

State Board of Elections meeting and Rules Hearing
DRAFT – meeting minutes

Monday, June 18, 2018
10:00 a.m. CT

Secretary of State's Office
Business Services Building
215 East Prospect
Pierre, South Dakota

Secretary Krebs called the meeting to order at 10:00am CT.

Present via conference call: Mike Buckingham (Board of Elections member), Carri Crum (Board of Elections member), Linda Lea Viken (Board of Elections member), Margaret Gillespie (Board of Elections member) and Rick Knobe (Board of Elections member).

Present in person: Secretary Shantel Krebs (Chair, Board of Elections), Kea Warne (Deputy Secretary of State, Election Services), Kristin Gabriel (HAVA Coordinator), Rachel Soulek (Election Coordinator), Christine Lehrkamp (State Election Coordinator) and Tom Deadrick (Deputy Secretary of State, Business Services).

Quorum present.

Also present in person and over the phone were – auditors, media, candidates and elected officials.

A *motion* to approve the October 30, 2017 Board of Elections meeting minutes by Viken, second by Knobe.

Roll call vote: Buckingham – abstain; Gillespie – abstain; Knobe – Aye; Viken – Aye; Crum – Aye; Secretary Krebs – Aye. Approved.

Secretary Krebs requested to amend the agenda to add public comments after *item 5* on the agenda.

A *motion* to approve amending the agenda by Buckingham, second by Gillespie.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – Aye; Viken – Aye; Crum – Aye; Secretary Krebs – Aye. Approved.

Viken asked for agenda *item 8 - public comment* to be allowed as each rule is discussed instead of waiting for public comments after the board has already voted on the proposed rule changes.

A *motion* to amend the agenda to include public comments as each rule is discussed by Viken; second by Knobe.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – Aye; Viken – Aye; Crum – Aye; Secretary Krebs – Aye. Approved.

Krebs read off the names of those attendees that had signed in (list is attached), requested those that were on via conference call to identify themselves and introduced Secretary of State staff. Those on conference call were: Rob Timm (Chiesman Center for Democracy, Inc.), Dana Ferguson (reporter with the Argus Leader), Ann Mines-Bailey (Secretary of State representative from the Attorney General's office), Kristen Witchey (Deputy Finance officer – Brookings County), Jeannette McClain (Brown County Auditor's office staff) and Bobbi Janke (Lake County Auditor).

Update on County Held HAVA funds

Kristin Gabriel reviewed the state-held county HAVA fund balances. She noted 22 counties were at a \$0 balance, 9 of which applied for a HAVA grant for the 2018 election cycle. She noted the 22 counties would be eligible for a HAVA grant for the 2020 election cycle, with the deadline for applying being July 1, 2019. She stated that the counties purchased new voting equipment in the fall of 2017, which then put several of them at a zero balance. Handout provided with the county balances (was posted with meeting documents).

Update on Statewide Voter Equipment Purchase

Kea Warne, reported that thirty of South Dakota's sixty-six counties purchased new equipment to be in place for the June 5, 2018 Primary Election. The new equipment consists of a new ballot marking machine, ExpressVote that replaced the AutoMarks (purchased in 2004). These 30 counties also replaced their M100 and M650 tabulating machines (purchased in 2004) and purchased either the DS200, DS450 or DS850 tabulating machine.

Update on the Consolidated Appropriations Act of 2018 – New HAVA funds

Secretary Krebs updated those present regarding new HAVA funds from Congress. The last time Congress provided HAVA funds was in 2002. The 2018 Congress has appropriated monies to be used for election equipment. South Dakota will receive \$3million with a 5% match requirement for that money (\$150,000). South Dakota has until 2020 to acquire the matching funds. There are two options for collecting the \$150,000 match: 50/50 match from counties and state or Secretary of State's office brings the full, \$150,000 budget request to the 2019 and/or 2020 Legislature.

Board Questions:

Viken asked, out of the two options, is it one way or the other? Secretary Krebs stated yes, as the legislature will determine how much of the \$150,000 they will provide. The legislature could provide funds over a couple budget cycles instead of providing all at once or they could only provide a certain amount of the \$150,000, then the Secretary of State's office and counties would have to provide the rest. Does the Secretary of State's office have to have the \$150,000 before they can draw on funds? Secretary Krebs stated no. How will money be dispersed to each county? Secretary Krebs stated the original HAVA funding was determined based upon a percentage of the number of registered voters in each county compared to the total number of registered voters in the state.

Item 6 on the agenda was the *2019 Proposed election related legislation* but was amended to allow for public comment prior to the board reviewing the proposed legislation.

Secretary Krebs stated public comment would be allowed for 30 minutes.

Secretary Krebs explained the reason behind why she was proposing legislation regarding e-pollbooks and vote centers. E-pollbooks were first used in 2012 by then Secretary Gant as a pilot project and again in 2014 as a pilot project. There are 7 counties that use these in conjunction with vote centers. Pennington and Custer counties just use e-pollbooks at their regular precincts. On Jan. 22, 2015 she stated her concerns in a meeting with the counties regarding the use of e-pollbooks and the previous administrations use of HAVA funds to pay for the pilot project. It was determined that wasn't an appropriate use of HAVA funds therefore if counties wanted to continue using e-pollbooks they would have to fund them out of their county general budgets. Secretary Krebs has concerns moving forward with the security and integrity of the election process. She has many concerns with the usage of e-pollbooks after what happened from the last election. She acknowledges that there is a lot of concern from counties that use e-pollbooks and that option being taken away from them. However, the bigger

concern is that the last election affected the entire state and she feels that it's a statewide issue and it needs to be discussed. The Secretary of State's office provided auditor training Nov. 2015 and Nov. 2017 and during these trainings she encouraged counties to use paper backups if using e-pollbooks, but it's not in statute so she could only recommend they do that. The Secretary of State does not have control over which counties utilize e-pollbooks and vote centers. County commissions make that decision and the auditor enters into a contract with a vendor. The Secretary of State is not involved in that process in any way. She stated there were thousands of Facebook posts and comments asking how she was going to fix this problem, which is why she is bringing forth legislation. The Board of Elections decides which legislative proposals would move on to the legislature. Secretary Krebs says there are four options:

1. Make no statute changes and proceed as is.
2. Propose legislation to require paper backups for those counties that use votes centers and/or e-pollbooks.
3. Eliminate entirely the use of both.
4. Propose 2 and 3 and let legislature decide which option to go with.

The Secretary of State and her staff took many constituent calls regarding what occurred at the Primary election. Secretary Krebs wants it on the record what she is proposing but none of this will impact the 2018 General election.

Secretary Krebs then called on Brandon Campea, BPro, Inc. President, and e-pollbook vendor. She asked for explanation on what happened on election day and what is being done to fix it so it doesn't happen again.

1. **What happened-** E-pollbooks communicate with a central server when internet is available but can run stand alone without an internet connection. Election morning, when the e-pollbooks were being turned on, the load was too high and caused the central server to crash. To mitigate the issue, BPro, asked counties to turn off their internet connection (some counties use hot spots to connect all their e-pollbooks) but not all did. The server issue was fixed by the end of the day which then allowed the counties to close and sync their e-pollbooks.
2. **How do we prevent this from happening again-** The Secretary of State's office runs multiple mock elections and they will coincide the testing of e-pollbooks with those mock elections. This will allow counties to simulate checking in voters and run through a full test of the e-pollbooks. A back up plan as Secretary Krebs has mentioned, would be paper pollbooks and paper registration lists that would allow voters to vote without delay in a county utilizing e-pollbooks.
 - a. A verification process will be added, that BPro will monitor, to determine whether the e-pollbook has been set up correctly.

Secretary Krebs asked Campea if this backup plan has been provided, in writing, to the counties? He stated yes.

Secretary Krebs then asked does each county know what their issue was? He stated yes. The Board of Elections and Secretary Krebs requested a copy of the document(s) he provided to the counties. Campea said yes it will be provided but there is specific information within them that should be kept confidential for security reasons. Viken suggests redacting confidential information before providing a copy to Secretary Krebs.

Knobe asked Campea to elaborate more on the accuracy issues mentioned by Secretary Krebs. Campea stated that one county did not complete their full setup on several of their e-pollbooks which caused the voter registration file to be incomplete. Because of the incomplete set up, labels weren't printing completely. Despite these issues, the election workers were still able to provide the correct ballot to the voters and the auditor confirmed that. Part of the remediation plan is for BPro and the counties to double

check to make sure that each e-pollbook is set up correctly. Knobe then asked if there was a problem with the accuracy of the count? Campea firmly stated no.

Secretary Krebs asked if e-pollbooks can be tested the night before and how would that be done? Campea said it is recommended that the counties test the night before to pull in all the information and this was communicated to auditors prior to the election. The verification, by BPro, that the e-pollbooks are setup correctly was not part of the setup plan but will be next time.

Public testimony began at 10:40 am.

The Board of Elections was provided all public comments that were submitted prior to this meeting.

Janette McIntyre (legislative candidate District 34) stated that her testimony is for the purpose of filing a complaint with the SD Election Commission. Ms. McIntyre outlined her complaints via a document she read from (attached).

James Bialota (Pennington county auditor candidate) is asking for recount and audit of the Pennington county election. He stated he sent out an email within the 10-day window to request this. He stated that the election was a fiasco and wrong ballots were given to voters. The poll list from the 605 app did not take off names of those that had already voted so there was no way of knowing if individuals voted twice. There were discrepancies between the e-pollbook list and the paper list. Voters were turned away. Voters were forced to use provisional ballots after 7:00 pm even though the polls were still open. There are other serious complaints within his emailed document. He stated again that he is asking for a complete and utter review of the Pennington county election and the list and the disenfranchisement of the voters is an understatement.

Viken commented that the Board of Elections has the right to make declaratory rulings but she is not sure they have the authority to force a recount. Secretary Krebs said she knows of no authority to do so. Viken asked Bialota what statute he is referring to regarding the 10-day rule? He doesn't know at the moment.

Secretary Krebs asked what Bialota meant when he mentioned early voting tablets. Bialota was referring to electronic pollbooks.

Julie Pearson (Pennington County Auditor) would welcome an audit if that's allowed. She expressed that they followed state law regarding keeping the polls open. Polling places were told not to use the e-pollbooks and shut them down via their vendor. She instructed the election workers to wait to vote people until a paper list arrived at that polling location. There is nothing in state law that allows for the use of provisional ballots in this situation. She did what the legislature has allowed her to do via state law. Regarding the vote 605 comment- they used the county voter registration list and they do not tell voters or their election workers to use the vote 605 app ever. They also did not use e-pollbooks during early (absentee) voting. Ms. Pearson commented that ERM (Election Systems & Software export program) didn't flow correctly and that they are unofficial results until the state and county canvasses are complete. Her staff tried to correct the issue with the ERM and the system didn't take their correction. E-pollbooks do print out a label that states the voter's name, party and the ballot to provide to the voter...so workers do know what ballot to give voters. That label is kept by the election workers. Ms. Pearson stated they manually posted from the e-pollbooks labels and voter registration poll list to verify there was no double voting. And the number of ballots counted matched the number from both e-pollbooks. All lower race the candidates do not get the same number of votes as the first races on the ballot, this is known as drop off. Voters often believe that the lower races may not matter as much so they don't vote on those races. This is called under and over voting and there is a

report with that data. Regarding Mr. Bialota's comment about not having access to voted ballots- ballots are secured after the counting is complete and can only be opened by court order. No one is ever allowed to be rifle through voted ballots. Ms. Pearson stated again that she followed the law. She feels that voters would be more disenfranchised if they were given a provisional ballot. She was advised by Secretary of State and the assistant Attorney General that provides counsel to the Secretary of State as to when to use the provisional ballots and to make sure to keep those ballots separate. The Pennington county state's attorney was also in contact with the assistant attorney general. Ms. Pearson started printing registration lists for each precinct at 6:15 am when e-pollbooks weren't working. Ms. Pearson is unsure what the issue is with ERM but they've updated software and have gone to using ExpressVotes to try to fix this. In Pennington County, they count absentee ballots first because they have an absentee precinct, which throws off the precinct counts. If they are off by more than five ballots then state law requires the auditor to recount that precinct. They did recount many precincts until they got the same number twice. The numbers are accurate and she admits that voters could've been disenfranchised but she did what law allowed to do. Pennington County will not use e-pollbooks again in 2018 even though the election workers love them. Since some counting was done twice that delayed the results. They ran the election accurately and with integrity. E-pollbook training was done and things worked fine during testing. Nothing indicated that there would be this issue. They used them in the city election and things worked perfectly. When asked how the auditor knows how many ballots to count on election night, there is tracking every step of the way. The number of ballots sent out to precincts is tracked; once election workers receive the ballots, they must count and document how many they receive; they also track and count any bundles of ballots they open; at the end of the night they subtract any spoiled ballots; all of that is noted on the ballot statement (recapitulation sheet) that workers fill out; they also subtract the number of unused ballots; this all then equals the number of ballots that should be counted. The number in the e-pollbook should equal this number. The ballots and ballot statement are then driven to the counting location in one vehicle by two election workers representing the republican and democratic parties. All seals are accounted for. Then the sealed ballot box is opened. There is a lot of security in elections. The only failure was the e-pollbooks. No need for law change requiring a paper list but the counties should have that in their plan. There were connectivity issues for Pennington and at the moment Ms. Pearson was not sure what caused that. Nor does she know if any brand of e-pollbooks would have had issues. Custer county has e-pollbooks though they have a different vendor and they had no troubles.

Tom Tveidt (Hughes County Commissioner) provided public comment but wasn't speaking on behalf of the Commission. His concern is that last week, on Wednesday, was the first time anyone heard of the legislation (to ban e-pollbooks and vote centers) being proposed. This allowed no time for the Hughes County Commission or the South Dakota Board of County Commissioners to meet to discuss this legislation. The e-pollbooks and vote centers have worked fine for all their elections since 2012. He asked the Board of Elections to please be careful with their decision and give all those that this affects time to weigh in.

There was no public comment from those on the phone.

Board of Elections member Pam Lynde joined at 11:12am.

Bob Litz (Minnehaha County Auditor) testified that the idea that her (Ms. Pearson) integrity would be challenged as a criminal offense is not right. There's never been a perfect election and to think so is utter fiction. Minnehaha County had issues but they don't use e-pollbooks. But there are advantages to using them. In Minnehaha county they had 27 different ballots and with a 14-hour day, for the election workers, errors could be made by the end of that day. They had to

reopen ballot boxes and redo the “pink” sheets (recapitulation sheets). In that process it was discovered that 162 ballots were not counted and this wasn’t discovered until after the county canvass. As a result, they counted them and recanvassed. Litz feels if they had e-pollbooks this would’ve been discovered sooner. Litz commends Ms. Pearson for handling the stressful situation. Minnehaha county had 300 workers on election and some things just happen. Litz feels that accountability is about as good as its going to get.

