

**Introduction to**  
**The South Dakota**  
**Supreme Court**



**and**  
**Case Summaries for**  
**Oral Arguments at the**  
**October Term of the Court**  
**to be held**  
**September 30 through October 2, 2019**  
**University of South Dakota**  
**Vermillion, South Dakota**

*David Gilbertson*  
CHIEF JUSTICE

*Supreme Court*  
STATE OF SOUTH DAKOTA



September 30, 2019

To our Guests Observing the  
October Term Hearings of the  
South Dakota Supreme Court

Ladies and Gentlemen:

Your Supreme Court welcomes you to our October Term.

This brochure has been prepared as part of the continuing effort of the Supreme Court to promote increased public knowledge of the state 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,

David Gilbertson  
Chief Justice

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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 David Gilbertson*

Chief Justice Gilbertson was elected to a 4-year term as Chief Justice by the members of the Supreme Court in September 2001, was re-elected to a second 4-year term as Chief Justice by the members of the Supreme Court in June 2005, a third 4-year term in June 2009, a fourth 4-year term in June 2013 and a fifth 4-year term in 2017. He was appointed to the Supreme Court in April 1995 to represent the Fifth Supreme Court District, which includes Brown, Butte, Campbell, Clark, Codington, Corson, Day, Deuel, Dewey, Edmunds, Faulk, Grant, Hamlin, Harding, Marshall, McPherson, Perkins, Potter, Roberts, Spink, Walworth and Ziebach counties, and was retained by the voters in the 1998, 2006 and 2014 general elections.

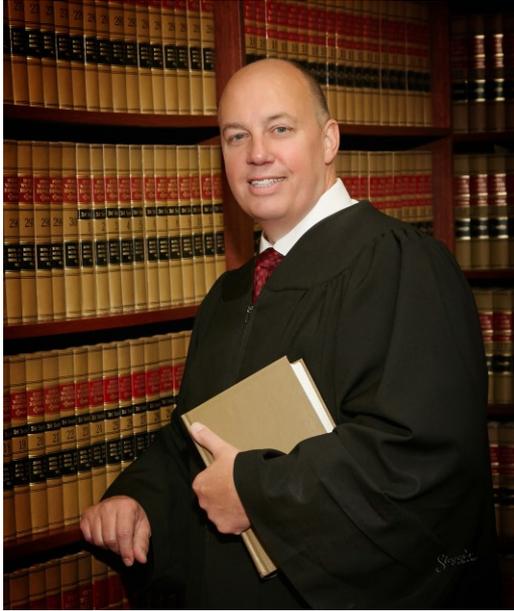
Chief Justice Gilbertson received his undergraduate degree from South Dakota State University in 1972 and his Juris Doctor from the University of South Dakota, School of Law in 1975. He engaged in private practice from 1975 until his appointment to the circuit court bench in 1986. He served as a Circuit Judge for the Fifth Judicial Circuit from 1986 until his appointment to the Supreme Court in 1995.

He served as President of the Conference of Chief Justices for the 2015-2016 Term. He has previously held the positions of Board Member, First-Vice President and President-elect and has chaired various committees. He also served as Chairman of the Board of Directors for the National Center for State Courts for its 2015-2016 Term. From 2010 to 2016 he served as the state court representative of the Criminal Rules Committee of the United States Courts. In 2006 he was the recipient of the Distinguished Service Award from the National Center for State Courts for his defense of judicial independence. He was the recipient of the "Grass Roots" Award by the American Bar Association in 2014 also for his defense of judicial independence. He is the past President of the South Dakota Judges Association. He also serves on the Judicial-Bar Liaison Committee of the State Bar Association and has served as a Court Counselor at South Dakota Boys State since 1995. Chief Justice Gilbertson and his wife Deb, have four children.



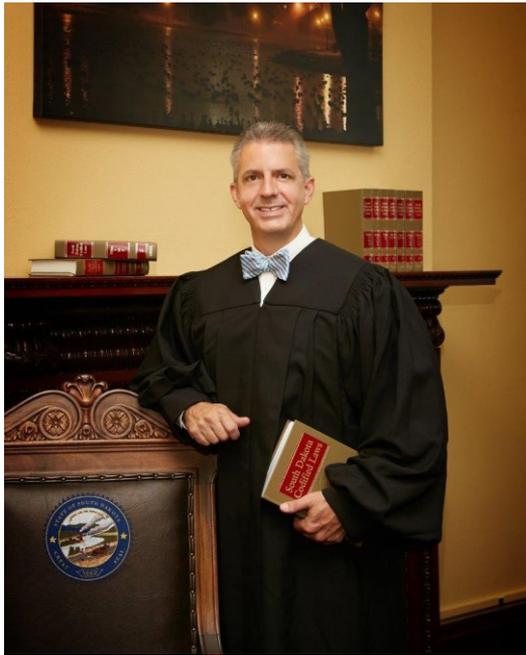
### *Justice Janine M. Kern*

Justice Kern, who was appointed to the Supreme Court on November 25, 2014, by Governor Dennis Daugaard, represents the First Supreme Court District, which includes Custer, Lawrence, Meade and Pennington counties. She received a Bachelor of Science degree in 1982 from Arizona State University and a Juris Doctor degree from the University of Minnesota Law School in 1985. Justice Kern worked in the Attorney General's office from 1985-1996 serving in a variety of capacities including the appellate division, drug prosecution unit and as Director of the Litigation Division. She was appointed a Circuit Court Judge in 1996 in the Seventh Judicial Circuit comprised of Custer, Fall River, Oglala Lakota and Pennington Counties and served 18 years on the trial court bench. She is a member of the American Law Institute, the National Council of Juvenile and Family Court Judges, the State Bar Association, the Pennington County Bar Association, the American Bar Association Fellows and past President of the South Dakota Judges Association. She served on the Council of Juvenile Services from 2004-2013 and on the Federal Advisory Committee on Juvenile Justice from 2004-2008 and on numerous other boards and commissions. Justice Kern and her husband Greg Biegler make their home in the beautiful Black Hills.



### ***Justice Steven R. Jensen***

Justice Jensen was appointed to the Supreme Court by Governor Dennis Daugaard. He was sworn in on November 3, 2017. Justice Jensen represents the Fourth Supreme Court District consisting of Union, Clay, Yankton, Hutchinson, Hanson, Davison, Bon Homme, Douglas, Aurora, Charles Mix, Gregory, McCook, Turner and Lincoln Counties. Justice Jensen grew up on a farm near Wakonda, South Dakota. He received his undergraduate degree from Bethel University in St. Paul, Minnesota 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 practice in 1989 with the Crary Huff Law Firm in Sioux City, Iowa and Dakota Dunes, South Dakota. In 2003, Justice Jensen was appointed as a First Judicial Circuit Judge by former Governor Mike Rounds. He became the Presiding Judge of the First Judicial Circuit in 2011. Justice Jensen served as chair of the Unified Judicial System's Presiding Judges Council, president of the SD Judges Association, and has served on other boards and commissions. In 2009, Justice Jensen was appointed as a Judicial Fellow to the Advanced Science and Technology Adjudication Resource Center in Washington D.C. Justice Jensen and his wife, Sue, have three children.



***Justice Mark E. Salter***

Justice Salter began as a member of the Supreme Court on July 9, 2018, following his appointment by Governor Dennis Daugaard. Justice Salter received a Bachelor of Science degree from South Dakota State University in 1990 and his Juris Doctor degree 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 Governor Daugaard and served in the Second Judicial Circuit from 2013 until his appointment to the Supreme Court in 2018. Justice Salter served as the presiding judge of the Minnehaha County Veterans Treatment Court from its inception in 2016 until 2018. He also 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 Salter represents the Second Supreme Court District which includes Minnehaha County. He and his wife, Sue, have four children.



## *Justice Patricia J. DeVaney*

Justice DeVaney was appointed to the Supreme Court by Governor Kristi Noem to represent the Third Supreme Court District. She was 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 1990 from the University of South Dakota, majoring in political science, and received her Juris Doctor degree 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 seventeen 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. During her tenure at the Attorney General's Office, she also handled administrative matters for state agencies and professional licensing boards. Justice DeVaney was appointed by Governor Dennis Daugaard as a Circuit Judge for the Sixth Judicial Circuit in 2012, where she presided over criminal, civil and juvenile proceedings, heard administrative appeals, and assisted as the second judge for the Sixth Circuit DUI/Drug Court. Justice DeVaney has served as the Secretary-Treasurer, and is currently the President-Elect, of the South Dakota Judges Association. She has also served on various other committees and boards in her professional capacity and in the Pierre community, where she resides with her husband, Fred, and their three children.



### ***Clerk of the Supreme Court***

Shirley Jameson-Fergel is the Clerk of the South Dakota Supreme Court. It is the function of this office to assist the Supreme Court, and especially the Chief Justice, in the organization of the correspondence, exhibits, and other documentation related to the formal activities of the Supreme 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 Clerk's office is also responsible for the management of all legal records of the Court, compiling appellate statistics, and documenting and disseminating Court rules.



### ***2019-2020 Supreme Court Law Clerks***

Law Clerks are employed by the Court to assist the Justices with research and writing of the opinion on the cases under consideration. In the photograph above from left to right, 2019-2020 Supreme Court Law Clerks, left to right, Stacy Skankey (Supreme Court Law Clerk), Jennifer Williams (Justice DeVaney), Benjamin Selbo (Justice Jensen), Stacia Berg (Chief Justice Gilbertson), Lora Waeckerle (Justice Kern), and Jennifer Doubledee (Justice Salter).

## **Summary of Jurisdictions for the South Dakota Court System**

### **Supreme Court**

Five justices appointed by the Governor from judicial appointment districts are subject to statewide electoral approval three years after appointment and every eight years thereafter. Retirement at age seventy.

Court terms held throughout the calendar year.

Has appellate jurisdiction over circuit court decisions.

Has original jurisdiction in cases involving interests of state. Issues original and remedial writs.

Has rule-making power over lower court practice and procedure, and administrative control over the Unified Judicial System.

Renders advisory opinions to the Governor, at his request, on issues involving executive power.

### **Circuit Court**

Circuit Court services available in each county seat.

Counties grouped into seven circuits, served by forty-one judges elected from within their circuits for eight-year terms. Vacancies filled by the Governor, who appoints replacements from a list of candidates recommended by the Judicial Qualifications Commission.

Trial courts of original jurisdiction in all civil and criminal actions. 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.

## **The 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.

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. 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 twenty 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 the 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. The Court's opinions are also available online at: <http://ujs.sd.gov/>

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.

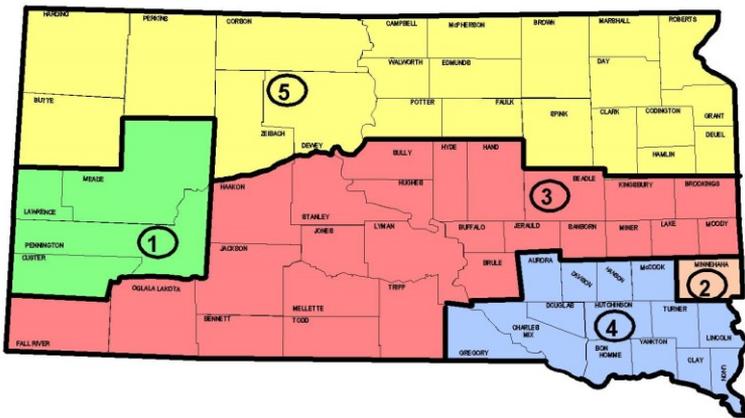
The five members of the Court (four justices and a chief justice) are responsible for making decisions as a group regarding appellate cases and other judicial business. It is not unusual, however, for one of the judges from the circuit court to be assigned to temporarily sit on the Supreme Court bench 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.

All of 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 seventy. 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 November 1980, vacancies on the Supreme Court are filled by 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.

Chief Justice Gilbertson was appointed in 1995 from District Five. Justice Kern was appointed in 2014 from District One. Justice Jensen was appointed in 2017 from District Four and Justice Salter was appointed in 2018 from District Two. Justice DeVaney was appointed in 2019 from District Three. Chief Justice Gilbertson was retained in the November 2014 general election.

South Dakota Supreme Court Appointment Districts  
*Effective January 23, 2012*



**In the Supreme Court  
of the  
State of South Dakota**

<b>Courtroom Protocol</b>
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The following list of Do's and Don'ts was prepared for the benefit of anyone attending one of the 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 of South Dakota**  
**October 2019 Term**

Nine cases are scheduled for oral argument during this term. 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. In addition to these oral arguments, numerous other cases will be considered by the Court during this term without further argument by the attorneys. These cases are on the Court's "non-oral" calendar. After hearing oral arguments each day, the Court will consider several non-oral cases.

<b>Case Summaries</b>
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The case summaries on the following pages have been prepared only for the cases scheduled for oral argument. The case number, date and order of argument appear at the top of each summary.

**Hamen v. Hamlin County**

On June 9, 2016, officers searched for Gary Hamen who had five warrants for his arrest. Around 11:30 a.m., Hamlin County Sheriff Chad Schlotterbeck and Watertown Police Department Detective Chad Stahl met with Gary's father, Gareth Hamen, at his residence. The officers asked whether Gary owned guns and Gareth told the officers Gary did own a few guns. During the visit, Gary called Gareth and asked to be picked up because the police were looking for him. Gary said he needed a car to go to Canada or Mexico. Gareth asked where Gary was, and Gary said he was at the mobile home owned by Gareth and Sharla Hamen. The mobile home was located approximately 600 feet to the northwest of Gareth's house. Gary was allowed to live in the mobile home during times when he was not working.

Following the meeting at Gareth's home, the officers went about half a mile southwest from the mobile home. From this location, the officers saw Gary leave the mobile home and go back inside. Sheriff Schlotterbeck requested help from the Watertown Police Department SWAT Team to get Gary to surrender from the mobile home.

Officers from the Watertown Police Department set up a loose perimeter around the mobile home but were unable to watch all four sides. A drone surveyed the mobile home and surrounding areas for signs of Gary. Sergeant Kirk Ellis of the Watertown Police Department parked an armored vehicle about 40 yards from the mobile home and used a PA system to contact Gary. Officers received no response.

While attempting to make contact with Gary, officers were advised that a witness saw Gary running towards Castlewood. The witness said that Gary came out of a tree line near the river but ran back into the trees. Another

witness told officers that he believed he saw Gary near the river. An officer inside the armored vehicle called Gary's cellphone and Gary answered. Gary sounded out of breath, like he was running, and claimed he was almost to Minnesota.

Meanwhile, Sheriff Schlotterbeck was parked at a nearby intersection speaking with Tim Hofwalt, Gary's brother-in-law. Tim was married to Gary's sister Julie Hofwalt, and their home was within view of the mobile home. Tim told Sheriff Schlotterbeck that Gary was at his home the previous night and Gary had at least one gun. Sheriff Schlotterbeck dispatched the information from Tim to all involved law enforcement officers. He then requested aid from the Codington County SWAT Team and Highway Patrol to further secure the area to ensure Gary did not make it to Castlewood.

Sheriff Schlotterbeck then briefed Codington County Sheriff Toby Wishard that Gary was last seen near the water west of Castlewood. The Codington County Special Response Team brought a second armored vehicle to clear the shelterbelt in search of Gary. The Special Response Team found a bag belonging to Gary containing a cellphone and an empty gun case. Believing Gary was armed, Sheriff Schlotterbeck and Sheriff Wishard agreed the mobile home would need to be cleared.

Sheriff Wishard and the Special Response team first went to Julie and Tim's residence. Officers searched the house and farm, with the exception of one padlocked out building. Julie told officers that Gary was likely hiding in the willows west of Gareth's mobile home. After searching the farm, officers told Gareth they would clear the mobile home.

During this time, Troy Jurrens, a former marine who runs a business from his home, was listening to the transmissions by radio between the various law enforcement

agencies. He alleges that just before the armored vehicles damaged the mobile home, someone announced that the officers were returning to the mobile home. Another person responded that Gary was not in the mobile home and the first voice said, that officers were going back anyway. Tim also contends that he heard a radio transmission saying the mobile home was clear and Gary was seen running towards the river.

According to Sheriff Wishard, to secure the mobile home, officers needed to create a communication porthole to call out Gary from inside. To create the communication porthole, the Watertown armed vehicle pulled away the front stairs and deck, which were not attached to the house or secured in the ground. The Watertown vehicle then pushed in the front door with a ram. The Codington County vehicle opened three portholes on the opposite side of the mobile home through windows and a sliding patio door. Drone footage captured this procedure. While the officers called out for Gary to exit the mobile home, the drone raised its vantage point. The drone captured someone walking in the river near the Hamen residence; this was Gary. Officers apprehended Gary around 6:00 p.m.

The Hamens claim that the mobile home was extensively damaged in addition to the removed doors and windows. The deck stairway was destroyed and the deck damaged. The wall and frame near the main doorway was damaged, and the mobile home knocked from its foundation on the south end. Further, one of the armored vehicles drove over the septic tank, crushing it. In sum, the Hamens claim an estimated \$18,778.61 in damage to the mobile home.

On January 30, 2017, the Hamens filed a complaint against Hamlin County, Sheriff Schlotterbeck, and Unnamed Sheriff's Deputies claiming a cause of action for inverse condemnation under the South Dakota Constitution and a 42 U.S.C. § 1983 cause of action for deprivation of constitutional

rights under the Fourth and Fourteenth Amendments of the U.S. Constitution.

Hamlin County and Sheriff Schlotterbeck moved for summary judgment on both claims. The Hamens filed a cross-motion for summary judgment. The circuit court held a hearing on the motions and issued its decision June 29, 2018. The circuit court denied the summary judgment motions as to all parties except Hamlin County. The court held that material issues of fact existed and it was improper for the court to rule on the inverse condemnation or § 1983 claim. The court held there was nothing in the record to prove an official policy or custom that Hamlin County approved or condoned the damage to the mobile home.

Hamlin County and Sheriff Schlotterbeck petitioned for discretionary appeal. Appellants raise two issues:

1. Whether the damage to the Hamens' mobile home during the arrest of Gary Hamen is a compensable taking or the result of an exercise of police power.
2. Whether Sheriff Schlotterbeck is entitled to qualified immunity.

