, 2004 SD 116, 688 N.W.2d 429. In *Reaser* a husband and wife submitted a divorce stipulation to the court for its approval. The trial judge denied approval because the stipulation did not provide for child support for the children. *Reaser*, 2004 SD 116 at ¶ 4, 688 N.W.2d at 431. The Reasers then filed a revised stipulation setting a child support obligation, but voided the obligation in a collateral “private agreement” not disclosed to the court. *Reaser*, 2004 SD 116 at ¶ 5, 688 N.W.2d at 431. The trial judge approved the decree not knowing of this “private agreement.” *Reaser*, 2004 SD 116 at ¶ 6, 688 N.W.2d at 431. Once it learned of the “private agreement,” the trial court vacated portions of the divorce decree relating to child custody and child support. *Reaser* affirmed on the grounds that the stipulation originally approved by the court was a “false instrument” within the meaning of SDCL 22-11-



22 (now SDCL 22-12A-16), a companion statute to SDCL 22-11-28.1.

*Reaser*, 2004 SD 116 at ¶ 20, 688 N.W.2d at 436.

Just as SDCL 22-11-22's purpose is to prohibit the perpetration of "a fraud upon the court," SDCL 22-11-28.1's purpose is to prohibit the perpetration of a fraud upon a government agency and the public.

*Reaser*, 2004 SD 116 at ¶ 20, 688 N.W.2d at 436. And just as SDCL 22-11-22 effectuates its purpose by prohibiting the production of any "false instrument" at any legal proceeding, SDCL 22-11-28.1 effectuates its purpose by prohibiting the filing of a "false instrument" in a public office. There is no reason for the term "false instrument" to not mean the same thing under both statutes.

Like Bosworth's petitions, the stipulation in *Reaser* was exactly *what* it purported to be and produced by parties who were *who* they purported to be. *Reaser*, 2004 SD 116 at ¶ 5, 688 N.W.2d at 431. The stipulation's only defect was a false statement contained within it purporting to provide for child support when, in fact, none was provided for. Though authentic in form and no forgery, the false statement in the stipulation sufficed to make it a "false instrument." *Reaser*, 2004 SD 116 at ¶ 20, 688 N.W.2d at 436.

This court's most recent examination of SDCL 22-11-28.1 found that a fake court order filed with the court clerk purporting to void a foreclosure was a false instrument. *State v. Paulson*, 2015 SD 12, 861 N.W.2d 504. The fake order was not a forgery of a legitimate order in the

strictest sense because it was not captioned in the name of any court, or issued on the authority of any official office, that actually exists in the state. *Paulson*, 2015 SD 12, at ¶ 4, 861 N.W.2d at 506. It was evidently bogus on its face. Yet, the order had been made to “look official, which included proper formatting, a fabricated seal, a notary endorsement and seemingly official titles given to its signatories.” *Paulson*, 2015 SD 12, at ¶ 23, 861 N.W.2d at 510. *Paulson* found that the subject order was “a false instrument” in that “it mimicked a genuine order” but was “devoid of authority.” *Paulson*, 2015 SD 12, at ¶ 24, 861 N.W.2d at 510.

As in *Paulson*, Bosworth dressed her petition forms up to “look official,” to appear valid, by filling in the circulator’s verification, without which it was invalid on its face. Bosworth’s deception is several matters of degree worse than Paulson’s because, unlike his fake orders, the falsity of Bosworth’s oath, and the validity of the verification, was not evident from the face of the document. See also *State v. Shilvock-Havird*, 472 N.W.2d 773, 778 (S.D. 1991)(defendant prosecuted under statute prohibiting the obtaining of public funds by means of a false instrument for filing authentic, unforged vouchers overstating services rendered). And Bosworth’s false oath concealed two of the evils the oath is meant to prevent: the filing of petition forms bearing forged and duplicate signatures. EXHIBITS 1C/1D; EXHIBIT 1E (at least 11 forged signatures); TRANSCRIPT at 325/25-327/23.

*Hayes, Reaser, Paulson, Shilvock-Havird* and the California cases expose Bosworth's argument for the dissembling that it is. According to Bosworth, her petitions were genuine so long as they contained signatures of actual voters who were nominating her to be a candidate on the ballot. However, the petitions, on their face require more than authentic signatures of actual supporters to be a *genuine* instrument. As reflected in the oath section of the petition reproduced below, and as required by ARSD 5:02:08:00.01, the petitions were genuine only if they also were (1) circulated by Bosworth and (2) signed by each signatory in Bosworth's presence.

#### **FIGURE 1: Bosworth Petition Oath**

In truth, which Bosworth does not deny, Bosworth neither circulated nor personally witnessed the signatures on the petitions in question.

Bosworth did not redact her oath by crossing out and initialing the portions she had not met to signal on the face of the petitions that they were not compliant with the law. See FIGURE 1 above (excerpt from EXHIBIT 1E at APPENDIX 020). As a result, the petition forms Bosworth filed *looked* like – were perfect “similitudes” of – genuine instruments

when they were not. BLACK'S LAW DICTIONARY (5<sup>th</sup> Edition)(false instrument is "one made in the similitude of a genuine instrument and purporting on its face to be such"). The fact that Bosworth succeeded in making her petitions *appear* to be, as she says, "what [they] purported to be," namely *genuine* petition forms, is the essence of her crime, not an excuse for it.

Bosworth's notion that a document must be literally *forged* to be a "false instrument" under SDCL 22-11-28.1 does not serve the statute's stated purpose. The purpose of a statute criminalizing the filing of false instruments "is to protect the integrity and reliability of public records, and this purpose is served by an interpretation that prohibits any knowing falsification of public records." *People v. Denman*, 159 Cal.Rptr.3d 812 (Cal.App.4<sup>th</sup> 2013)(quitclaim deeds were "false instruments" when defendant did not own an interest in the land as represented in the deeds).

Like the California statute interpreted in *Powers* and *Generes*, SDCL 22-11-28.1 criminalizes the filing of either a false *or* forged instrument.<sup>2</sup> As observed in *Generes*, this disjunctive phrasing reflects a legislative purpose to broaden the scope of a statute like SDCL 22-11-

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<sup>2</sup> *Hayes*, 159 N.W. at 110 (use of the disjunctive "or" in statute created two distinct offenses, one of creating and passing false instruments by a corporate officer and another of passing authentic instruments without approval of corporate board); *Generes*, 165 Cal.Rptr. at 225 (differentiation between "false or forged" instruments "clearly" meant to proscribe two different means of violating statute).

28.1 beyond the filing of forged documents. For one, if “false” and “forged” meant the same thing in the statute there would be no need for both. For another, a broader scope to the statute better protects the integrity of public records because instruments containing a false statement can deceive and defraud government officials or the public at large even if they do not, as here, bear forged signatures or meet the technical requirements of a “forgery.” *Generes*, 165 Cal.Rptr. at 225.

A broader reading of SDCL 22-11-28.1 also better protects the state’s election laws. State election petitions are not “mundane” filings. *Powers*, 11 Cal.Rptr.3d at 623. Nominating petitions advance important objectives of democratic governance by requiring prospective candidates to meet eligibility requirements. The petitions are also a preliminary test of a candidate’s competency and honesty. A candidate who willfully ignores simple filing requirements, and shrugs off honestly reporting his or her activities, probably does not belong on the ballot, let alone in public office.

Bosworth’s argument that a “false instrument” is only one that is forged in form (not authentic in form but false in substance) was rejected in *Hayes* 100 years ago, and rejected again in *Reaser* only 12 years ago. Likewise, the *Powers* court found that, since California’s false instrument statute had “been broadly construed for decades to cover a wider array of documents” than just private agreements, “it was reasonably clear” to the defendant that filing an authentic-appearing deed falsely identifying

himself as the property owner would be criminal under the false instruments statute. *Powers*, 11 Cal.Rptr.3d at 625. The same is true here.

There are only eight reported false instrument cases in South Dakota in the last 100 years, which is a fair indication that the public at large understands that making false statements in forms filed with public agencies is not allowed. Not one defendant since Hayes has tried to parse the statute so fine as to argue that a false statement in a consequential written instrument is O.K. so long as the instrument is not itself a forgery. Again, this shows that the public at large well understands the conduct prohibited by SDCL 22-11-28.1 and related false instrument statutes.

In 1991 a court reporter was prosecuted for filing a false instrument to receive public funds because her vouchers – which were not forged or otherwise inauthentic – falsely stated the actual work she had performed. *Shilvock-Havird*, 472 N.W.2d at 778; *Powers*, 11 Cal.Rptr.3d at 623. *Shilvock-Havird* certainly served notice to Bosworth and the public at large that the law does not tolerate fraud in public filings, least of all in instruments whose outward authenticity make the fraud difficult to detect. *Shilvock-Havird*, 472 N.W.2d at 778; *Powers*, 11 Cal.Rptr.3d at 623. Given the obvious and longstanding imperatives behind accuracy in public filings and the need to preserve the integrity of

public records, Bosworth knew, or certainly should have known, that her conduct was criminal.

### **3. Bosworth's Petition Sheets Are Entirely Invalid**

Bosworth argues “that a single false statement of fact within an instrument does not make that document a false instrument under the statute unless that single false statement renders the entire instrument counterfeit or a fraud.” Bosworth’s petitions fail her own test of a false instrument.

ARSD 5:02:08:00.01(1)(b) clearly invalidates an entire petition sheet that is not properly verified, in contrast to ARSD 5:02:08:00.01(2), which only invalidates an *individual* signature when the petition irregularity is less serious than a verification error. APPENDIX at 015. In *Burns v. Kurtenbach*, 327 N.W.2d 636, 638 (S.D. 1982), the court, citing to precedent which held that “the absence of a completed circulator’s verification renders a referendum petition invalid,” said it saw “no reason why the same analysis should not apply to” nominating petitions. *Kurtenbach*, 327 N.W.2d at 638, citing *Corbly v. City of Colton*, 278 N.W.2d 459 (S.D.1979); *Nist v. Herseth*, 270 N.W.2d 565 (S.D.1978). By improperly completing the verification, Bosworth herself invalidated all of the signatures and rendered each petition sheet entirely false and fraudulent. *Larson*, 1996 SD 100 at ¶¶ 12, 22, 552 N.W.2d 830, 834, 836. Thus, according to Bosworth’s own definition, the petition sheets in question were false instruments.

At the time Bosworth filed her petition sheets, they purported to contain valid signatures. But because the signatures had not been obtained and witnessed by Bosworth personally as represented by her oath, the petitions were not at all what they purported to be. Bosworth need only have consulted ARSD 5:02:08:00.01(1)(b) and *Larson* to know that petition sheets she had not personally circulated and witnessed were entirely invalid. TRANSCRIPT at 185/8-13; APPENDIX at 015.

**C. Through Agents And At Her Direction, Bosworth Offered Her Falsely-Sworn Nominating Petitions For Filing**

In closing, Bosworth argues that the evidence was not sufficient to find that she “offered” the false petitions for filing in violation of SDCL 22-11-28.1. At trial, Bosworth argued straight-up insufficiency of the evidence; she claimed that she had not personally “offered” the petitions because the act of filing was performed by members of her campaign staff (at her direction). TRANSCRIPT at 577/11-18. Bosworth now argues something different; she argues that the jury was not properly instructed on agency law so as to allow them to connect the actions of her agents to her personally. As with her first argument, Bosworth is trying to fit the square peg of her new appellate argument into the round hole of her old trial-level argument.

