

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

JESSICA POLLEMA and)
JOHN KUNNARI,)
))
Petitioners,)
))
vs.)
))
MONAE JOHNSON, in her)
official capacity as South Dakota)
Secretary of State, DANIEL)
HAGGAR, in his capacity as the)
State’s Attorney for Minnehaha)
County, ERIC BOGUE, in his)
capacity as the Deputy States)
Attorney for Minnehaha County,)
JEAN BENDER, CINDY)
HEIBERGER, JEFF BARTH,)
ALEX JENSEN, JENNIFER)
BLEYENBERG in their official)
capacity as the Minnehaha)
Canvassing Board, LEAH)
ANDERSON, in her official)
capacity as Minnehaha County)
Auditor.)
Respondents.)
)

AFFIDAVIT AND
APPLICATION FOR WRIT
OF MANDAMUS

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF MINNEHAHA)

PETITION FOR RELIEF IN THE FORM OF A WRIT OF MANDAMUS

TO: The Honorable Judges of Said Court:

COMES NOW, the above-named Petitioners (hereinafter referred to as "Petitioners") and respectfully submit this Affidavit and Application for Writ of Mandamus as follows:

“The Writ of Mandamus may be issued by the Supreme and circuit courts, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.” S.D. Codified Laws § 21-29-1

The Petitioners are legal residents, taxpayers, and registered bona-fide voters of Minnehaha County, South Dakota.

Petitioners are active citizens, participating in local and statewide government affairs.

Petitioner, John Kunnari has a personal interest in the outcome of the 2024 South Dakota Primary Election as a Candidate for District 11 House.

Petitioners have a personal interest in said issue, to which compliance of the law directly affects the accuracy of voter identity as a bona fide resident of the county, and thus the validity of my vote, along with application of the law in my county.

Summary of Petitioners’ Argument and Examples of Relief Requested

1. The legislature of South Dakota has outlined the minimum standards which must be maintained by every county in order for an election to be considered reliable. As outlined below, in Minnehaha County’s 2024 primary election those minimum standards were not met by election officials rendering the election results unreliable. Respondents in their official capacities engaged in insufficient efforts to ensure that the legal registered voters voted in this election.

2. If this election performance is repeated, Petitioners and all South Dakota voters will suffer damages. Petitioner and all South Dakota voters have suffered damages as a result of the most recent primary election due to the failure of the officials to ensure voters are residents of their claimed districts.

3. Apart from Court action in equity, no other mechanism exists in the law for Petitioners to require Respondents to perform their ministerial duties requiring that South Dakota elections be conducted in conformity with the law as the legislature has set forth.

4. Only this Honorable Court has the power to require Respondents to act to bring the 2024 primary election (and subsequent) elections supervised by South Dakota authorities into conformity with the minimum standards for reliability set down by the legislature and outlined *infra*.

5. Without the Court's action, Petitioners believe and therefore aver that the 2024 primary elections (and subsequent) election results have been unreliable.

6. Petitioners seek this Court's intervention to ensure that only properly registered voters cast votes in Federal and South Dakota state elections beginning in 2024. That, due to the documentation of voters who were not actually residents of the districts in which they registered, the primary election has yielded a result that does not reflect the actual intent of voters within the districts.

7. Petitioners seek this Court's intervention to ensure that only votes properly cast are counted (and/or recounted) in Federal and South Dakota state elections beginning in 2024, and immediately addressing the most recent election by requiring a correction of the vote count and unofficial results of the June 4, 2024 primary election in Minnehaha County to rectify the errors of that election in including 132 ballots deemed to be fraudulent by the precinct board in the new unofficial results after the June 24, 2024 recount.

8. Petitioners seek this Court's intervention to ensure that only votes properly cast are counted (and/or recounted) in Federal and South Dakota state elections beginning in 2024 by requiring an immediate pause on processing unverified, inaccurate, and incomplete voter registration forms by requiring all Federal and State laws are adhered to in the registration process by requiring proof of a physical residence for 30 days for new voter registrations, requiring proof of prior physical residence in the State of South Dakota for any Federal or UOCAVA voter registrations, and requiring that all boxes on all voter registration forms be filled out accurately and completely.

9. Petitioners seek this Court's intervention to ensure that only votes properly cast are counted (and/or recounted) in Federal and South Dakota state elections beginning in 2024 by requiring an immediate audit of the statewide voter file for

inaccurate, incomplete and perjured voter registrations with missing information or no listing of a valid current or prior physical residence, requiring election officials perform voter verification mailings by non-forwardable mail to all suspect registrants, identifying incomplete, inaccurate and perjured voter registrations and thus requiring they be corrected and completed prior to any future votes cast by said voters, and to perform the duties as required to purge the rolls prior to 90 days ahead of the next election in the manner prescribed in Federal and State law and administrative rule.

10. Petitioners seek this Court's intervention to ensure that only votes properly cast are counted (and/or recounted) correctly in Federal and South Dakota state elections in even numbered years beginning in 2024.

11. Petitioners seek this Court's intervention to ensure that the authenticity of every voter and ballot counted (and/or recounted) is proven by the maintenance of a comprehensive voter registration file and voter roll oversight, maintenance of accurate and current voter rolls, conduct of a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters, and to ensure the completion of any program the purpose of which is to remove ineligible voters from the official lists of eligible voters not later than ninety (90) days prior to an election in compliance with all legally prescribed safeguards in Federal and South Dakota state elections beginning in 2024.

12. Petitioners seek this Court's intervention to ensure that Federal and South Dakota state elections in even numbered years beginning in 2024 are conducted with the transparency required by law.

13. Petitioners, upon review of the statutes cited below, believe and therefore aver that federal and state law specify what South Dakota officials must conform to, at a minimum, to properly conduct Federal and South Dakota state elections in order to produce reliable results that are certifiable.

14. Petitioners believe and therefore aver that based on the analysis below, combined with the various exhibits attached to this petition and incorporated by reference herein, that in the 2024 Federal and South Dakota state elections, and prior, officials of South Dakota failed to ensure that safeguards were in place as mandated by various statutes designed to ensure the integrity of the elections.

15. Petitioners believe and therefore aver the failure by South Dakota officials to know of and implement the safeguards required by law in 2024 allowed state and

county officials to certify the 2024 primary election despite analysis showing the election results were per se unreliable on account of apparent voter registration issues which made the election results unreliable.

16. Petitioners aver they have called the various issues with elections to the attention of South Dakota officials who failed to take sufficient action to ensure no further repeats of those issues cited here were affecting the integrity of our elections.

17. The relief requested by Petitioners in the form of a Writ of Mandamus seeks, broadly speaking, this Court order Respondents to perform the ministerial functions their jobs required by taking actions to rectify reliability issues evident in the 2024 primary election.

2024 Primary Election in Minnehaha County Produced Unreliable Results and Should Not Have Been Certified

18. Petitioner, JESSICA POLLEMA, pursuant to SDCL 12-18-10, notified Respondent LEAH ANDERSON of a challenge to Minnehaha County Precincts 04-16 and 05-16 by email on Monday, June 3rd, 2024 at 4:31 PM. [EXHIBIT 1] Petitioner arrived at the Minnehaha County Auditor's Office at 8:00 AM on June 4, 2024 planning to present a challenge to the absentee board as the ballots in question were cast by absentee and were in the custody of the Minnehaha County Auditor. The ballots were not located or cast in the precinct. Respondent Deputy State's Attorney Eric Bogue communicated to Respondent Leah Anderson that the challenge was going to be brought to the precinct board at the polling location and directed Petitioner Jessica Pollema to follow them there. After arriving and advising the precinct board of the challenge and their responsibility, Petitioner presented said challenge to the precinct board of voting precinct 04-16 with the attached list of voters who requested an absentee ballot from 3916 N. Potsdam Avenue, Sioux Falls, SD. [EXHIBIT 2] The list shows absentee ballots that were marked returned as of May 30, 2024 with more which arrived in the time period between May 30th and June 4th, 2024 that were not included. This list was purchased from Respondent Secretary of State Monae Johnson's office and said list was verified as accurate by Respondent Minnehaha County Auditor Leah Anderson. A photo copy of the original voter registration forms of each corresponding voter was also provided to the precinct board. [EXHIBIT 3]

19. A second challenge was presented to Minnehaha County precinct board at voting precinct 05-16. After arriving and advising the precinct board of the

challenge and their responsibility, Petitioner JESSICA POLLEMA presented said challenge to the precinct board of precinct 05-16 with the attached list of voters who requested an absentee ballot from 401 E 8th Street, Sioux Falls, SD.