Mr. James Moore, Mr. Joel Engel III, Attorneys for  
Appellants Hamlin County and Chad Schlotterbeck

Mr. David Strait, Attorney for Appellees Gareth and Sharla  
Hamen

**State v. Harruff**

Kristi Olson was discovered unresponsive in her Dallas home on June 1, 2017. Kristi's oldest daughter, Samantha, who lived in a home nearby, had called her mother several times that morning and received no answer. Kristi was known for always having her phone with her, so when Kristi did not answer the phone, Samantha was worried. Samantha went to Kristi's home and found Kristi lying unresponsive in her bed. Samantha called 911 and woke up everyone in the house. An ambulance arrived at the home and transported Kristi to the hospital where she was pronounced dead upon arrival. Medical professionals observed that Kristi had abrasions and discoloration around her neck.

Local law enforcement officers contacted the Division of Criminal Investigation for assistance and began an immediate investigation. Kristi's children noticed that their mother's cell phone was missing and Chance Harruff's name was immediately mentioned. Harruff was Kristi's most recent boyfriend and was known for having a tumultuous relationship with Kristi.

Harruff and Kristi had a history of verbal arguments and physical altercations. Harruff would get violent with Kristi, the couple would make up and start the process over again. Kristi refused to report the domestic violence to law enforcement but did confide in family and friends about the abuse. A major source of contention in the relationship was phone calls and text messages Kristi received from other men. On at least two occasions, when other men would contact Kristi, Harruff would fight with Kristi and destroy her cell phone.

Law enforcement asked Harruff to come in for questioning and he did so voluntarily. During his first interview, Harruff provided the officers with an account of his whereabouts on the previous night. Harruff told the officers that the last time he saw Kristi was in her home around 6:00 p.m. He later went to Mr. G's convenience store in Gregory and then to his apartment. Harruff said that a friend, Kristin Wallace, came to his apartment for a few beers. Around 12:30 a.m., Harruff and Wallace went to another residence briefly to get cigarettes. Harruff then returned alone to his apartment where he stayed for the rest of the night. Around 2:45 a.m., Harruff said that he spoke with Kristi on the phone. Officers questioned Harruff about Kristi's missing cell phone and he indicated that he did not know where it was and that he last saw her phone was around 6:00 p.m.

Officers contacted the cell phone provider and discovered a ping from Kristi's cell phone in Gregory around 4:00 a.m. Officers reviewed surveillance videos of various businesses in Gregory around that time. Footage from Mr. G's convenience store showed Harruff's car driving into Gregory from Dallas, parking briefly near the dumpster at Mr. G's, and then driving in the direction of his apartment. Officers searched the dumpster at Mr. G's and found remnants of a purple iPhone in a white kitchen trash bag, later identified as Kristi's cell phone.

Harruff was interviewed by law enforcement a second time and confronted with the cell phone information. Harruff admitted that he traveled to Kristi's home around 4:00 a.m. and had a verbal disagreement with her about the messages she was receiving from other men. Harruff told the officers that he grabbed the cell phone and Kristi hit him. Harruff then shoved Kristi back into the house and Kristi slammed the door on him. Harruff claimed that he never entered the house and he returned to his apartment.

The forensic pathologist concluded that Kristi's cause of death was asphyxia due to manual strangulation and that her death was a homicide. Harruff was indicted by a Gregory County grand jury for alternative counts of first degree murder, second degree murder and manslaughter in the first degree for the death of Kristi Olson.

Prior to trial, the State filed a Notice of Intent to Offer Other Act Evidence to prove Harruff's motive and intent. The other acts detailed Harruff's abuse of Kristi throughout their relationship. The circuit court noted that past abusive conduct in a domestic relationship is highly relevant in murder cases and that Harruff's prior conduct revealed a "controlling and hostile relationship fueled by jealousy of Olson's relationships with other men." After applying the required balancing test under SDCL 19-19-403, the circuit court held that the evidence was more probative than prejudicial and admitted the other acts admissible at trial.

During the eight-day jury trial, the State elicited the other acts evidence through the testimony of Marissa Bridges, Melvin Vosika, and Kristin Wallace. At the close of the State's case-in-chief, Harruff made a motion for judgment of acquittal which the circuit court denied. The jury convicted Harruff of second-degree murder and he was sentenced by the court to life in prison. On appeal, Harruff raises three issues:

1. Whether the circuit court erred in denying Harruff's motion for judgment of acquittal on second degree murder.
2. Whether sufficient evidence exists to sustain the second-degree murder conviction.

3. Whether the circuit court erred by admitting the testimony of Marissa Bridges, Melvin Vosika, and Kristin Wallace over Harruff's objection that the testimony was cumulative in violation of SDCL 19-19-403.

Mr. Clint Sargent, Ms. Raleigh Hansman, Attorneys for  
Appellant Chance Harruff

Mr. Jason Ravnsborg, Attorney General, Mr. Quincy R.  
Kjerstad, Assistant Attorney General, Attorneys for  
Appellee State of South Dakota

**State v. Buffalo Chip**

At the heart of this case is the validity of Buffalo Chip City, a newly incorporated municipality in Meade County, South Dakota. The Buffalo Chip is a campground located just outside of the City of Sturgis, South Dakota, home of the annual Sturgis Motorcycle Rally. The controversy giving rise to this case began in 2015 when area residents petitioned the Meade County Board of County Commissioners to incorporate Buffalo Chip campground as a city. At the time, SDCL 9-3-1 provided that: “No municipality shall be incorporated which contains less than one hundred legal residents or less than thirty voters.”

After holding a hearing and considering testimony, the Board concluded that the area of incorporation had more than thirty registered voters and that more than a quarter of the voters signed the petition as required by law. The Board, believing SDCL 9-3-1 had been satisfied, voted to incorporate Buffalo Chip. It scheduled an election for May 7, 2015 so that the voters in the proposed area could decide whether to assent to incorporation. The voters approved the request to incorporate, and Buffalo Chip City filed its articles of municipal incorporation with the Secretary of State.