The new form of Bosworth’s insufficiency argument is actually an objection to the instructions. Timely objection to the form of the instructions is required by SDCL 15-6-51(c) to preserve issues pertaining to the instructions for review. Yet Bosworth’s brief does not cite to a



portion of the transcript where she argued that an agency instruction was necessary for a conviction in her case, where she objected to the absence of an agency instruction, or where she made a motion for judgment of acquittal on the grounds of the absence of the allegedly necessary agency instruction. Consequently, to the extent Bosworth tries to cloak an objection to the instructions as an “insufficiency of the evidence” claim, this form of her argument is waived. See *Sundt v. South Dakota Department of Transportation*, 1997 SD 1, ¶ 17, 566 N.W.2d 476, 480.

When this court reviews an appeal for the sufficiency of the evidence, the “question is whether ‘there is evidence in the record which, if believed by the fact finder, is sufficient to sustain a finding of guilt beyond a reasonable doubt.’” *State v. Beck*, 2010 SD 52, ¶ 7, 785 N.W.2d 288, 292. “Claims of insufficient evidence are ‘viewed in the light most favorable to the verdict.’” *State v. Morgan*, 2012 S.D. 87, ¶ 10, 824 N.W.2d 98, 100. This court “will not resolve conflicts in the evidence, assess the credibility of witnesses, or reevaluate the weight of the evidence.” *State v. Hayes*, 2014 SD 72, ¶ 39, 855 N.W.2d 668, 680. Accordingly, “a guilty verdict will not be set aside if the state's evidence and all favorable inferences that can be drawn therefrom support a rational theory of guilt.” *State v. Johnson*, 2009 S.D. 67, ¶ 10, 771 N.W.2d 360, 365.

When reviewed under a straightforward insufficiency analysis, the evidence was more than sufficient for the jury to conclude that Bosworth “knowingly offered a false or forged instrument for filing . . . in a public office.” When Bosworth became a candidate, the Secretary of State provided her with written circulating instructions which explained that signatures on a petition form had to be personally witnessed by the circulator. TRANSCRIPT at 169/4, 175/17. Bosworth read the secretary’s instructions. TRANSCRIPT at 658/23. As part of prepping Bosworth to circulate petitions, she demonstrated her understanding “that the person who solicits the signatures has to be the person who signs it” to both her campaign lawyer and manager, Joel Arends and Patrick Davis. TRANSCRIPT at 368/25-370/3, 372/10, 535/14-536/19. When a question came up concerning whether Bosworth or her clinic receptionist, Melissa “Missy” O’Connell-Galer, could sign a petition form left on the reception desk of Bosworth’s clinic for patients to sign, Missy heard Arends explicitly advise Bosworth that only the person who had witnessed the signatures, Missy, could sign the petition. TRANSCRIPT at 554/2-18.

When tallying the petitions at her campaign office, Bosworth encountered a petition whose circulator had not signed and she asked Arends “Can I sign this?” TRANSCRIPT at 374/18. Arends told her that it would be “improper” for her to sign it since she had not personally witnessed the signatures contained on the petition form. TRANSCRIPT

at 375/20. “Do not sign this petition because you didn’t circulate it,” Arends told her, “I can’t be any more clear.” TRANSCRIPT at 440/9. Bosworth watched as Arends set this unsigned form aside and excluded it from the petition. TRANSCRIPT at 547/14-548/4. Bosworth “shot daggers” at another campaign staffer, and was “visibly annoyed and angry,” when that staffer prevented her from signing other petitions that she had not circulated. TRANSCRIPT at 479/3, 504/2.

Once all of the petitions were collated and prepared for filing, Bosworth’s campaign manager, Patrick Davis, “was assigned the task of taking the petitions from the campaign office to Pierre for filing” by Bosworth. TRANSCRIPT at 482/1-13. Bosworth admitted that Davis filed the petitions for her at her direction. TRANSCRIPT at 692/22, 700/24. Once the petition was filed, Davis texted Bosworth to advise her that “the job was done and her request was fulfilled.” TRANSCRIPT at 484/16.

Later, when political opponents publicized allegations that Bosworth had signed as the circulator of some petition forms that had been signed by voters on the days that she was in the Philippines, Bosworth took to the airwaves and claimed in a TV interview she had signed them on the advice of her lawyer, Joel Arends. It was a bald-faced lie. EXHIBIT 4; TRANSCRIPT at 447/4, 451/11, 486/5. Arends was understandably livid at having been publicly “thrown under the bus . . . [and] wrapped around the axle” by his client and a candidate with

pretenses to high public office. TRANSCRIPT at 487/3. Bosworth issued a retraction the next day. EXHIBIT 5; TRANSCRIPT at 453/9-455/15, 492/15, 493/3.

The foregoing facts unequivocally prove the two necessary elements of offering a false instrument for filing in a public office: (1) that Bosworth knew that it was “improper” to submit petition forms signed by her as circulator if she had not personally witnessed the signatures on the forms and (2) that, despite this knowledge, Bosworth caused petitions signed by her as circulator bearing signatures she had not witnessed to be filed with the Secretary of State for the State of South Dakota. Even without a specific jury instruction on agency, Bosworth’s own testimony connected the actions of her agent to herself directly.

## **CONCLUSION**

Approval of a nominating petition and placement of a candidate’s name on the ballot necessitate process before a state agency and agency action. This process, and resulting action, cannot be corrupted by an individual’s perjury if the agencies of government are to meet their responsibilities toward the public at large. The state’s election laws and rules require the Secretary of State to, in essence, adjudicate the legitimacy of a petition before him or her based on the facts presented and in reliance on the oath of the filer. The performance of this function fits the BLACK’S LAW DICTIONARY (5<sup>th</sup> Edition) definition of “proceeding” as

“[a]n act which is done by the authority or direction of [an] agency” or an “action . . . conducted by a[n] administrative agency.”

SDCL 22-29-1 was enacted to ensure that the procedure of validating petitions, and the secretary’s resulting action, rest on honest information affirmed by an oath. As described in *Larson*, accepting and validating nominating petitions for filing is a proceeding before the Secretary of State, and Bosworth’s oath is a substantial requirement of that process, without which her petitions were neither valid nor genuine. ARSD 5:02:08:00.01(1)(b); *Larson*, 1996 SD 100 at ¶¶ 9, 11, 25, 26, 552 N.W.2d at 836.

This court’s decisions in *Hayes*, *Reaser*, *Paulson* and *Shilvock-Havird* support the state’s position that a publicly-filed, outwardly-authentic document containing a false statement is a “false instrument” for purposes of SDCL 22-11-28.1 if the falsity is known to the filer. There is no reason for the term “false instrument” to have a meaning different here from the one given to it by *Hayes*, *Reaser*, *Paulson* and *Shilvock-Havird*.

Bosworth admitted that she directed campaign staff to file her petition with the South Dakota Secretary of State, knowing that it contained forms that she had signed as circulator though she had not personally witnessed the signatures of the persons who signed them. Whether she did so personally or, as she admitted, through another, it

was self-evidently Bosworth who offered the fraudulent petition for filing because it was done in her name for her campaign.

Dated this 17<sup>th</sup> day of June 2016.

Respectfully submitted,

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### **CERTIFICATE OF COMPLIANCE**

1. I certify that appellee's brief is within the typeface and volume limitations provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in proportional 12 point type. Appellee's brief contains 6,624 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2010.

/s/ Paul S. Swedlund  
Paul S. Swedlund  
Assistant Attorney General

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 17<sup>th</sup> day of June 2016 a true and correct copy of the foregoing brief was served on via e-mail on Dana Hanna at [dhanna@midconetwork.com](mailto:dhanna@midconetwork.com).

/s/ Paul S. Swedlund  
Paul S. Swedlund  
Assistant Attorney General

## **APPENDIX**

Bosworth's Brief Re: Dismissal Of Perjury Counts	001
BLACK'S LAW DICTIONARY (9 <sup>th</sup> Edition)	008
BLACK'S LAW DICTIONARY (5 <sup>th</sup> Edition)	011
ARSD 5:02:08:00.01-03	014
R.C. § 3745, South Dakota Compiled Laws 1929	018
Exhibit 1E	019

STATE OF SOUTH DAKOTA

)

IN CIRCUIT COURT

COUNTY OF HUGHES

)SS

SIXTH JUDICIAL CIRCUIT

\*

STATE OF SOUTH DAKOTA,

\*

CRIM. No. 14-305

\*

Plaintiff,

\*

**DEFENDANT'S MEMORANDUM  
OF LAW IN SUPPORT OF MOTION  
TO DISMISS PERJURY COUNTS  
AS VOID FOR VAGUENESS**

v.

\*

ANNETTE BOSWORTH,

\*

\*

Defendant.

\*

The defendant Dr. Annette Bosworth has moved the Court to dismiss the 6 counts of perjury in the indictment on the grounds that, under the specific facts of this case, SDCL §22-29-1 is void for vagueness. For the following reasons, the defendant contends that, under the specific facts of this case, the statutory phrase "any state or federal proceeding or action in which such an oath may by law be administered" is unconstitutionally vague.

SDCL §22-29-1 provides:

Any person who, having taken an oath to testify, declare, depose, or certify truly, before any competent tribunal, officer, or person, in any state or federal proceeding or action in which such an oath may by law be administered, states, intentionally and contrary to the oath, any material matter which the person knows to be false, is guilty of perjury.

The issue to be decided is whether SDCL §22-29-1, and specifically the phrase "state or federal proceeding or action," as applied to the specific facts of this case, is unconstitutionally vague.

"[A] criminal statute may be vague and therefore void if it fails to define the criminal

offense with sufficient definiteness that ordinary people can understand what conduct is

prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. . . . Therefore, we consider whether the statute affords notice to citizens as to what conduct is prohibited and whether it establishes minimal guidelines to govern law enforcement so as not to allow policemen, prosecutors, and juries to pursue their personal predilections.” *State v. Meyers*, 857 N.W.2d 597 (S.D. 2014)(citations, internal quotations, and brackets omitted) .

“As a general rule, a void for vagueness review is limited to the specific facts of the case. . . . The standard for a void for vagueness claim in violation of due process is whether the prohibited act or omission is expressed in terms so vague that reasonable people of ordinary intelligence might apply it differently.” *Donat v. Johnson*, – N.W. 2d –, 2015 WL1354535, at p. 7 (SD., 2015) (citations, internal quotations and brackets omitted).

In this case, the State contends that Dr. Bosworth violated the perjury statute by signing the circulator’s verification on 6 voters’ nominating petitions, which verification stated that the signer had personally witnessed the petitioners signing the petitions. The State’s Attorney General contends that a voters’ nominating petition is a “state or federal proceeding or action in which such an oath may by law be administered” under the statute. The Attorney General bases that contention upon the fact that state law provides for a verification signed by the circulator under oath for such petitions to qualify for filing by the Secretary of State.

The defendant Dr. Bosworth contends that a voters’ nominating petition is not a proceeding or action under the statute and that the statute must be interpreted to refer to a judicial or quasi-judicial proceeding or action.

If both interpretations of the statutory phrase are reasonable interpretations that a person of ordinary intelligence might arrive at, then the statute is unconstitutionally vague and deprives the defendant of the notice required by due process.

