

SOUTH DAKOTA SUPREME COURT

—Traveling Term of Court—

AU
AUGUSTANA
UNIVERSITY

FC SUPREME COURT 860



March 18-19, 2026

Augustana University

Hamre Recital Hall, Fryxell Humanities Center
2120 S. Grange Ave., Sioux Falls, South Dakota

Judicial Primer
8:30 a.m.

Oral Arguments
9:00 a.m.

Judicial Q&A
11:15 a.m.

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SOUTH DAKOTA
UNIFIED JUDICIAL SYSTEM

Steven R. Jensen
CHIEF JUSTICE



Supreme Court
STATE OF SOUTH DAKOTA

March 18, 2026

To Our Guests Observing the
March 2026 Term Oral Arguments
of the South Dakota Supreme Court

Ladies and Gentlemen:

Your Supreme Court welcomes you to our March 2026
Term of Court.

This booklet has been prepared as part of the continuing
effort of the Supreme Court to promote increased public
knowledge of the South Dakota Unified Judicial System.

We hope it will assist you in understanding some of
the functions of the Supreme Court and make your
observation of the Court hearings a more valuable and
enjoyable experience.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Steven R. Jensen".

Steven R. Jensen Chief Justice

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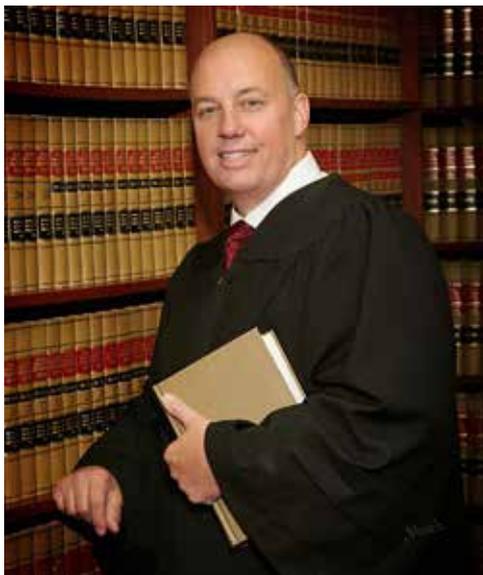
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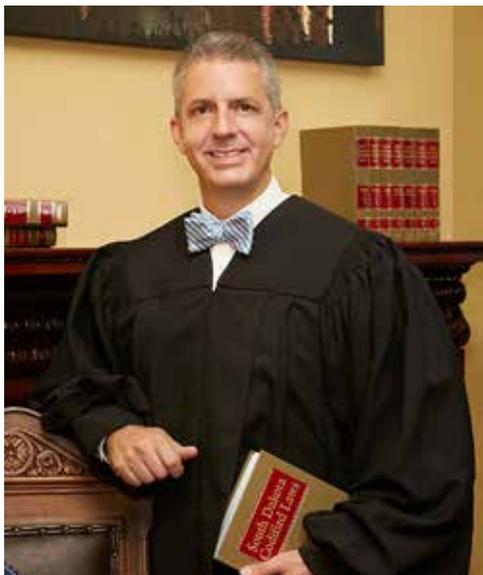
The Justices have extended an invitation to the public to attend any of the Court’s sessions. To assist with the Supreme Court visit, persons in attendance must abide by proper courtroom etiquette. The Supreme Court employs security methods to ensure the well-being of all who attend its proceedings, and all attending the morning court sessions will be requested to pass through a metal detector. Backpacks and book bags should not be brought, and other bags and purses are subject to inspection and search by security personnel.



CHIEF JUSTICE STEVEN R. JENSEN

Fourth Supreme Court District

Chief Justice Steven R. Jensen was appointed to the South Dakota Supreme Court by Gov. Dennis Daugaard and sworn in on Nov. 3, 2017. He was selected by his colleagues on the Supreme Court to serve as Chief Justice in 2021. He was reselected to a second, four-year term as Chief Justice beginning Jan. 6, 2025. Chief Justice Jensen grew up on a farm near Wakonda, S.D. He received his undergraduate degree from Bethel University in St. Paul, Minn., in 1985 and his juris doctor from the University of South Dakota School of Law in 1988. He clerked for Justice Richard W. Sabers on the South Dakota Supreme Court before entering private law practice in 1989. In 2003, Chief Justice Jensen was appointed as a First Judicial Circuit judge by Gov. Mike Rounds. He became presiding judge of the First Judicial Circuit in 2011. Chief Justice Jensen served as chair of the Unified Judicial System's Presiding Judges Council, president of the South Dakota Judges Association, and has served on other boards and commissions. In 2009, Chief Justice Jensen was appointed as a Judicial Fellow to the Advanced Science and Technology Adjudication Resource Center in Washington, D.C.