Following the election, several Meade County residents and the City of Sturgis appealed the Board’s decision. After more than a year of litigation, the circuit court declared the incorporation of Buffalo Chip City void, finding the Board’s decision a legal nullity due to deficiencies in the petitioner’s filings and the Board’s procedural process. Buffalo Chip City and the Board appealed the circuit court’s ruling to the South Dakota Supreme Court.

In the appeal, captioned *Lippold v. Meade County Board of Commissioners*, the Supreme Court reversed the circuit court's judgment of dissolution because the Court held that Sturgis and the petitioners lacked standing to challenge the Board's decision. 2018 S.D. 7, 906 N.W.2d 917. Only the State of South Dakota, the Court explained, could seek to vacate the incorporation of a city when the challenged city is already acting as a municipality.

On May 29, 2018, in response to *Lippold*, the State filed a quo warranto proceeding to annul the existence of Buffalo Chip City. Quo warranto is a legal action utilized to vacate a corporation's charter or its articles of incorporation. Buffalo Chip City moved to dismiss the lawsuit, contending the State lacked authority to commence the action. It argued that SDCL 21-28-12, which authorizes the State to forfeit a corporation's charter or articles, could not be used to dissolve municipalities because dissolution of municipalities is specifically excluded from the statute. The circuit court denied the motion to dismiss, holding that SDCL 21-28-2(3), authorized the State to challenge any association that had not been duly incorporated.

The parties then filed cross motions for summary judgment. The Buffalo Chip again challenged the State's authority to proceed, this time arguing the action was prohibited by SDCL 9-3-20. SDCL 9-3-20 provides that "[t]he regularity of the organization of any acting municipality shall be *inquired into* only in an action or proceeding instituted by or on behalf of the State." (Emphasis added). According to the Buffalo Chip, use of the phrase "inquire into" within SDCL 9-3-20 inserted a temporal element into the statute requiring that investigation into a city's organization occur contemporaneous with incorporation. In response, the State argued the language of SDCL 9-3-20 and the Supreme Court's holding in *Lippold* gave it authority to make the challenge.

The parties also debated the proper interpretation of SDCL 9-3-1, the statute outlining the population requirements for incorporating a municipality. The State argued Buffalo Chip City did not satisfy SDCL 9-3-1 because even though it had thirty voters at the time of incorporation, it did not have one hundred legal residents. The Buffalo Chip disagreed, arguing that SDCL 9-3-1 required either one hundred legal residents *or* thirty voters but not both.

The circuit court granted summary judgment to the State. It held that SDCL 9-3-20 and SDCL 21-28-2(3) authorized the State to bring the action and determined that the dictates of common sense and the plain language of SDCL 9-3-1 required at least one hundred residents *and* thirty registered voters to be incorporated. A contrary interpretation, in the court's view, would mean that the Legislature intended to allow incorporation of a municipality that had no residents but thirty voters. Because the area of incorporation had less than one hundred legal residents, the circuit court dissolved Buffalo Chip City on the basis that it was not lawfully incorporated.

The Buffalo Chip appeals the circuit court's judgment of dissolution, raising the following issues:

1. Whether the circuit court erred by allowing the State to bring an action to vacate Buffalo Chip's Articles of Incorporation and annul Buffalo Chip City's existence.
2. Whether the circuit court erred by finding that SDCL 9-3-1 required both one hundred legal residents and thirty voters in the area before the Meade County Commission could set an election.

Mr. John Stanton Dorsey; Ms. Kimberly Pehrson; Mr. Kent  
R. Hagg, Mr. Zachary Peterson; and Mr. Jack H.  
Hieb, Attorneys for the Appellant Buffalo Chip

Mr. James E. Moore, Attorney for the Appellee State of  
South Dakota

## **Graff v. Children’s Care Hospital and School**

Benjamin Graff (Ben) was born with impaired cognitive abilities and has required professional assistance throughout his life. He started receiving services through Children’s Care Hospital and School (CCHS) in 1995. In 2010, on the recommendation of his individualized education program team, he enrolled in a residential treatment program at CCHS. While he was in CCHS’s residential care, the staff at CCHS used physical restraints on Ben, including prone (face-down) restraints. After approximately six months, Ben withdrew from the residential program and, through his parents who are his guardians, he sued CCHS, alleging damages caused by CCHS’s use of physical restraints.

CCHS moved for summary judgment, asserting Ben’s claims were untimely under the statute of repose for medical malpractice claims. The circuit court determined Ben’s claims of negligence, intentional infliction of emotional distress, and negligent infliction of emotional distress were not grounded in medical malpractice, and it permitted the lawsuit to continue.

Before the trial on Ben’s claims, CCHS asked the circuit court to exclude from evidence any prior Department of Health surveys conducted on CCHS before Ben was a resident. These surveys noted any possible deficiencies that may have been discovered after on-site inspections of the facility. The circuit court concluded the surveys were of “limited relevance” and prohibited Ben from introducing them into evidence at the trial. Part of the court’s reasoning for excluding the surveys was based upon its view that the surveys did not provide the proper standard of care

regarding physical restraints. At first, the circuit court ruled that certain statutes relating to corporal punishment provided the proper standard of care. However, the circuit court ultimately instructed the jury that various statutes pertaining to developmentally disabled individuals applied.

Following a three-week jury trial, the jury returned a verdict in favor of CCHS on all of Ben's claims. As the prevailing party, CCHS applied for taxation of costs and disbursements. The circuit court awarded CCHS partial costs and disbursements against Ben's parents and guardians, Neil and Debra Graff.

Ben appeals, raising two issues that we restate as follows:

1. Whether the circuit court abused its discretion, or otherwise erred, when it excluded the Department of Health surveys from evidence.
2. Whether the circuit court abused its discretion by taxing partial costs and disbursements against Ben's parents.

By way of notice of review, a procedure by which the prevailing party in the proceedings below may appeal certain issues to this Court, CCHS raises three issues that we restate as follows:

1. Whether the circuit court erred when it denied CCHS's motion for summary judgment based on the statute of repose.
2. Whether the circuit court abused its discretion when it instructed the jury that various statutes pertaining to developmentally disabled individuals applied to Ben's claims.

3. Whether the circuit court abused its discretion by awarding a partial amount, rather than the full amount, of costs and disbursements against Ben's parents.