The statute does not define state or federal "proceeding" or "action."

"When a statute or rule does not define a term, it should be construed according to its accepted usage and a strained, unpractical, or absurd result should be avoided." *Larson v. Hazeltine*, 552 N.W.2d 830, 834 (S.D. 1996)(citation omitted).

The commonly accepted usage of the terms state or federal "proceeding" and "action" refer to procedures in a court case. To stretch the meaning of those terms to include a voters' nominating petition would bring about a strained, unpractical and absurd result.

The accepted usage of those terms in the law is found in *Black's Law Dictionary* (Eighth Edition). An "action" is "[a] civil or criminal judicial proceeding." The word "proceeding" means "1. The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment. 2. Any procedural means for seeking redress from a tribunal or agency. \* \* \* 4. The business conducted by a court or other official body; a hearing."

The authors of the South Dakota Criminal Pattern Jury Instructions also consider that a state or federal proceeding or action under SDCL §22-29-1 must necessarily refer to a "case" at law or a quasi-judicial proceeding such as an administrative hearing. The Comment to the pattern perjury instruction [3-14-2] states:

Depending on the circumstances of the alleged perjury, an instruction might be given appropriate to clarify that it is a "case" in which the law authorizes or allows an oath, such as, depositions, matters before administrative hearing officers, and so forth.

Furthermore, the doctrine of *noscitur a sociis* requires a court to define a word or a term in the "same general sense" as the words with which it is coupled. *Spiska Engineering, Inc. v. SPM Thermo-Shield, Inc.*, 678 N.W.2d 804, 806 (S.D., 2004). A voters' nominating petition is

clearly not a state or federal action. Therefore, the State would argue that a person who signs a

petition is involved in a "proceeding" under state law. But a proceeding must be understood to mean something generally similar to a state or federal action, which clearly refers to a legal action: the commonly accepted usage of the term state or federal action means a judicial or quasi-judicial case. Under the doctrine of *noscitur a sociis*, a court must interpret the word "proceeding" as generally similar to an "action" and vice versa. Therefore, given the common-sense rule of *noscitur a sociis*, both words have to refer to a procedure that takes place within a case, either a case at law or a case in a quasi-judicial matter such as an administrative hearing.

"In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *Maracich v. Spears*, 133 S.Ct. 2191, 2203 (U.S. 2013)(citations and internal quotations omitted). The legislative intent of a statute "must be determined from the statute as a whole, as well as enactments relating to the same subject." *In re Estate of Hamilton*, 21012 S.D. 34, ¶7, 814 N.W.2d 141, 143.

The legislature directly addressed the false swearing by a circulator to a verification on a voters' petition in SDCL §2-1-10. That statute makes it a misdemeanor offense for a circulator to falsely swear to a verification on a voters' petition to initiate a constitutional amendment or other measure or to refer legislation to the electors.

SDCL §2-1-10 provides:

Each person, who circulates and secures signatures to a petition to initiate a constitutional amendment or other measure or to refer legislation to the electors, shall sign a verification before filing the petition with the officer in whose office it is by law required to be filed. The verification shall prescribe that the circulator made reasonable inquiry and, to the best of the circulator's knowledge, each person signing the petition is a qualified voter of the state in the county indicated on the signature line and that no state statute regarding the circulation of petitions was knowingly violated. The State Board of Elections shall prescribe the form for the verification. The verification shall be complete and the affixing of the circulator's signature shall be witnessed and notarized by a notary public commissioned in South Dakota or other officer authorized to administer oaths pursuant to



§ 18-3-1. *Any person who falsely swears to the verification provided for in this section is guilty of a Class 1 misdemeanor.*

[Emphasis added.]

If falsely signing a circulator's verification on a referendum petition were covered by the perjury statute, there would have been no need for the legislature to enact SDCL § 2-1-10. If a voters' petition for a constitutional amendment were a proceeding or action under SDCL 22-29-1, falsely swearing to a verification on the petition would be perjury and punishable as a felony. The fact that the legislature deemed it necessary to make falsely swearing by a circulator to a verification on a voters' referendum petition a separate crime from perjury would logically indicate that the legislature did not intend to have the perjury statute prohibit anything other than false swearing in a judicial or quasi-judicial proceeding or legal action.

Moreover, to interpret the perjury statute to make falsely swearing to a circulator's verification on a voters' nominating petition a felony, while a separate statute makes it a misdemeanor to do the same on a voters' referendum petition would lead to an absurd result, and it is a well recognized rule of statutory construction that court must interpret statutes to avoid absurd results. *Larson v. Hazeltine*, 552 N.W.2d 830, 834 (S.D. 1996)(citation omitted).

The defendant submits that the only reasonable interpretation of "state or federal proceeding or action" as used in SDCL §22-29-1 is to apply its common usage: a proceeding or action in a court of law or administrative hearing. That is certainly one reasonable interpretation of the phrase. Even if that interpretation were not the only reasonable interpretation of the statutory language, if the defendant's interpretation of the statutory language is a reasonable one, then the statute is one which "reasonable people of ordinary intelligence might apply [ ] differently" (*Donat v. Johnson*, — N.W. 2d —, 2015 WL1354535, at p. 7 (SD., 2015)) and the statute, under the specific facts of this case, should be declared void for vagueness.

Therefore, the Court should dismiss the 6 perjury counts in the indictment.

DATED: MAY 8, 2015

Respectfully submitted,

/s/ Dana L. Hanna

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he served a true and correct copy of the foregoing document upon the person(s) herein next designated, on the date shown below, via US mail, postage pre-paid to wit:

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DATED this 8<sup>th</sup> day of May, 2015.

/s/ Dawn Messiah  
Legal Assistant to Dana L. Hanna

# **Black's Law Dictionary®**

**Ninth Edition**

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APPENDIX 008

**civil law.** A purchaser's action to recover for his overpayment for a defective item. Cf. *actio redhibitoria*. Pl. *actiones quanti minoris*.

"If a defect appeared which had not been so declared the buyer, if he sued within six months, could claim rescission of the sale by the *actio redhibitoria*, and, if within twelve months, could claim the difference between the price paid and the actual value of the defective slave or animal by the *actio quanti minoris*. In both actions the knowledge or ignorance of the seller was irrelevant: liability was strict." Barry Nicholas, *An Introduction to Roman Law* 181 (1962).

**actio quod iussu** (ak-shee-oh kwod jəs-[y]oo). **Roman law.** An action against a paterfamilias or a slave owner for enforcement of a debt contracted on behalf of the paterfamilias or slaveowner by a son or a slave.

**actio quod metus causa** (ak-shee-oh kwod mee-təs kaw-zə). **Roman law.** An action to penalize someone who wrongfully compelled the plaintiff to transfer property or to assume an obligation. • The plaintiff could obtain damages of four times the value of the loss suffered. Pl. *actiones quod metus causa*.

**actio realis** (ak-shee-oh ree-ay-lis). [Law Latin] **Hist.** A real action. See *real action* under ACTION (4). Pl. *actiones reales*.

**actio redhibitoria** (ak-shee-oh red-i-bi-tor-ee-ə). **Roman & civil law.** An action for restoration to cancel a sale because of defects in the thing sold. Cf. *actio quanti minoris*. Pl. *actiones redhibitoriae*.

**actio rei persecutoria** (ak-shee-oh ree-i pər-si-kyoo-tor-ee-ə). [Law Latin "an action for pursuing a thing"] **Roman law.** An action to recover a specific thing or monetary compensation, rather than a penalty. Cf. *actio poenalis*. Pl. *actiones rei persecutoriae* (ak-shee-oh-nee-z ree-i pər-si-kyoo-tor-ee-i).

**actio rerum amotarum** (ak-shee-oh reer-əm am-ə-tair-əm). **Roman law.** An action to recover items stolen by a spouse shortly before a divorce. Pl. *actiones rerum amotarum*.

**actio rescissoria** (ak-shee-oh re-si-sor-ee-ə). **Roman law.** An action to restore to the plaintiff property lost by prescription. • This action was available to minors and other persons exempt from prescriptive claims against their property. Pl. *actiones rescissoriae*.

**actio serviana** (ak-shee-oh sər-vee-ay-nə). **Roman law.** An action by which a lessor could seize, in satisfaction of unpaid rent, the lessee's personal property brought onto the leased premises. Pl. *actiones servianae*.

**actio servi corrupti** (ak-shee-oh sər-vi kə-rəp-ti). [Latin] **Roman law.** An action for corrupting a slave or servant. • Since the "corruption" could take the form of bribery to find out the master's confidential business information, one scholar suggested in a famous article that it could be the precursor of the modern law of trade secrets. A. Arthur Schiller, *Trade Secrets and the Roman Law: The Actio Servi Corrupti*, 30 *Colum. L. Rev.* 837 (1930). Other scholars strongly disagree (see quotation).

"The *actio servi corrupti* presumably or possibly could be used to protect trade secrets and other similar commercial

interests. That was not its purpose and was, at most, an incidental spin-off. But there is not the slightest evidence that the action was ever so used." Alan Watson, *Trade Secrets and Roman Law: The Myth Exploded*, 11 *Tul. Eur. & Civ. L.F.* 19 (1996).

**actio stricti iuris** (ak-shee-oh strik-ti joor-is). **Roman law.** A class of personal actions enforceable exactly as stated in the *formula* without taking equitable considerations into account; an action of strict right. • This type of action was often used to recover a definite sum of money or a particular object that was the subject of a formal promise (*stipulatio*). See FORMULA (1). Pl. *actiones stricti iuris*.

**actio temporalis** (ak-shee-oh tem-pə-ray-lis). **Roman & civil law.** An action that must be brought within a specified time. Cf. *actio perpetua*. Pl. *actiones temporales*.

**actio tutelae** (ak-shee-oh t[y]oo-tee-lee). **Roman law.** An action arising from a breach of the duty owed by a guardian (*tutor*) to the ward, such as mismanagement of the ward's property. Pl. *actiones tutelae*.

**actio utilis** (ak-shee-oh yoo-tə-lis). **Roman law.** An extension of a direct action, founded on utility rather than strict right, available esp. to persons having an interest in property less than ownership. • This type of action was modeled after the *actio directa*. Cf. *actio directa*; *actio in factum*. Pl. *actiones utiles*.

**actio venditi** (ak-shee-oh ven-də-ti). **Roman law.** An action by which a seller could obtain his price or enforce a contract of sale. — Also termed *actio ex vendito*. Pl. *actiones venditi*.

**actio vi bonorum raptorum** (ak-shee-oh vi bə-nor-əm rap-tor-əm). **Roman law.** A penal action to recover goods taken by force. • A successful plaintiff would also receive three times the value of the taken property. Cf. INTERDICTUM QUOD VI AUT CLAM.

**actio vulgaris** (ak-shee-oh val-gair-is). **Hist.** An ordinary action, as opposed to one granted in special circumstances. Pl. *actiones vulgares*.

**legis actio.** See LEGIS ACTIO.

**action.** (14c) 1. The process of doing something; conduct or behavior. 2. A thing done; ACT (2). 3. Patents. OFFICE ACTION.