No further public comment.

Secretary Krebs noted on the record the public comments that were received by the Secretary of State’s office (these were posted, with meeting materials, as soon as they were received):

- Kevin Hipple, Hughes County Manager
- Patty Hojem, Yankton County Auditor
- Maxine Fischer, Brown County Auditor
- Rob Timm, Chiesman Center for Democracy, Inc.
- Jane Naylor, Hughes County Finance Officer
- Vicki Buseeth, Brookings County Finance Officer
- Sue Knutzen, Brookings County Election worker
- Brookings County Commissioners
- Kristen Witchey, Brookings County Deputy Finance Officer
- Marilyn Ring, Hyde County Auditor

Viken stated that SDCL 12-1-21 outlined that a complaint under HAVA can be given to the Board of Elections:

12-1-21. Complaints filed under the Help America Vote Act. The State Board of Elections shall resolve any complaint filed under Section 402 of the Help America Vote Act of 2002, as of January 1, 2003, in accordance with the contested case provisions of chapter 1-26. The complaint shall be signed, notarized, and filed with the secretary of state. The board shall resolve the complaint within ninety days of its filing. The State Board of Elections may promulgate rules, pursuant to chapter 1-26, governing the procedure for the complaint process.

Viken then asked Ms. Mines-Bailey to provide comment regarding this and if this is something Board of Elections needs to take action on. Secretary Krebs said it would be appropriate for Ms. Mines-Bailey and the Secretary of State’s office to review this and then follow up with the board.

Secretary Krebs in her closing comments pointed out that BPro’s Brandon Campea didn’t issue a public apology and that would’ve been appropriate. Secretary Krebs knows it is this vendor’s issue because Custer County had no issues and they use a different vendor. This impacted the entire state and yes, she realizes counties like e-pollbooks and vote centers and that they are convenient but this is a statewide issue and it needs to be discussed. Secretary Krebs reiterated that she made recommendations in 2015 and 2017 to the auditors to have paper backups of everything and if the auditors would have followed those recommendations this wouldn’t have been an issue. Secretary Krebs then asked Campea if the Secretary of State was responsible for this issue? Campea stated no. Secretary Krebs requested a public apology. Campea gave one and accepted the blame of his software and e-pollbooks not performing as they should.

The Board of Elections began their review of the proposed legislation.

Viken asked if it would be appropriate to withhold a decision on proposal #1 until the Board made decisions regarding proposals #6A and #6B. Secretary Krebs agreed this would be appropriate to address proposals #6A and #6B before addressing proposal #1.

They took up the proposals in this order: 6A, 6B, 1, 2, 3, 4, 5, 7, 8, 9, 10

Board will take no action in regard to proposal #1 as they did not approve proposal #6A.

#1 Amend: 12-1-3. Definition of terms used in title. Terms used in this title mean:

- (1) "Candidate," a person whose name is on the ballot or who is entitled to be on the ballot to be voted upon for nomination or election at any election;
- (2) "Election," any election held under the laws of this state;
- (3) "Election officials," state and local officials charged with the duty of conducting elections and the canvass of returns;
- (4) "Elector," a person qualified to register as a voter, whether or not the person is registered;
- ~~(4A) "Electronic pollbook," an electronic system containing both the registration list and pollbook;~~
- (5) "General election," the vote required to be taken in each voting precinct of the state on the first Tuesday after the first Monday in November of each even-numbered year;
- (5A) "Paid circulator," any person who receives money or anything of value for collecting signatures for a petition;
- (6) "Party office," an office of a political party organization as distinct from a public office;
- (7) "Person in charge of an election," or "person charged with the conduct of an election," the county auditor in all cases except local elections for a municipality, school district, township, or other political subdivision, in which case it is the officer having the position comparable to the auditor in that unit of government if not specifically designated by law;
- (8) "Petition," a form prescribed by the State Board of Elections, which contains the question or candidacy being petitioned, the declaration of candidacy if required and the verification of the circulator. If multiple sheets of paper are necessary to obtain the required number of signatures, each sheet shall be self-contained and separately verified by the circulator;
- (9) "Petition circulator," a resident of the State of South Dakota who is at least eighteen years of age who circulates nominating petitions or other petitions for the purpose of placing candidates or issues on any election ballot;
- (10) "Political party," a party whose candidate for any statewide office at the last preceding general election received at least two and one-half percent of the total votes cast for that statewide office;
- (10A) "Pollbook" or "poll list," a list containing in numerical order the names of all persons voting at the election and type of ballot voted;
- (10B) "Polling place," a designated place voters may go to vote;
- (11) "Primary" or "primary election," an election held at which candidates are nominated for public office;
- (12) "Public office," an elected position in government;
- (12A) "Registration list," a list of eligible voters;
- (13) "Registered mail," does not include certified mail;
- (14) "Registration officials," the county auditor and deputies and other persons authorized to assist in registration pursuant to chapter 12-4;
- ~~(14A) "Vote center," a polling place when the precinct has been defined as the entire jurisdiction and an electronic pollbook is utilized;~~
- (15) "Voter," a person duly registered to vote or one who is performing the act of voting;

(16) "Independent (IND)" or "no party affiliation (NPA)," any voter who writes independent, I, Ind, the field is blank, no party affiliation, no party, no choice, nonpartisan, or line crossed off in the choice of party field on the voter registration form;

(17) "Independent candidate," notwithstanding the definition of independent as stated in this chapter, any registered voter regardless of party affiliation who declares to be an independent candidate for public office pursuant to this chapter;

(18) "Other," any voter who writes a political party not recognized in South Dakota in the choice of party field on the voter registration form.

#2 Amend: 12-4-5. Entry of applicants in registration file--Deadline--List for runoff election. The county auditor shall enter in the master registration file the names of all eligible persons who have had their completed applications for registration and mail registration cards received by any county auditor or any local, state, or federal agency responsible for conducting voter registration under this chapter no later than 5:00 p.m. local time fifteen days preceding the election. However, any completed mail registration card mailed to the appropriate county auditor and postmarked no less than thirty days preceding an election shall be added to the registration file. A voter registration completed at any local, state, or federal agency during any given week commencing on Tuesday through the following Monday shall be sent to the appropriate county auditor by that agency no later than the following Wednesday. The State Board of Elections may promulgate rules, pursuant to chapter 1-26, for the alternative transmission of voter registration information by computer from the agency to the secretary of state. The name of any voter who has registered to vote by 5:00 p.m. local time fifteen days preceding a runoff election shall be added to the file used for the runoff election.

Secretary Krebs explained what occurred when a voter filled out the voter registration application at the agency but then took the voter registration application with them and then the voter turned in the application. As a result, it wasn't turned in on time to meet the voter registration deadline and the extension of time per the statute didn't apply because the agency didn't turn it in, the voter did.

