



# Rounds, Daugaard file answers in EB-5 litigation

By [Todd Epp](#) / [Northern Plains News](#) on Oct 21, 2014 at 12:16 p.m.

**F**ormer governor and Republican U.S. Senate candidate Mike Rounds says in an affidavit that he does not have any personal files related to the EB-5 scandal.

However, in the same affidavit filed in U.S. District Court Monday, he did state under oath that he has “several CDs from the State that contain copies of official documents, records, and correspondence while I was in office.”

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Rounds filed the affidavit in response to federal actions Democratic Minnehaha County Commissioner Jeff Barth filed in September requesting that Rounds, Gov. Dennis Daugaard, Joop Bollen, various Board of Regents and Northern State University executives and lawyers, Harvey Jewett and Aberdeen attorney Jeff Sveen preserve evidence regarding the state’s EB-5 program.

Also Monday, Rounds and a number of the respondents filed a response to Barth’s petitions to preserve evidence under a federal civil procedure rule that allows pre-case filing discovery in certain limited instances.

Sioux Falls attorneys William Fuller and Eric Preheim filed the response for Rounds, Daugaard and the BOR and NSU respondents.

The response argues that Barth does not have enough interest or injury in the EB-5 matter to give him standing to bring the matter to court.

“The Petition provides no factual allegations that Jeff Barth has suffered an injury in fact or that he will suffer an injury in fact,” according to the response.

The response included several affidavits from state and BOR attorneys noting that the EB-5 records Barth wants have already been placed on a litigation hold and were not in danger of being lost or destroyed. According to the affidavits, the legal holds began in 2009 during the Darley litigation against the South Dakota International Business Institute and Hanul Law Firm, with additional holds placed after Barth filed his petitions in federal court in late September.

Barth says he's looking for more than just what Rounds had access to as governor.

"It's just not the papers Rounds he had while governor but his continued communications with Joop (Bollen) I'm interested in," Barth said today (Tuesday). "That may not be covered. With the Darley case in 2009, why then were Mr. (Richard) Benda's emails erased. I'm looking at those things now."

Benda was the Secretary of Tourism and Economic Development during Rounds' last term.

The response also argues that Barth has not stated a federal claim based on either federal law or diversity jurisdiction of the parties. Generally speaking, for there to be diversity jurisdiction, the parties must be from different states or nations. All of the respondents and Barth, the petitioner, are from South Dakota.

The response alleges that Barth petition contains “vague and hostile allegations, while potentially useful in political attack ads, have not been, are not currently, and will never be enough to state a plausible federal claim.”

Further, the response notes that Barth has not shown “how any of the Respondents violated any ‘clearly established law’,” by their actions.

The respondents also argue that Barth himself needed to verify his original petitions and not his attorney, former Democratic state representative Richard Engels of Hartford.

Judge Karen E. Schreier will hold a hearing on the matter at 3 p.m. Monday in the federal courthouse in Sioux Falls.