**advisory action.** Patents. See *advisory office action* under OFFICE ACTION.

4. A civil or criminal judicial proceeding. — Also termed *action at law*. [Cases: Action ⇨ 1.]

"An action has been defined to be an ordinary proceeding in a court of justice, by which one party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. But in some sense this definition is equally applicable to special proceedings. More accurately, it is defined to be any judicial proceeding, which, if conducted to a determination, will result in a judgment or decree. The action is said to terminate at judgment." 1 Morris M. Estee, *Estee's Pleadings, Practice, and Forms* § 3, at 1 (Carter P. Pomeroy ed., 3d ed. 1885).

"The terms 'action' and 'suit' are nearly if not quite synonymous. But lawyers usually speak of proceedings in courts of

*rules of procedure.* See CIVIL PROCEDURE; CRIMINAL PROCEDURE.

**proceeding.** (16c) 1. The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment. 2. Any procedural means for seeking redress from a tribunal or agency. 3. An act or step that is part of a larger action. 4. The business conducted by a court or other official body; a hearing. 5. *Bankruptcy.* A particular dispute or matter arising within a pending case — as opposed to the case as a whole. [Cases: Bankruptcy ⚡2156.]

"Proceeding" is a word much used to express the business done in courts. A proceeding in court is an act done by the authority or direction of the court, express or implied. It is more comprehensive than the word "action," but it may include in its general sense all the steps taken or measures adopted in the prosecution or defense of an action, including the pleadings and judgment. As applied to actions, the term "proceeding" may include—(1) the institution of the action; (2) the appearance of the defendant; (3) all ancillary or provisional steps, such as arrest, attachment of property, garnishment, injunction, writ of *ne exeat*; (4) the pleadings; (5) the taking of testimony before trial; (6) all motions made in the action; (7) the trial; (8) the judgment; (9) the execution; (10) proceedings supplementary to execution, in code practice; (11) the taking of the appeal or writ of error; (12) the *remittitur*, or sending back of the record to the lower court from the appellate or reviewing court; (13) the enforcement of the judgment, or a new trial, as may be directed by the court of last resort." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 3-4 (2d ed. 1899).

**adjudicatory proceeding.** See *adjudication hearing* under HEARING.

**administrative proceeding.** See ADMINISTRATIVE PROCEEDING.

**collateral proceeding.** (18c) A proceeding brought to address an issue incidental to the principal proceeding.

**competency proceeding.** (1925) A proceeding to assess a person's mental capacity. • A competency hearing may be held either in a criminal context to determine a defendant's competency to stand trial or as a civil proceeding to assess whether a person should be committed to a mental-health facility or should have a guardian appointed to manage the person's affairs.

**contempt proceeding.** (1859) A judicial or quasi-judicial hearing conducted to determine whether a person has committed contempt. [Cases: Contempt ⚡40.]

**core proceeding.** See CORE PROCEEDING.

**criminal proceeding.** (16c) A proceeding instituted to determine a person's guilt or innocence or to set a convicted person's punishment; a criminal hearing or trial.

**ex parte proceeding** (eks pahr-tee). (18c) A proceeding in which not all parties are present or given the opportunity to be heard. — Also termed *ex parte hearing*.

**in camera proceeding** (in kam-a-ra). (1958) A proceeding held in a judge's chambers or other private place.

[Cases: Pretrial Procedure ⚡411; Privileged Communications and Confidentiality ⚡31.]

**informal proceeding.** (18c) A trial conducted in a more relaxed manner than a typical court trial, such as an administrative hearing or a trial in small-claims court. [Cases: Administrative Law and Procedure ⚡469; Courts ⚡176.]

**involuntary proceeding.** See *involuntary bankruptcy* under BANKRUPTCY.

**judicial proceeding.** (16c) Any court proceeding; any proceeding initiated to procure an order or decree, whether in law or in equity.

**noncore proceeding.** See RELATED PROCEEDING.

**posttrial proceeding.** Action on a case that occurs after the trial is completed.

**proceeding in rem.** A proceeding brought to affect all persons' interests in a thing that is subject to the power of a state. [Cases: Action ⚡16.]

**proceeding quasi in rem.** A proceeding brought to affect particular persons' interests in a thing. [Cases: Action ⚡16.]

**quasi-criminal proceeding.** *Procedure.* A civil proceeding that is conducted in conformity with the rules of a criminal proceeding because a penalty analogous to a criminal penalty may apply, as in some juvenile proceedings. • For example, juvenile delinquency is classified as a civil offense. But like a defendant in a criminal trial, an accused juvenile faces a potential loss of liberty. So criminal procedure rules apply. [Cases: Action ⚡18; Infants ⚡194.1, 195.]

**related proceeding.** See RELATED PROCEEDING.

**special proceeding.** (18c) 1. A proceeding that can be commenced independently of a pending action and from which a final order may be appealed immediately. 2. A proceeding involving statutory or civil remedies or rules rather than the rules or remedies ordinarily available under rules of procedure; a proceeding providing extraordinary relief. [Cases: Action ⚡20.]

**summary proceeding.** (17c) A nonjury proceeding that settles a controversy or disposes of a case in a relatively prompt and simple manner. — Also termed *summary trial*. Cf. *plenary action* under ACTION (4).

"Summary proceedings were such as were directed by Act of Parliament, there was no jury, and the person accused was acquitted or sentenced only by such person as statute had appointed for his judge. The common law was wholly a stranger to summary proceedings." A.H. Manchester, *Modern Legal History of England and Wales, 1750-1950* 160 (1980).

**supplementary proceeding.** (17c) 1. A proceeding held in connection with the enforcement of a judgment, for the purpose of identifying and locating the debtor's assets available to satisfy the judgment. 2. A proceeding that in some way supplements another. [Cases: Execution ⚡358; Federal Civil Procedure ⚡2707.]

**proceedings below.** See STATEMENT OF THE CASE (1).

**Pro bono publico** /prɔw bɔnow pɔblɔkow/. For the public good; for the welfare of the whole.

**Probus et legalis homo** /prɔwbɛs ɛt lɛgɛjɛlɛs hɔwmow/. Lat. A good and lawful man. A phrase particularly applied to a juror or witness who was free from all exception, and competent in point of law to serve on juries. In the plural form: *probi et legales homines*.

**Procedendo** /prɔwsɛdɛndow/. Action wherein court of superior jurisdiction orders court of inferior jurisdiction to proceed to judgment but has no bearing on nature of judgment to be entered. *State ex rel. Jacobs v. Municipal Court of Franklin County*, 26 Ohio App.2d 113, 269 N.E.2d 629, 631, 55 O.O.2d 245. A writ by which a cause which has been removed from an inferior to a superior court by *certiorari* or otherwise is sent down again to the same court, to be proceeded in there, where it appears to the superior court that it was removed on insufficient grounds.

More commonly, a case returned to a lower court is said to be remanded to such court.

A writ (*procedendo ad iudicium*) which issued out of the common-law jurisdiction of the court of chancery, when judges of any subordinate court delayed the parties for that they would not give judgment either on the one side or on the other, when they ought so to do. In such a case, a writ of *procedendo ad iudicium* was awarded, commanding the inferior court in the sovereign's name to proceed to give judgment, but without specifying any particular judgment. It was the earliest remedy for the refusal or neglect of justice on the part of the courts. In *re Press Printers & Publishers, C.C.A.N.J.*, 12 F.2d 660, 664.

A writ by which the commission of a justice of the peace is revived, after having been suspended. 1 Bl.Comm. 353.

**Procedendo on aid prayer** /prɔwsɛdɛndow ɔn ɛjd prɛ(ya)/. If one pray in aid of the crown in real action, and aid be granted, it shall be awarded that he sue to the sovereign in chancery, and the justices in the common pleas shall stay until this writ of *procedendo de loquela* come to them. So, also, on a personal action.

**Procedural due process**. Those safeguards to one's liberty and property mandated by the 14th Amend., U.S.Const., such as the right to counsel appointed for one who is indigent, the right to a copy of a transcript, the right of confrontation; all of which are specifically provided for in the 6th Amendment and made applicable to the states' procedure by the 14th Amendment.

Central meaning of procedural due process is that parties whose rights are to be affected are entitled to be heard and, in order that they may enjoy that right, they must be notified. *Parham v. Cortese*, 407 U.S. 87, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556. Reasonable notice and opportunity to be heard and present any claim or defense are embodied in the term "procedural due process." In *re Nelson*, 78 N.M. 739, 437 P.2d 1008.

**Procedural law**. That which prescribes method of enforcing rights or obtaining redress for their invasion; machinery for carrying on procedural aspects of civil or criminal action; e.g. Rules of Civil, Criminal, and

Appellate Procedure, as adopted by the Federal and most state courts. *Barker v. St. Louis County*, 340 Mo. 986, 104 S.W.2d 371, 377, 378, 379; *Schultz v. Gosselink*, 260 Iowa 115, 148 N.W.2d 434, 436. As a general rule, laws which fix duties, establish rights and responsibilities among and for persons, natural or otherwise, are "substantive laws" in character, while those which merely prescribe the manner in which such rights and responsibilities may be exercised and enforced in a court are "procedural laws". *State ex rel. Blood v. Gibson Circuit Court*, 239 Ind. 394, 157 N.E.2d 475, 478. See also Procedure.

**Procedure**. The mode of proceeding by which a legal right is enforced, as distinguished from the substantive law which gives or defines the right, and which, by means of the proceeding, the court is to administer; the machinery, as distinguished from its product. That which regulates the formal steps in an action or other judicial proceeding; a form, manner, and order of conducting suits or prosecutions. The judicial process for enforcing rights and duties recognized by substantive law and for justly administering redress for infraction of them. *Sims v. United Pacific Ins. Co.*, D.C.Idaho, 51 F.Supp. 433, 435.

Procedure is machinery for carrying on suit including pleading, process, evidence and practice, whether in trial court or appellate court. *Brooks v. Texas Emp. Ins. Ass'n*, Tex.Civ.App., 358 S.W.2d 412, 414.

The law of procedure is what is commonly termed by jurists "adjective law" (q.v.).

See also Procedural law.

**Proceeding**. In a general sense, the form and manner of conducting juridical business before a court or judicial officer. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment. Term also refers to administrative proceedings before agencies, tribunals, bureaus, or the like.

An act which is done by the authority or direction of the court, agency, or tribunal, express or implied; an act necessary to be done in order to obtain a given end; a prescribed mode of action for carrying into effect a legal right. All the steps or measures adopted in the prosecution or defense of an action. *Statter v. United States*, C.C.A.Alaska, 66 F.2d 819, 822. The word may be used synonymously with "action" or "suit" to describe the entire course of an action at law or suit in equity from the issuance of the writ or filing of the complaint until the entry of a final judgment, or may be used to describe any act done by authority of a court of law and every step required to be taken in any cause by either party. The proceedings of a suit embrace all matters that occur in its progress judicially.

Term "proceeding" may refer not only to a complete remedy but also to a mere procedural step that is part of a larger action or special proceeding. *Rooney v. Vermont Investment Corp.*, 10 Cal.3d 351, 110 Cal.Rptr. 353, 365, 515 P.2d 297. A "proceeding" includes action and special proceedings before judicial tribunals as well as proceedings pending before quasi-judicial officers and boards. *State ex rel. Johnson v. Independent School Dist. No. 810, Wabasha County*, 260 Minn. 237, 109 N.W.2d 596, 602. In a more particular sense, any application to a court of



justice, however made, for aid in the enforcement of rights, for relief, for redress of injuries, for damages, or for any remedial object.