[EXHIBIT 4] The list shows absentee ballots that were marked returned as of May 30, 2024 with more which arrived in the time period between May 30th and June 4th, 2024 that were not included. This list was purchased from Respondent Secretary of State MONAE JOHNSON's office and said list was verified as accurate by Respondent Minnehaha County Auditor Leah Anderson. A photo copy of the original voter registration forms of each corresponding voter was also provided to the precinct board. [EXHIBIT 5]

20. The law states that "if a person makes an application for ballots, or if an absentee ballot has been cast, the person's right to vote at that poll and election may be challenged only as to the person's identity as the person registered who the person claims to be...." [EXHIBIT 6].

21. County and City Zoning ordinances demonstrate the addresses listed above are zoned commercial, and do not allow for hundreds of people to physically reside at that location/address. Listing of these addresses as a physical residence on the voter registration form is perjury, because the individuals do not, in fact, live in the commercial building or personal mail box. Voter registrations that were accepted with no proof of current or prior physical address as required on the voter registration form were incomplete, and were processed and accepted in violation of federal and state laws that the voter must be verified, placed in the voting precinct in which they reside, and the forms must be accurate and complete. [EXHIBIT 7]

22. Petitioner filed a challenge as to the identity of the listed voters, not only based on the Help America Voter Verification (HAVV) check of the Date of Birth and last four of the Social Security Number, but also challenging their identity as a bona fide resident of the county, residing in precincts 04-16 or 05-16, at 3916 N Potsdam Ave, Sioux Falls and/or 401 E 8th Street, Sioux Falls, providing for an actual physical residence at the address listed on the voter registration forms as Federal and State law requires. Each box on the voter registration form requests information required by law to identify the voter as a Citizen of the United States, a resident of the State, County and Precinct, in order to place them in the corresponding voting precinct in which they reside. Each piece of information is required for the election official to make a proper determination of the identity of the voter of a State, County and Precinct and is required by Federal and State Law. The verification of the identify of a voter requires more than a date of birth and last four digits of a social security number, thus the U.S. Congress and the State

Legislature provided for voter registration forms and requires all of the boxes on the voter registration form to determine the identity of a voter including but not limited to all the provisions in USC Title 52 and SDCL 12-3-1, 12-3-1.1, 12-4-1, 12-4-1.2, 12-4-3.2, 12-4-4.2, 12-4-4.4, 12-4-4.5, 12-4-4.10, 12-4-4.12, 12-4-4.5, 12-4-5.3, 12-4-6, 12-4-7.2; in particular:

a. 12-3-1. General qualifications of voters.

Every person who, at the time of an election, **maintains residence in this state**, will be eighteen years of age or older on or before the next election, is not otherwise disqualified, and complies with the law regarding the registration of voters pursuant to chapter 12-4, may vote at any election in this state.

b. 12-3-1.1. Residents of federal areas.

No person residing on an area **within the boundaries of this state** which has been ceded to, or acquired by, the federal government shall be denied the right to vote in elections of this state or of the county, municipality, school district, or special district wherein such area lies if such person is otherwise qualified to vote in such election or elections. (emphasis added)

c. 12-4-1. Persons entitled to register--Precinct.

A person **who maintains residence**, as provided in § 12-1-4, **within the state for at least thirty days prior to submitting the registration form**, and who **has the qualifications of a voter prescribed** by § 12-3-1 or 12-3-1.1, or who will have such qualifications at the next ensuing municipal, primary, general, or school district election, **is entitled to be registered as a voter in the election precinct in which the person maintains residence**. *A person eligible to vote may vote only in the election precinct where the person maintains residence.* (emphasis added)

d. 12-4-3.2. Private entity or individual registering voters--Form filing deadline--Violation as misdemeanor.

Any private entity or individual registering a person to vote shall file the **completed registration form** with the county auditor. (emphasis added)

e. 12-4-4.5. Absentee registration and voting in last county and precinct of residence.

The overseas citizen may register and vote absentee **in the same county and election precinct in which the overseas citizen, or spouse or parent of the**

overseas citizen, resided immediately prior to leaving the United States. (emphasis added)

f. 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 name of each eligible person whose **completed application** for registration and mail registration card is receive. (emphasis added)

g. 12-4-5.3. Review of voter registration application by auditor--Notice to applicant--Promulgation of rules.

When a voter registration application is received by the county auditor, the county auditor or an individual designated by **the county auditor shall review the application for eligibility and completeness**. If the applicant is not eligible to be registered **or sufficient information to complete the registration card cannot be obtained from the applicant, the county auditor must send an acknowledgment notice by nonforwardable mail** to the applicant indicating the reason the registration was not filed. The acknowledgment notice must state that the **applicant needs to submit the corrected information to the county auditor** within thirty days or the voter registration form may not be processed. The county auditor shall send an acknowledgment notice by **nonforwardable mail** to the applicant whose registration is accepted..... (emphasis added)

Non-forwardable mail is mandated for verification of the voter by the South Dakota State legislature so as to ensure the actual physical location of the voter is verified by mail arriving at that address intended to be received by said voter's person. Mail forwarding services are by definition commercial business services that **forward mail** to the customer because they do not reside and cannot be found at that location. The mail is forwarded to the voter by the service to wherever they currently reside. Voter verification forms bypassing state law by forwarded mail from commercial mail services to a voter by its very nature are in clear violation of SDCL 12-4-5.3, and violate the intent of the State Legislature to ensure the accuracy, integrity and security of validating a voter by residence.

h. 12-4-6. Filling out registration card--Registration at driver's license station--Applicant unable to write.

An applicant for registration **shall answer questions and sign the oath as required on the form prescribed by the State Board of Elections.**
(emphasis added)

i. 12-4-7.2. Duty to ensure completion of registration cards.
Any local, state, or federal agency staff person who registers a voter shall ensure that the registration card, as prescribed by the State Board of Elections, is filled out completely. (emphasis added)

j. 52 USC § 10502(d) (e) (h) (i)

(d) Registration: time for application; absentee balloting: time of application and return of ballots

For the purposes of this section, **each State shall provide by law for the registration or other means of qualification of all duly qualified residents of such State who apply.....**

(e) Change of residence; voting in person or by absentee ballot in State of prior residence

If any citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any election for President and Vice President **has begun residence in such State** or political subdivision after the thirtieth day next preceding such election and, for that reason, does not satisfy the registration requirements of such State or political subdivision he shall be allowed to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election, (1) in person **in the State or political subdivision in which he resided immediately prior** to his removal if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision, or (2) by absentee ballot **in the State or political subdivision in which he resided immediately prior** to his removal if he satisfies, but for his nonresident status and the reason for his absence, the requirements for absentee voting in that State or political subdivision.

(h) "State" defined

The term "State" as used in this section includes each of the several States and the District of Columbia.

(i) **False registration, and other fraudulent acts and conspiracies: application of penalty for false information in registering or voting**

The provisions of section 10307(c) of this title **shall apply to false registration**, and other fraudulent acts and conspiracies, committed under this section.

j. 52 USC §§ 10307(c), 20511(2) **A person who provides false information concerning a person's name, address, or period of residence in a voting district to establish voting eligibility commits election fraud.** (emphasis added) It is clear the Federal government requires accurate and truthful information as to a voters address and residency for purposes of voting and considers a voters address as part of information identifying a voter.

23. One of the two challenges was successful, and 132 ballots were deemed fraudulent by false identity and rejected by the precinct board in precinct 04-16. Petitioner presented 04-16 precinct board with a list of voters who's absentee ballot had been recorded as received by May 30th, 2024, the original voter registration forms of each voter to make a determination of accuracy, completeness and validity of said voter identity as a bona fide resident of said precinct, and a presentation on most of the statutes cited in this Writ that were violated in the processing of the corresponding incomplete, inaccurate and perjured voter registration forms by the County. Respondent Deputy State's Attorney Eric Bogue argued against Petitioners challenge. Petitioner offered a rebuttal to Respondents argument. Arguments were offered in the presence of Respondents State's Attorney Daniel Haggar and Leah Anderson.

Precinct Superintendent and Deputies of precinct 04-16 were left to discuss as a board whether or not to review the information and uphold the challenge. After discussion, said precinct board notified Petitioner and Respondents Daniel Haggar, Eric Bogue, and Leah Anderson of intent to review all the material presented to them in the challenge, uphold their oath to do everything in their power to prevent fraud, and in the best interest of the bona fide residents and voters of the precinct and county. After hours of review, said precinct board notified Respondent Minnehaha County Auditor Leah Anderson of their decisions after thorough review of each voter registration form and which ballots had been rejected, along with labeling as "rejected" and notating in the poll book, as required by statute.