A *motion* to approve Proposal #2 by Viken; second by Knobe.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – Aye; Viken – Aye; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

#3 Amend: 12-5-14. County central committee--Composition--Organization--Certification of party officials. The precinct committeemen and the precinct committeewomen of each political party; the state committeemen and committeewomen; the county chairperson, vice-chairperson, and secretary-treasurer or secretary and treasurer; and the elected public officers who reside in the county and other officers as designated by the party's constitution or bylaws, constitute the county central committee of their respective parties. They shall form their party organization by electing a county chairperson and other officers as determined by the party's constitution or bylaws. The name and mailing address of the county chairperson shall be certified to the county auditor and state party chair immediately following the

election of the county chairperson or change of the county chairperson. The name and mailing address of the county officer responsible for the records and reports required pursuant to chapter 12-27 shall be certified to the secretary of state immediately following the election. The name and mailing address of the state party chairperson shall be certified to the secretary of state immediately following the election or appointment of the state party chairperson.

Secretary Krebs stated this was a result of a state party calling the Secretary of State's office asking who are the county party chairs. This information should be provided to the state party.

A *motion* to approve Proposal #3 by Crum; second by Lynde. Discussion by the Board: Viken asked if county parties submit this information to the Secretary of State's office. Secretary Krebs said no they do not. Viken suggested sending reminders to the state parties. Secretary Krebs said that her office does do that. Knobe said he has a problem with the Board of Elections getting involved in saying that people have to report to a political party chair and doesn't think this should be done. Viken disagreed and said this was a great idea after serving in the roll of party chair and vice-chair.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – No; Viken – Aye; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

4 Amend: 12-6-7.1. Petition for candidate for Legislature, county political public office, or county party office. Notwithstanding the provisions of § 12-6-7 a nominating petition for a candidate for office in the State Legislature, county political public office, and county party office shall be signed by not less than fifty voters or not less than one percent of the voters who cast their vote for the party's gubernatorial candidate, whichever is less. The petition shall clearly designate the senatorial or representative district number and chamber for which said individual is a candidate.

Secretary Krebs explained a candidate for the legislature submitted petitions to our office without indicating the district number or chamber. There was some miscommunication between the candidate and a county auditor when filling out the petitions. Those petitions are filed with our office and we could not accept the petitions without that information on the petitions. Luckily, he submitted his petitions early enough that he was able recirculate and resubmit.

A *motion* to approve Proposal #4 by Knobe; second by Viken.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – Aye; Viken – Aye; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

#5 Amend: 12-12-1. Notice of offices to be filled--Publication. The county auditor ~~or other local election official~~ charged with the conduct of the primary election ~~local elections~~ shall give notice of the offices that are to be filled by nomination or by declaration and the deadlines for filing in all official newspapers at least once each week for two consecutive weeks between the fifteenth and thirtieth day of

~~January, the last publication to be not less than ten nor more than fifteen days before the deadline for filing. Other local election officials charged with the conduct of local elections shall give notice of the offices that are to be filled by nomination or by declaration and the deadlines for filing in all official newspapers at least once each week for two consecutive weeks, the last publication to be not less than ten nor more than fifteen days before the deadline for filing.~~ **The provisions of this section apply unless otherwise provided by the statutes specifically governing their elections.**

~~That same Election officials~~ shall give a further notice of each election stating the date and time of the election and designating polling places in all official newspapers at least once each week for two consecutive weeks, the last publication to be not less than four nor more than ten days before the election. However, for any secondary election as provided for in § 12-6-51.1, one notice shall be published along with a copy of the ballot in each of the newspapers in the state which publish on Saturday and Sunday. The secretary of state shall direct the newspapers to publish the ballot and notice on the eleventh or twelfth day after the primary election. The secretary of state shall pay all costs of publication. Vacancy notice is published about 2 weeks prior to filing deadline which doesn't give candidates enough time to circulate petitions. We'd like to have that notice much earlier to allow people to know sooner the positions that are up.

The Secretary of State's office is proposed an additional amendment to this proposal and that is highlighted in yellow above.

A **motion** to approve that additional amendment (in **yellow highlight**) by Knobe; second by Viken.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – Aye; Viken – Aye; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

The Secretary of State's office is proposed another amendment to this proposal and that is highlighted in gray above.

A **motion** to approve that additional amendment (in **gray highlight**) by Viken; second by Knobe.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – Aye; Viken – Aye; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

A **motion** to approve the style and form edits (in **green highlight**) by Viken; second by Gillespie.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – Aye; Viken – Aye; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

A **motion** to approve proposal #5 as amended by Buckingham; second by Crum.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – Aye; Viken – Aye; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

Board will take no action in regard to proposal #6A as they approved proposal #6B.

#6A Repeal: Version I: ~~12-14-17. Vote centers. Notwithstanding any other provision of law, any jurisdiction may conduct an election using vote centers pursuant to the provisions of this section. The election shall be conducted in conformance with all applicable election laws and rules with the following exceptions:~~

~~———— (1) — The jurisdiction may use vote centers that allow the voters in the jurisdiction to vote at any one of the vote centers in lieu of establishing precincts and wards for the election;~~

~~———— (2) — Any person who is registered to vote and living in the jurisdiction may be appointed as a polling place superintendent or deputy to any of the vote centers;~~

~~———— (3) — Secure, encrypted electronic pollbooks shall be used in lieu of paper registration books;~~
~~and~~

~~———— (4) — The entire jurisdiction is designated as one voting precinct for this election.~~

#6B Amend: Version II: 12-14-17. Vote centers. Notwithstanding any other provision of law, any jurisdiction may conduct an election using vote centers pursuant to the provisions of this section. The election shall be conducted in conformance with all applicable election laws and rules with the following exceptions:

(1) The jurisdiction may use vote centers that allow the voters in the jurisdiction to vote at any one of the vote centers in lieu of establishing precincts and wards for the election;

(2) Any person who is registered to vote and living in the jurisdiction may be appointed as a polling place superintendent or deputy to any of the vote centers;

(3) Secure, encrypted electronic pollbooks shall be used in lieu of paper registration books;

and

(4) A county that uses vote centers must provide a printed paper voter registration list and a printed bound paper pollbook to each vote center prior to the polls opening; and

(5) The entire jurisdiction is designated as one voting precinct for this election.

Board questions:

Viken asked if a vote center has to go to their backup of a printed paper list, does that meet the criteria that e-pollbooks provide to ensure that someone hasn't already voted somewhere else? Secretary Krebs stated no it does not. When a county uses vote centers, does the county also have regular polling places? Secretary Krebs stated no. All precincts are combined and a voter is able to vote at any VC. Linda- theoretically people could go vote at any vote center.

Buckingham mentioned that a voter could recognize that a paper list is being utilized and vote multiple times. Then he asked, wouldn't that be figured out at the audit and be deemed prosecutable? Secretary Krebs said that is correct.

Knobe pointed out after hearing all this discussion and having been a candidate and elected

official, when everything is done what matters is whether the count is accurate. How long the process takes shouldn't matter. Accuracy is key and responding to the moment isn't the way to react. E-pollbooks are not perfect. And he wants the board to be really careful to not micromanage counties on how to run their elections. Counties should be deciding whether to use vote centers, e-pollbooks and backup paper lists. He reminded everyone that at the end of the day the count was accurate.

Buckingham explained that he was a member of the Federal Election Assistance Commission when vote centers were first being implemented in Colorado. A rural Colorado auditor discussed why he wanted to implement vote centers. It was because most citizens lived in areas that made it difficult for them to even get to work let alone be able to get to a specific polling place that they had to vote at. In Pennington County, the Doty firehall is a polling place and most of the voters assigned to that polling place, drive past where they live to get to it and then must drive back. Ultimately vote centers could encourage more voters to vote. To take this situation that occurred and to eliminate vote centers, he has problems with that.