JUSTICE MARK E. SALTER

Second Supreme Court District

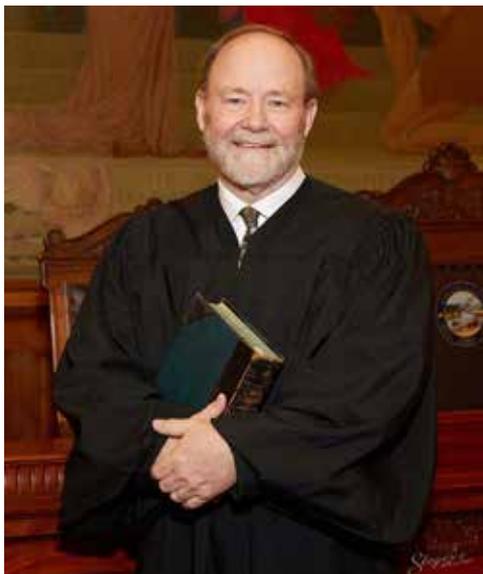
Justice Mark E. Salter was appointed to the South Dakota Supreme Court by Gov. Dennis Daugaard and sworn in on July 9, 2018. Justice Salter received a bachelor of science degree from South Dakota State University in 1990 and his juris doctor from the University of South Dakota School of Law in 1993. After clerking for a Minnesota state district court, he served on active duty in the United States Navy until 1997 and later served in the United States Naval Reserve. Justice Salter practiced law with the Sioux Falls firm of Cutler & Donahoe, where he became a partner before leaving in 2004 to return to public service with the United States Attorney's Office for the District of South Dakota. As an assistant United States attorney, Justice Salter focused on appellate practice and became the chief of the office's appellate division in 2009. He was appointed as a circuit court judge by Gov. Dennis Daugaard and served in the Second Judicial Circuit from 2013 until his appointment to the Supreme Court. He served as the presiding judge of the Minnehaha County Veterans Court from its inception in 2016 until 2018. Justice Salter serves as an adjunct professor at the University of South Dakota School of Law, where he has taught Advanced Criminal Procedure and continues to teach Advanced Appellate Advocacy.



JUSTICE PATRICIA J. DEVANEY

Third Supreme Court District

Justice Patricia J. DeVaney was appointed to the South Dakota Supreme Court by Gov. Kristi Noem and sworn in on May 23, 2019. Justice DeVaney was born and raised in Hand County and graduated from Polo High School in 1986. She received her bachelor of science degree in political science from the University of South Dakota in 1990 and her juris doctor from the University of Virginia School of Law in 1993. Justice DeVaney began her career of public service as an assistant attorney general in the South Dakota Office of Attorney General, where she practiced law from 1993 to 2012. She began her practice in the appellate division, then moved to the litigation division where she spent 17 years as a trial lawyer, prosecuting major felony offenses as well as representing the state in civil litigation in both state and federal trial and appellate courts. She also handled administrative matters for state agencies and professional licensing boards. Justice DeVaney was appointed by Gov. Dennis Daugaard as a circuit court judge for the Sixth Judicial Circuit in 2012. She served as the second judge for the Sixth Circuit Drug & DUI Court. Justice DeVaney has served as the secretary-treasurer and president of the South Dakota Judges Association. She has co-chaired the Supreme Court's Commission on Sexual Harassment in the Legal Profession and serves as vice-chair of the Courthouse Security Committee.



JUSTICE SCOTT P. MYREN

Fifth Supreme Court District

Justice Scott P. Myren was appointed to the South Dakota Supreme Court by Gov. Kristi Noem and sworn in on Jan. 5, 2021. Justice Myren grew up on his family farm in rural Campbell County and graduated from Mobridge High School in 1982. He received a bachelor of science degree, double majoring in history and political science from the University of South Dakota in 1985. He earned his juris doctor from Rutgers University in 1988. Justice Myren practiced law in Denver before returning to South Dakota to work as a staff attorney for the South Dakota Supreme Court. He served as an administrative law judge for the Office of Administrative Hearings and magistrate judge for the Sixth Judicial Circuit. In 2003, he was appointed as a circuit court judge for the Fifth Judicial Circuit by Gov. Mike Rounds. He was re-elected to that position by the voters in 2006 and 2014. He served as judge for the Brown County Drug and DUI Court. He was appointed presiding judge for the Fifth Judicial Circuit in 2014. Justice Myren served as chair of the UJS Presiding Judges' Council and president of the SD Judges' Association. He served on numerous committees, including the Court Improvement Program and Juvenile Detention Alternative Initiative, which he chaired. He was selected as a Judicial Fellow to the Advanced Science and Technology Adjudication Resource Center in Washington, D.C., in 2009.



JUSTICE ROBERT GUSINSKY

First Supreme Court District

Justice Robert Gusinsky was appointed to the South Dakota Supreme Court by Gov. Larry Rhoden and sworn in on Dec. 8, 2025. Justice Gusinsky was born in Latvia. After emigrating with his parents through Israel and Germany, he settled in California and became a U.S. citizen. Justice Gusinsky received his undergraduate degree in aeronautical engineering in 1990 from Embry Riddle Aeronautical University. He worked as a commercial airline pilot and flight instructor before changing course to pursue law. Justice Gusinsky received his juris doctor from the University of South Dakota School of Law in 1996. Following graduation, Justice Gusinsky practiced as a trial lawyer at Lynn, Jackson, Shultz & Lebrun and later at Clayborne, Loos, Strommen & Gusinsky in Rapid City. He next served as an assistant U.S. Attorney with the U.S. Attorney's Office from 2007 to 2013, when Gov. Dennis Daugaard appointed him a circuit court judge for the Seventh Judicial Circuit. Justice Gusinsky became presiding judge of the Seventh Judicial Circuit in 2024.