"Proceeding" means any action, hearing, investigation, inquest, or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given. *Calif.Evid.Code*.

**Collateral proceeding.** One in which the particular question may arise or be involved incidentally, but which is not instituted for the very purpose of deciding such question; as in the rule that a judgment cannot be attacked, or a corporation's right to exist be questioned, in any collateral proceeding. See *Collateral estoppel doctrine*.

**Legal proceedings.** See *Legal proceedings*.

**Ordinary proceedings.** Those founded on the regular and usual mode of carrying on a suit by due course at common law.

**Special proceeding.** Generic term for remedies or proceedings which are not ordinary actions; e.g. condemnation (*Fed.R.Civil P. 71A*); vesting title (*Rule 70*).

A "special proceeding" has reference only to such proceedings as may be commenced independently of a pending action by petition or motion upon notice in order to obtain special relief, and, generally speaking, a special proceeding is confined to type of case which was not, under the common-law or equity practice, either an action at law or a suit in equity. *Church v. Humboldt County*, 248 C.A.2d 855, 57 Cal.Rptr. 79, 81.

**Summary proceeding.** Any proceeding by which a controversy is settled, case disposed of, or trial conducted, in a prompt and simple manner, without the aid of a jury, without presentment or indictment, or in other respects out of the regular course of the common law. In procedure, proceedings are said to be summary when they are short and simple in comparison with regular proceedings; e.g. conciliation or small claims court proceedings as contrasted with usual civil trial.

**Supplementary proceeding.** A separate proceeding in an original action, in which the court where the action is pending is called upon to exercise its jurisdiction in aid of execution of the judgment in the action. It is a statutory equivalent in actions at law of the creditor's bill in equity, and in the majority of states where law and equity are merged, is provided as a substitute therefor. See e.g. *Fed.R.Civil P. 69*. In this proceeding the judgment debtor is summoned to appear before the court (or a referee or examiner) and submit to an oral examination touching all his property and effects, and if property subject to execution and in his possession or control is thus discovered, he is ordered to deliver it up, or a receiver may be appointed. See *Execution; Supplementary proceedings*.

**Proceeds.** Issues; income; yield; receipts; produce; money or articles or other thing of value arising or obtained by the sale of property; the sum, amount, or value of property sold or converted into money or into other property. Proceeds does not necessarily

mean only cash or money. *Phelps v. Harris*, 101 U.S. 370, 25 L.Ed. 855. That which results, proceeds, or accrues from some possession or transaction. *State Highway Commission v. Spainhower, Mo.*, 504 S.W.2d 121, 125. The funds received from disposition of assets or from the issue of securities.

Proceeds includes whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks and the like are "cash proceeds". All other proceeds are "non-cash proceeds". *U.C.C. § 9-306(1)*.

**Proceres /próseriyz/.** Nobles; lords. The house of lords in England is called, in Latin, "*Domus Procerum*." Formerly, the chief magistrates in cities.

**Process.** A series of actions, motions, or occurrences; progressive act or transaction; continuous operation; method, mode or operation, whereby a result or effect is produced; normal or actual course of procedure; regular proceeding, as, the process of vegetation or decomposition; a chemical process; processes of nature. *Sokol v. Stein Fur Dyeing Co.*, 216 App.Div. 573, 216 N.Y.S. 167, 169; *Kelley v. Coe*, App.D.C., 99 F.2d 435, 441.

Process is mode, method or operation whereby a result is produced; and means to prepare for market or to convert into marketable form. *Employment Security Commission of Ariz. v. Bruce Church, Inc.*, 109 Ariz. 183, 507 P.2d 108, 112.

#### Patent Law

An art or method by which any particular result is produced. An act or series of acts performed upon the subject-matter to be transformed or reduced to a different state or thing. A means or method employed to produce a certain result or effect, or a mode of treatment of given materials to produce a desired result, either by chemical action, by the operation or application of some element or power of nature, or of one substance to another, irrespective of any machine or mechanical device; in this sense a "process" is patentable, though, strictly speaking, it is the art and not the process which is the subject of patent. Broadly speaking, a "process" is a definite combination of new or old elements, ingredients, operations, ways, or means to produce a new, improved or old result, and any substantial change therein by omission, to the same or better result, or by modification or substitution, with different function, to the same or better result, is a new and patentable process.

#### Civil and Criminal Proceedings

Process is defined as any means used by court to acquire or exercise its jurisdiction over a person or over specific property. *Austin Liquor Mart, Inc. v. Department of Revenue*, 18 Ill.App.3d 894, 310 N.E.2d 719, 728. Means whereby court compels appearance of defendant before it or a compliance with its demands. *Dansby v. Dansby*, 222 Ga. 118, 149 S.E.2d 252, 254.

When actions were commenced by original writ, instead of, as at present, by summons, the method of compelling the defendant to appear was by what was termed "original process," being founded on the origi-

**5:02:08:00. Guidelines for acceptance of petitions.** When a petition is presented for filing, the person or governing board authorized to accept the petition for filing shall determine if it meets the following requirements for acceptance:

- (1) The petition is in the form required by this chapter;
- (2) The petition contains the minimum number of valid signatures, counted according to § 5:02:08:00.01. One or more invalid signatures on a petition section do not disallow other valid signatures on the section;
- (3) Each section of the petition contains an identical heading and is verified by the circulator. The circulator may add the addresses of the petitioners and the dates of signing before completing the verification. The circulator may also add the printed name of the signer and the county of voter registration. Residence addresses may be abbreviated. The verification was completed and signed before an officer authorized to administer oaths;
- (4) The declaration of candidacy contains the original signature of the candidate. Additional sections may have an original or photocopied signature of the candidate;
- (5) If a petition is for a ballot question to be voted on statewide, the signatures were obtained after a copy of the text of the petition was filed with the secretary of state;
- (6) The governing board or person authorized by statute to accept the petition shall, if requested, allow a petition circulator the opportunity to add missing information on the signature lines or circulator's verification on his or her petition provided the filing deadline has not passed; and
- (7) Following the presentation of the petition for filing, names may not be removed from the petition.

Except for petitions to nominate candidates for school boards, the person who is authorized to accept petitions for filing need not check for voter registration of the signers. Petitions containing signatures in excess of the minimum number may be filed, but the excess signatures will be disregarded.

**Source:** 2 SDR 46, effective December 30, 1975; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 10 SDR 27, effective September 26, 1983; 14 SDR 19, effective August 9, 1987; 16 SDR 20, effective August 10, 1989; 16 SDR 203, effective May 28, 1990; 28 SDR 99, effective January 17, 2002; 35 SDR 48, effective September 8, 2008.

**General Authority:** SDCL 12-1-9(6).

**Law Implemented:** SDCL 2-1-2, 2-1-2.1, 2-1-4, 9-13-11, 12-1-1, 12-1-1.1, 12-1-2, 12-6-8, 13-7-6.

**Cross-Reference:** Sections of petition, § 5:02:08:00.02.

**5:02:08:00.01. Requirements for counting signatures on petitions.** Requirements for counting signatures on a petition sheet are as follows:

(1) No signature on a petition sheet may be counted if one of the following conditions is present:

(a) The form of the petition does not meet the requirements of this chapter;

(b) The circulator's verification is not completed or is improperly completed, according to subdivision 5:02:08:00(3) unless the missing information is completed elsewhere on the petition sheet. A completed circulator's verification must include the printed name of the circulator, the circulator's residence address as provided in subdivision 5:02:08:00.01(2)(c), and complete date;

(c) The declaration of candidacy has not been completed on or after the first date authorized by statute to circulate the petition, and signed by the candidate and the signature witnessed by an official empowered to administer oaths in South Dakota; or

(d) The circulator's verification was signed by more than one circulator; and

(2) An individual signature on a petition sheet may not be counted if one of the following conditions is present:

(a) It was signed prior to the signing of the candidate's declaration of candidacy or, if for a ballot question, it was signed before a copy of the text was filed with the secretary of state;

(b) It was signed after the circulator completed the verification;

(c) The residence address does not include a street and house number or a rural route and box number and the town. If the signer is a resident of a second or third class municipality, a post office box number may be used. If the signer does not have a residence address or post office box number, a description of the residence location must be provided. If the signer is a resident of a building with a publicly known name, the building name may be used;

(d) The date of signing, including month and day, is not indicated;

(e) The signer's name is not printed and legible; or

(f) The signer's county of voter registration is not provided.

**Source:** 10 SDR 27, effective September 26, 1983; 12 SDR 43, effective September 23, 1985; 14 SDR 19, effective August 9, 1987; 16 SDR 20, effective August 10, 1989; 19 SDR 12, effective August 5, 1992; 21 SDR 77, effective October 24, 1994; 26 SDR 168, effective June 25, 2000; 33 SDR 230, effective July 1, 2007; 35 SDR 48, effective September 8, 2008.

**General Authority:** SDCL 12-1-9(6).

**Law Implemented:** SDCL 2-1-2, 2-1-2.1, 2-1-4, 9-13-11, 12-1-1, 12-1-1.1, 12-1-2, 12-6-8, 13-7-6.

**5:02:08:00.03. Form of petition.** Each type of petition must contain the applicable heading as prescribed in this chapter and the following instructions to signers, signature blanks, and verification unless otherwise prescribed for a specific petition:

#### 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.

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

#### VERIFICATION BY PERSON CIRCULATING PETITION

**INSTRUCTIONS TO CIRCULATOR:** This section (**bold**) **must** (**unbold**) 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, 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.

\_\_\_\_\_  
Signature of Circulator

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Signature of Officer Administering Oath

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Title of Officer Administering Oath

**Source:** 16 SDR 20, effective August 10, 1989; 16 SDR 203, effective May 28, 1990; 19 SDR 12, effective August 5, 1992; 23 SDR 115, effective January 22, 1997; 26 SDR 168, effective June 25, 2000.

**General Authority:** SDCL 12-1-9(7).

**Law Implemented:** SDCL 12-1-3(14).

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For a plaintiff, the statute of limitations under this section is tolled while any potential plaintiff is incapacitated by minority.

Section 9. As a public nuisance, all prepaid adult entertainment cards and prepaid adult entertainment telephone cards are subject to seizure and destruction without compensation by any law enforcement agency with appropriate jurisdiction.

Signed February 22, 2002.

## CHAPTER 113

(HB 1299)

### The definition and venue of perjury prosecutions changed.

ENTITLED, An Act to change the definition and venue of perjury prosecutions and to provide for the verification of certain information on certain state applications or other documents.

*BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:*

Section 1. That § 22-29-1 be amended to read as follows:

22-29-1. Any person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases state or federal proceeding or action in which such an oath may by law be administered, intentionally and contrary to such the oath, states any material matter which he the person knows to be false, is guilty of perjury.

Section 2. That chapter 23A-16 be amended by adding thereto a NEW SECTION to read as follows:

Perjury may be prosecuted in the circuit court for either the county where the proceeding or action is venued or where the act of perjury was committed.

Section 3. Any person who submits any petition, application, information, or other document for the purpose of obtaining benefits or any other privilege from the State of South Dakota shall verify, under oath, that such petition, application, or information is true and correct. However, it is sufficient if the claimant, in lieu of verification under oath, signs a statement printed or written thereon in the form following: "I declare and affirm under the penalties of perjury that this claim (petition, application, information) has been examined by me, and to the best of my knowledge and belief, is in all things true and correct." Any person who signs such statement as provided for in this section, knowing the same to be false or untrue, in whole or in part, shall be guilty of perjury.

