

STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF HUGHES)

IN THE CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

JESSICA POLLEMA
RICK WEIBLE)
)
Petitioners,)
)
vs.)
)
)
SOUTH DAKOTA STATE)
BOARD OF ELECTIONS,)
MONAE JOHNSON in her)
official capacity as Secretary of)
State, JAMALIA FRANZEN,)
KRISTIN MATSUDA, AUSTIN)
HOFFMAN, LINDLEY)
HOWARD, SCOTT)
MCGREGOR, KENT)
ALBERTY in their official)
capacity as members of the)
Board)
)
)
)
Respondents.)
)

MOTION FOR AND
AFFIDAVIT IN SUPPORT
OF APPLICATION FOR
PRELIMINARY
INJUNCTION

STATE OF SOUTH DAKOTA)
)ss
COUNTY OF HUGHES)

**MOTION FOR AND PETITION IN SUPPORT OF
PRELIMINARY INJUNCTION**

TO: The Honorable, the Judges of Said Court:

Petitioners Jessica Pollema and Rick Weible, pro se, respectfully move this Court pursuant to SDCL 15-6-65(a) for a preliminary injunction enjoining Respondents from certifying, distributing, or authorizing the use of the ES&S EVS 6.5.0.0, 6.1.1.0, or 6.1.0.0. electronic voting system (or any modifications/upgrades thereto) until such system is demonstrated to and complies with the requirements of ARSD 5:02:09:02, ARSD 5:02:09:02.01, and related statutes.

In support of this Motion, Petitioners state as follows:

1. This Court has jurisdiction over this matter pursuant to SDCL Ch. 16-6 (circuit court jurisdiction) and SDCL Ch. 21-24 (declaratory judgments) and Ch. 21-8 (injunctions).
2. Venue is proper in this county because Respondents' physical address is located in Hughes County, Respondents' actions originate in Pierre, South Dakota, and the Board of Elections actions and decisions have an impact statewide.
3. Petitioners are registered voters in Minnehaha and Brookings counties, South Dakota, and intend to vote in upcoming elections that may utilize the systems at issue. Petitioners have standing as the unlawful certification and or use of non-certifiable electronic election systems threatens irreparable injury to Petitioner's rights to a fair and secure election process.
4. The South Dakota Administrative Rules require that automatic tabulating systems be approved only after demonstration to the Board (or designee). [EXHIBIT1]
5. A recent demonstration of ES&S EVS 6.5.0.0 was conducted by ES&S representatives on Wednesday, January 21, 2026 and Thursday, January 22, 2026 at the AmericInn hotel in Fort Pierre, South Dakota without a quorum of Board members present. The Board of Elections has not made it clear or made any public notice of having formally nominated a designee. Thus, the Board or the Board's designee were not present for said demonstration. [EXHIBIT 2]
6. The recent demonstration of ES&S EVS 6.5.0.0 was conducted by ES&S employees. The South Dakota Administrative Rules require that automatic tabulating systems be approved only after demonstration that they meet specified criteria, including for modifications/upgrades, certification to EAC 2015 voting system standards (VVSG 1.1) by an accredited independent test authority (ARSD 5:02:09:02; 5:02:09:02.01). [EXHIBIT 1]

7. Per the United States Election Assistance Commission website, no voting system in the United States has been submitted to the EAC for testing and approval to 2015 voting system standards (VVSG 1.1), but the Board intends to certify it despite no systems nationwide meeting VVSG 1.1 for modifications as required. Per the sdsos.gov website, the Board of Elections meeting agenda for Friday, February 13, 2026 at 11:30, item F lists "Certification of Election Equipment". [EXHIBIT 3]
8. This constitutes a violation of Respondents' own mandatory rules, as no compliant system exists, rendering any certification unlawful.
9. Administrative Rule 5:02:09:02.03 states the following: "Before the State Board of Elections grants a certificate of approval, the following capabilities of the electronic ballot marking system must be demonstrated to the board or its designee. The board may grant a certificate of approval for a system, if the system fulfills the following requirements:

ARDS 5:02:09:02.03 (12) Complies with the disability voting requirements of the Help America Vote Act of 2002 as of January 1, 2005;

Eyewitness accounts attest that ES&S failed to demonstrate any of the peripheral equipment required by HAVA for disability compliance, such as Audio ballot / non-visual access, Screen magnification / enlargement and high-contrast modes for low-vision voters, Alternative input methods such as tactile controls, large buttons, sip-and-puff switches, paddles, joystick, or other adaptive devices for voters with limited dexterity or mobility impairment, Audio-tactile interfaces, Private and independent verification and correction, Adjustable physical design such as adjustments allowing lowered height or tilt screen for wheelchair users or those with reach limitations, and Compatibility with assistive technologies allowing personal devices or software where feasible. This critical oversight puts disabled voters at a higher risk and fails to ensure compliance with federal law regarding disability device function and security. [EXHIBIT 1]
10. Furthermore, a closer review of previously certified electronic voting systems, including modifications/upgrades, reveals the ES&S EVS 6.1.1.0 certified by the State Board of Elections on August 23, 2021, which is a modification or upgrade to ES&S EVS 6.1.0.0, also did not meet the requirements of being certified to VVSG 1.1. [EXHIBIT 4]
11. Respondents have previously and are about to certify an electronic voting system that is not consistent with Respondents' own written and approved rules for certification. Per the sdsos.gov website, the Board of Elections meeting agenda for Friday, February 13, 2026 at 11:30, item F lists

“Certification of Election Equipment” as though they intend to certify. Public comment is not allowed until after certification, therefore there is no remedy for the public to object prior to certification. [EXHIBIT 3]

12. Per sdsos.gov, “Administrative rules are officially promulgated agency regulations that have the force and effect of law. Generally, these rules elaborate the requirements of a law or policy. Following citizen input at public hearings, administrative rules are passed by the Legislative Interim Rules Review Committee.” Zar v. SD Bd. of Examiners of Psychologists (1985) and Zar v. SD Bd. of Examiners of Psychologists (1985).
13. Petitioner is likely to succeed on the merits because the rules are clear and mandatory; Respondents lack discretion to ignore the EAC 2015 requirement for upgrades/modifications, or Administrative Rules, which the Board devised themselves.
14. Petitioner will suffer irreparable harm absent injunction: Use of non-compliant systems risks inaccurate tabulation, vote dilution, loss of public confidence in elections, and violation of state law—harms that cannot be adequately remedied post-election.
15. The balance of equities tips sharply in Petitioner's favor: Enjoining unlawful certification preserves the status quo and rule of law, while Respondents face only temporary delay in deployment (no compliant alternative exists anyway).
16. The public interest strongly favors granting relief to ensure elections comply with South Dakota's administrative rules and promote trustworthy voting systems.
17. No bond or minimal bond should be required under SDCL 15-6-65(c), as this is a public-interest challenge with no monetary damages likely to Respondents.

WHEREFORE, Petitioners request that the Court:

- a. Set this Motion for hearing at the earliest possible date, preferably prior to the 2/13/2025 11:30AM CST scheduled certification;
- b. Issue a preliminary injunction enjoining Respondents from certifying, distributing, or using ES&S EVS 6.5.0.0 (or non-compliant modifications) and issue a preliminary injunction for continued statewide use of ES&S EVS 6.1.1.0, which was certified in violation of the rules, pending full resolution;
- c. Grant such other and further relief as the Court deems just and proper.

Dated this _____ day of February, 2026.

JESSICA POLLEMA

RICK WEIBLE

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF HUGHES)

I verify that I am the person who signed the foregoing Motion for and Affidavit in Support of Application for Preliminary Injunction, and that I have read the same and know the contents hereof, and that the statements made therein are true and correct to the best of my knowledge and belief.

JESSICA POLLEMA

RICK WEIBLE

Subscribed and sworn to me this _____ day of February, 2026.

Notary Public
My Commission Expires: _____