CLERK OF THE SUPREME COURT



Shirley Jameson-Fergel is the clerk of the Supreme Court. This office assists the Supreme Court, and especially the Chief Justice, in the organization of correspondence, exhibits and other documentation related to formal activities of the Court. This includes monitoring the progress of appeals; scheduling oral arguments before the Court; recording Court decisions, orders and directives; and controlling their release and distribution. The office is also

responsible for management of all legal records of the Court, compiling appellate statistics, and documenting and disseminating Court rules.

SUPREME COURT LAW CLERKS

Law clerks are employed by the Court to assist the Justices with research and writing opinions on the cases under consideration.



L-R: Brock Brown, Supreme Court law clerk; Will West, law clerk for Justice Myren; Caleb Vukovich, law clerk for Justice Salter; Taylor Graves, law clerk for Chief Justice Jensen; Brooklyn Bollweg, law clerk for Justice Gusinsky; Pat Archer, law clerk for Justice DeVaney; Dana Van Beek Palmer, Supreme Court law clerk

SOUTH DAKOTA COURTS

The South Dakota Unified Judicial System consists of the Supreme Court, circuit courts and State Court Administrator's Office. The Supreme Court is the state's highest court and final decision maker on South Dakota law. The circuit courts are the state's trial courts where criminal proceedings and civil litigation are handled. The State Court Administrator's Office provides centralized administrative assistance and support services for the South Dakota judiciary.



SUPREME COURT

The South Dakota Supreme Court is the state's highest court and the court of last resort for state appellate actions.

The Supreme Court is comprised of the Chief Justice, who is the administrative head of the Unified Judicial System, and four justices who are the final judicial authority on all matters involving the legal and judicial system of South Dakota.

Supreme Court justices are appointed by the Governor from a list of nominees selected by the South Dakota Judicial Qualifications Commission. One justice is selected from each of five geographic appointment districts. Permanent justices must be voting residents of the district from which they are appointed at the time they take office. Justices face a nonpolitical retention election three years after appointment and every eight years after that.

The Supreme Court:

- Holds court terms throughout the calendar year.
- Has appellate jurisdiction over circuit court decisions.
- Has original jurisdiction in cases involving interests of the state.
- Issues original and remedial writs.
- Has rule-making power over lower court practice and procedure and has administrative control over the Unified Judicial System.
- Renders advisory opinions to the Governor, at their request, on issues involving executive power.



CIRCUIT COURTS

Circuit courts are the state's trial courts of general jurisdiction through which the bulk of criminal proceedings and civil litigation are processed.

South Dakota has seven judicial circuits, 46 circuit judges and 17 magistrate judges. Circuit court services are available in each county seat.

Circuit court judges are elected by the voters within the circuit where they serve. The judges must be voting residents of their circuit at the time they take office. In the event of a vacancy, the Governor appoints a replacement from a list of nominees selected by the Judicial Qualifications Commission.

- Circuit courts are trial courts of original jurisdiction in all civil and criminal actions.
- Circuit courts have exclusive jurisdiction in felony trials and arraignments and civil actions involving damages of more than \$12,000.
- Jurisdiction of less serious civil and criminal matters is shared with magistrate courts, over which the circuit courts have appellate review.



SUPREME COURT

SUPREME COURT PROCESS

The judicial system of South Dakota has two levels. The circuit courts are the lower courts through which criminal prosecutions and most civil lawsuits are processed. The South Dakota Supreme Court is the state's highest court and the court of last resort for parties who seek to change adverse decisions of the circuit court. The Supreme Court is the final judicial authority on all matters involving the legal and judicial system of South Dakota.



Appellate Jurisdiction

When an individual involved in a legal action is convinced that the judge in the circuit court has made an error in deciding the law of the case, that party may bring the case to the Supreme Court for a remedy. This is called an “**appeal**,” and the court hearing the appeal is called the “**appellate**” court. The party bringing the appeal is an “**appellant**” and the other party—usually the party who was successful in the lower court—is the “**appellee**.” Most of the work of the Supreme Court involves its appellate jurisdiction.

- In an appellate action, the Court may decide to hear “oral arguments” in the case, in which both parties are permitted to come before the Court and give a short presentation (an argument) to support their position in the case.

SUPREME COURT

- There is no trial, the lawyers do not confront each other, and the Court does not take testimony from witnesses.
- Usually, the attorneys for the parties involved stand before the Court and speak for 15 minutes to emphasize or clarify the main points of the appeal.
- The members of the Court may ask questions or make comments during the lawyer's presentation.
- After hearing oral arguments, the Court discusses the case, and one justice is assigned to write the opinion in the case.
- Other justices may write concurring or dissenting opinions to accompany the majority opinion, all of which are published as formal documents by the West Publishing Company in the North Western Reporter. Opinions are also available online at: <http://ujs.sd.gov>.



Original Jurisdiction

In addition to its appellate jurisdiction, the Supreme Court has its own area of “**original**” jurisdiction. It is also responsible for a wide range of administrative duties involving the personnel and procedures of the court system and the professional conduct of attorneys throughout the state.



Justices

The five members of the Supreme Court (four justices and a chief justice) are responsible for making decisions as a group regarding appellate cases and other judicial business.

It is not unusual, however, for one of the judges from the circuit court to be assigned to temporarily sit on the Supreme Court bench to assist in the decision-making process. Such an appointment may occur when a justice is disqualified. A justice may be disqualified when the justice appears to have a conflict or personal



involvement in a case, or if there is a vacancy on the Court caused by the illness or departure of a justice.

Those who sit on the Supreme Court must be licensed to practice law in the state, and permanent justices must be voting residents of the district from which they are appointed at the time they take office. There is no formal age requirement for those who serve on the Court, but there is a statutory requirement that a justice must retire shortly after reaching the age of 70. A retired justice, if available, may be called back to temporary judicial service in any of the state's courts.

Under the terms of a constitutional amendment passed by the voters in 1980, vacancies on the Supreme Court are filled by the Governor's appointment. This appointment must be made from a list of two or more candidates recommended by the Judicial Qualifications Commission. All Supreme Court justices must stand, unopposed, for statewide approval or rejection by the electorate in a retention election. For newly-appointed justices, the retention vote is held at the next general election following the third year after appointment. After the first election, justices stand for retention election every eighth year.

SUPREME COURT DISTRICT MAP



- **Chief Justice Steven R. Jensen**
Appointed to the Supreme Court in 2017 from district four.
- **Justice Mark E. Salter**
Appointed to the Supreme Court in 2018 from district two.
- **Justice Patricia J. DeVaney**
Appointed to the Supreme Court in 2019 from district three.
- **Justice Scott P. Myren**
Appointed to the Supreme Court in 2021 from district five.
- **Justice Robert Gusinsky**
Appointed to the Supreme Court in 2025 from district one.

Our Mission

The Unified Judicial System (UJS) is dedicated to providing a fair, impartial, and accessible court system that upholds the rule of law and is worthy of the public's trust and confidence.

Our Vision

Justice for All.

COURTROOM PROTOCOL

The following list of do's and do not's was prepared for the benefit of anyone attending one of the Supreme Court's sessions. Your cooperation in observing proper courtroom protocol will assure that the lawyers presenting argument before the Court will not be unduly distracted and that the proper respect for the judiciary will be maintained. Your cooperation is appreciated.



DO

- Remove caps/hats before entering the courtroom.
- Enter the courtroom prior to the commencement of an argument.
- Stand when the justices enter and leave the courtroom.
- Listen attentively.
- Turn cell phones off before entering the courtroom.



DO NOT

- Bring food, drinks, cameras, or recording equipment into the courtroom.
- Enter or leave the courtroom during the course of an argument.
- Chew gum or create any distraction.
- Engage in any conversation once an argument begins.

SUPREME COURT PRIMER

Prior to court on both March 18 and 19, 2026, Second Judicial Circuit Judge Jon C. Sogn and State Court Administrator Greg Sattizahn will provide a brief summary of South Dakota's court system and explain what attendees will see that day in the court process, who is involved in the cases, and what happens after oral arguments are heard.



Judge Jon C. Sogn was appointed a judge for the Second Judicial Circuit by Gov. Dennis Daugaard in 2015. He previously worked as a private practice lawyer in Sioux Falls and has taught as an adjunct lecturer in trial techniques at the University of South Dakota School of Law. Judge Sogn earned his undergraduate degree from Augustana College, Sioux Fall, and his juris doctor from the University of South Dakota School of Law.



As state court administrator, Greg Sattizahn is the non-judicial officer who implements the rules and policies of the South Dakota Supreme Court as they apply to the operations and administration of the state courts. He has served in this position for the South Dakota Unified Judicial System since 2013. Sattizahn earned his undergraduate degree from Iowa State University and his juris doctor from the University of South Dakota School of Law.

TERM OF COURT CASE SUMMARIES

Six cases are scheduled for oral argument during the Supreme Court's March 2026 Term of Court. For these cases, attorneys are permitted to appear before the Court to emphasize certain points of the case and respond to the Court's questions. Case summaries have been prepared for the cases scheduled for oral argument and are provided on the following pages.

In addition to these oral arguments, numerous other cases will be considered by the Court during this term of court without argument by the attorneys. These cases are on the Court's "non-oral" calendar.

CASES

Case #31183, #31194

Wednesday, March 18, 2026—Number 1

Groves v. Goodsell

Jason Groves, an attorney, and Goodsell & Oviatt, LLP (formerly Goodsell Quinn, LLP), a law firm, entered into three contingency fee agreements with three clients to provide legal representation to each client on claims arising from the denials of workers' compensation benefits. Each agreement provided for a split of attorney's fees as follows: "Out of the attorney's fees, Goodsell Quinn, LLP agrees to split on a pro rata Fifty/Fifty percent (50%-50%) basis with Groves Law Office."

Groves passed away on October 18, 2021. Client #1's case settled prior to Groves' death—on September 1, 2021—Client #2's case settled in May 2022, and Client #3's case remains unresolved. Goodsell paid itself for its 50% of the attorney's fees earned from Client #1's case on October 13, 2021. Goodsell did not tender payment for 50% of the attorney's fees earned from Client #1's case to Groves' estate until November 7, 2022. That same day, Goodsell tendered payment for a sum totaling less than 50% of the attorney's fees earned from Client #2's case. Goodsell claimed Groves' estate was not entitled to 50% of the attorney's fees for Client #2 and Client #3. Groves' estate filed suit to recover those fees. Goodsell placed the disputed portion of attorney's fees for Client #2 with the clerk of courts pending resolution of the dispute.

