

August 19, 2022

Honorable Governor Kristi Noem
CC: Mark Vargo, Acting Attorney General
500 E Capitol Ave
Pierre, SD 57501

Honorable Governor Kristi Noem,

Thank you for your public defense and your continued efforts to strengthen South Dakota's laws to provide further protections against undue influence into our free and fair elections.

You have not only publicly stated your defense, but have taken critical steps to protect them, such as signing SB 122 into law this year which banned the private funding of our elections from organizations like Mark Zuckerberg's Center for Technology and Civic Life. This was an issue that affected 35 of our 66 South Dakota counties, which received nearly \$380,000 from the Center for Technology and Civic Life since 2020. Because of you, and as you said, this "avenue ... to unfairly influence our free and open elections" has been secured.

Our elections are foundational to our form of government, as you publicly explained during your national ABC interview with George Stephanopoulos on Nov. 8, 2020, when you stated:

"We live in a Republic, we are government that gets its power from the consent of the governed, that is the people. They give their consent on election day. Election day needs to be fair, honest, and transparent."

As an advocate for open and honest government, and your statement that "every Governor has a responsibility to make sure their election system is sound," we the undersigned legislators come to you for your leadership regarding an election integrity issue, and consider this, as you've said before, "a fantastic opportunity to restore public trust."

South Dakota has excelled in not only protecting the right to vote, but the inherent right of the people to oversee the process of how it is counted, being embodied in our laws allowing for the inspection of nearly every step of our elections while still maintaining the secrecy of individual ballots, and as is seen within South Dakota Codified Laws (SDCL) §§ 12-4-9, 12-17B-5, 12-17B-10, 12-17B-16, 12-19-44, 12-20-1, 12-20-3, and 12-20-13 in accordance with 12-20-17.

Recently South Dakota citizens who seek to keep our elections open, honest and transparent have been denied public record requests for the tabulation Cast Vote Records (CVR) and machine logs from the ES&S tabulator machines, as described in §§ 12-20-13, on the basis that the contracts for and use of ES&S equipment and services to tabulate our ballots effectively renders the official election counts and returns to become proprietary data of ES&S and are therefore not open to public disclosure pursuant to §§ 1-27-1.5 (3) & (8) and §§ 1-27-1.6 (6) or have been denied because such records are considered internal agency records pursuant to §§ 1-27-1.5 (24). However, as has been reported such CVR records which are identical in nature have been publicly released in California, Colorado, Florida, Georgia, Illinois, Michigan, Nevada, and New

Jersey, but have been similarly denied in South Carolina, which also uses the ES&S systems. In addition, it is our understanding that the 2020 CVR records and machine logs are subject to destruction at the end of this month, but there are still ongoing investigations into that election.

We the undersigned legislators believe that Government is instituted among people, to secure their rights and derive its lawful authority from the consent of the governed. Therefore, we believe that no agency may engage in any contract or agreement which would eliminate or otherwise abolish the lawful rights of the citizens. As you've stated, "our government must operate to serve people, not special interests." Thus, regardless of any agreement with ES&S for the use of their equipment or services in our public elections, such agreement should not be the basis to obstruct or abolish the inherent right of citizens to oversee their elections. No institute or person should have the ability to contract away the rights of another without their consent.

This matter is similar conceptually to the reasons for SB 122, which effectively ban public-private agreements which allow the potential for undue influence in our elections.

That is why we the undersigned legislators are asking for your strong leadership as our Governor to protect the rights of our citizens with their elections again, by directing Attorney General Mark Vargo to retain all 2020 election material and extend such preservation for an additional 12 months, due to ongoing investigations and as the subject of unresolved public record disputes. In addition, we ask that you and your administration take the appropriate actions to direct our County Auditors to uphold the rights of our citizens to oversee and review the election process to further strengthen our elections, and to honor our commitment to our citizens for government transparency.

Respectfully submitted,

Representative Aaron Aylward
Representative Drew Dennert
Representative Fred Deutsch
Representative Randy Gross
Representative Jon Hansen
Representative Taffy Howard
Representative Kevin Jensen
Representative Phil Jensen
Representative Chris Karr
Representative Sam Marty
Representative Liz May
Representative John Mills

Representative Tina Mulally
Representative Scott Odenbach
Representative Ernie Otten
Representative Marty Overweg
Representative Carl Perry
Representative Sue Peterson
Representative Tom Pischke
Representative Tony Randolph
Representative Bethany Soye
Representative Kaleb Weis
Senator Julie Frye-Mueller
Senator Marsha Symens