Crum echoes what *Knobe* and *Buckingham* have said. E-pollbooks and vote centers do have their place in SD elections.

Motion to approve proposal #6B by *Crum*, second by *Viken*. Comments on the motion- *Viken* stated that hearing in the end that results are accurate gives her assurance that vote centers can be a good option, it's up to the counties if they want to use them and it's their cost to have the e-pollbooks. This is still an appropriate option for counties to have.

Roll call vote: *Buckingham* – Aye; *Gillespie* – Aye; *Knobe* – No; *Viken* – Aye; *Crum* – Aye; *Lynde* – Aye; Secretary *Krebs* – Aye. Approved.

#7 Amend: 12-15-2. Precinct superintendent and precinct deputy to be registered voters and residents of precinct. Any precinct superintendent or precinct deputy appointed under the provisions of § 12-15-1 shall be a registered voter and a resident of the precinct for which the person is appointed. If, by the time prescribed in § 12-15-1, the auditor exhausted all efforts to meet the party distribution, and a sufficient number of members of the precinct election board are unable to be appointed, a vacancy may be filled by appointing any independent registered voter of the county in which the precinct is located, ~~provided the voter meets the party distribution required by § 12-15-3.~~

Secretary *Krebs* explained that county auditors are having much difficulty finding election workers. This would allow the auditor to appoint an independent (NPA) registered voter thus giving them a wider pool of potential election workers.

Knobe, thanked Secretary *Krebs* for including independents in the process. He then asked what about other parties and shouldn't we just allow any registered voter to be an election worker. Secretary *Krebs* clarified that currently it's based upon party candidates on the ballot. *Viken* said the purpose of the original statute was to have a balance between the parties represented on the ballot and she is in favor of allowing independents but not in favor of allowing other parties.

Motion to approve proposal #7 by *Knobe*; second *Lynde*.

Roll call vote: *Buckingham* – Aye; *Gillespie* – Aye; *Knobe* – Aye; *Viken* – Aye; *Crum* – Aye; *Lynde* – Aye; Secretary *Krebs* – Aye. Approved.

#8 Amend: 12-16-28. Pollbooks provided--Form. The person in charge of an election shall provide paper ballot precincts with a pollbook in the form prescribed by the State Board of Elections for each election precinct for the purposes of § 12-18-5. If a county uses electronic pollbooks but does not use vote centers the auditor must provide a printed paper voter registration list and a printed bound paper pollbook to each precinct prior to the polls opening.

Motion to approve as amended by adding the word “opening” after “polls” in the last sentence by Viken, second by Crum.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – ~~Aye~~ No; Viken – Aye; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

Board will take no action with regards to proposal #9 as they did not approve proposals #1 and #6A.

#9 Amend: 12-18-5. Poll lists maintained by member of precinct election board. A member of the precinct election board belonging to a political party which is not the same as the political party of the member of the precinct election board who has the registration list shall keep a poll list in paper ~~or~~ ~~electronic~~ format which contains in numerical order the names of all persons voting at the election and the type of ballot voted.

#10 Amend: 12-25-29. Statements by convention nominees for state office--Violation as petty offense or misdemeanor. Any candidate for United States senate, United States house of representatives, governor, lieutenant governor, state treasurer, attorney general, secretary of state, state auditor, public utilities commissioner, ~~or~~ commissioner of school and public lands, or state legislator shall file a statement of financial interest with the secretary of state not more than fifteen days after the candidate's nomination is certified. A violation of this section is a petty offense. Any intentional violation of this section is a Class 2 misdemeanor.

Secretary Krebs explained to comply with Federal Judge Piersol’s ruling earlier this year, these additional candidate positions are now able to be nominated at their party’s convention. But only those that have alternative political status are able to nominate those additional positions.

Knobe asked if this change is more complicated than initially thought and should the Board table the proposal until the next meeting? Secretary Krebs stated we cannot table as this is a federal court ruling that we need to comply with and there is not another Board of Elections meeting scheduled in 2018.

Board determined to hold on action at this time while the Secretary of State’s staff has time to do some more research regarding the proposal. The Board will move on to Rules hearing and come back to this proposal after (12:22 pm CT).

At the conclusion of the rules hearing this proposal was addressed again. **Secretary of State staff determined it was best to propose a new statute instead of amending 12-25-29. No Board action was taken regarding proposal #10.**

The language for the new statute is as follows:

Statements by convention nominees for state office--Violation as petty offense or misdemeanor. Any candidate for United States senate, United States house of representatives, governor, lieutenant governor, state treasurer, attorney general, secretary of state, state auditor, public utilities commissioner, commissioner of school and public lands, or state legislator who has been nominated at the convention of a party with alternative political status shall file a statement of financial interest with the secretary of state not more than fifteen days after the candidate's nomination is certified. A violation of this section is a petty offense. Any intentional violation of this section is a Class 2 misdemeanor.

Gillespie asked if this was a recommendation from research this morning? Secretary Krebs stated yes.

Motion to approve new statute proposal by Crum. Second by Knobe.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – Aye; Viken – Absent; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

Secretary Krebs called the Board of Elections Rules Hearing to order at 12:20 p.m. (CT).

Present via conference call: Mike Buckingham (Board of Elections member), Carri Crum (Board of Elections member), Linda Lea Viken (Board of Elections member), Margaret Gillespie (Board of Elections member), Pam Lynde (Board of Elections member) and Rick Knobe (Board of Elections member).

Present in person: Secretary Shantel Krebs (Chair, Board of Elections), Kea Warne (Deputy Secretary of State, Election Services), Kristin Gabriel (HAVA Coordinator), Rachel Soulek (Election Coordinator), Christine Lehrkamp (State Election Coordinator) and Tom Deadrick (Deputy Secretary of State, Business Services).

Quorum present.

Also present in person and over the phone were – auditors, media, candidates and elected officials.

Public comment:

James Bialota – he asked that the Board of Elections consider defining more clearly what residency means. And he used the example of 100+ voters using the Wal-Mart address as their residence address on their voter registration application. Secretary Krebs explained that the late Senator Tieszen tried unsuccessfully to pass a clearer definition through the legislature. We also must be careful that we are following Federal law.

Julie Pearson - 5:02:06:10.03, requesting to put in statute the buff color so the auditors know ahead of time what the color will be. She also supports no precinct name having to be printed on each ballot as that is on the official ballot stamp. Regarding the Printer's Note, she is wondering why the right-hand corner must be cut off ½ inch from the top and right. She is also wondering if the ballot paper should be specified.

Rob Timm – wanted to express his concerns with HB 1196 (passed with emergency clause, 2018 Legislature) and the resulting proposed rule change.

Proposed changes to the following rules: §§ 5:02:03:19; 5:02:04:17; 5:02:06:10.03; 5:02:08:00; 5:02:08:00.01; 5:02:08:00.05; 5:02:08:07; 5:02:08:07.01; 5:02:08:08; 5:02:08:09; 5:02:08:45; 5:02:09:16; and 5:02:10:04; inclusive.

5:02:03:19. Voter registration address verification notice.

Secretary Krebs explained the changes to administrative rule 5:02:03:19. These were a result of legislation passed in 2018.