Mr. Michael L. Luce and Mr. Vincent A. Purtell, Attorneys for Appellants Neil H. Graff and Debra A. Graff, as Parents and Guardians of Benjamin B. Graff

Mr. Edwin E. Evans, Mr. Mark W. Haigh, and Mr. Tyler W. Haigh, Attorneys for Appellee Children's Care Hospital and School

**State v. Quevedo**

Carlos Quevedo repeatedly stabbed Kasie Lord to death in the early morning hours of January 18, 2017. Lord worked as a clerk at the Loaf ‘N Jug convenience store in Rapid City and was attempting to stop Quevedo and his friend from stealing a case of beer. Quevedo was a juvenile at the time of the killing and had spent the prior evening ingesting cold medicine, alcohol, and marijuana. Quevedo and his friends had robbed another convenience store earlier in the night to obtain alcohol. They had also been stealing items from unlocked cars, which is how Quevedo obtained the knife he ultimately used to kill Lord.

After the stabbing, Quevedo and his friend, Cody Grady, fled the scene. Law enforcement officers apprehended both boys at Grady’s home shortly after the crime. Quevedo told the officers that he had blacked out and had no memory of stabbing Lord.

A grand jury indicted Quevedo on alternate counts of first-degree premeditated murder, first-degree felony murder, second-degree murder, and first-degree robbery. Quevedo moved to have the matter transferred to juvenile court, but then withdrew the motion, eventually accepting a plea agreement with the State to plead guilty to second-degree murder.

At sentencing, the court noted that Quevedo was just eight months shy of his eighteenth birthday when he killed Lord. Ordinarily, a conviction for second-degree murder requires a mandatory sentence of life imprisonment without the possibility of parole. However, in 2012, the United States Supreme Court held that mandatory life sentences for juveniles convicted of homicide offenses violates the Eighth Amendment’s cruel and unusual punishment prohibition.

The Legislature subsequently enacted SDCL 22-6-1.3, which prohibits life imprisonment without the possibility of parole for defendants under the age of 18.

In its sentencing analysis, the court considered the circumstances surrounding the offense, as well as mitigating factors, including the fact that Quevedo was raised in a violent home by drug-addicted parents. Quevedo also had prior involvement with the criminal justice system due to his own drug and alcohol use. Despite these circumstances, the court noted that Quevedo had graduated from high school and had assisted in raising his younger siblings. After weighing the circumstances of the crime and mitigating factors, the court sentenced Quevedo to 90 years in the penitentiary, making him eligible for parole in 2062.

Quevedo raises the following issues on appeal:

1. Whether the circuit court violated the Eighth Amendment's prohibition on cruel and unusual punishment by imposing a 90-year sentence for a juvenile offender guilty of a homicide offense.
2. Whether the circuit court's imposition of a 90-year sentence was grossly disproportionate to the offense of second-degree murder in violation of the Eighth Amendment's prohibition on cruel and unusual punishment.

Mr. Paul Eisenbraun, Attorney for Appellant Carlos C. Quevedo

Mr. Jason R. Ravnsborg, Attorney General, and Ms. Ann Meyer, Assistant Attorney General, Attorneys for Appellee State of South Dakota

### Estate of Gaaskjolen

Marlin and Dora Lee Gaaskjolen were ranchers in Meadow, South Dakota, owning some 3000 acres of ranch and farm land. They had two daughters, Audrey and Vicki. In 1990, Marlin and Dora Lee executed wills, each leaving their entire estate to the other spouse. If the other did not survive, the estate was to be divided equally between Audrey and Vicki. Marlin and Dora Lee made every effort to treat their daughters equally and fairly.

Audrey was a registered nurse who moved into her parents' home in 1999 to care for her parents. Vicki lived about 30 miles away from the family ranch. After Marlin died in 2003, Audrey continued to live at the ranch and provided care for Dora Lee. Dora Lee had multiple health issues including a hip surgery, ulcers, skin cancer, and a mitral valve prolapse. Additionally, in 2007, she suffered a brain injury after she was kicked by a Longhorn heifer. The brain injury forced Dora Lee to spend several weeks in the hospital and go through several weeks of physical therapy. She did not fully recover from the injury and suffered from facial aphasia, which made it difficult for her to speak in more than one or two-word responses.

In exchange for providing full-time care, Audrey possessed and lived on the south half of the property rent free and received a monthly paycheck. At the time, Vicki was leasing the north half of the property from Dora Lee. Vicki subleased the north half for more money than her own rent obligation and deposited the excess funds into a special account for Dora Lee's future needs.

In early 2012, Audrey expressed to Vicki her desire to take over the north half of the ranch because she needed more grass for her cattle and horses. Vicki, however,

planned on subleasing it to her daughter and son-in-law. In August 2012, Audrey brought up the lease issue again, claiming that Dora Lee wanted to lease the north half to Audrey. Later that month when Vicki's husband visited Dora Lee, Dora Lee told him she wanted Audrey to be on the property.

After this encounter, Audrey prepared a letter, purportedly signed by Dora Lee, which terminated the lease agreement between Dora Lee and Vicki. Vicki decided legal action would be necessary for Dora Lee's personal welfare and to protect her estate. Vicki filed an emergency petition for appointment of temporary conservator, which was signed by a judge, appointing Dacotah Bank as temporary conservator.

Audrey hired attorney John Nooney to represent Dora Lee. All communications between Nooney, his associates, and Dora Lee went through Audrey because Dora Lee could only speak in two or three words to answer leading questions and could not talk on the phone. According to Audrey, Dora Lee was upset about the conservatorship, the lease dispute with Vicki, and the fact that Vicki did not visit her after the conservatorship was in place. However, Audrey's emails made it clear that Vicki was not welcome at the ranch after the conservatorship was filed.

Audrey later contacted attorney James Elsing to draft a new will for Dora Lee. The new will left Dora Lee's entire estate to Audrey and specifically disinherited Vicki, her children and grandchildren. After multiple meetings with Dora Lee, Elsing was satisfied Dora Lee had testamentary capacity and intent and saw nothing to suggest the presence of undue influence. The new will was signed on December 18, 2012.