Signed February 22, 2002.

KEVIN M. FITZGERALDS  
4-28-14  
1-28-14

4-28-14  
Bm

NOMINATING PETITION FOR PARTISAN ELECTION Republican PARTY

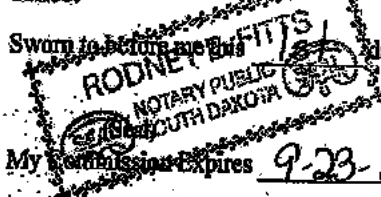
INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

WE, THE UNDERSIGNED qualified voters of State (here insert the jurisdiction in which the office is sought: name of county, number of legislative district, or "state") of South Dakota and members of the Republican Party, nominate Annette Bosworth, MD, of Minnehaha County, South Dakota, whose mailing address is 2801 S. Minnesota Ave, Ste 105-129 Sioux Falls, SD 57105, and whose principal residence address is 909 East 14th Street Sioux Falls, SD 57104, as a candidate for the office of US Senate at the Primary Election to be held June 3, 2014.

DECLARATION OF CANDIDATE

I, Dr Annette Bosworth (print name here exactly as you want it on the election ballot), under oath, declare that I am eligible to seek the office for which I am a candidate, that I am registered to vote as a member of the Republican party, and that if I am a legislative or county commission candidate I reside in the district from which I am a candidate. If nominated and elected, I will qualify and serve in that office.

Sworn to before me this 1st day of Jan, 202014



(Signed)

Rodney E. Fitts

Signature of Officer Administering Oath

Rodney E. Fitts

Title of Officer Administering Oath

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
2. Before the petition is filed, each signer or the circulator must add the residence address of the signer and the date of signing. 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 registration.
4. Abbreviations of common usage may be used. Dito marks may not be used.
5. Failure to provide all information requested may invalidate the signature.

NAME	RESIDENCE	DATE/COUNTY
<u>Leonard Waldner</u>	<u>35350 206th St</u>	<u>2/21/14</u>
<u>Mike Waldner</u>	<u>35350 206th St</u>	<u>2/21/14</u>
<u>Robert Waldner</u>	<u>35350 206th St</u>	<u>2/21/14</u>
<u>George Hoyer</u>	<u>35350 206th St</u>	<u>2/21/14</u>
<u>Joseph Waldner</u>	<u>35350 206th St</u>	<u>2/19/14</u>
<u>Jonathan Waldner</u>	<u>35350 206th St</u>	<u>2/20/14</u>
<u>Dan Waldner</u>	<u>35350 206th St</u>	<u>2/21/14</u>
<u>Daniel Waldner</u>	<u>35350 206th St</u>	<u>2/21/14</u>

- Print on reserve side -

20





NAME	RESIDENCE	DATE/COUNTY
SIGN 8 Mike Waldner PRINT Mike Waldner sr.	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 9 Joe Stahl PRINT Joe Stahl	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 10 John Waldner PRINT John Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 11 Josh Hofer PRINT Joshua Hofer	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 3535 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 12 Zack Waldner PRINT Zack Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 13 David Waldner PRINT David Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 3535 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 14 Sam Waldner PRINT Sam Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 15 Martin Waldner PRINT Martin Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 16 Jeffy Waldner PRINT Jeffy Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 17 George Waldner PRINT George Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 18 Ronnie Waldner PRINT Ronnie Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/23/14 COUNTY OF REGISTRATION Hand
SIGN 19 Philip Waldner PRINT Philip Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/21/14 COUNTY OF REGISTRATION Hand
SIGN 20 Brian Waldner PRINT Brian Waldner	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER 35350 206th St CITY OR TOWN Miller	DATE OF SIGNING 2/21/14 COUNTY OF REGISTRATION Hand

# VERIFICATION BY PERSON CIRCULATING PETITION

INSTRUCTIONS TO CIRCULATOR: This section must be completed following circulation and before filing.

Print name of the circulator Handwritten Signature Residence Address 909 E 14th St City Stony Falls State SD

I, under oath, state that I circulated the above petition, that each signer personally signed this petition in my presence, 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.

Sworn to before me this 24 day of March 14.

JOEL A. ARENDT

Signature of Circulator

(Seal)

My Commission Expires 2015

Form Revised 2008 - 5-02-08-01

Signature of Officer Administering Oath

Title of Officer Administering Oath



APPEAL NO. # 27510

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IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

---

STATE OF SOUTH DAKOTA

v.

ANNETTE BOSWORTH

---

APPEAL FROM THE SIXTH CIRCUIT COURT OF  
HUGHES COUNTY, SOUTH DAKOTA  
SIXTH JUDICIAL CIRCUIT

---

HONORABLE JOHN L. BROWN,  
Circuit Court Judge

---

**APPELLANT'S REPLY BRIEF**

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Date Notice of Appeal was filed: July 27, 2015

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## ARGUMENT

### I.

**In SDCL §22-29-1, the legislature intended “state or federal proceeding or action” to refer to an adjudicative process.**

The Appellant Dr. Annette Bosworth contends that the perjury convictions in this case should be reversed because the legislature intended the words “state or federal proceeding or action” to refer to an adjudicative process and that for this Court to rule that a voters’ nomination petition is a state proceeding or action within the meaning of the perjury statute would be to broaden the reach of that statute far beyond what the legislature intended. The issue was squarely raised before the trial court. *See: Motion to Dismiss Perjury Counts and Memorandum of Law in Support of Motion to Dismiss Perjury Counts* [DE 112] (Appendix 7, attached). The issue is preserved for appeal.

### A.

**When this Court interprets the meanings of the words “proceeding” and “action” in the perjury statute, it must apply the definitions of those words that are found in SDCL §15-1-1, §15-12-20, §19-13A-2 and §47-1A-140.**

Under §2-44-4, if the terms “proceeding” and “action” are defined in statutes, this Court is bound by those definitions. *State v. Sondreal*, 459 N.W.2d 435, 439-440 (S.D. 1990).

SDCL §2-44-4 provides:

Whenever the meaning of a word or phrase is defined in any statute such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly occurs.

A “proceeding” is defined in SDCL §19-13A-2(7) as “a judicial, administrative, arbitral, or other adjudicative process” or “a legislative hearing or similar process” and as

a “civil suit and criminal, administrative, and investigatory action” in SDCL §47-1A-140(32). An “action” is defined in SDCL §15-1-1(1) as “an ordinary proceeding in a court of justice, by which a party prosecutes another party for the enforcement, determination, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense” and as “any action or special proceeding in the trial court, whether civil or criminal or quasi-criminal” in SDCL §15-12-20(1).

In the Appellee’s brief, the State simply ignores Dr. Bosworth’s argument that, under SDCL §2-44-4, this Court is bound by the definitions of “proceeding” and “action” that appear in those state statutes.

Clearly, none of those statutory definitions of “proceeding” and “action” would encompass a voters’ nominating petition.

## B.

### **The established meanings of “proceeding” and “action” as legal terms of art refer to an adjudicative process.**

Dr. Bosworth argues that the legislature’s use of the words “proceeding” and “action” in the perjury statute expresses a legislative intent to have those legal terms of art carry their established meanings in the law, referring to a judicial or quasi-judicial adjudicative process. The Attorney General argues that an “action” was intended to mean any act performed by someone, and a voters’ nominating petition is state action because a state action is anything someone does that somehow relates to state law. There is nothing in the statutory language that expresses a legislative intent to extend the reach of the perjury statute in such a radical way by stretching the meaning of the word “action” beyond its established meaning as a term of art, referring to an adjudicative process.



## II.

### A.

**False swearing on a collateral matter in a legal document does not strip the document of all legal authority and therefore, does not render the document a false instrument under §SDCL 22-11-28.1.**

*State v. Paulsen*, 2015 S.D. 12, 861 N.W.2d 504, is a recent case in which this Court examined the question of what is a false instrument under SDCL §22-11-28.1. That case stands for the proposition that a “false” instrument under this statute must be a document that is fundamentally and essentially fraudulent, and therefore, “devoid of authority.” *Id.*, 2015 S.D. 12, at ¶24, 861 N.W.2d at 510. “[T]he order was a false instrument, devoid of authority, yet it mimicked a genuine court order.” *Ibid.*

In *Paulson*, this Court found that Paulson’s phony court orders were false instruments because they appeared to be documents that had actual legal authority “to induce another to act” (*ibid.*), but they were in fact totally devoid of any such legal authority.

Here, if Bosworth’s false statements in the circulator’s verifications did not make the petitions themselves devoid of legal authority to induce another to act, then the petitions were not false instruments under the statute.

Contrary to the State’s mischaracterization of Dr. Bosworth’s argument, Dr. Bosworth does not contend that SDCL §22-11-28.1 only pertains to forged documents. Actually, in her brief, Bosworth stated: “A document does not have to be a forged instrument to be a false instrument, but this canon of statutory interpretation counsels that a false instrument is similar to a forged instrument in the same general sense, in that both are counterfeit documents that are designed to appear to be something they are not—

genuine legal documents invested with authority.” Appellant’s Brief, page 24. This Court has recognized “that a word may be defined by an accompanying word, and ordinarily the coupling of words denotes an intention that they should be understood in the same general sense.” *Spiska Engineering, Inc. v. SPM Thermo-Shield, Inc.*, 2004 S.D. 44, ¶6, 678 N.W.2d 804, 806.

The State contends that any factually false statement in a legal document automatically strips that document of all legal authority and renders it a false instrument. The cases cited by the State do not stand for that proposition.

In *State v. Hayes*, 159 N.W. 108 (S.D. 1916), a case that was decided 100 years ago, the Supreme Court held that the evidence was sufficient to support the defendant’s conviction for forgery where the defendant created a certificate of deposit which falsely stated that a depositor had deposited \$2000 in a bank. That false statement in the certificate—that \$2000 had been deposited in the bank—made the certificate a false instrument because it went to the heart of the document and made the entire certificate of deposit a counterfeit and fraudulent legal document. *Hayes* actually recognizes that there is a distinction between an instrument that contains false statements and a false instrument. “There is a distinction between the false making of an instrument and the making of a false instrument, as has been determined by many of the adjudications of the courts, but this statute under consideration differs from the statutes of many of the states in that it relates, not to the false making or issuing of the instrument, but to the making or issuing of a false or fraudulent instrument.” *Hayes*, 159 N.W. at 110.

The State asserts that its interpretation of the term “false instrument” is one supported by *Reaser v. Reaser*, 2004 SD 116, 688 N.W.2d 429. *Reaser* was a divorce

case, dealing with a sham stipulation concerning child support. In pure *dicta*, the opinion stated that the sham stipulation at issue may have been a violation of SDCL §22-11-22. It made no mention of the filing a false instrument statute. Obviously, *Reaser* has no bearing on the issue before this Court.

Dr. Bosworth refers this Court to *State v. Jones*, 222 Ariz. 555, 218 P.3d 1012 (2009), in which the court held that any false verifications in voters' nominating petitions did not render the petitions not genuine so as to constitute filing of a false instrument and that an instrument that contains an untrue statement falls within the statute prohibiting filing a false instrument only if the instrument is counterfeit, inauthentic or otherwise not genuine.