Motion to approve proposed changes to 5:02:03:19 by Crum, second by Lynde.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – Aye; Viken – Aye; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

5:02:04:17. Notice of deadline for filing primary nominating petitions.

Secretary Krebs explained that these changes better clarify the offices to be listed in the notice and where the petitions are to be filed.

Motion to approve proposed changes to 5:02:04:17 by Knobe, second by Viken.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – Aye; Viken – Aye; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

5:02:06:10.03. Primary election ballot for ballot marking device.

Motion to amend by inserting the words “tan for non-political” before the “and” in the third sentence of the rule by Viken, second by Crum.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – Aye; Viken – Aye; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved

Motion to approve proposed changes to 5:02:06:10.03 as amended by Knobe, second by Crum.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – Aye; Viken – Aye; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved

5:02:08:00. Guidelines for acceptance of petitions.

Secretary Krebs explains that these proposed rule changes are in response to HB 1196 that was past this last legislative session.

Amendments by the Board:

- delete the word “section” in subsection 3 and insert “sheet” and delete the word “sections” in subsection 4 insert the word “sheets”

Viken asked if all this is in response to HB 1196. Secretary Krebs stated yes.

- Insert the following language at the end of the last sentence: “, unless there is a challenge to that petition. But the excess signatures will not be considered by the filing office unless the excess signatures are needed to validate the petition.”

Knobe has concerns with subsection 5b as it seems that this is being overly bureaucratic and to throw petitions out because someone didn't sort properly doesn't seem right. (He is referencing a proposal of 5b which the board determined they were moving to 5:02:08:00.01, new subsection 1j, where if something wasn't sorted correctly that error would not invalidate the entire petition.)

Motion to approve the amendments as indicated above by Viken, second by Gillespie.

Viken for the record stated: What our responsibility as a Board of Elections member, our role is to implement rules to carry out the laws and/or recommend legislation. It's difficult to approve some of these things as I don't philosophically agree but my not voting for these changes isn't what the Board of Elections is tasked with.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – Aye; Viken – Aye; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

Motion to approve the rule as amended by Buckingham, second by Krebs. Viken asked what happens if the Board of Elections doesn't approve. Secretary Krebs stated state law is still in effect and we would be without guidance in a rule. Knobe stated he could not support these things that the legislature approved.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – No; Viken – Aye; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

5:02:08:00.01. Requirements for counting signatures on petitions.

Viken asked if under subsection g one wrong petition size would throw out the entire petition. Secretary Krebs state no. Viken said this makes it sound as if all the petitions would be thrown out if there is one wrong size.

Knobe asked if his signature was not counted on a petition is there recourse for that one signature. Secretary Krebs stated a rejection can be challenged in court. Knobe commented that it seems as if we are looking for excuses to throw out petitions based on some anomaly for the convenience of processing these things.

Motion to amend 1(g), 1 (h) and 1(j) by inserting “if a non-compliant petition sheet is rejected, that will not result in rejecting properly submitted petition sheets” by Viken, second by Gillespie.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – Aye; Viken – Aye; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

Motion to approve rule as amended by Crum, second by Viken.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – No; Viken – No; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

5:02:08:00.05. Methodology for conducting the random sample for a statewide candidate, initiative petition, referred law petition, or initiated constitutional amendment petition.

Motion to approve the proposed rule changes by Knobe, second by Lynde.

Viken stated she dislikes this random sample process and wants new members to understand that the numbers are the only sample size they review. She understands the necessity of this but doesn't like it. She asked what the Secretary of State's office did when a candidate submitted more signatures than what the table had. Secretary Krebs stated she contacted Northern State University (*who was originally asked to create the tables based upon the rule*) to provide the additional numbers for this table so our office knew what to sample. Viken asked what a safe harbor was. Secretary Krebs explained. Viken then asked is 707 the number the Secretary of State's office would review. Secretary Krebs stated yes. Viken explained that she has a prior engagement so this will be her last vote.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – Aye; Viken – Aye; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

05:02:08:07. Form of initiative petition.

Secretary Krebs explained that the language in the title of the rule was no longer necessary, that moving “be it enacted...” was a result of many petitions sponsors putting it in the wrong place and not complying with the rule and the change to the language in the circulator's verification is to comply with HB 1196.

Motion to approve the proposed rule changes by Buckingham, second by Crum.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – No; Viken – absent; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

05:02:08:07.01. Affidavit to be filed with completed initiative, referendum, or initiated constitutional amendment petition.

Secretary Krebs explained that the changes to the oath were to make it very clear that each sponsor had to provide their own notarized oath. The additional circulator information that is required is a result of HB 1196 that was passed during the 2018 legislative session.

Knobe asked how much extra paper work is being created with these changes. Secretary Krebs explained a lot for our office. He then asked what the Secretary of State's office will be doing with this information and what do we do to verify it. Secretary Krebs stated we will keep the information with the submitted petitions in a locked office and we retain them for one year per the records retention and destruction schedule. Knobe asked if these affidavits will be the first thing checked before the signatures are reviewed. Secretary Krebs said that we collect the data that is turned in to us and if someone were to challenge the petitions this information could be used in a court challenge.

Motion to approve the proposed rule changes by Buckingham, second by Crum.

Gillespie asked what the sponsor is swearing too regarding the oath. Secretary Krebs explained that they are swearing they've submitted what is required by statute and rule.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – No; Viken – absent; Crum – Aye; Lynde – Aye; Secretary Krebs – No. Approved.

05:02:08:08. Form of referendum petition.

Secretary Krebs explained that the changes to this rule are identical to most of the changes in 05:02:08:07 and for the same reason.

Motion to approve proposed rule changes by Buckingham, second by Lynde.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – No; Viken – absent; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

05:02:08:09. Form of initiated constitutional amendment petition or initiated petition for repeal of constitutional provision.

Secretary Krebs explained that the changes to this rule are identical to most of the changes in 05:02:08:07 and 05:02:08:08 and for the same reason.

Motion to approve the proposed rule changes by Crum, second by Lynde.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – No; Viken – absent; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

05:02:08:45. Form for precinct committeeman or committeewoman.

Secretary Krebs explained that these changes were a result of questions prior to the primary election.

Motion to approve the proposed rule changes by Knobe, second by Crum.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – Aye; Viken – absent; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

05:02:09:16. Recapitulation sheet.

Secretary Krebs explained that we didn't have in rule a place for the ExpressVote ballots to be documented on the recapitulation sheet. After submitting this proposed rule change to the board, the Secretary of State's office received feedback from auditors requesting additional changes to this sheet. Secretary Krebs suggested additional edits to the recapitulation sheet.

Motion to amend the proposed rule change by Knobe, second by Crum.

Roll call vote: Buckingham – Aye; Gillespie – absent; Knobe – Aye; Viken – absent; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

Motion to approve the proposed rule changes as amended by Crum, second by Lynde.

Roll call vote: Buckingham – Aye; Gillespie – absent; Knobe – Aye; Viken – absent; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

05:02:10:04. Instructions to absentee voters.

Secretary Krebs stated this proposed rule change was in response to auditors receiving absentee ballots with postage due. Discussion resulted in additional clarification needed explaining that those covered under UOCAVA do not have to pay for postage.

Motion to amend the proposed rule changes by Crum, second by Lynde.

Roll call vote: Buckingham – Aye; Gillespie – absent; Knobe – Aye; Viken – absent; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

Motion to approve the rule changes as amended by Lynde, second by Crum.