24. Petitioner, John Kunnari, Candidate for District 11 House, filed a petition for a manual recount with the Respondent Minnehaha County Auditor Leah Anderson on June 12, 2024. Petitioner provided sixteen notarized affidavits to submit to the recount board, but there was no process to submit them. [EXHIBIT 8] Petitioner then submitted a letter with supporting affidavits dated June 19, 2024, delivered June 20, 2024 to presiding judge Hon. Judge Robin Houwman detailing the evidence collected and presented in said affidavits of potential improper voter

registrations and improperly cast ballots by absentee mail in the Minnehaha County House District 11 race. Hon. Judge Robin Houwman responded on June 20, 2024 that any action on the evidence gathered was outside her authority and redirected Petitioner to the recount board. [EXHIBIT 9]

Petitioner John Kunnari submits to the Court the attached impact statement in [EXHIBIT 10].

The sworn affidavits submitted by Petitioner John Kunnari demonstrate voters registered to vote in District 11 which are registered to vote at addresses they do not reside and property owners have no record of said voters ever having stayed at that property. Said voters signed the voter registration forms under penalty of perjury that they “actually live at and have no present intention of leaving the above address”. Sixteen potentially fraudulent ballots cast in Candidate John Kunnari’s race exceeds the margin of victory of the opposing candidates, which was won by ten votes. The unreliable and potentially incorrect and inaccurate results of the race leaves candidates and voters uncertain of the reliability and accuracy of the results, which undermines the faith and trust in institutions tasked with upholding the law while ensuring all civil and constitutional rights afforded to us are protected. In order to expedite future fair elections, Petitioner John Kunnari does not seek a new election, but rather defers to the Court to ensure the correct results of the Minnehaha county election are reported minus 132 fraudulent ballots, compliance of all federal and state laws are upheld by all offices of the state mentioned in this Writ, and all future elections will not be diluted by potentially fraudulent ballots cast by voters with inaccurate, unverified and potentially false identities.

25. Federal and State Law have clear provisions for verification of the voter. Upon review of thousands of original voter registration forms from this county and several others, coming from mail forwarding service addresses, it has become clear that the duty to ensure accurate and complete voter registration forms has been neglected, and many incomplete, inaccurate, and perjured voter registration forms have been accepted. The failure to ensure bona fide voters of the county puts local elections at risk and dilutes the vote with non-verified voters and non-residents voting in local elections.

- a. Provided here is an abbreviated list of Federal and State Laws that have been broken in the process: 52 USC 10307, 52 USC 10308, 52 USC 10502, 52 USC 20504, 52 USC 20507, 52 USC 20508, 52 USC 20510, 52 USC 20511 See [EXHIBIT 11]

- b. According to the South Dakota Constitution Article VII Section 2: **Each elector who has met all residency and registration requirements, and who is qualified to vote within a precinct shall be entitled to vote in that precinct until he establishes another voting residence** (emphasis added). The voter shall be qualified to vote in the precinct in which he actually lives and shall vote in that precinct. SDCL 12-1-4, SDCL 12-4-2, 12-4-5, 12-4-5.3, 12-4-5.5, 12-4-6, 12-4-6.1, 12-4-7.2, SDCL 12-19-1, SDCL 12-26-3, SDCL 12-26-8. See [EXHIBIT 12]
- c. According to the voter registration form provided by the Respondent Secretary of State MONAE JOHNSON and prescribed by the State Board of Elections prior to July 1, 2023, Line 3A requires a location of a residence if the voter is listing a PO Box or general delivery as the residence address on line 2.

The affidavit signed under penalty of perjury states:

I declare, under penalty of perjury (2 years imprisonment and \$4,000 fine), that:

I am a citizen of the United States of America;

I actually live at and have no present intention of leaving the above address; (emphasis added)

I will be 18 on or before the next election;

I have not been judged mentally incompetent;

I am not currently serving a sentence for a felony conviction; and

I authorize cancellation of my previous registration, if applicable.

[EXHIBIT 13]

- d. According to the voter registration form provided by the Respondent Secretary of State MONAE JOHNSON and prescribed by the State Board of Elections after to July 1, 2023, Line 4A requires a location of a residence if the voter is listing a PO Box or general delivery as the residence address on line 2.

The affidavit signed under penalty of perjury states:

I declare, under penalty of perjury (2 years imprisonment and \$4,000 fine), that:

I am a citizen of the United States of America;

I will be 18 years of age or older on or before the next election;
I have maintained residence in South Dakota for at least 30 days prior to submitting the registration form; (emphasis added)
I have not been judged mentally incompetent;
I am not currently serving a sentence for a felony conviction; and
I authorize cancellation of my previous registration, if applicable.
[EXHIBIT 14]

26. Petitioners believe legislative intent with the passage of Senate Bill 139, signed into law July 1, 2023, requiring proof of 30 day residency was intended to strengthen residency requirements in response to issues Petitioner Jessica Pollema, along with dozens of other South Dakota citizens, brought to the South Dakota State Legislature during legislative sessions in both 2022 and 2023. The previous residency requirements have been and are clearly being abused and taken advantage of by non-residents, which directly affects voting rights of the actual citizen residents of the state. SDCL 12-4-1 states: “***A person who maintains residence, as provided in § 12-1-4, within the state for at least thirty days prior to submitting the registration form, and who has the qualifications of a voter prescribed by § 12-3-1 or 12-3-1.1, or who will have such qualifications at the next ensuing municipal, primary, general, or school district election, is entitled to be registered as a voter in the election precinct in which the person maintains residence.***”

A person eligible to vote may vote only in the election precinct where the person maintains residence.” (emphasis added)

27. Petitioner used a fully legal avenue to challenge the identity of said voters prescribed in the law, which is not unconstitutional or illegal, as the ACLU and League of Women voters assert. ACLU Acting Executive Director Elizabeth Skarin sent attached letter to Respondents June 21, 2024 describing her interpretation of the rejection of absentee ballots by the precinct board 04-16. Several of the facts in the letter are false and shall be addressed below. [EXHIBIT 15]

a. The entire argument presented by Skarin is based on the assumption the voter registrations of said voters were initially processed correctly and in full compliance with applicable federal and state laws, and that said voters were or are verified residents of South Dakota who either reside in South Dakota or formerly resided in South Dakota and chose to travel or move overseas, thus not losing their former residency status. If that were the case, those voter applications were legally processed and have every legal right to

cast a ballot in South Dakota elections. However, a comprehensive review of said voter registration forms show just the opposite occurred.
[EXHIBITS 3 & 5]

b. Skarin asserts the sole reason for the “purported challenges was voters’ listing of shared addresses or addresses affiliated with mail forwarding services.” Skarin’s argument is incomplete as the listing of a mail forwarding address is permissible in “residence address” box 3 or 4, however the form requires the applicant to list a physical location if residence address is a PO Box or general delivery in box 3a or 4a. The voter registration forms provided to the precinct board for said voters were either blank or listed 3916 N Potsdam Ave, Sioux Falls and/or 401 E 8th Street, Sioux Falls as the physical location of their residence. As stated above, the County and City zoning ordinances prohibit personal residences at the stated addresses and a personal visit to those locations provides for the fact no persons actually reside there. Listing these locations as the actual physical location of the personal residence of said voter is not possible, thus resulting in perjury, as the affidavit at the bottom the voter registration form declares. All other voter registration forms that were processed with the above address listed in line 3 or 4 leaving lines 3a or 4a blank, were incomplete and should not have been accepted, but rather the County officials should have sent back the incomplete forms for all information required on the form to adequately verify the voter and place him in the precinct in which he resides.