In seeking to persuade this Court not to follow *Jones*, the State cites two California cases, *People v. Powers*, 11 Ca. Rptr.3d 619, 117 Cal.App.4<sup>th</sup> 291 (2009) and *Generes v. Redding Judicial District*, 165 Cal.Rptr. 222, 225, 106 Cal.App.3d 678 (1980). In *Powers*, the question presented was whether a fishing activity record was an "instrument" within the meaning of the statute. The *Generes* case involved an entirely fraudulent document that purported to convey an interest in real estate that the creator of the document did not in fact own. Neither *Powers* nor *Generes* is applicable to the issues in *Jones* or in this case.

In determining whether a particular false statement in a particular legal document makes that document a false instrument under SDCL §22-11-28.1, the question is: does that false statement render the entire document a fraud and strip it of all legal authority to induce another to act? The determinative issue in this case then is whether, as a matter of law, the false statements in the verifications stripped the petitions of all legal authority to

induce another to act or whether, in spite of those statements, the petitions still had the legal force of law to compel someone to act.

B.

**The election laws of this State do not allow the Secretary of State to invalidate a nominating petition that is properly completed on its face or to inquire into whether the facts stated in the circulator's verification on the petition are true.**

ARSD 5:02:08:00.01(1)(b) sets forth the requirements for counting signatures on petitions and it provides:

Requirements for counting signatures on a petition sheet are as follows:

(1) No signature on a petition sheet may be counted if one of the following conditions is present:

\* \* \*

(b) The circulator's verification is not completed or is improperly completed, according to subdivision 5:02:08:00(3) unless the missing information is completed elsewhere on the petition sheet. A completed circulator's verification must include the printed name of the circulator, the circulator's residence address as provided in subdivision 5:02:08:00.01(2)(c), and complete date.

The State claims that ARSD 5:02:08:00.01(1)(b) "clearly invalidates an entire petition sheet that is not properly verified."<sup>1</sup> Without providing any support for that claim in the text of the rule, the State simply assumes, and asks this Court to assume, that a factually false verification is not one that is "properly verified" within the meaning of the rule. Actually, ARSD 5:02:08:00.01(1)(b) does not use the term "properly verified" at all. The actual language in the rule calls for the rejection of a petition if the circulator's verification "is not completed or is improperly completed, according to subdivision 5:02:08:00(3)." ARSD 5:02:08:00(3) requires that each section of the petition must

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<sup>1</sup> Appellee's brief, page 22

contain an identical heading and be verified by the circulator, and the circulator's verification must be "completed and signed before an officer authorized to administer oaths." <sup>2</sup> If a petition meets those requirements, it is a valid petition and the signatures will be counted.

ARSD 5:02:08:00.01(1)(b) does not address or require the veracity of any fact presented in the petition for the petition to have lawful authority.

It is settled law in this state that the Secretary of State has no lawful authority to look behind the face of a voters' nominating petition to determine the veracity of the facts stated in the petition.

This point was decided more than a hundred years ago in *McNulty v. Glassner*, 145 NW 547 (1914): "In the performance of his duties, the Secretary of State, in certifying the names of the proposed candidates to the several county auditors, acts only in a ministerial capacity, and, when such a certificate is presented to him in due form of law, *he has no judicial or quasi judicial power to inquire into or determine the facts recited in the certificate of such proposal committee to ascertain their truth or falsity or to determine whether such certificates are constitutional or not.*" (Citations omitted.)(Italics added.)

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<sup>2</sup> ARSD 5:02:08:00(3) provides:

When a petition is presented for filing, the person or governing board authorized to accept the petition for filing shall determine if it meets the following requirements for acceptance:

\* \* \*

(3) Each section of the petition contains an identical heading and is verified by the circulator. The circulator may add the addresses of the petitioners and the dates of signing before completing the verification. The circulator may also add the printed name of the signer and the county of voter registration. Residence addresses may be abbreviated. The verification was completed and signed before an officer authorized to administer oaths[.]

In *State ex rel. Coon v. Morrison*, 61 S.D. 339, 249 N.W.2d 318, 319 (1933), this Court again ruled that the Secretary of State, in determining whether a voters' petition should be filed, acts "in a purely ministerial capacity, and is limited to a consideration of such matters only as are apparent on the face of the petition itself." See also *Larson v. Hazeltine*, 1996 S.D. 100, 552 N.W.2d 830 (1996).

That was also the unequivocal testimony of the State's expert, former Secretary of State Chris Nelson. (Quoted in the Appellant's brief at pages 6-7.)

Q. [Mr. Hanna] And in the signature validation process, which involves determining whether the circulator's verification is complete, it's true, isn't it, that the Secretary of State acts only in a ministerial capacity?

A. [Mr. Nelson] That is correct.

Q. And when such a petition is presented to him in due form of law, he has no legal power to inquire into or determine the facts recited in the petition to ascertain their truth or falsity?

A. Nothing beyond what is on the face of the petition, correct.

\* \* \*

Q. And the Secretary of State is without authority to exercise discretion to decline to file the petitions if all of the requirements for a petition are met on its face?

A. That is correct.

[TR 190-7-191:11]

Q. Okay. So if that's all in there, if there is a signature, if there is the printed name and the address, it's all good, right?

A. If all of the information is there so that it is complete, we would consider that to be a valid verification.

[TR 191:10-15]

The key question to be determined in the signature validation process is whether the petition, on its face, is properly completed. Whether the voters' signatures were in fact witnessed by the circulator is simply immaterial to that question.

The State seeks to make much of the fact that one petition did in fact contain several signatures that were not genuine, because the circulator, a religious community's leader, thought he had the right to sign his parishioners' names. That fact would have invalidated those individual signatures, pursuant to ARSD 5:02:08:00.01(2), but it would not have prevented the Secretary's office from counting the genuine voters' signatures on the petition.

This Court has recognized that the public interest favors minimizing interference in elections to allow voters the ultimate determination. See, *e.g.*, *South Dakota State Federation of Labor AFL-CIO v. Jackley*, 2010 S.D. 62 ¶ 11-12, 786 N.W. 2d 372, 376-377. With that public interest in mind, a court must presume a petition circulator's verification is legal, even when a challenge is made to its veracity. *Larson v. Hazeltine*, 552 N.W.2d at 385, citing *State ex rel. Coon v. Morrison*, 61 S.D. 339, 249 N.W. 318, 319 (1993) and *O'Brien v. Pyle*, 51 S.D. 385, 393, 214 N.W. 623, 626 (1927). Had someone sought to bring a court action to challenge the Secretary of State's decision to certify the petitions as valid and having the force of law, on the grounds that the verifications were false or fraudulent, the law holds that the verification "must not only be false, but it must also be made fraudulently. . ." *State ex rel. Jensen v. Wells*, 66 S.D. 236, 281 N.W. 99, 103 (1938). See also, *Morford v. Pyle*, 220 N.W. 907, 909 (S.D. 1928).



The Attorney General asserts that the petitions in question were “invalidated” by the factually untrue statements in the verifications, but he does not, and cannot, support that assertion with any factual evidence in the record.<sup>3</sup>

It is true that the verification of the circulator is a necessary part of the petition, so that if the verification were entirely absent, the petition would be rejected, as was the case in *Corbly v. City of Colton*, 278 N.W.2d 359 (S.D. 1979). But the State errs in equating the complete absence of a circulator’s verification with a verification that is completed on its face, but which contains an untrue statement. As a matter of law, a false statement in the verification will not cause the office of Secretary of State to reject a petition that is properly completed on its face and which meets all the requirements of ARSD 5:02:08:00.01(1)(b) and ARSD 5:02:08:00(3). Bosworth’s verifications were signed by her and notarized; they included her printed name and residence address and the date. Therefore, they were valid petitions and the Secretary of State was required by law to file the petitions and count the signatures, which he did.

To be a false instrument under this statute, in accordance with the *Paulson* case, a false instrument must be a document that appears on its face to have legal authority but which is in fact entirely devoid of legal authority. Here, regardless of the false statements in the verifications of the petitions, the petitions, being properly completed on their face,

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<sup>3</sup> Along with this brief, the Appellant is filing a Second Request to Supplement the Record to include Attorney General Jackley’s letter to Secretary of State Gant, which disproves the State’s contention that the false statements in the verifications invalidated the petitions. The Attorney General’s letter provides evidence for the facts that after a challenge to the validity of these six petitions was filed on the grounds that Dr. Bosworth’s circulator’s verifications were untrue, the Secretary of State nevertheless re-certified the petitions and counted the voters’ signatures on those petitions, being limited to a review of the petitions on their face to determine if they were valid.

had the authority to induce the Secretary of State to certify the petitions as valid and to count the signatures of voters who signed the petitions. Since they were not devoid of legal authority, the petitions were not false instruments under the statute.

### III.

**The trial court did not give the jury an instruction on vicarious criminal liability. The court's instruction, that the evidence had to prove that *the defendant* filed a false instrument, was binding on the jury.**

SDCL §23A-25-2 provides that jurors "are bound . . . to receive as law that which is laid down as such by the court."

The issue to be decided is whether the evidence was sufficient to prove the defendant's guilt based on the law that was laid down to the jury by the court.

The argument presented to this Court is in fact the same argument that was presented to the trial court: it is a "straight-up insufficiency of the evidence" argument. (Appellee's brief, page 23.) The trial court instructed the jury that the evidence had to prove that the defendant, not any other person, filed false instruments. Since by statute, the jury was bound by that instruction and the evidence was undisputed that Dr. Bosworth did not herself file any of the petitions in question, the evidence was insufficient to find her guilty of offering false instruments.

Here, as explained in the Appellant's brief, the State's evidence at trial and its theory of guilt in the trial changed from the evidence and theory of guilt in the grand jury presentation. The State presented evidence to the grand jury that Dr. Bosworth personally filed the petitions in question and she committed a crime by her own act. The witness recanted her testimony at trial and the prosecution's theory became that Bosworth was vicariously guilty of filing false instruments, because an agent filed them at her direction.

But the State neglected to ask the Court to give any instruction that would have allowed the jury to decide that question or to allow the jury to find the defendant guilty for the act committed by another person. The Court did not give any instruction that directed the jury to determine whether the accused should be held criminally responsible for an act committed by another person.

In the Appellee's brief, the State mischaracterizes Dr. Bosworth's argument by claiming that she is arguing that the jury was not properly instructed on agency law. The State mischaracterizes her argument as "actually an objection to the instructions" (page 23) and then argues that by failing to object to the instruction given, she has waived the issue of insufficiency of evidence. Bosworth is not objecting to the instruction given; she only argues that it was binding on the jury and is binding on this Court. The defense has no duty to assist the State in prosecuting the accused by requesting an instruction on the prosecutor's theory of guilt. That is the prosecutors' duty and here, they neglected to perform that duty. They cannot put the blame for that neglect on the defense.

The State argues that the evidence was sufficient because the evidence proved that a person acting as Dr. Bosworth's agent filed false instruments. That would be true if, and only if, the court had so instructed the jury. But it did not. The court did not instruct the jury that they could find the defendant guilty if the evidence proved that the act was committed by an agent of the defendant and therefore, the jury could not have made that finding.