Roll call vote: Buckingham – Aye; Gillespie – absent; Knobe – Aye; Viken – absent; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

General remarks from the Chair, Secretary Krebs. Our office now goes to the Legislative Rules Review committee with these proposed changes to the rules. The proposed legislation will be presented to the 2019 legislative session. We will follow up with the Board in regards to our statutory authority in performing a Board of Elections audit, review the tabulation machine question from Pennington county with the vendor and the Board of Elections authority pertaining to the complaint from Mr. Bialota. We are not intending to have another Board of Elections meeting this year.

Buckingham asked to go back and review e-pollbooks. He asked, should the Secretary of State's office take on the role of researching vendors, certifying the equipment and have oversight of these vendors? Secretary Krebs stated there is no authorization in statute to do this. Buckingham continued with the trust of the voters in Pennington county under the current system is woeful. What role does the Board of Elections and the Secretary of State's office play so that vendors provide service and that when voters show up at the polls they are able to vote.

Secretary Krebs commented that she hasn't supported e-pollbooks since she took office. She is going to recommend that the vote center counties provide a backup plan to her office by August 15. Secretary Krebs is also going to recommend that vote center counties have a paper registration list and a paper pollbook at every precinct. She would also like to see elections workers, in vote center counties, get to their polling location one hour prior to polls opening so that thorough testing can be done. She wants to make sure that vote center county auditors have all the contact information they need of who they contact if there are any issues. The backup plans, if provided, will be posted on the Secretary of State's website. There is nothing in statute now regarding all of this so all Secretary Krebs can do is make recommendations.

Secretary Krebs was frustrated that she had to cleanup another mess in a short time, between the Primary election and this Board of Elections meeting. BPro has a lot of work to do in order to gain the confidence of voters and the Secretary of State. Ultimately though, these election decisions are decided at the local level as the Board of Elections has supported leaving these decisions to the local election officials.

Knobe stated that regarding proposal #8 he wants it reflected that he meant to vote NO. Gillespie had stepped away and wants to know if anything was decided regarding the complaint. Secretary Krebs explained it is in the hands of the Attorney General's office and we will follow up once we have been provided guidance from the Attorney General's office.

The question has been asked as to why provisional ballots were not used in the morning. SDCL 12-18-39, 40 clearly state that a person's name must be written in the pollbook and the election workers did not have a pollbook to write the names in.

Motion to adjourn at 2:41 pm by Crum. Second by Knobe.

Roll call vote: Buckingham – Aye; Gillespie – Aye; Knobe – Aye; Viken – Absent; Crum – Aye; Lynde – Aye; Secretary Krebs – Aye. Approved.

12 June, 2018

Official Complaint

TO: US Attorney; SD Attorney General; SD SOS; SD Election Board; Pennington County State's Attorney; Rapid City Attorney; ACLU; SD Republican Party; Pennington County Republican Party

Official Complaint against, Pennington County SD Auditors Office, Including Julie Pearson (Auditor), Cindy Mohler (Chief Deputy Auditor, Kathy Peterson (Chief Deputy Auditor), Victoria Wolf (Deputy Auditor), Lori Severson (Election Supervisor)

The Pennington County website says that it is one of the duties of the Auditor to perform "*all the duties required by law relative to all County, State and Federal elections held in the County. The Auditor also maintains all records of voter registration and election history.*"

Unfortunately, the June 5, 2018 election was fraught with illegalities and/or incompetence. The Auditor did not adequately follow Federal or South Dakota election law, did not properly train or supply poll workers, and therefore did not insure the integrity of the election.

The failure of the Auditor to act according to the law in the proper handling of voter records and ballots calls into question the validity of the ballot.

This letter includes a list of facts and personal election stories, all of which are improper and many of which are illegal.

The following points are examples of the grossly inadequate supervision of the June 5, 2018 Pennington County election by the Pennington County Auditor. Individuals involved are ready to be called to testify at a hearing concerning their observances' and experiences during this election.

Violations of Election Law:

- There were no precinct counts recorded or records of people who showed up to vote.
- The SOS paper voter lists did not include a record of those who voted at the auditor's office before Election Day. Therefore, anyone who took advantage of early voting would be able to go to the polls on Election Day and vote a second time.
- Brand new electronic tablets, which cost the county \$638,000 plus the cost of training workers to use them, were inoperable. *Source: Rapid city Journal*
- Voters were turned away from the polls in the morning because the electronic voting lists on the tablets were not accessible. Paper lists had to be sent from the auditor's office to the polling places before voters would be allowed to vote. *Source: Rapid City Journal*
- People who tried to vote early in the day on Election Day could have been offered provisional ballots but no provisional ballots were at the polling sites. *Source: audio recording of Kathy Peterson*
- The Auditor's office had not provided the required paper lists at the polling places and delayed voting at the polls on the morning of the election until the paper lists could be supplied. Hundreds, perhaps thousands of voters were disenfranchised because they were unable to return to the polls. *Source: Rapid City Journal*
- The envelopes containing the ballots for early voters were so thin that the ballot could be read through the envelopes. The ballots were pre-folded with the written side outward. It has been reported that the Pennington County Auditor's office was instructed well before the election to obtain envelopes which

would not expose the vote information thereby violating the integrity of the ballots. Source: photo evidence

- Cindy Mohler, candidate for Pennington County Auditor, submitted petitions which were invalid; they were notarized without being signed by the circulator. The petitions were subsequently altered to conform to the law. The DCI was informed about the invalid petitions, but no judgment has as yet been forthcoming. In spite of the obvious infraction of the law, the Pennington County Auditor accepted the petitions and Ms. Mohler was included on the primary ballot. Mohler admitted to the Act in a TV interview. Source: KEVN Fox News
- Many registered voters were given provisional ballots. Provisional ballots are only counted if “a race is close”. These legitimate voters were possibly disenfranchised.
- Julie Pearson brought Cindy Mohler to pre-election polling training and polling station during the city water ordinance referendum and introduced her to the poll workers as the "next Pennington County Auditor". This is illegal electioneering at the County Building & election sites.
- Candidate Janette McIntyre was watching the SOS feed on election night for District 34 election results. It was after midnight and the figures for 6 precincts had been listed with 1488 votes for McIntyre and 1730 votes for Jessica Olson. When the figures were posted for all 8 precincts *the number of votes had not changed.*
- The public was told by the Pennington County Auditor’s office that video cameras would be installed in the election room so that the ballot counting would be completely transparent. The video camera covered only a portion of the ballot room area and most of the ballot counting was not accessible to public view. Source: Video Record
- Julie Pearson, treasurer for the campaign of Cindy Mohler, was in the ballot room on election night counting votes. She was filmed with ballots in her hand. Source: Video Record
- Early voting ballot boxes were open and empty as shown by the video cameras at 7 PM, before the official vote count had begun.
- There is a video record of ballots being passed through the counting machine twice.
- Voters showed up to vote only to be told that they were deceased and had been removed from the lists. They could not vote. Source: Rapid City Journal
- Hundreds, perhaps thousands, of people are registered to vote at Walmart and at UPS Stores. There are over 5000 people registered to vote at American Way. By law voters must be registered from their place of residence. The Auditor’s office has been informed about the situation and has chosen to do nothing. 162 are known to be registered to vote who's place of residence and mailing is listed as Walmart.
- James Bialota found that there are people on the voter list registered to vote at his business property address. There are voters registered at business properties across Pennington County. SD statute clearly states that voters must register at their place of residence.

