

TO: 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 of Elections

This is a formal request for your immediate halt to the certification process of the ES&S EVS 6.5.0.0 and your attention to proven legal conflicts.

I, Jessica Pollema respectfully petition to this board to review all documentation, state laws, and administrative rules prior to certifying, distributing, or authorizing the use of the ES&S EVS 6.5.0.0 or 6.1.1.0 ES&S electronic voting systems (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.

1. I am registered voter in Minnehaha county, South Dakota, and intend to vote in upcoming elections that may utilize the systems at issue. I have standing as the unlawful certification and or use of non-certifiable electronic election systems threatens irreparable injury to my rights to a fair and secure election process.
2. The South Dakota Administrative Rules require that automatic tabulating systems be approved only after demonstration to the Board (or designee). [EXHIBIT 1]
3. 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]
4. 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]
5. 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]

<https://www.eac.gov/voting-equipment/certified-voting-systems>

6. This constitutes a violation of the Board’s own mandatory rules, as no compliant system exists, rendering any certification unlawful.
7. 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. [EXHIBIT 1]

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.

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, that also did not meet the requirements of being certified to VVSG 1.1. [EXHIBIT 4]

8. The Board of Elections has previously (August 23, 2021) and are about to certify an electronic voting system that is not consistent with their 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 you 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]

9. 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.”
10. The Board lacks discretion to ignore the EAC 2015 requirement for upgrades/modifications, or Administrative Rules, which the Board drafted and approved themselves. These approvals can still be found at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=123>. Qualified voters of the state will suffer irreparable harm absent injunction of a court or action by the Board. 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.
11. The Board is in a legal quandry. No viable replacement election system exists which meets the legal requirements of the Boards Administrative Rules, thus the Board should and must move to return to hand counted elections for 2026 immediately.
12. The public interest strongly favors this action to ensure elections comply with South Dakota's administrative rules and promote trustworthy voting systems.
13. As a matter of national security, public trust, and secure elections the Board must halt certification and use of the noncompliant ES&S EVS 6.5.0.0 and 6.1.1.0 immediately.

JESSICA POLLEMA

5:02:09:02. Approval of automatic tabulating systems required before distribution.

Prior to distribution in South Dakota, a company or corporation dealing in automatic tabulating or electronic ballot marking systems shall give written notice to the state board of elections and demonstrate that its system complies with SDCL 12-17B-2 and § 5:02:09:02.01 or 5:02:09:02.03 and is certified as fulfilling the requirements of the Election Assistance Commission 2015 voting system standards by an independent test authority accredited by the Election Assistance Commission. If the State Board of Elections approves the system, it shall issue a certificate of approval.

Any changes or modifications in an approved automatic tabulating or electronic ballot marking system may be certified by the State Board of Elections with or without the demonstration described in this section for initial approval. The modification for the already approved system must have been certified as fulfilling the requirements of the Election Assistance Commission voting system 2015 standards by an independent test authority accredited by the Election Assistance Commission or been certified to meet the national standard by another state. Any change or modification determined to be de minimis by the independent test authority does not need state board of elections certification.

Source: 2 SDR 5, effective July 30, 1975; 6 SDR 25, effective September 24, 1979; 16 SDR 203, effective May 28, 1990; 21 SDR 77, effective October 24, 1994; 22 SDR 95, effective January 18, 1996; 29 SDR 113, effective January 30, 2003; 32 SDR 109, effective December 26, 2005; 33 SDR 230, effective July 1, 2007; 35 SDR 306, effective July 1, 2009; 46 SDR 42, effective September 30, 2019; 47 SDR 37, effective October 6, 2020.

General Authority: SDCL 12-17B-17(1).,.

Law Implemented: SDCL 12-17B-2.

EXHIBIT 17

5:02:09:02.01. Criteria for approving automatic tabulating systems. Before the State Board of Elections grants a certificate of approval, the following automatic tabulating equipment capabilities of an electronic voting system must be demonstrated to the board or its designee. The board shall deny a certificate of approval for automatic tabulating equipment which as demonstrated does not fulfill the following requirements:

- (1) It enables the voter to vote in absolute secrecy;
- (2) It enables the voter to vote a ticket selected from all the candidates;
- (3) It rejects all of a voter's votes for any office or on any measure if the voter has cast more votes for the office or the measure than the voter is entitled to;
- (4) It accommodates all measures to be submitted to the voters in the form provided by law;
- (5) It processes 3,000 ballots at a rate of 15 ballots a minute for a central counting unit;
- (6) It processes 750 ballots at a rate of 10 ballots a minute for a precinct counting unit;
- (7) It allows no more than one percent of ballots to be rejected by the machine because of ballot feeding errors during a demonstration; and
- (8) It accurately counts every ballot for each position voted.

The ballots for testing must contain at least ten contests. The ballots for processing must be at least 90 percent fully voted with the remainder containing overvoted and undervoted ballots. At least 2 percent of the ballots to be tested must be folded in the same manner as absentee ballots.

Source: 16 SDR 20, effective August 10, 1989; 21 SDR 77, effective October 24, 1994; 23 SDR 236, effective July 17, 1997.

General Authority:SDCL 12-17B-17.

Law Implemented:SDCL 12-17B-2.

EXHIBIT 1]

5:02:09:02.03. