

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

WAYNE S. SMITH,)	CIV. 11-4001-KES
)	
Plaintiff,)	
)	
vs.)	ORDER DENYING MOTIONS
)	TO DISMISS AS MOOT
)	
STATE OF SOUTH DAKOTA,)	
JASON GANT in his official and)	
personal capacity as Secretary of)	
State of South Dakota,)	
MIKE MILSTEAD in his official)	
and personal capacity as)	
Minnehaha County Sheriff,)	
DEPUTY SHERIFF JEFF GOMER)	
in his official and personal)	
capacity,)	
)	
Defendants.)	

Defendants Jason Gant¹ and South Dakota move to dismiss Wayne Smith’s complaint. Defendant Mike Milstead moves to join South Dakota’s motion to dismiss. Smith filed an amended complaint after Gant and South Dakota moved to dismiss. Thus, the motions to dismiss are rendered moot. *See, e.g., Pure Country, Inc. v. Sigma Chi Fraternity*, 312 F.3d 952, 956 (8th Cir. 2002) (“If anything [the plaintiff’s] motion to amend the complaint rendered moot [the defendant’s] motion to dismiss the original complaint.” (citation omitted)); *Onyiah v. St. Cloud State Univ.*, 655 F. Supp. 2d 948, 958 (D. Minn.

¹ The amended complaint identifies Chris Nelson as the Secretary of State. Jason Gant is the current Secretary of State for South Dakota.

Sept. 17, 2009) (“[A]s a general proposition, if a defendant files a Motion to Dismiss, and the plaintiff later files an Amended Complaint, the amended pleading renders the defendant's Motion to Dismiss moot.” (citations omitted)).

Accordingly, it is

ORDERED that Gant’s motion to dismiss (Docket 16) is denied as moot;

IT IS FURTHER ORDERED that South Dakota’s motion to dismiss (Docket 25) is denied as moot;

IT IS FURTHER ORDERED that Milstead’s motion to join South Dakota’s motion to dismiss (Docket 32) is denied as moot.

Dated February 3, 2011.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
CHIEF JUDGE