Groves filed several motions for summary judgment, seeking determinations that (1) Groves was entitled to prejudgment interest on the attorney's fees for Client #1 because Groves' estate did not receive his 50% of the fees until over a year after Goodsell paid itself; and (2) that the fee agreements were enforceable and entitled Groves to 50% of the attorney's fees earned under each agreement. Goodsell filed cross-motions for summary judgment, seeking determinations that (1) the fee agreements were personal services contracts that terminated upon Groves' death and (2) the South Dakota Rules of Professional Conduct rendered the fee agreements unenforceable or reduced the amount owed to Groves to a proportion of the work he actually rendered.

CASES

After several hearings on the various motions for summary judgment, the circuit court issued several orders. Regarding Client #1, the circuit court held that Groves' estate was entitled to prejudgment interest from September 15, 2021, until November 7, 2022, the date Goodsell paid the fees owed to Groves for Client #1. Regarding Client #2 and Client #3, the circuit court held that the fee agreements were personal services contracts that terminated upon Groves' death. As such, the circuit court held Groves' estate was not entitled to any attorney's fees for Client #3 because no recovery has been made for Client #3. As to Client #2, the circuit court found that Groves' estate was entitled to recover some fees for the services Groves rendered while he was alive. The court held that the November 7 payment compensated Groves' estate for more than he was entitled to recover based on services rendered, so Groves' estate was not entitled to any additional attorney's fees. The circuit court later awarded Goodsell prejudgment interest on the funds it had deposited with the clerk of courts pending resolution of the dispute.

Groves appeals, raising several issues which we restate as follows:

1. Whether the circuit court erred in finding that the fee agreements for Client #2 and Client #3 were personal services contracts that terminated upon Groves' death.
2. Whether the circuit court erred in finding that there were no genuine issues of material fact as to the amount of attorney's fees Groves' estate was entitled to recover regarding Client #2.
3. Whether the circuit court erred in awarding Goodsell prejudgment interest on the funds it deposited with the clerk of courts.

Goodsell cross-appeals, raising one issue:

1. Whether the circuit court erred in awarding Groves prejudgment interest on the attorney's fees earned from Client #1's case.

CASES

Mr. John K. Nooney of Nooney & Solay, LLP, Attorney for Appellant Groves

Mr. Steven C. Beardsley of Beardsley, Jensen & Lee, Attorney for Appellee Goodsell & Oviatt, LLP

CASES

Case #31131

Wednesday, March 18, 2026—Number 2

State v. Albaidhani

On April 3, 2025, two officers with the Sioux Falls Police Department (Officers One and Two) attempted to stop a stolen vehicle driven by Samir Albaidhani. Albaidhani had absconded parole and was suspected of being armed. While attempting the stop, Albaidhani exited the car and fled on foot. He turned around to face Officers One and Two and fired several gunshots, striking Officer One in the arm and injuring him. Albaidhani eluded capture at this point but was subsequently stopped by law enforcement officers near Beresford. He was wounded before eventually being arrested and taken to the hospital to be treated for his minor injuries.

The Minnehaha County State’s Attorney’s Office filed a warrant, affidavit in support of the warrant, and a complaint with the Second Circuit clerk of courts. The names of Officers One and Two were not redacted from the filings, and the documents contained identifying information for both victim officers. Upon receipt, the clerk of courts accepted the filings, making the filings public. Albaidhani was charged with attempted first-degree murder of a law enforcement officer and aggravated assault against a law enforcement officer. Officers One and Two invoked their rights under Article 6, section 29 of the South Dakota Constitution (Marsy’s Law) and submitted a request to the circuit court to seal the current and future filings.

Officers then filed a writ of mandamus requesting redaction of their names from the public filings on April 4, 2025. On the same day, the circuit court directed the clerk to designate as confidential all filings in the criminal matter while the mandamus action was pending. The Officers consented to providing Albaidhani with unredacted copies of the filings, however, so long as Albaidhani or his counsel did not disclose the copies or discuss the Officers’ names.

The mandamus proceeding was assigned to an out-of-circuit judge and a hearing was held on the narrow issue of whether a writ of mandamus was an available remedy. Without reaching the merits of the writ, the circuit court determined mandamus relief was improper

CASES

and unavailable in this case, finding that “SDCL § 15-15A-13 and Marsy’s Law provide the [Officers] with a plain, speedy, and adequate remedy before the trial court, in the ordinary course of law.”

Officers One and Two thereafter moved the circuit court in the criminal action, requesting the court to redact the Officers’ names, initials, or any identifying information pursuant to their constitutional protections provided under Marsy’s Law. The circuit court again ordered unredacted filings to remain under seal until the motion was fully determined, but that Albaidhani still be provided with unredacted copies.