These incomplete voter registration forms were not processed in accordance with the law, thus exposing the voter rolls to possible errors by omission, diluting the true and honest vote of duly qualified and bona fide residents of the State, County and Precinct.

c. Skarin also alleges in her letter “these residency challenges were not allowed under state law. Nevertheless, the County Auditor permitted the challenges and brought them before the precinct boards for precinct 04-16 and 05-16. These statements are also inherently false as SDCL 12-18-10 provides for exactly the avenue used for the challenge. The Respondent Minnehaha County Auditor Leah Anderson was acting under the advice of Respondents State’s Attorneys Daniel Haggar and Eric Bouge, who were the ones to determine the challenge be brought to the precinct board and instructed Petitioner and Leah Anderson to follow them there by car. Petitioner Deputy State’s Attorney Eric Bogue laid out the proceedings at the precinct level, while Petitioner State’s Attorney Daniel Haggar

supervised and witnessed the entire proceedings. The events happened under their advice and under their discretion.

d. Skarin further asserts Petitioner worked “in coordination with the County Auditor”, which is not true and a reckless allegation with no factual evidence, which has since been posted on said organizations website aclusd.org.

e. Skarin asserts “States Attorneys and election officials warned the Precinct Boards and the County Auditor that these challenges violated state law.” However, the description of the above events describes a challenge presented in accordance with the law.

f. The remainder of Skarin’s arguments fall under the assumption that all voter registrations were accepted and completed in compliance with federal and state laws, which the details of this Writ clearly demonstrate has not been the case, and South Dakota elections are in jeopardy of being contaminated with potential fraudulent votes by fraudulent voter rolls.

g. Lastly, Skarin cites *Dunn v. Blumstein* to support her argument, however a review of *Dunn v. Blumstein* provides the support for Petitioners argument that all voters of voting district can and shall be lawfully required to be bona fide residents of a state, thus protecting the sanctity of the vote of legitimate citizens of the state and locality where local issues should only be decided by those who reside in such jurisdiction.

The court concluded that a period of 30 days appears to be ample to complete whatever administrative tasks are needed to prevent fraud and ensure the purity of the ballot box. They also concluded that, since there are adequate means of ascertaining bona fide residence on an individualized basis, the state may not conclusively presume non-residence from failure to satisfy the waiting period requirements of durational residence laws. That particular case involved Mr. Blumstein, who moved to Tennessee to begin a job. When he went to register as a bona fide resident, he could not because he had not been in the state for one year or in the county for three months.

He did not challenge the power of Tennessee to restrict the vote to bona fide Tennessee residents nor did Tennessee dispute that he was a bona fide resident when he attempted to register.

Throughout their decision, the Supreme Court discusses the fact that Tennessee was well within their rights to require that someone be a bona fide resident of the state in order to vote in that state. In fact, they stated:

"We emphasize again the difference between bona fide residence requirements and durational residence requirements. We have in the past noted approvingly that the states have the power to require that voters be bona fide residents of the relevant political subdivision. (citations omitted). An appropriately defined and uniformly applied requirement of bona fide residence may be necessary to preserve the basic conception of a political community and, therefore, could withstand close constitutional scrutiny. But durational residence requirements, representing a separate, voting qualification imposed on bona fide residents must be separately tested...."

They went on to state: "In 202 of the Voting Rights Act of 1965, added by the Voting Rights Act Amendments of 1970, Congress outlawed state durational residency requirements for presidential and vice presidential elections, and prohibited the states from closing registration more than 30 days before such elections."

Further, "As long as the state permits registration up to 30 days before an election, a lengthy durational residence requirement does not increase the amount of time the state has in which to carry out an investigation into the sworn claim by the would be voter that he is in fact a resident." "Objective information tendered as relevant to the question of bona fide residence under Tennessee law -- places of dwelling, occupation, car registration, drivers license, property owned, etc. -- is easy to double check, especially in light of modern communications."

In footnote 13, the court further states "Nothing said today is meant to cast doubt on the validity of appropriately defined and uniformly applied bona fide residence requirements."

In closing, the Dunn case confirms that a 30 day registration requirement is acceptable. It also confirms that one must be a bona fide resident of the state to vote. It would follow that, if a 30-day registration requirement is acceptable, that a 30-day residency requirement would also be acceptable as you cannot register unless you are a bona fide resident of the state--which would explain why other states still have a residency requirement of 30 days. The Tennessee case was far outside of those parameters by requiring one

year in the state and three months in the county. It should also be noted that durational residency requirements outlawed by Congress were only for the presidential and vice presidential elections. Even then, the 30 day registration requirement was acceptable.

28. Petitioners believe and therefore aver that contributing to the unreliability of the county's election is the fact that South Dakota's voter registration rolls, themselves, contained an undetermined amount of potential errors at the time of the 2024 primary election, potentially in the tens of thousands.

29. These potential errors were in the form of invalid, incomplete or perjured voter registration forms, registrations out of compliance with UOCAVA, HAVA, and NVRA, and registrants with questionable addresses or no proof of a physical location as required under penalty of perjury on the voter registration form provided by the Secretary of State.

30. South Dakota Election Officials have routinely processed voters through the Federal Voter Registration Program that register under UOCAVA. It is apparent that the officials have neglected to validate or verify the voter by requiring proof of prior residency in South Dakota as required in 52 USC 10502.

a. The law states “*each State shall provide by law for the registration or other means of qualification of all duly qualified residents of such State who apply..... **If any citizen of the United States who is otherwise qualified to vote in any State or political subdivision** in any election for President and Vice President has begun residence in such State or political subdivision after the thirtieth day next preceding such election and, for that reason, **does not satisfy the registration requirements of such State or political subdivision he shall be allowed to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election, (1) in person in the State or political subdivision in which he resided immediately prior to his removal if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision, or (2) by absentee ballot in the State or political subdivision in which he resided immediately prior to his removal if he satisfies, but for his nonresident status and the reason for his absence, the requirements for absentee voting in that State or political subdivision.**”*

(i) *False registration, and other fraudulent acts and conspiracies: application of penalty for false information in registering or voting”*
(emphasis added)

b. The provisions of section 10307(c) of this title shall apply to false registration, and other fraudulent acts and conspiracies, committed under this section.

c. Pursuant to 52 USC S. 20511 – Criminal Penalties

A person, including an election official, who in any election for Federal office—

(1) knowingly and willfully intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, any person for—

(A) registering to vote, or voting, or attempting to register or vote;

(B) urging or aiding any person to register to vote, to vote, or to attempt to register or vote; or

(C) exercising any right under this chapter; or

(2) knowingly and willfully deprives, defrauds, or attempts to deprive or defraud the residents of a State of a fair and impartially conducted election process, by—

(A) the procurement or submission of voter registration applications that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held; or

(B) the procurement, casting, or tabulation of ballots that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held, shall be fined in accordance.

(emphasis added)

d. Federal Law does not allow for individuals to randomly select a state for residency for voting purposes with no current or prior proof of physical residency. South Dakota state law requires proof of a physical location of the residence in order to complete the voter registration form, signed under penalty of perjury, and the South Dakota State Constitution requires that a voter meet all residency and registration requirements. Neglecting the verification of these voters dilutes the integrity and sanctity of the vote of actual bona fide South Dakota residents as Federal law requires.

31. Such errors jeopardize the validity of elections throughout the state, bring doubt as to the accuracy and integrity of the state's currently-in-place voting systems, undermine South Dakota's collective voting rights, disenfranchise bona fide residents of the county and state, dilute the vote of actual residents of the county and state, all in violation of existing state and federal election laws.

32. The above referenced errors and/or fraudulent registrations have a profound impact upon the elections in that some vote differences in this recent primary election have been as few as 10 votes, including the unofficial vote returns from June 4, 2024 in Petitioner JOHN KUNNARI's District 11 House race. In recent elections such a small vote count difference has resulted in the loss of legislative representation, which therefore has resulted in the loss of legislative leadership elections, thus resulting in a long-term impact upon state policy.