Anecdotal Voter Experiences:

- A woman voting at the Caputa precinct asked the precinct worker why Florence Thompson, who was running for Republican Committee woman, was not listed on her ballot. Her ballot did include other primary candidates. The precinct worker took back the ballot and handed the woman another ballot which included Ms. Thompson’s name.
- Five voters registered at the home of Ken and Jean French went to their designated precinct to vote on Election Day. They were told they were no longer voting at that location and were instructed to go to another location. Not one of the five voters had been notified of the change.
- Mr. Rob Mudlin, a registered Republican voter, was given a provisional ballot at the Whispering Pines voting place. He was required to sign a provisional ballot form which said “I am not a registered voter.” There was no apparent reason why he needed a provisional ballot. (Provisional ballots are not counted unless the Auditor deems it necessary.)

- A recount of a tied vote for precinct Committeeman produced one additional vote. Why? How?
- Jodi Purdy changed her voter registration at the County Auditor's office to "Republican" so she could vote in the Primary for a friend who was running for the County Commission. The poll workers told her she was still registered an "Independent", so she could only have an Independent ballot.
- Michael Schindler, who votes in New Underwood, relates that the computer voting was inoperable and the poll workers could not find his name on the paper list. Computer came back up and his name was on the computer list. The computer and paper lists did not match.
- James Bialota and his wife reported that the voter lists on electronic tablets and the voter lists on paper lists were not the same in Precinct 4-2. Names on one list did not appear on the other. In fact Emily Bialota had voted earlier with name on tablet list ~~tablet list~~ earlier in the day and James noticed she was still eligible to vote on the paper list that came in later. A woman in front of James Bialota had staff call Pennington County Auditor's office so she could vote as her name was not on the paper list even though she registered to vote the prior year. She had been told her name was not on list and couldn't vote after calling Auditor it was determined she was eligible to vote.
- There were at least 100 people who left the Calvary Lutheran Church polling place in the morning because there were no voter lists available so they could not vote. Many of them complained that they were unable to come back later in the day or even in the evening.
- Many voters who were turned away from the polls because no voting lists were available were not told that the polls would stay open past 7 PM.
- Kris McPherson could not vote in her district primary election because she was told at the polling place that she was registered as a non-partisan voter in spite of the fact that her husband, Sean McPherson, was on the ballot as a Republican candidate and she had voted as a Republican in past elections.

Interesting Facts:

- \$638,000 was in the Auditors budget for elections in a non-presidential voting year.
- Democrats and Independents changed party affiliations to Republican at the Auditor's desk during early voting, got an early ballot, voted in the Republican primary, returned to the Auditor's desk and change back to their previous party affiliation. All this was accomplished with one visit to the Auditor's office.
- Provisional ballots are not counted unless "deemed necessary."
- The paper lists obtained from the SOS which were used at the polling places were a year old.
- Those who register when obtaining or renewing a driver's license have often found their registrations to be unrecorded or inaccurate.

In closing, we the undersigned are formally protesting the June 5, 2018 Pennington County, SD Primary Election and its results because those results may be a product of gross neglect or incompetence on the part of the office of the Pennington County Auditor or may be the result of criminal actions.

This protest is being filed within the 10 day window of opportunity required by law.

We request a thorough, independent investigation of the election to determine whether a revote or some other less drastic remedy is necessary.

We also request that all of the officials responsible for a fair and legal election in Pennington County SD be required to justify their actions and inactions in this election.

TESTIMONY JUNE 18, 2018 Janette McIntyre

SD ELECTIONS COMMISSION
PIERRE, SD

10:00AM

Thank you for the opportunity to speak to you today.

I'm Janette McIntyre and I was a candidate for District 34 House of Representatives on the Republican ballot in the June 5th primary.

I came in 3rd in the election and lost. It is not my intention today to seek an overturning or revote of the election.

My sole purpose today is to file a formal complaint with the SD Election Commission.

You collectively are the ultimate authorities of the election process in South Dakota and believe as I do that the confidence in the administration of this election, particularly in Pennington County was at best less than stellar and at worst borders on gross negligence.

Many do not believe that the voters, particularly in Pennington County, were afforded an election that they can have ultimate confidence in.

Many issues were documented, not only by the Rapid City Journal but many of the television stations as well.

For the record, some of the incidents that I, and others, believe have had at the very least "SOME" impact on the June 5th election are as follows:

- E Polling Books were not working
 - Possibly election workers were not familiar enough or had adequate training to ensure a smooth transition to the electronic format.
- Backup lists - required were not provided at ALL polling stations. The Pennington County Auditor was quoted (RCJ) as saying this was to "save money."
- Voters were denied the ability to vote in some cases for nearly 2 hours (1 hour 45 minutes)

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BOE mtg

- The voters were told "a technician is being called and they would have to 'come back later.' Voters were NOT told that the polls would be open later when they were sent away.
- Paper lists did not have the same information in many cases as the electronic poll books.
- No provisional ballots were offered to the voters because poll workers without the lists could not determine whether the voter was Republican/Democrat/Independent or NP.

These are just a few of the issues that would clearly show that voters were **disenfranchised** during this primary election process.

Could the number of voters who did not return effect the election of any candidate? In Pennington County at one polling place over 100 people were turned away and poll workers claim (and will verify) that they did not return.

In some races there were ties! If one voter was **disenfranchised** it is one vote that would have made a difference to a race.

ELECTION NIGHT

Results for the election were not sent to the SOS office until well after 10PM because the latest precinct was to be open until 8:45.

Results in my election (District 34 House) were shown between 10:30-11:00 as 8 of 8 precincts reporting and I was listed as the winner complete with bold face print of my name and the check mark on the SOS website.

Less than an hour later the SOS website showed 2 of 8 precincts reporting. Well after midnight 6 of 8 precincts reported and showed the totals of 1488 for me and 1730 for Jessica Olson the 2nd place finisher. A difference of 242 votes. Much later 8 of 8 pops up on the SOS site. The vote totals were exactly the same. 1488 and 1730.

As of today, the SOS website remains the same, yet the canvas of the election has different totals.

Another example of what looks like an unusually high Non Vote was the District 5 County Commission Race. Over 25% of the voters who voted for Governor did NOT vote in this race. Although, down ballot issues may not be voted as consistently but 25% is a much higher margin than historical data shows.

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AUDITORS OFFICE

On Friday, June 8, we ask the Auditor's office if the ballots could be viewed and we were denied the ability to see the ballots as there were only 3 races that fell within the recount parameters.

CONCLUSION

Commissioners, with all due respect, we feel there are numerous issues that took place during this election to leave the community, candidates and voters with little confidence in the integrity of the process and the office.

It is quite easy to blame defective or malfunctioning electronic equipment but we believe that may be an easy scapegoat for a much bigger problem.

A forensic audit of this election, the voter registration lists IN PENNINGTON COUNTY that were used by both the electronic poll books, paper lists and the ballot counting process should be done prior to the November election. Doing nothing is not acceptable.

It is not sufficient to say, "I'm sorry to the voters, poll workers and candidates." Someone needs to be held accountable with consequences as severe as the election process is important. To do nothing is to condone the actions/in actions that took place and will continue to leave the integrity of the election in question.

Thank you for the opportunity to speak to you today.