



South Dakota Secretary of State

Monae L. Johnson
Secretary of State

Thomas J. Deadrick
Deputy Secretary of State

State Board of Elections DRAFT Meeting Minutes

Monday, January 23, 2023, at 2:00 PM

Secretary of State's Business Services Conference Room
215 East Prospect Avenue, Pierre

Call in Information: 1+ 605-679-7263

Phone Conference ID: 703 049 003#

Call to Order: Secretary of State Monae L. Johnson called the meeting to order at 2:15 PM

Members present in person: Secretary of State Monae L. Johnson (Chair, Board of Elections), Michael Buckingham (Board of Elections Member), Jackie Sieverding (Board of Elections Member), Linda Lea Viken (Board of Elections Member), and Sheri Lund (Board of Elections Member).

Others present (In-Person): Tom Deadrick (Deputy Secretary of State), Kayla Dowling (Office of the Secretary of State), Kayla Boxley (Office of the Secretary of State, CJ Moit (Disability Rights of South Dakota), Jeanette Gibbons, Jeff Struwe, Susan Struwe, Rick Weible, Jessica Polema, Fred Weidner, Burdena Weidner, Leah Anderson, Kayla Defls, Lindley Howard, and Mike Mueller.

Others present (Online): Patrick Baumann, Mike Mathis, Diana Page, Mac Huber, Gwen Reker, Vicki Voss, Linda Montgomery, Kammie Makenzie, Cindy Meyer, Dave Spear, Linda Poppy, Mathew Monfore, and other callers by phone.

A motion was made by Michael Buckingham and seconded by Jackie Sieverding to approve the draft minutes from the October 24, 2022, meeting. A roll call vote was taken, and the motion carried unanimously.

A motion was made by Sheri Lund and seconded by Linda Lea Viken to approve the agenda for January 23, 2023, meeting. A roll call vote was taken, and the motion carried unanimously.

A motion was made by Jackie Sieverding and seconded by Linda Lea Viken to call the Board of Elections meeting into Executive. A roll call vote was taken, and the motion carried unanimously.

A motion was made by Linda Lea Viken and seconded by Jackie Sieverding to call the Board of Elections back to order. A roll call vote was taken, and the motion carried unanimously.

A discussion was held regarding the three petitions for declaratory judgement request from Rick Weible to the Board of Elections on December 30, 2022. Linda Lea Viken moved, and Jackie Sieverding seconded that the Petitions be dismissed. Motion is attached. Linda Lea Viken also moved, and Jackie Sieverding seconded that the attached Findings of Fact and Conclusions of Law be adopted. A roll call vote was taken, and the motion carried unanimously.

A discussion was held concerning state law change requests for the 2023 Legislative Session and with time constraints and putting an office together in such a short amount of time, the Office of the Secretary of State



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informed the Board that the office was already occupied with the items that the legislature was bringing forth and would not be bringing any legislation to the Legislature.

A discussion was held for possible rule changes regarding voter registration and the individual's address and if they live in a rural area and they do not have a street address. A motion was made by Linda Lea Viken and seconded by Jackie Sieverding to approve the Secretary of State's Office to continue to work on the rule change procedures and putting information together for the next Legislative rule hearing to be held on April 23, 2023. A roll call vote was taken, and the motion passed unanimously.

The meeting was opened for public comment. Rick Weible requested the Board make a statement about the cast vote records and add some clarity from the Election Assistance Commission that this information is to be made public. Further discussion was held, and it was determined that it would be best to talk more about the cast vote records process at the next Board of Elections meeting. Rick Weible also brought forward concerns regarding many inaccuracies with the 2022 elections as well as security scans conducted by outside entities showed that the Secretary of State's system is not secured. Others present and online voiced their concerns over the 2022 elections and how the information that was posted on our site was ever changing as well as the current process being conducted for future elections. Another topic that was discussed by the public, was post-election audits and how they should be completed after every election in every county.

General remarks include the newly elected Secretary of State Monae L. Johnson thanking the Board for attending the meeting and there will be information posted for the next Board of Elections meeting. Secretary Johnson referenced a summer study that will be conducted this year by the Secretary of State's Office and not through the legislature. The study will focus on post-election audits and other topics in relation to Elections.

A motion was made by Sheri Lund and seconded by Jackie Sieverding to adjourn the Board of Elections meeting. A roll call vote was taken, and the motion to adjourn at 3:15 was passed unanimously.

STATE OF SOUTH DAKOTA
STATE BOARD OF ELECTIONS

IN THE MATTER OF
THREE PETITIONS OF
RICK WEIBLE

) MOTION TO DISMISS
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This matter came before the Board of Elections on January 23, 2023 on three Petitions for Declaratory Rulings submitted by Rick Weible to the Board of Elections. Linda Leach Viken moves to dismiss all three of Petitioner Rick Weible's Petitions dated Dec 6, 2022 for failure to request an action upon which the Board of Elections can act.

Having reviewed the three Petitions submitted by Rick Weible, and having considered the applicable law and administrative rules Linda Leach Viken hereby moves that the Board of Elections dismiss all three petitions based on the following:

1. Three Petitions for declaratory rulings pursuant to SDCL 1-26-15 and ARSD 5:02:02:01 were emailed by Rick Weible to the Secretary of State's office on December 6, 2022.
2. On December 12, 2022, the Secretary of State's office notified Petitioner Rick Weible by letter sent via U.S. mail that before his Petitions could be reviewed, the Petitions need to be provided by written document addressed to the South Dakota State Board of Elections and delivered in person or mailed to the board at its principal place of business pursuant to ARSD 5:02:01:02.
3. The Secretary of State's office received by U.S. Mail three Petitions for declaratory rulings pursuant to SDCL 1-26-15 on December 30, 2022.
4. One petition requests the following:
 - a. The Board of Elections to refer the matter to "the Attorney General's office ... for prosecution" if the poll books were not delivered to the County Canvassing Board pursuant to SDCL 12-20-32;
 - b. If the Board of Elections' intent is to "recommend to strike" the criminal penalty for a violation of SDCL 12-20-32, the Board of

Elections “shall submit such recommendation to the legislature”; and

- c. “[I]f the legislature determines that it wants to keep the criminal penalty in place, then within 30 days after adjournment of the legislature in 2023, the Board shall submit evidence for prosecution and investigate all other counties for compliance in 2022, and submit any violations of the law for remediation by the Attorney General.”
5. For Brookings County, one petition requests that if Brookings County did not prove the accuracy of the system the Board of Elections require a full hand recount of the 2022 General Election to verify the election night totals and to have a new test deck created with each candidate on the ballot utilizing a unique number of votes cast from any other candidate on the test deck.
6. For Minnehaha County, one petition requests that if Minnehaha County did not prove the accuracy of the system the Board of Elections require a full hand recount of the 2022 General Election to verify the election night totals and to have a new test deck created with each candidate on the ballot utilizing a unique number of votes cast from any other candidate on the test deck.
7. Rick Weible in all three of the Petitions he submitted is requesting the Board of Elections to take actions it is not authorized to do.
8. A petition for a declaratory ruling shall substantially comply with the form set forth in ARSD 5:02:02:01 and must state the precise issue to be answered by the board’s declaratory ruling.
9. The Board of Elections is not authorized under SDCL 1-26-15 to refer any matters to the Attorney General’s office for prosecution.
10. The Board of Elections is not authorized under SDCL 1-26-15 to require a full recount of the ballots of the 2022 General Election in Minnehaha or Brookings counties.
11. The Board of Elections is not authorized under SDCL 1-26-15 to have new test decks created in Minnehaha or Brookings counties with each candidate on the ballot utilizing a unique number of votes cast from any other candidate on the test decks.

12. The Board of Elections is not authorized to recommend to the legislature to strike the criminal penalty for violation of SDCL 12-20-32 pursuant to SDCL 1-26-15.
13. The Board of Elections is not authorized under SDCL 1-26-15 to investigate counties for compliance with SDCL 12-20-32.
14. The Board of Elections is not authorized under SDCL 1-26-15 to make recommendations to the legislature.
15. The Board of Elections is not authorized to require a recount under SDCL Chapter 12-21.
16. Petitioner Ricke Weible did not substantially comply with ARSD 5:02:02:01 and requests actions that are not proper under SDCL 1-26-15.
17. The form of all three Petitions submitted to the Board of Elections by Rick Weible did not substantially comply with a petition for a declaratory ruling under ARSD 5:02:02:01.

Based upon the above Linda Hea M. Viken requests the Board of Elections to dismiss all three petitions submitted by Rick Weible because all three Petitions submitted by Rick Weible do not substantially conform to ARSD 5:02:02:01 and request the Board of Elections take actions it is not authorized to do under SDCL 1-26-15 in that Petitioner Rick Weible is not requesting the Board of Elections to rule on the applicability of any statutory provision and all three Petitions are not suitable cases for a declaratory ruling because the Petitions would require presentation of competing evidence, witness examination or cross-examination and because the Board of Elections would have to consider extrinsic evidence. All three Petitions submitted by Rick Weible to the Board of Elections should be dismissed.

By:

[typed printed name]

South Dakota Secretary of State

STATE OF SOUTH DAKOTA
STATE BOARD OF ELECTIONS

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| IN THE MATTER OF |) | RULING OF THE STATE |
| THREE PETITIONS OF |) | BOARD OF ELECTIONS |
| RICK WEIBLE |) | |
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This matter came before the Board of Elections on January 23, 2023 on three Petitions for Declaratory Rulings submitted by Rick Weible to the Board of Elections. Linda Lee Viken moved to dismiss all three of Petitioner Weible's Petitions dated December 6, 2022 for failure to request an action upon which the Board of Elections can act.