- a. The most recent primary election highlighted 6 of the 45 races as being within a presumptive margin leading to a recount. That is over 13 % of the legislative races.
- b. The absentee requested and returned list purchased from the Respondent Secretary of State Monae Johnson's Office produced errant and unreliable data. Voters in Candidate John Kunnari's House District 11 alone displayed a recorded vote cast for the June 4, 2024th primary election prior to the occurrence of said election. South Dakota state law requires that no votes be counted or reported before the close of the polls on election day, and requires county officials to upload voter history within 45 days after the election. The display of votes cast before an election is an alarming error that should not ever occur. [EXHIBIT 16]
- c. Evidence of this error was presented to Respondent Minnehaha County Auditor Leah Anderson during the primary election cycle and Anderson stated there was no explanation for the errors and were not occurring at the county level. [EXHIBIT 17]
- d. As of June 3, 2024, absentee requested and return lists displayed 78 votes cast with associated voter history by absentee ballot in Minnehaha County alone by all methods of casting ballots, such as, absentee in person, absentee by mail, and UOCAVA, which suggests the error is not due to a particular method of voting. [EXHIBIT 18]
- e. As of June 3, 2024, statewide absentee requested and return lists displayed 599 voter records with a voter history for the June 4, 2024 election, separately, voter history records displayed 604 votes cast for the June 4, 2024 primary election, prior to the occurrence of the election. [EXHIBIT 19]

- f. Respondent Secretary of State Monae Johnson was notified of the errors by email, and the response was: “This is an expected program function that occurs as auditors make certain updates.” However, when questioned to explain the function that was causing the error, no response was made. [EXHIBIT 20]
- g. During the November 2022 general election absentee voting period, Petitioner Jessica Pollema found evidence of 1013 voter histories in the absentee requested and returned file on September 26, 2022, prior to the November 8, 2022 general election. [EXHIBIT 21] Upon discovery of this issue, and alerting public officials, said errant voter histories were removed or deleted from the statewide voter file statewide in multiple counties, which was not performed by the local county officials, as mandated by law. Attached email from Hand County Auditor Doug Deboer confirms this fact. [EXHIBIT 22] During the November 2022 general election absentee voting period, Petitioner Jessica Pollema found evidence of 154 voter histories in the absentee requested and returned file on October 19, 2022, prior to the November 8, 2022 general election. [EXHIBIT 23] A comparison of the two data sets demonstrates deleted voter histories, which should only be completed by an authorized employee of the County Auditor, or the County Auditor personally. It is still unknown who performed this mass deletion. During the November 2022 general election absentee voting period, Petitioner Jessica Pollema found evidence of 1122 voter histories in the absentee requested and returned file on October 31, 2022 prior to the November 8, 2022 general election. [EXHIBIT 24] The data in the October 31, 2022 absentee file demonstrates a recurrence of the issue which caused a mass deletion on or before October 19, 2022; again, before the occurrence of the November 8, 2022 general election. A phenomenon which should never occur in an accurate and secure statewide voter file.
- h. The removal or deletion of data in the statewide file was an unauthorized and unlawful manipulation of voter records outside the scope of the individual County Auditors. This event should give all South Dakotans pause, and require examination of the security of the voter file and all who have access to it.
- i. Respondents Minnehaha County Canvassing Board were presented with and had full knowledge of the ballots challenged and rejected based on false identity at the precincts on June 4, 2024. Rather than choosing to investigate the potential fraud, Respondents Minnehaha County

Canvassing Board added the ballots to be counted. Video of the certification of the vote can be found here:

<https://www.youtube.com/watch?v=uPSc0FhqXIY>

33. Petitioner Jessica Pollema purchased a random sampling of original voter registration forms from across the state in multiple counties from various mail forwarding services. Each mail forwarding service has been listed as the actual physical residence of the voters, however, in many cases the address listed is a commercial grocery store such as Timmons Market at 316 Villa Drive, Box Elder, SD, a commercial building such as 514 America's Way, Box Elder, SD, or a single family 1,300 square foot ranch style home at 411 N 6th Street, Emery, SD with over 1,400 purported "residents" living there while the 2020 United States Census data reports 447 residents of Emery SD. An analysis of a random sampling of original voter registration forms from multiple locations in the State produced a 99% incomplete, inaccurate or perjury rate. Five voter registration forms from each address have been attached for the Court's review, along with a spreadsheet of the analysis of all forms purchased through January 2024. Additional voter registration forms have been obtained since, which demonstrate the same pattern. A copy of all purchased voter registration forms in Petitioner's possession are available to the Court upon request. [EXHIBIT 25]

33. Petitioners seek redress from these voter registration apparent errors, relief from blatantly inaccurate voter registration rolls and relief from extreme voting errors generally, which collectively and historically amount to violations of federal election laws, South Dakota election laws, and various voting rights encompassed by the United States Constitution and the South Dakota State Constitution.

34. The aforesaid violations of federal and state law may have in the past resulted in the certification of election results from flawed, inaccurate, and obscure processes outside the view of impartial witnesses or the public, and Respondents have refused collectively to maintain or enforce compliance with federal and state required transparency mandates. In fact, the Respondent Eric Bogue, under the authority of Respondent Daniel Haggar, in this case ordered the Recount Board to include the challenged ballots found to be fraudulent and rejected by the precinct board of precinct 04-16, in the recount action on June 24, 2024. Petitioner in this case was not notified, the precinct superintendent and deputies who made the decision to reject the ballots based on false identity were not notified, and the recount board was not presented the information from the challenge. Instead, the recount board was provided the 132 ballots deemed fraudulent by the precinct board, by the Respondent Eric Bogue, who instructed the board to include them in

the recount. Due to this decision, Petitioners further assert that the Respondents are in violation of SDCL 12-26-22. Disturbance of election proceedings as misdemeanor and SDCL 12-26-25. Tampering with ballots, ballot box, or poll list as felony.

33. Petitioners have brought this issue to the attention of Respondents, who have done absolutely nothing to address these errors ensuring future elections will suffer from the same deficiencies.

34. Furthermore, rather than becoming alarmed by these apparent errors pursuant to prevailing election laws, Respondents instead have collectively ignored the issue of the unreliable election results therefore produced and have become party to the problem.

35. Petitioners believe and therefore aver Respondents have failed to adequately police and monitor problems with the voter rolls and failed to adequately respond to and correct voting registration errors within the state of South Dakota, despite being in the best position to ensure the reliability, integrity, and accuracy of South Dakota's elections to ensure veracity of the state's election results.

36. Petitioners have repeatedly made good faith and sincere efforts to negotiate and get Respondents to respond to Petitioner's legitimate concerns.

37. Petitioners have repeatedly shown Respondents evidence of potential violations of election law, regarding the conduct of elections by local and state officials charged with administering elections, on behalf of all citizens in accordance with the law.

38. The risk of election subversion is indisputable, but South Dakota has denied Petitioners a fair hearing, despite the serious nature of Petitioners' findings calling into question the reliability, integrity and accuracy of prior elections administered by the state.

39. The prayer for relief seeks the protection of Petitioner's rights, as well as those of every bona fide voting citizen and resident of South Dakota, to have their vote fairly counted in an open and reliable election as such elections are defined according to law as outlined below.

40. Respondents have denied Petitioners' their right to a fair vote.

41. Petitioners believe and therefore aver Respondents have violated multiple federal and state laws, or negligently allowed such violations to occur, while loudly proclaiming the infallibility of the state's election results.

42. Respondents insist that Petitioners have adequate voting rights, while simultaneously fighting from every conceivable angle to prevent Petitioners from attempting to protect those rights. Respondents' collective actions in refusing to address the problem extinguishes and undermines the very meaning of the right to vote in a fair democracy.

43. Respondents can and should be compelled to address compliance with existing election law, specifically: compelled to adequately investigate the issue, prosecute anyone in violation of federal and/or state law, and actively work to bring the state back into compliance with federal and state election law mandates so that South Dakota's constitutionally enshrined voting rights are upheld and preserved.

44. The All-Writs Act, 28 U.S.C. § 1651 provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in the aid of their respective jurisdictions and agreeable to the usages and principles of law."

45. "A Writ of Mandamus may be granted by the Supreme and circuit courts, when inferior courts, officers, boards, or tribunals have exceeded their jurisdiction, and there is no writ of error or appeal nor, in the judgment of the court, any other plain, speedy, and adequate remedy." S.D. Codified Laws § 21-31-1

Parties

46. Jessica Pollema is an individual with the address of 6901 E Brooks Edge Place, Sioux Falls, SD.

47. John Kunnari is an individual with the address of 5808 W 52nd St, Sioux Falls, SD.

48. The South Dakota Secretary of State is a government entity responsible for administering and ensuring the state's compliance with South Dakota's Election

Code and the state's compliance with federal law – namely the Help America Vote Act, and the National Voter Registration Act.

49. Daniel Haggard and Eric Bouge, each in his official capacity as the Minnehaha County States Attorney and Deputy States Attorney, are responsible for overseeing and managing the legal compliance of the Minnehaha County States Attorney's Office, which is a government agency tasked with the enforcement and prosecution of state law in addition to ensuring that county actors, including those acting within the Minnehaha County Auditor's Office and Minnehaha County Canvassing Board, are complying with South Dakota law.

50. Leah Anderson, in her official capacity as the Minnehaha County Auditor, is responsible for maintaining and securing the county voter file for Minnehaha County, as well as conducting compliant elections for Federal, State and Countywide elections.

51. Jean Bender, Jennifer Bleyenbergh, Cindy Heiberger, Jeff Barth and Alex Jensen in their official capacity as the Minnehaha County Canvassing Board.