A hearing on the petition for permanent conservator was held on February 20, 2013. Dora Lee testified at the

hearing but was mostly unresponsive to questions. The court granted the petition and named Dacotah Bank as permanent conservator. Attorney Nooney appealed the decision to the South Dakota Supreme Court. While on appeal, Nooney decided that a codicil would be a good way to reaffirm Dora Lee's testamentary desires.

In May 2013, attorney Shelley Lovrien, on behalf of Dacotah Bank, visited Dora Lee. Dora Lee told Lovrien she did not remember signing anything to engage an attorney and did not know who her attorney was. She also stated that there were changes made to her will but she did not know what they were. She also expressed that she thought her children and grandchildren were the beneficiaries of her will.

The conservatorship appointment was affirmed in February 2014. Later in 2014, Elsing met with Dora Lee regarding the codicil Nooney suggested. On October 24, 2014, Dora Lee signed a codicil that reaffirmed her December 2012 will.

Dora Lee died at the age of 90 on March 29, 2016.

The circuit court concluded that Dora Lee had the testamentary capacity to make a will. However, the court also found that a confidential relationship existed between Dora Lee and Audrey, which created a presumption of undue influence. The presumption of undue influence shifts the burden to the beneficiary to show she took no unfair advantage of the decedent. Because Audrey failed to rebut the presumption of undue influence, the court held that the December 18, 2012 will and the October 24, 2014 codicil were invalid.

Audrey appeals the circuit court's decision that both instruments were the product of Audrey's undue influence.

Mr. John Stanton Dorsey, Attorney for Appellant Audrey  
Lorius

Mr. Michael M. Hickey and Ms. Kelsey B. Parker, Attorneys  
for Appellee Vicki Penfield

Mr. Greg L. Peterson, Attorney for Personal Representative  
Dacotah Bank

**Slota v. Imhoff & Assocs.**

On February 13, 2013, Fred Slota was indicted on charges of first degree rape and sexual contact with a child under the age of sixteen. The alleged victim was seven-year-old A.K., who was living with Fred and his wife as a foster child.

Fred's wife found defendant Imhoff and Associates, P.C. (Imhoff), a California law firm, on the internet. Imhoff advertised itself as a specialist in criminal law that offers assistance all over the United States, including South Dakota. Fred hired Imhoff to defend him. Imhoff then hired Henry Evans, a Sioux Falls attorney, to defend Fred. Imhoff also hired Manuel de Castro, Jr., a South Dakota attorney to help defend Fred as well. Imhoff later assigned Shannon Dorvall, an Imhoff associate, to help Evans defend Fred.

After a jury trial, Fred was convicted on one count of first degree rape and one count of sexual contact with a child under the age of sixteen. Fred was sentenced to thirty years in the South Dakota State Penitentiary. The written judgment of conviction was filed on June 2, 2014. On June 19, 2014, Mr. de Castro sent Fred a closing letter on Imhoff stationary confirming that Imhoff and Associates was ending its representation of Fred.

Fred sought post-conviction relief. A habeas petition was filed on September 19, 2015, raising claims of ineffective assistance of counsel. A habeas judge granted Fred habeas relief, finding that under the totality of the circumstances Evans' representation fell short of the prevailing professional standard and that Fred was prejudiced by such cumulative errors. On June 7, 2017, the habeas court granted habeas relief and vacated Fred's conviction.

Forty-one days after being released from prison, Fred sued three of his four criminal defense attorneys for fraud and deceit and all four for legal malpractice. Evans, Imhoff, Dorvall, and de Castro all received service by July 14, 2017. The services occurred just over three years from June 2, 2014, the last date the attorneys represented Fred.

Defendants Imhoff, Evans, Dorvall, and de Castro all moved for judgment on the pleadings arguing that Fred's claims are time barred by SDCL 15-2-14.2. The circuit court granted the motions. The court held that the claims were time barred because they are subject to the three-year statute of repose of SDCL 15-2-14.2, rather than the six-year statute of limitations applicable to fraud claims. Thus, Fred's claims for legal malpractice were filed too late. The court also found that the factual allegations in the complaint do not support a fraud claim. The court determined Fred's fraud and deceit claims were merely reassertions of his claims for legal malpractice and that artful pleading cannot change those claims to benefit from a longer statute of limitations.

In this appeal, Fred Slota conceded that the circuit court correctly dismissed his claims against all defendants for legal malpractice. Fred only challenges the circuit court's ruling as to his fraud and deceit claims.

Mr. James D. Leach, Attorney for Appellant Fred Slota

Mr. Thomas J. Welk, Mr. Jason R. Sutton, and Mr. Mitchell W. O'Hara, Attorneys for Appellees Imhoff and Associates P.C., Henry Evans, and Shannon Dorvall

**State v. Armstrong**

In 2016, Joshua John Armstrong was incarcerated in the South Dakota State Penitentiary after being convicted in 2009 of sexual contact with a person under sixteen. While in prison, he prepared a packet of letters and other documents to be sent to the Compass Center in Sioux Falls. The Compass Center is an organization that provides services for victims of domestic and sexual assault, including services to prisoners who wish to report sexual harassment or assault occurring within the prison. Armstrong addressed the envelope to “P.R.E.A.”—the acronym for the federal Prison Rape Elimination Act. Under that Act, prison staff could not open Armstrong’s envelope and review the documents before mailing.

Armstrong’s envelope arrived at the Compass Center, and Michelle Markgraf read and reviewed its contents. The envelope contained a three-page letter addressed to PREA, an eighteen-page letter addressed to Governor Dennis Daugaard, a completed commissary order form, documents indicating treatment was being used as a weapon against Armstrong, and handwritten quotes from this Court’s 2010 opinion affirming Armstrong’s 2009 conviction. Only the letters to PREA and Governor Daugaard are relevant to this appeal.

In his letter to PREA, Armstrong identified that he had sent previous, unanswered letters to the Compass Center. He then begged for help, and wrote the following:

I want you to know that I am absolutely serious about what I said about [K.H.] I have got nothing to lose and everything to gain by raping and killing her or a guard. At least I will be serving time for a crime that I actually committed and to be honest I would rather die

of lethal injection than sit in this cell suffering from untreated psoriasis and thoughts that I can't seem to stop.

...