The circuit court held a hearing on the matter and ultimately denied the Officers’ motion. In its written memorandum decision, the circuit court did not discuss whether a law enforcement officer could be considered a “victim” under Marsy’s Law, deeming it “not necessary to reach that issue to resolve the present Motion to Seal.” The court thereby “assume[d] without deciding” that the Officers qualified as victims. The court started its analysis by determining subsection 5 “does not expressly provide a right to prevent the disclosure of any and all identifying information” or a right to “complete anonymity” because the plain language of the subsection does not mention “identifying information.” In denying the Officers’ motion, the circuit court noted:

Although an individual’s name is among the many facts that may be used to locate that individual, a name alone does not provide location details about the individual. Nothing in the plain language of Marsy’s Law prevents the disclosure of a victim’s name. And, if it did, courts would be forced to weigh that right against a defendant’s right to confront adverse witnesses in a public trial—a balancing that this [c]ourt need not perform on the facts presented here.

It then determined the narrow issue presented to it was whether the court had the power under South Dakota law to “force the parties to redact their filings”—deciding it did not. Officers One and Two are represented under a collective bargaining unit—the Fraternal Order of Police Lodge No. 1—and they appeal this order, raising two issues:

CASES

1. Whether law enforcement officers may qualify as “victims” under Marsy’s Law.
2. Whether the circuit court erred when it determined Officers One and Two were not entitled to have their names redacted from public filings under Marsy’s Law and SDCL 15-15A-13.

Mr. Jeffrey R. Beck, Attorney for Appellants and Interested Persons—
The Fraternal Order of Police Lodge No. 1.

Ms. Kylie Beck and Ms. Emily Herbert of Minnehaha County Public
Defender’s Office, Attorneys for Appellee Albaidhani.

CASES

Case #31074

Wednesday, March 18, 2026—Number 3

Vivos Xpoint v. Sindorf

Vivos xPoint Investment Group, LLC, (Vivos) is a California company that owns a survival bunker complex outside the city of Edgemont. This community consists of 575 decommissioned military bunkers that were originally built in 1942 to store bombs and other military munitions. The bunkers sat empty from 1967 until Vivos bought the property and began advertising them as survival shelters that can be bought or leased and repurposed in preparation for a catastrophic event.

Daniel Sindorf signed a 99-year lease with Vivos for a bunker in July 2020. Incorporated into the lease agreement is an addendum titled “Addendum B” that sets forth Vivos’ community rules and regulations. The lease reserves Vivos’ right to “change or modify” these community rules and regulations “at any time, subject to providing [tenants] with a minimum of Thirty (30) Days written notice.”

In November 2021, Vivos modified a provision of the community rules and regulations relating to the use and possession of all weapons, firearms, and munitions. Specifically, the November 2021 modification added the words “or brandished” within the following provision: “No firearms or munitions may be discharged or brandished within the community, other than in designated and posted shooting area(s), subject to the posted rules and regulations at the shooting range(s).” Sindorf has acknowledged that he received timely notice of this rule change.

In July 2023, Sindorf was involved in an altercation where he brandished a firearm in the presence of a Vivos employee and the employee’s girlfriend. While the underlying facts of the altercation are disputed, Sindorf asserts that he had withdrawn his firearm to protect himself from the couple’s three dogs. After learning about the incident, Vivos terminated Sindorf’s lease, claiming that his conduct violated the community rule against brandishing a firearm outside of a posted shooting area. Vivos then sent Sindorf a notice to quit and

CASES

vacate the premises. Sindorf physically left the community, but he refused to give Vivos access to his bunker, which he kept locked and full of his personal property.

Vivos initiated an eviction action against Sindorf to reclaim possession of his bunker. Before trial, Sindorf filed a motion for summary judgment and dismissal of Vivos' eviction action, asserting that the lease was void because Vivos' ability to modify the community rules and regulations rendered the lease illusory, meaning the promises contained in the agreement were not real. The circuit court granted summary judgment in Sindorf's favor, holding that "the 99-year lease is an illusory contract that [Vivos] can unilaterally modify the terms of at any time with no recourse for [Sindorf]."

Vivos appeals the circuit court's order, raising the following issue:

1. Whether a lease containing a provision that requires a lessee to comply with community rules and regulations and that reserves in the lessor the ability to modify those rules and regulations from time to time with 30 days' notice renders the lease illusory.

Mr. Eric M. Schlingen, Attorney for Appellant Vivos xPoint Investment Group, LLC.

Mr. Matthew Hays McCoy and Mr. J. Scott James, Attorneys for Appellee Daniel Sindorf.

CASES

Case #31100, #31144

Thursday, March 19, 2026—Number 1

Viva Capital Trust V. Garrett

In 2005, Frank Garrett, Jr., a 78-year-old California resident, met Stewart Weissman, an insurance agent who solicited clients to participate in a program whereby a high-dollar life insurance policy could be acquired and the premiums paid via an initial non-recourse loan obtained from a premium finance lender, United National Funding. Frank agreed to participate in the program in order to obtain a life insurance policy on his life for the benefit of his wife Jean. Among other things, this required the creation of a South Dakota irrevocable trust that would be the owner and beneficiary of the policy. In 2006, the irrevocable trust (Trust) was created, naming Frank as the grantor, First National Bank in Sioux Falls as the trustee, and Jean as the beneficiary of the Trust. Frank and the trustee obtained a \$10 million life insurance policy that named the Trust as the owner and beneficiary of the policy. The Trust obtained a loan from United to cover the cost of the premiums. To facilitate the transaction, various documents were prepared by United for Frank, Jean, and the trustee's signatures.