Jurors are not free to find a defendant guilty based on a legal instruction that might have been given but was not given. Although an instruction on vicarious criminal liability would have been proper, given the evidence, such an instruction was not

requested or given. Therefore, pursuant to the command of SDCL §23A-25-2, the State—and the jurors—were stuck with the law that the court actually laid down to the jury.

Here, the State would have this Court perform a function that is solely the jury's. To affirm these convictions, this Court would have to make its own finding of fact that the person who actually did file the petitions was acting as the defendant's agent when he did so. Moreover, this Court would have to apply its own finding of that fact to a theory of vicarious criminal liability that was never presented to the jury. To make a finding of fact that the jury did not and could not have made, since the jury was not instructed on the question, is beyond the authority of this Court.

Nowhere in the State's brief does the Attorney General attempt to explain why SDCL §23A-25-2 does not apply here. Unless the Attorney General or this Court can explain why the jury was not bound by SDCL §23A-25-2 to apply the law that was actually laid down by the trial judge, then the evidence presented at trial was insufficient to prove that the defendant violated the statute and those convictions should be reversed.

Dated this 4<sup>th</sup> day of August, 2016.

Respectfully submitted,

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### **CERTIFICATE OF COMPLIANCE**

1. I certify that the Appellant's Reply Brief is within the limitation provided for in SDCL 15-26A using Times New Roman typeface in 12 point type. Appellant's Reply Brief contains 3,562 words.
2. I certify that the word processing software used to prepare this brief is Microsoft Word 2013.

Dated this 4<sup>th</sup> day of August, 2016.

/s/ Dana L. Hanna

Dana L. Hanna

## APPENDIX

7. Motion to Dismiss Perjury Counts; Memorandum of Law in Support  
Of Motion to Dismiss Perjury Counts.....G1 – G9

## APPENDIX 7.

STATE OF SOUTH DAKOTA )  
 ) SS  
COUNTY OF HUGHES )

IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, )  
Plaintiff, )  
 )  
vs. )  
 )  
ANNETTE BOSWORTH, )  
Defendant. )

Crim. No. 14-305

MOTION TO DISMISS  
PERJURY COUNTS

NOW COMES the defendant Annette Bosworth, by and through undersigned counsel, and pursuant to SDCL § 23A-8-2 (5) and (6), hereby moves the court to dismiss the 6 perjury counts in the indictment on the grounds that the facts alleged in the indictment are insufficient to describe a violation of SDCL § 22-29-1.

As is set forth more fully in the defendant's memorandum of law in support of this motion, each of the 6 counts of the indictment that charge the crime of perjury is insufficient to state a violation of SDCL § 22-29-1 because the indictment fails to allege any facts that would support a finding that the defendant took an oath in a state or federal proceeding or action.

WHEREFORE, the defendant Annette Bosworth moves the Court to dismiss each of the 6 perjury counts in the indictment.



DATED this 28<sup>th</sup> day of October, 2014.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he electronically served a true and correct copy of the foregoing document upon the person(s) herein next designated, on the date shown below his/her/their last known e-mail address(es), to wit:

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Dated this 28<sup>th</sup> day of October, 2014.

Robert Van Norman  
Robert Van Norman

STATE OF SOUTH DAKOTA )  
 ) SS  
COUNTY OF HUGHES )

IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, )  
Plaintiff, )  
 )  
vs. )  
 )  
ANNETTE BOSWORTH, )  
Defendant. )

Crim. No. 14-305  
MEMORANDUM OF LAW IN  
SUPPORT OF MOTION TO DISMISS  
PERJURY COUNTS

### SUMMARY OF ARGUMENT

Pursuant to SDCL § 23A-8-2 (5) and (6), the defendant Annette Bosworth moves the Court to dismiss the 6 counts in the indictment that charge her with perjury. SDCL § 23A-8-2 (5) requires the Court to dismiss a count in an indictment when "it does not describe a public offense" and SDCL § 23A-8-2 (6) requires dismissal of a count when it "contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other bar to the prosecution." Dr. Bosworth moves to dismiss on the grounds that even if all the facts alleged in the perjury counts were proven true, those facts would be insufficient as a matter of law to prove that the crime of perjury was committed.

In the 6 counts charging perjury, the indictment states that Dr. Bosworth violated SDCL § 22-29-1 by signing a declaration on 6 voters' nominating petitions in which she declared that she had personally observed the signers sign the petitions, knowing that fact to be untrue, after taking an oath in a state or federal proceeding or action. Dr. Bosworth now moves to dismiss the 6 perjury counts on the grounds that the facts set forth in the perjury counts are insufficient as a matter of law to establish a violation of SDCL § 22-29-1 because even if all the facts set forth in those counts were proven true, they would not describe or charge a violation of the perjury statute because the oath described in the indictment was not taken "in any state or federal

proceeding or action.” The statutory language here – “state or federal proceeding or action” – has a commonly understood meaning in the law. Giving those words in the statutory language their commonly understood legal meaning, they refer to a judicial proceeding or action—that is, a legal action in which one party is seeking a judgment. To constitute the crime of perjury, the oath in question must be administered in a state or federal judicial proceeding or action or a state or federal quasi-judicial proceeding such as an administrative hearing. Simply stated, the indictment is insufficient to describe a violation of the general perjury statute because a voters’ nominating petition is not a “state or federal proceeding or action” under SDCL § 22-29-1.

#### ARGUMENT AND AUTHORITY

SDCL § 22-29-1 provides:

Any person who, having taken an oath to testify, declare, depose, or certify truly, before any competent tribunal, officer, or person, *in any state or federal proceeding or action* in which such an oath may by law be administered, states, intentionally and contrary to the oath, any material matter which the person knows to be false, is guilty of perjury.

(Italics added.)

The legal issue to be decided is whether an oath administered to one who signs a declaration on a voters’ nominating petition is an oath administered in a “state or federal proceeding or action” under SDCL § 22-29-1.

In deciding that question, the Court must give the words and phrases in the statute their plain meaning and effect. This fundamental rule of statutory construction is well settled.

The purpose of statutory construction is to discover the true intention of the law which is to be ascertained primarily from the language expressed in the statute. The intent of a statute is determined from what the legislature said, rather than what the courts think it should have said, and the court must confine itself to the language used. Words and



phrases in a statute must be given their plain meaning and effect. When the language in a statute is clear, certain and unambiguous, there is no reason for construction, and the court's only function is to declare the meaning of the statute as clearly expressed.

*Moss v. Guttormson*, 1996 S.D. 76, ¶ 10, 551 N.W.2d 1417 (1996).

The words "proceeding" and "action" are not ambiguous. They have commonly understood and commonly accepted meanings in the law.

Black's Law Dictionary (Seventh Edition, 1999), which is the authoritative text on the commonly accepted meanings of legal terms and words, defines a "proceeding" as:

1. The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment.
2. Any procedural means for seeking redress from a tribunal or agency.
3. An act or step that is part of a larger action.
4. The business conducted by a court or other official body; a hearing. \*\*\*

Summarizing the meaning of a "proceeding" in the law, Black's Law Dictionary quotes from Edwin E. Bryant's *The Law of Pleading Under the Codes of Civil Procedure 3-4* (2d. Ed. 1899):

" 'Proceeding' is a word much used to express the business done in courts. A proceeding in court is an act done by the authority or direction of the court, express or implied. It is more comprehensive than the word 'action,' but it may include in its general sense all the steps taken or measures adopted in the prosecution or defense of an action, including the pleadings and judgment. \* \* \*"

Just as with the definition of "proceeding," Black's Law Dictionary (Seventh Edition, 1999) understands an "action" to be a proceeding in a court of law. Black's Law Dictionary quotes the definition of the term "action" from *Estee's Pleadings, Practice and*

*Forms* (3d ed., 1885):

"An action has been defined to be an ordinary proceeding in a court of justice, by which one party prosecutes another party for the enforcement or protection of a right, the redress of prevention of a wrong, or the punishment of a public offense. . . . More accurately, it is defined to be any judicial proceeding, which, if conducted to a determination, will result in a judgment or decree."

If the words "in any state or federal proceeding or action" are to be given their plain and commonly understood meanings, then the oath administered to a person who circulates and signs a voters' nominating petition, when there is no pending judicial or quasi-judicial case involved, is not an oath administered in a state or federal proceeding or action under SDCL §22-29-1. There is no violation of the perjury statute unless the oath was taken in an action then pending in a state or federal court—that is, within an actual pending state or federal case or controversy.

The necessity in a perjury prosecution that the false statement be made within a pending judicial case finds support in *State v. Reidt*, 54 S.D. 178, 222 N.W. 677 (S.D. 1929). The case dealt with the sufficiency of a criminal pleading that charged the defendant with perjury. In that case, the convicted defendant argued that the information that charged him with perjury was legally insufficient because it did not specifically identify the case or controversy in which the false statement was made. The State Supreme Court and the parties clearly recognized that to constitute the crime of perjury, the false statement must be made within a specific judicial case or controversy. The Supreme Court recognized that the false statement had to be made in an actual pending court case; there was no dispute about that in the case. The Supreme Court held that the information, which stated that Reidt gave false testimony in an action pending in circuit

court of a certain county, sufficiently identified the proceeding or action in which the false statement was made.

There are no cases decided by the South Dakota Supreme Court that undermine that holding or that would support an argument that one can commit perjury and violate SDCL §22-29-1 by violating an oath not taken in a judicial proceeding or court case or a legal action in which a party is seeking some kind of relief and judgment from a court or state or federal governmental agency.

"Courts should not enlarge a statute beyond its declaration if its terms are clear and unambiguous." *DeSmet Insurance of South Dakota v. Gibson*, 1996 SD 102, 552 NW2d 98, 100. Here, the State would have the court enlarge the statute and expand the meaning of the terms "state or federal proceeding or action" beyond their plain and clear commonly understood meanings in the law.

Clearly, in enacting the general perjury statute, the intent of the legislature was to impose criminal liability on those who would undermine the integrity of the fact finding process in state or federal judicial proceedings. By requiring the violation of an oath in a "state or federal proceeding or action in which such an oath may by law be administered," the legislative intent clearly was not to make any sworn false statement, including those not made in a pending case in a state or federal court, a violation of the perjury statute. If that had been the legislative intent, there would have been no need to limit criminal liability to statements made in a state or federal proceeding or action. Rather, the intent of the legislature, as expressed in the plain meaning of



the statutory language, was to limit the crime of perjury to intentionally false statements made in a court case, such as trial testimony, affidavits filed in a case, or deposition testimony. That is the clear legislative intent as expressed in the element of the crime that requires that the oath be administered in a state or federal proceeding or action.


Unless the court were to indulge in a strained, artificial and tortured interpretation of the statutory language, a voters' nominating petition is not a "state or federal proceeding or action", as those terms are used in SDCL §22-29-1.

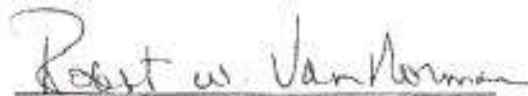
Therefore, the defendant Annette Bosworth's motion to dismiss the six perjury counts in the indictment should be granted.

DATED this 28<sup>th</sup> day of October, 2014.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he electronically served a true and correct copy of the foregoing document upon the person(s) herein next designated, on the date shown below his/her/their last known e-mail address(es), to wit:

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Dated this 28<sup>th</sup> day of October, 2014.



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