I know that I can not live like this much longer and fight my own conscience every day to keep me from raping [K.H.] or a guard, but if the warden and Governor are willing to sacrifice her I might as well.

...

What would you do? Please let me know if or when you forward the letter to Daugaard. I want to know where I stand and what I need to do in my near future. If you don't respond by August 26, 2016 I will assume that I am on my own and might as well die embarrassing South Dakota's government.

K.H. is actually "C.H." and she is a mental health therapist at the penitentiary. Armstrong was housed in her unit.

In his letter to Governor Daugaard, Armstrong also referenced C.H. and related in even greater detail similar statements about how he would rape and kill her. Armstrong gave Governor Daugaard multiple options "to keep [C.H.] from being raped and murdered," including the placement of several hundreds of thousands of dollars in various accounts and providing him a full pardon.

Ultimately, Armstrong was indicted on one count of threatening to commit a sexual offense. Under that charge, Armstrong was alleged to have directly threatened or communicated the specific intent to commit further felony sex offenses. Armstrong pleaded not guilty, and at trial, moved for judgment of acquittal. He argued that the State failed to present sufficient evidence that he *directly*

threatened C.H. The circuit court denied Armstrong's motion. At the close of the case, Armstrong requested an instruction informing the jury that to find him guilty, it must determine "beyond a reasonable doubt that he directly threatened or directly communicated specific intent to commit a further felony sex offense." He requested another instruction on specific intent, namely that "the State must prove that the defendant acted with the specific design or purpose to threaten [C.H.]" The circuit court refused both requested instructions, and the jury found Armstrong guilty.

Armstrong appeals, asserting the circuit court erred in denying his motion for judgment of acquittal and in refusing his requested instructions.

Mr. Beau J. Blouin and Mr. Christopher Miles, Attorneys for  
Appellant Joshua John Armstrong

Mr. Jason R. Ravensborg, Attorney General and Ms. Erin E.  
Handke, Assistant Attorney General, Attorneys for  
Appellee State of South Dakota

**Black Bear, et al. v. Mid-Central Ed. Coop., et al.**

The Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) grant is designed to help underprivileged students throughout the country graduate high school and enter and succeed in post-secondary education. The South Dakota Department of Education (SDDOE) received the grant in 2011 to provide services to low-income Native American students in South Dakota.

Mid-Central Educational Cooperative (MCEC) contracted with SDDOE to administer GEAR UP, and later contracted with the American Indian Institute for Innovation (AIII) to provide some personnel and services for GEAR UP. SDDOE ended the GEAR UP administration agreement with MCEC in 2015, when it was revealed that Scott Westerhuis, MCEC's business manager and AIII's registered agent and chief financial officer, and his wife Nicole had been mismanaging and embezzling funds from MCEC.

Alyssa Black Bear and Kelsey Walking Eagle-Espinosa sued multiple defendants, on behalf of the students meant to benefit from GEAR UP, alleging the misappropriation of federal GEAR UP funds caused injury to the group. Black Bear and Walking Eagle-Espinosa attended schools that the SDDOE included on the list of those serviced by the GEAR UP grant. Both students now attend college. Their complaint brought claims of civil theft, breach of contract, negligent supervision, vicarious liability, and breach of duty to control.

The defendants resisted the students' request for class action certification and moved for summary judgment on multiple theories: (1) the students are not intended third-

party beneficiaries of the SDDOE-MCEC contract and cannot enforce it; (2) the students did not comply with applicable notice requirements; (3) neither MCEC nor AIII can be held vicariously liable for the Westerhuis' torts; and (4) the students do not have standing. Each motion was denied.

The defendants moved for summary judgment again, this time on three bases: (1) there is no evidence that any GEAR UP funds were among the funds misappropriated; (2) the students' claims are preempted by federal law; and (3) the students do not have standing (the court did not readdress this claim). The circuit court denied the motion on the status of the GEAR UP funds, finding there were genuine issues of material fact. The circuit court granted the motion for summary judgment on preemption, finding no private remedy available to litigants under GEAR UP. All claims were dismissed based on the preemption finding.

Black Bear and Walking Eagle-Espinosa appeal, raising one issue:

1. Whether the circuit court erred in ruling that their claims are preempted by federal law.

Through Notices of Review, the various defendants raise six issues:

1. Whether the circuit court erred in ruling that Black Bear and Walking Eagle-Espinosa have standing to bring their claims.
2. Whether the circuit court erred in concluding that Black Bear and Walking Eagle-Espinosa effectively complied with notice requirements.
3. Whether the circuit court erred in finding a genuine issue of material fact regarding whether Black Bear and Walking Eagle-Espinosa were intended third-party

beneficiaries of the agreement between SDDOE and MCEC.

4. Whether the circuit court erred in finding a genuine issue of material fact regarding whether MCEC or its executive director can be held vicariously liable for the torts of Scott and Nicole Westerhuis.
5. Whether the circuit court erred in finding a genuine issue of material fact regarding whether GEAR UP funds were missing or misappropriated.
6. Whether the circuit court erred in certifying the lawsuit as a class action.

Mr. John Hinrichs, Mr. Scott Heidepriem, Mr. Matthew Tysdal, and Mr. Steven Emery, Attorneys for Appellants Alyssa Black Bear and Kelsey Walking Eagle-Espinosa

Mr. Ryland Deinert and Mr. Scott Swier, Attorneys for Appellee MCEC

Mr. Quentin Riggins and Ms. Katelyn Cook, Attorneys for Appellee AIII

Ms. Rebecca Wilson, Attorney for Appellee Estate of Nicole Westerhuis

Mr. Richard Rylance and Ms. Trudy Morgan, Attorneys for Appellee Estate of Scott Westerhuis

Mr. Eric Steinhoff, Attorney for Appellee Dan Guericke

Mr. Terry Pechota and Mr. Dana Hanna, Attorneys for Appellee Stacy Phelps

Mr. Michael Luce and Mr. Samuel Kerr, Attorneys for  
Appellees MCEC Directors

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

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

**Brief** - A document written by a person’s attorney containing the points of law which the attorney desires to establish, together with the arguments and authorities upon which his 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 person sued by the plaintiff or prosecuted by the state in the circuit court.

**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 person 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