In 2009, at Frank's direction, the Trust surrendered the policy to the lender, as satisfaction in full for all obligations due and owing for the loan. In connection with this surrender, Frank and Jean agreed to surrender and relinquish all ownership and right to claim death benefits under the policy. Thereafter, the policy was transferred to other entities, until it was purchased by Viva Capital Trust in December 2014. Viva paid the required premiums for several years to keep the policy in force. After Frank died on January 18, 2019, the insurance company paid the death benefit under the policy, plus interest, to Viva's securities intermediary, Wilmington Trust, which credited the payment to Viva's account.

In January 2022, Frank's son, Jerry Garrett, as special administrator for Frank's estate (Estate), filed actions in federal courts claiming the policy was void because it was procured by or payable to someone without an insurable interest in Frank's life, and therefore the Estate

CASES

was entitled to the policy’s \$10 million death benefit. Viva then filed this action in May 2022 in South Dakota, seeking a declaratory judgment that it is the rightful owner of the policy’s death benefits and that the policy was validly issued and is enforceable. The Estate answered and counterclaimed against Viva and Wilmington Trust, alleging the policy violated South Dakota’s insurable interest statute, SDCL 58-10-3, which states, in part, that “no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits” are payable “to a person having, at the time when such contract was made, an insurable interest in the individual insured.” The Estate sought to recover the policy proceeds from Viva pursuant to SDCL 58-10-5, which entitles an insured’s estate to maintain an action to recover policy proceeds if SDCL 58-10-3 was violated.

Viva filed a motion to dismiss the counterclaim on the grounds that Frank, through the Trust, procured the policy on his own life and made the Trust the beneficiary; thus, the policy was valid under the insurable interest statutes. The circuit court granted the motion. Thereafter, the Estate filed amended counterclaims alleging that Frank’s policy, and United’s premium financing, were part of a stranger-originated life insurance (STOLI) scheme that violated SDCL 58-10-3, which prohibits strangers lacking an insurable interest from procuring a policy on the life of another. The Estate sought a declaratory judgment that the Trust was a “sham” and was void, invalid, and unenforceable at its inception. It alleged that Frank’s consent to establish the Trust was obtained through fraud and undue influence and that the Trust was created for an unlawful purpose. The amended counterclaim further alleged that, because the “Sham Trust” was invalid and unenforceable at its inception, the policy violated the insurable interest statutes and the Estate was therefore entitled to recovery of the policy proceeds. In response, Viva asserted, among other claims, that the Estate’s counterclaims were barred by South Dakota’s statute of repose, which precludes claims contesting the validity of a trust that are commenced later than one year after the settlor’s death.

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The parties filed motions for summary judgment. The circuit court held a hearing and granted Viva's motion, ruling that the amended counterclaims were barred by the statute of repose. The court further ruled that Frank and the trustee created a valid and enforceable trust under South Dakota law; that the Estate's claims of undue influence, fraudulent inducement, and lack of capacity were not supported by the evidence and did not present any genuine issues of material fact; that the policy was validly issued and delivered to the Trust; and that Viva was entitled to retain the policy's death benefit because the policy complied with the insurable interest requirements, as it was procured by Frank and/or the Trust. The court denied the Estate's motion for summary judgment, ruling that the Trust had an insurable interest in Frank's life and had a lawful purpose. Thereafter, the court awarded Viva litigation costs in the amount of \$30,284.76.

The Estate appeals, raising several issues, which we restate as follows:

1. Whether the circuit court erred when it determined that the statute of repose bars the Estate's claims for relief.
2. Whether the circuit court erred when it granted summary judgment in favor of Viva and Wilmington Trust.
3. Whether the circuit court erred when it awarded Viva costs.

Mr. Corey T. Denevan, Ms. Shannon R. Falon, Mr. Gregory Star (pro hac vice), Mr. Nicolas Novy (pro hac vice), and Mr. Chase A. Howard (pro hac vice), Attorneys for Appellant Jerry Garrett, as Special Administrator for the Estate of Frank Garrett, Jr.

Mr. Stephen C. Landon, Mr. Alex Hagen, Mr. Khai LeQuang (pro hac vice), Mr. Richard W. Krebs (pro hac vice), and Mr. Jordan Jekel (pro hac vice), Attorneys for Appellees Viva Capital Trust and Wilmington Trust, N.A., as securities intermediary.

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Case #31154

Thursday, March 19, 2026—Number 2

State v. Pickner

A jury found Wiley Pickner guilty of third-degree rape in September 2020. In January 2021, the circuit court sentenced him to 10 years in the penitentiary, with seven years suspended. Pickner was released from the penitentiary in March 2022 and placed on parole supervision with the Department of Corrections.

After Pickner was released on parole, he filed a motion to modify his sentence, asking the circuit court to “vacate the judgment of conviction and grant his request for a suspended imposition of sentence.” When a circuit court grants a suspended imposition of sentence, it does not enter a finding of guilt. Instead, the circuit court imposes requirements that the defendant must complete while on probation to avoid a conviction. Although the State opposed Pickner’s motion to modify his sentence, the circuit court granted the request for suspended imposition of sentence and placed Pickner on probation for 15 years. The State asked the circuit court to reconsider its decision, contending that it was a violation of the separation of powers to transfer Pickner from executive branch parole supervision to judicial branch probation supervision. The circuit court denied the State’s motion, and the State appealed. This Court dismissed the appeal for lack of jurisdiction.