The Board of Elections considered the request for dismissal by Linda Lee Viken and all three Petitions submitted by Rick Weible the Board of Elections finds that Rick Weible has not requested an action under SDCL 1-26-15 and ARSD 5:02:02:01 for which the Board of Elections can act upon. The three Petitions submitted by Rick Weible are hereby dismissed.

The Board of Elections having reviewed the three Petitions submitted by Rick Weible, and having considered the applicable law and administrative rules hereby makes the following:

FINDINGS OF FACT

1. Three Petitions for declaratory rulings pursuant to SDCL 1-26-15 and ARSD 5:02:02:01 were emailed by Rick Weible to the Secretary of State's office on December 6, 2022.
2. On December 12, 2022, the Secretary of State's office notified Petitioner Rick Weible by letter sent via U.S. mail that before his Petitions could be reviewed, the Petitions need to be provided by written document addressed to the South Dakota State Board of Elections and delivered in person or mailed to the board at its principal place of business pursuant to ARSD 5:02:01:02.
3. The Secretary of State's office received by U.S. Mail three Petitions for declaratory rulings pursuant to SDCL 1-26-15 on December 30, 2022.

4. One petition requests the following:

- a. The Board of Elections to refer the matter to “the Attorney General’s office ... for prosecution” if the poll books were not delivered to the County Canvassing Board pursuant to SDCL 12-20-32;
- b. If the Board of Elections’ intent is to “recommend to strike” the criminal penalty for a violation of SDCL 12-20-32, the Board of Elections “shall submit such recommendation to the legislature”; and
- c. “[I]f the legislature determines that it wants to keep the criminal penalty in place, then within 30 days after adjournment of the legislature in 2023, the Board shall submit evidence for prosecution and investigate all other counties for compliance in 2022, and submit any violations of the law for remediation by the Attorney General.”

5. For Brookings County, one petition requests that if Brookings County did not prove the accuracy of the system the Board of Elections require a full hand recount of the 2022 General Election to verify the election night totals and to have a new test deck created with each candidate on the ballot utilizing a unique number of votes cast from any other candidate on the test deck.

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7. Rick Weible in all three of the Petitions he submitted is requesting the Board of Elections to take actions it is not authorized to do.

CONCLUSIONS OF LAW

1. Any Finding of Fact that is more properly a Conclusion of Law shall be deemed so, and any Conclusion of Law more properly a Finding of Fact shall be deemed so.
2. The Board of Elections has jurisdiction over Rick Weible and the subject matter herein.
3. A petition for a declaratory ruling shall substantially comply with the form set forth in ARSD 5:02:02:01 and must state the precise issue to be answered by the board's declaratory ruling.
4. The Board of Elections is not authorized under SDCL 1-26-15 to refer any matters to the Attorney General's office for prosecution.
5. The Board of Elections is not authorized under SDCL 1-26-15 to require a full recount of the ballots of the 2022 General Election in Minnehaha or Brookings counties.
6. The Board of Elections is not authorized under SDCL 1-26-15 to have new test decks created in Minnehaha or Brookings counties with each candidate on the ballot utilizing a unique number of votes cast from any other candidate on the test decks.
7. The Board of Elections is not authorized to recommend to the legislature to strike the criminal penalty for violation of SDCL 12-20-32 pursuant to SDCL 1-26-15.
8. The Board of Elections is not authorized under SDCL 1-26-15 to investigate counties for compliance with SDCL 12-20-32.
9. The Board of Elections is not authorized under SDCL 1-26-15 to make recommendations to the legislature.
10. The Board of Elections is not authorized to require a recount under SDCL Chapter 12-21.
11. Petitioner Ricke Weible did not substantially comply with ARSD 5:02:02:01 and requests actions that are not proper under SDCL 1-26-15.

12. The form of all three Petitions submitted to the Board of Elections by Rick Weible did not substantially comply with a petition for a declaratory ruling under ARSD 5:02:02:01.

Based upon the above Findings of Fact and Conclusions of Law, the Board of Elections enters the following

RULING

Any Findings of Fact that is more appropriately considered a Conclusion of Law, and vice versa is hereby designated as such. That all three Petitions submitted by Rick Weible do not substantially conform to ARSD 5:02:02:01 and request the Board of Elections take actions it is not authorized to do under SDCL 1-26-15 in that Petitioner Rick Weible is not requesting the Board of Elections to rule on the applicability of any statutory provision and all three Petitions are not suitable cases for a declaratory ruling because the Petitions would require presentation of competing evidence, witness examination or cross-examination and because the Board of Elections would have to consider extrinsic evidence. All three Petitions submitted by Rick Weible to the Board of Elections are hereby dismissed.

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