Jurisdiction and Venue

52. This Court has jurisdiction pursuant to South Dakota Constitution Article V, Section 5 as well as S.D. Codified Laws § 21-29-1, which states: "The writ of mandamus may be issued by the Supreme and circuit courts, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station..."

53. This Court has jurisdiction pursuant to S.D. Constitution Article 5, Section 5, and S.D. Codified Laws § 15-25-1 as said jurisdiction is "...for the consideration of matters of prerogative, extraordinary, and general concern."

54. This Court additionally has subject matter jurisdiction over this complaint because the case presents substantial questions of compliance with state and federal law in regard to election processes.

55. This Court has personal jurisdiction as the Respondents are a collection of South Dakota and Minnehaha County agencies and actors, and Minnehaha County is within the jurisdiction of South Dakota.

Standing

56. Petitioner Jessica Pollema is a citizen of South Dakota, Minnehaha County, and voted in the 2024 primary election.

57. Petitioner Jessica Pollema also reported numerous issues to elected officials and was ignored numerous times. She was furthermore not successful in obtaining public records from Minnehaha County for election records deemed public by the federal agencies that defined the records as public for transparency's sake. See [EXHIBIT 26] for a document regarding Mrs. Pollema's efforts to improve election security and complaints to authorities.

58. Petitioner Jessica Pollema was furthermore not successful with a complaint filed with the Minnehaha County Sheriff's Department, Hanson County Sheriff's Department, and the Department of Criminal Investigation detailing questionable election data, practices, and registrations, along with impossible registration dates, duplicate voters, voters who voted twice and affidavits of stolen votes found in canvassing efforts. Entire file submitted to the South Dakota Department of Criminal Investigation is available to the Court upon request.

59. Petitioner JOHN KUNNARI is a citizen of South Dakota and candidate for South Dakota District 11 House, Minnehaha County who observed and reported numerous election issues, apparent errors, loopholes, and discrepancies to authorities and was ignored. See [EXHIBITS 7 & 8] for John Kunnari's efforts.

60. Petitioners have been and are currently harmed by the State of South Dakota's voting systems currently and formerly in use in the state and federal elections. Respondents have allowed, and continue to allow, violations of federal election laws, South Dakota election laws, the United States Constitution, the South Dakota Constitution and federal civil rights laws pertaining to voter rights.

61. The violations of South Dakota's election laws, federal election laws, the U.S. Constitution, the South Dakota Constitution and federal civil rights laws pertaining to voter registration rolls, transparency, compliance, and the serious issues hereinafter discussed with the overall voting systems exemplify their injury.

62. The injury to Petitioners and all South Dakota voters would cease to exist or be greatly relieved if the Court grants Petitioners' requested relief.

63. The Supreme Court of the United States has indicated that if one party to a lawsuit has standing, other entities can join as parties without having to independently satisfy the demands of Article III, provided those parties do not seek a distinct form of relief from the party with standing. E.g., *Horne v. Flores*, 557 U.S. 433 (2009).

Background

A. THE CONSTITUTIONALLY PROTECTED RIGHT TO VOTE

64. The United States Constitution grants the people the right to choose representatives to the people of several states, according to the voting eligibility requirements of the state. U.S. Const. art. 1, § 2.

65. The 14th Amendment of the United States Constitution, Section 1, defines a “citizen” as all people born or naturalized in the United States and subject to the jurisdiction thereof.

66. The 14th Amendment of the United States Constitution, Section 2, protects eligible citizen voters against denial or abridgment of their vote.

67. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." *Marbury v. Madison*, 1 Cranch 137, 5 U. S. 163 (1803).

68. Federal courts regard the right to vote in a fairly conducted election as a constitutionally protected feature of United States citizenship. *Reynolds v. Sims*, 377 U.S. 533 (1964).

69. After the 2016 and 2020 Presidential Elections, pervasive discussion reported on by the media focused on the validity of the presidential election results around the nation.

70. Discussions and/or litigation in many states around the Nation, centered on whether raw vote totals were accurate, with particular attention focused on the question: if all ballots in dispute were decided, hypothetically, in the favor of one candidate for president over the other, would that have changed the outcome of the election in that state?

71. Questions concerned whether the recorded vote totals, viewed in the light most favorable to the losing candidate in any given state, could have affected the awarding of electoral votes from said state, which, in turn, might have affected the determination of the “winner” of the elections for president and vice-president in the Electoral College.

72. The media widely reported that no court ruled that, even if all disputed ballots were assumed to have been found to be favorable to the Republican Candidate during the 2020 presidential election, the outcome in any disputed state would not have been affected. Furthermore, there was insufficient evidence produced such that a court could find that the outcome of the election in any disputed state was unreliable.

73. Petitioners do not seek to revisit the results of the 2020 presidential election, nor to re-examine the conclusions drawn by the various courts and media outlets as summarized above.

74. Petitioners posit a different question. How many disputed ballots found to be improperly cast in any given election may occur before the reliability and integrity of the entire election becomes suspect? Petitioners respectfully represent that the United States Congress has answered this very question as outlined further below and Congress’ answer to this question forms much of the basis of the instant Petition.

B. NATIONAL VOTER REGISTRATION ACT (“NVRA”)

75. The National Voter Registration Act (“NVRA”) was passed for the purpose of ensuring accurate and current voter registration rolls to enhance the integrity of elections.

76. In so doing, Congress found that: (1) the right of citizens of the United States to vote is a fundamental right; (2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and (3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities. 52 U.S.C. § 20501.

77. The NVRA exists in part to “protect the integrity of the electoral process” and “to ensure that accurate and current voter registration rolls are maintained.” 52 U.S.C. § 20501.

78. The NVRA requires states to “conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters” by reason of death or change of address. 52 U.S.C. § 20507(a)(4).

79. The NVRA requires the States to complete any program the purpose of which is to remove ineligible voters from the official lists of eligible voters not later than ninety (90) days prior to an election.

C. HELP AMERICA VOTE ACT (“HAVA”)

80. The Help America Vote Act (“HAVA”) exists in part to “establish minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections, and other purposes.” 52 U.S.C.A. § 21083.

81. HAVA requires that voter roll databases contain only the registrations of qualified citizen voters residing in that state. 52 U.S.C.A. § 21083(a).

82. HAVA defines a voting system as “the total combination of mechanical, electromechanical, or electronic equipment (including software, firmware, and documentation required to program, control, and support the equipment) that is used to define ballots; to cast and count votes; to report or display election results; and to maintain and produce any audit trail information.” 52 U.S.C.A. § 21083.

83. The purpose of any voting system is to accurately record, store, consolidate, and report the specific selections, and absence of selections, made by the voter as well as to accurately measure the intent of the total body of eligible voters that voted.

84. Voter registration is encompassed in the definition of a voting system defined in HAVA because a voting system includes the documentation required to program the voting machines and to “cast and count votes.” 52 U.S.C.A. § 21081(b).

85. Petitioners believe and therefore aver **the ability to “cast and count votes” begins with establishing eligibility and registering only qualified citizens into voter registration databases, thus assuring that all ballots granted, cast, and counted, are lawful** (emphasis added).

86. Petitioners believe and therefore aver that inaccurate voter rolls have significant negative consequences in elections.

87. Per HAVA, in any given state, each qualified voter is granted a unique statewide identifier in a database, which averts the risk of double-voting or extra ballots being cast in the name of one individual voter.

88. Congress's power to pass the HAVA comes from Article I, Section 8, Clause 18 of the United States Constitution, the Necessary and Proper Clause, making accurate voting systems a requirement to uphold the right of the people to choose their representatives.

SOUTH DAKOTA ELECTION CODE

89. South Dakota law requires that the Secretary of State establish a Statewide known as the "Statewide Registration File" system as set forth in Title 12 and described in SDCL 12-4-37 system.

90. Per SDCL Title 12, the system, among other things, is required to do the following:

- a. Contain a database of all registered electors;
- b. Develop and implement a secure system protected from external threats which may damage the integrity of the system;
- b. Ensure the integrity and accuracy of all registration records in the system;
- c. Assign a unique registration number to each individual currently registered in South Dakota;
- d. Make voter registration records open to the public;
- e. Identify the election precinct to which an elector is assigned;
- f. Identify electors who have moved out of state through comparison with the NCOA;
- g. Identify electors who are deceased and remove them from the rolls;
- h. Identify duplicate voter registrations on a countywide and Statewide basis;
- and
- i. Identify registered electors who vote in an election and the method by which their ballots were cast.
- j. Develop and maintain a secure system in compliance with NVRA, HAVA and all Federally mandated laws. Regarding UOCAVA specifically 12-4-4.9 states: All other provisions of law relating to elections shall apply to §§ 12-4-4.2 to 12-4-4.9, inclusive.