The State filed a motion to correct sentence with the circuit court, contending that the circuit court lacked authority to suspend the imposition of a sentence after it had found the defendant guilty and imposed a sentence. The State made substantially the same argument as it advanced in its motion to reconsider, and the circuit court again rejected it. This Court granted the State’s request to submit a discretionary intermediate appeal of the circuit court’s denial of the motion to correct sentence.

Mr. Marty J. Jackley, Attorney General, and Ms. Erin E. Handke, Assistant Attorney General, Attorneys for Appellant State of South Dakota

Mr. Justin L. Bell, Attorney for Appellee Wiley Pickner

CASES

Case #31091

Thursday, March 19, 2026—Number 3

Save Centennial Valley v. McGruder

In November 2024, the Lawrence County Commission voted to approve Ordinance #24-05 (the Ordinance), which provided the county commission, sitting as the board of adjustment, with authority to consider applications for conditional use permits. Save Centennial Valley (SCV) obtained the signatures of the requisite number of registered voters in Lawrence County in order to refer the Ordinance to a public vote. McGruder, the Lawrence County Auditor, advised SCV that, although a sufficient number of qualified voters signed the petition, the Ordinance was not subject to referendum.

In January 2025, SCV filed a petition for writ of mandamus, seeking to compel Lawrence County to refer the Ordinance to a public vote. Lawrence County thereafter filed a motion for judgment on the pleadings, requesting that the circuit court deny the petition for writ of mandamus. The circuit court denied SCV's petition for writ of mandamus and granted Lawrence County's motion for judgment on the pleadings. SCV appeals that decision.

The central issue on appeal is whether the Ordinance is a legislative or administrative decision. Under South Dakota law, legislative decisions of a board of county commissioners, but not administrative ones, are subject to the referendum process. Legislative decisions are those that enact a permanent law or lay down a general rule of conduct or course of policy, while administrative decisions are those that involve the mere execution of a plan already adopted by a governing body or the Legislature.

SCV argues that the Ordinance is a legislative decision because it lays down a new course of zoning policy that is permanent in nature. Lawrence County, on the other hand, argues that the Ordinance is an administrative decision because the Legislature amended the county zoning laws regarding who has the authority to issue conditional use permits in 2015, and the Ordinance is merely the execution of that plan adopted by the Legislature.

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Mr. Matthew J. Lucklum of Bangs, McCullen, Butler, Foye & Simmons, LLP, Attorney for Appellant Save Centennial Valley

Mr. Richard M. Williams and Ms. Katelyn A. Cook of Gunderson, Palmer, Nelson & Ashmore, LLP, Attorneys for Appellee McGruder

GLOSSARY OF TERMS

Affirm

When the Supreme Court “affirms” a circuit court’s action, it declares that the judgment, decree or order must stand as decided by the circuit court.

Appeal

The Supreme Court’s review of a circuit court’s decision in a lawsuit. The Supreme Court does not consider new evidence or listen to witnesses. Rather, it reviews the record of a case and applies the proper law to determine if the circuit court’s decision is correct.

Appellant

The party who takes an appeal from the circuit court to the Supreme Court. (In other words, the party who does not agree with the result reached in circuit court.)

Appellee

The party in a case against whom an appeal is taken; that is, the party who does not want the circuit court’s decision reversed. Sometimes also called the “respondent.”

Brief

A document written by a party’s attorney containing the points of law which the attorney desires to establish, together with the arguments and authorities upon which their legal position is based. The brief tells the Supreme Court the facts of the case, the questions of law involved, the law the attorney believes should be applied by the Court, and the result the attorney believes the Court should reach.

Defendant

The party sued by the plaintiff or prosecuted by the state in the circuit court.

GLOSSARY OF TERMS

Oral Argument

An opportunity for the attorneys to make an oral presentation to the Supreme Court when the appeal is considered. Oral arguments also give the Court an opportunity to ask the attorneys questions about the issues raised in their briefs.

Plaintiff

The party who brings a lawsuit in the circuit court.

Record

All the papers filed in a circuit court case including any transcripts. This includes the original complaint, motions, court orders, and affidavits and exhibits in the case.

Remand

The Supreme Court “remands” an appealed case back to the circuit court for some further action. For example, the Supreme Court might remand a case to the circuit court and require that court to hear additional evidence and make further factual findings that are important in deciding the case.

Reverse

When the Supreme Court “reverses” a circuit court decision, it finds that a legal error was made and requires that the decision be changed.

Transcript

A document that contains a verbatim account of all that was said in a circuit court case by the parties, the attorneys, the circuit judge, and any witnesses. The transcript is prepared by the court reporter, and it is reviewed by the Supreme Court as part of the appeal process.

NOTES

NOTES



SOUTH DAKOTA SUPREME COURT JUSTICES

L-R: Justice Scott P. Myren, Justice Mark E. Salter, Chief Justice Steven R. Jensen, Justice Patricia J. DeVaney and Justice Robert Gusinsky



SOUTH DAKOTA SUPREME COURT

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