91. The election code describes numerous criminal penalties for failing to adhere to basic code guidelines:

- a. Voting or offer to vote by unqualified person as misdemeanor. SDCL 12-26-4.
- b. Any person knowing himself not to be a qualified voter who votes or offers to vote at any election is guilty of a Class 2 misdemeanor. SDCL 12-26-3.
- c. False count or return by election official as misdemeanor--Defacement or concealment of statement or certificate. SDCL 12-26-25.
- d. Willful failure to perform official duty as misdemeanor. SDCL 3-16-1.
- e. Grounds for removal of local officers from office. SDCL 3-17-6.
- f. Falsification of public records--Misdemeanor. SDCL 22-11-23.
- g. Destruction or impairment of public record--Felony. SDCL 22-11-24
- h. Disturbance of election proceedings as misdemeanor. SDCL 12-26-22.
- i. False Count or return by election official as a misdemeanor. SDCL 12-26-25.
- j. All other offenses found in Title 12 Chapter 26.

92. South Dakota law requires each county auditor to “review each voter application for eligibility and completeness”, and “maintain and safeguard the voter registration records of the county”. SDCL 12-4-2 and 12-4-5.3.

93. Petitioners believe and therefore aver that the state, as well as Minnehaha County, cannot demonstrate effective control over voter eligibility in conformity with federal or state requirements, and the state has implemented a system that does not guarantee accuracy or compliance with legal mandates requiring the state to ensure that only eligible voters may register and vote.

D. ELECTION FRAUD CONGRESS SOUGHT TO GUARD AGAINST

94. Petitioners do not accuse any person or entity of engaging in election fraud, nor propose any person or entity will engage in such fraud in 2024 or in subsequent elections in South Dakota. Petitioners’ purpose in describing types of voter fraud is to set forth the harms the United States Congress sought to avoid by implementation of HAVA and NVRA as well as the various statutes passed by the South Dakota legislature and cited above.

95. Petitioners believe and therefore aver election fraud can occur in multiple diverse ways, not all of which are individualized to a specific actor.

96. Petitioners believe and therefore aver over the past fifty years, Congress has enacted criminal laws with broad jurisdictional basis to combat false voter registrations, multiple-voting, and fraudulent voting in elections in which a federal candidate is on the ballot. See 52 U.S.C. §§ 10307(c), 10307(e), 20511.

97. Voting in federal elections for individuals who do not personally participate in, and assent to, the voting act attributed to them, or impersonating voters, or casting ballots in the names of voters who do not vote in federal elections, can constitute prosecutable election fraud. See 52 U.S.C. §§ 10307(c); 10307(e); 20511(2).

98. It is possible for election officials acting “under color of law” to commit election fraud by performing acts such as diluting ballots with invalid ones (ballot stuffing), rendering false tabulations of votes, **or preventing valid voter registrations** (emphasis added), or votes from being given effect in any election, federal or non-federal (18 U.S.C. §§ 241, 242), as well as in elections in which federal candidates are on the ballot. See 52 U.S.C. §§ 10307(c), 10307(e), 20511(2).

99. An individual commits election fraud by submitting fictitious names to election officers for inclusion on voter registration rolls, thereby qualifying the fictitious name to vote in federal elections. 52 U.S.C. §§ 10307(c), 20511(2).

100. An individual commits election fraud by knowingly procuring eligibility to vote for federal office by people who are not entitled to vote under applicable state law and/or people who are not United States Citizens. 52 U.S.C. §§ 10307(c), 20511(2); 18 U.S.C. §§ 1015(f).

101. An individual who makes a false claim of United States Citizenship to register to vote commits election fraud. 18 U.S.C. § 1015(f); 18 U.S.C. § 911.

102. **A person who provides false information concerning a person’s name, address, or period of residence in a voting district to establish voting eligibility commits election fraud** (emphasis added). 52 U.S.C. §§ 10307(c), 20511(2).

103. Fraud can occur where an individual causes the production of voter registrations that qualify alleged voters to vote for federal candidates, where that

individual knows the registrations are materially defective under applicable state law. 52 U.S.C. § 20511(2)

104. However, election fraud need not involve the participation of individual voters. Election fraud can occur where an individual or organization places fictitious names on voter rolls (allowing for fraudulent ballots which can later be used to stuff the ballot box, supra.), casting fake ballots in the names of people who did not vote, obtaining and marking absentee ballots without the input of the voter involved, and falsifying vote tallies.

105. When the federal government seeks to maintain the integrity of elections, it does so for specific federal interests inter alia: (1) the protection of the voting rights of racial, ethnic, or language minorities, a specific constitutional right; (2) the registration of voters to vote in federal elections; (3) the standardization and procurement of voting equipment purchased with federal funds; (4) the protection of the federal election process against corruption; (5) the protection of the voting process from corruption accomplished under color of law; and (6) the oversight of non-citizen and other voting by persons ineligible to vote under applicable state law. Richard C. Pilger, *Federal Prosecution of Election Offenses*, p. 30, 8th Edition (2017).

106. The United States Congress has enacted a litany of specific crimes that can be prosecuted under a general definition as “election fraud”:

- a. False Information in, and Payments for, Registering and Voting: 52 U.S.C. § 10307(c).6
- b. Fraudulent Registration or Voting: 52 U.S.C. § 20511(2).
- c. False claims to Register or Vote: 18 U.S.C. § 1015(f).

107. In short, election fraud can constitute numerous different actions or inactions, and federal and state governments of the United States have an interest in guarding the integrity of elections, and ensuring election fraud is stopped, then prosecuted appropriately.

Requested Relief

ALL WRITS ACT RELIEF – 28 U.S.C. § 1651

108. Petitioners incorporate the previous paragraphs by reference as if set forth at length here.

109. Petitioners are not seeking to undermine official elections results previously certified prior to the 2024 primary election.

110. Petitioners seek redress from the constitutional harm brought upon them, and the South Dakota electorate at large, by Respondents failure to comply with federal and state election law.

111. Petitioners believe and therefore aver that Respondents have done nothing or an inadequate job at addressing the issues presented in this Petition – particularly to address the inaccurate and likely fraudulent voter registration used in elections conducted by state authorities.

112. Respondents' inaction and/or failure to act compels Petitioners to ask that the Court to issue a Writ of Mandamus requiring Respondents to comply with the two federal statutes at issue (NVRA and HAVA) along with the South Dakota Election Code, found in Title 12, while giving Respondents a reasonable time within which to bring South Dakota into compliance in time for the 2024 General Election and all elections conducted by the state going forward while providing relief to 2024 voters if bringing the state into compliance in time is impossible upon showing by Respondents.

113. Specifically, Petitioners respectfully seek that the Court order Respondents take steps, both short term and long term, to ensure the apparent errors made during the 2024 primary election does not recur and to bring the state into compliance with voter registration laws.

114. This Honorable Court is authorized to issue a Writ of Mandamus under "The All- Writs Act," 28 U.S.C. § 1651 granting the power to United States Federal Courts to "issue all

115. Instantly, Petitioners have no other remedy than a Writ of Mandamus.

116. Petitioners argue that injunctive and/or declaratory relief is inapplicable or inappropriate in this issue because the harm from the 2024 primary election is not yet realized and Petitioners are seeking to have Minnehaha election officials and/or state officials bring the state into compliance with federal and state law, specifically HAVA, NVRA, and the South Dakota Election Code, found in Title 12, absent a specific existing private cause of action Petitioners could assert that affords Petitioners relief.

117. Petitioners believe and therefore aver Respondents have allowed, and continue to allow, violations of federal election laws, state election laws, the United States Constitution, and federal civil rights laws pertaining to voter rights, which include mandating accurate registration rolls, transparency, compliance, and proper certification of the voting systems. 52 U.S.C. § 20501; 52 U.S.C. § 21083.

118. Petitioners believe and therefore aver that the voter rolls within the state of South Dakota are inaccurate, in violation of NVRA and HAVA. These are not list maintenance failures. The inaccuracies represent a failure to control the process of validating and registering only qualified citizen voters. These apparently invalid and/or illegal registrations continue to vote in large numbers in South Dakota elections.

119. Petitioners believe and therefore aver the Respondents have lost control of voter registration, leading to the distribution of ballots to what appear to be false registrants which results in a diluted vote and further harm to petitioners and the electorate at large. Upholding HAVA includes the risk assessments and proper certification of all system elements individually, and as a system as a whole.

120. Petitioners believe and therefore aver an election official's job is fidelity to the law in administering the electoral process, thereby protecting the integrity of an election, and the citizens from corruption in the election process.

121. Petitioners believe and therefore aver that state officials' failure to follow the law has resulted in election outcomes that are untrustworthy. The voting system in its present form cannot be used to produce trustworthy reliable results without the requested judicial intervention.

122. Petitioners believe and therefore aver a Writ of Mandamus is appropriate in this case. Respondents have failed, and continue to fail, in complying with federal and state laws regarding voting – including voting accuracy and accountability. It is clear from the Respondents conduct before, during, and after, the 2024 primary election that, absent judicial action, Respondents will do nothing to repair the deficiencies noted above to ensure the integrity of South Dakota's elections are conducted in compliance with federal and state law.

123. The scope of Petitioners' Mandamus request is narrow: Petitioners seek this Court to order Respondents follow existing federal and state law designed by

Congress and the South Dakota legislature to ensure that South Dakota's 2024 and subsequent elections produce reliable results.

124. Petitioners believe and therefore aver, then, that this Honorable Court has authority to issue the requested Writ of Mandamus to compel, not just the Respondent county officers to ensure that election law is carried out in South Dakota's 2024 and subsequent elections, this Court also has the authority to compel Respondent state officials because said officials are charged by the U.S. Constitution in the carrying out of federal law where Congress has asserted its power to "alter" existing South Dakota federal election procedures as it did in enacting NVRA and HAVA.

125. Petitioners believe and therefore aver that without judicial action, Respondents will do nothing to comply with HAVA and other federal and state statutes to ensure the integrity of South Dakota's elections and will call into question the validity of South Dakota's 2024 primary and general election results.

126. The scope of this request for a Writ of Mandamus is narrow: Petitioners seek a judicial order requiring Respondents both state and county to follow the laws cited herein in conducting the 2024 and subsequent elections, and adequately investigate and remedy the problems exposed in and detailed above.

127. Petitioners believe that this court may issue the Writ of Mandamus under similar circumstances of *McIntyre v. Wick* South Dakota Supreme Court Original Proceedings #19898, 19899. Plaintiffs John McIntyre (No. 19898) and Douglas Kazmerzak (No. 19899) filed separate petitions for Writs of Mandamus seeking our review of the recounts in their respective state legislative elections. We issued a Writ of Mandamus in each case limited to review of the recount proceedings pursuant to SDCL Ch 12-21. Defendants Hal G. Wick (No. 19898) and Arthur F. Fryslie (No. 19899) have asked us to dismiss each action and quash each writ, asserting that the South Dakota House of Representatives has the exclusive jurisdiction to judge the election returns and qualifications of its members. For the reasons set forth in this opinion, we conclude that while the legislature has the exclusive authority to finally determine who will be seated in a legislative election contest proceeding, this Court has the jurisdiction to review irregularities and errors in the tabulation of votes in any recount proceeding. https://uj.s.sd.gov/Supreme_Court/opiniondetail.aspx?ID=947

128. In *Larson v. Locken*, 262 NW 2d 752 - SD: Supreme Court 1978, it was decided that "based on the record and the findings of the trial court, we find that

the trial court did not err in calling for a new election since the many irregularities and violations of statute did cast substantial doubt upon the validity of the outcome of the election. The record shows blatant violations of the mandatory provisions of the absentee voting statutes.”

https://scholar.google.com/scholar_case?case=9534394367613884624&q=counting+of+fraudulent+ballots&hl=en&as_sdt=4,42

129. Becker v. Pfeifer Supreme Court of South Dakota Feb 4, 1999 588 N.W.2d 913 (S.D. 1999) the summary, holding voters will not be disenfranchised due to an election official's mistakes, negligence, or misconduct, "unless that conduct has been carried to such an extent as to affect the true outcome of the election and put the results in doubt" as elevating form over substance when the right to have one's vote counted is at stake is un-warranted.” <https://casetext.com/case/becker-v-pfeifer?q=writ%20of%20certiorari%20elections%20recount&sort=relevance&p=1&type=case&jxs=sd&tab=keyword>

130. Petitioner believes that THOMS, Appellant v. ANDERSEN, Respondent Supreme Court of South Dakota 235 N.W.2d 898 (S.D. 1975) applies, but in the opposite. In this case when the circuit court affirmed the recount board's vote not to include the missing ballots it also confirmed the election of Gwen Andersen, the Democratic candidate, as county auditor based upon that recount absent the disputed ballots from the two precincts in question. In so doing more than two hundred electors had their properly cast votes disregarded through no fault of their own. The court dissented in part that the recount board should have included the absentee ballots in the recount, as the action in misplacing the ballots was an error of the election officials. Those voters should not have been disenfranchised. Our case asserts that the voters identified with perjured voter registration are in error of the laws for residency requirements and our elected officials allowed those votes to count for the recount, disenfranchising bona fide registered voters.

<https://casetext.com/case/thoms-v-andersen?q=writ%20of%20certiorari%20elections%20recount%20fraudulent%20ballots&sort=relevance&p=1&type=case&jxs=sd&tab=keyword>

CONCLUSION

South Dakota’s voter registration rolls contained hundreds of apparent errors in the 2024 primary election. These apparent errors took the form of invalid, incomplete or perjured voter registration forms, registrations out of compliance

with UOCAVA, HAVA, and NVRA, and registrants with questionable addresses or no proof of a physical location as required under penalty of perjury on the voter registration form provided by the Secretary of State. This Honorable Court should enter an order in Mandamus compelling Respondents to ministerially correct the apparent errors evident from the 2024 elections data and prevent those same or similar ministerial errors from recurring during the South Dakota 2024 General Election and all subsequent elections to protect the integrity and sanctity of South Dakota's elections going forward for years to come.

WHEREFORE, Petitioners request the Court to issue Writ of Mandamus (or a peremptory writ if the Court deems it appropriate) commanding:

1. The Respondent Minnehaha County Auditor Leah Anderson revert to the unofficial vote count totals completed on June 4, 2024 without the 132 fraudulent ballots included in the vote totals for Minnehaha County precinct 04-16, and to conduct a thorough review of voters registered to both precincts 04-16 and 05-16 for potential inaccurate, incomplete, and perjured registration forms that were completed in violation of federal and state law, and to correct such errors found immediately.
2. The Respondent Secretary of State Monae Johnson provide the Court with evidence of implementation of an audit of the state's voter registration files in each county for accuracy and compliance with both Federal and State applicant requirements, ensuring all boxes on each voter registration form are accurate and complete.
3. The Respondent Secretary of State Monae Johnson provide the Court with explanation for illogical, uncompliant, and impossible voter data recorded in the statewide voter file and a detailed plan to prevent violations in the future.
4. The Respondent Secretary of State Monae Johnson provide the Court with evidence of advisement and order to each county entity and office that procures voter registrations comply with the law by ensuring each voter registration form is accurate and complete, and each new voter applicant is placed in the precinct in which he resides, or if registering by UOCAVA, previously resided.
5. Respondents be required to appear before the Court at such date and time set forth by the Court and show cause why the acts required by the Writ have not been carried out and should not be required, and that the Court grant Petitioners such other and further relief as may be equitable in the premises.
6. Such other and further relief as the Court may deem just and equitable.

Dated this 8th day of July, 2024.

Jessica Pollema
JESSICA POLLEMA

John Kunnari
JOHN KUNNARI

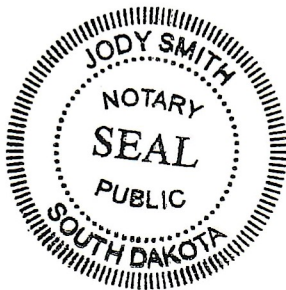
STATE OF SOUTH DAKOTA)
)SS
COUNTY OF MINNEHAHA)

We, the undersigned, verify that each is the person who signed the foregoing Affidavit and Application for Writ of Mandamus, and that each has read the same and knows the contents thereof, and that the statements made therein are true and correct to the best of our knowledge and belief.

Jessica Pollema
JESSICA POLLEMA

John Kunnari
JOHN KUNNARI

Subscribed and sworn to me this 8th day of July, 2024.



Jody Smith
Notary Public
My Commission Expires: 03/04/2025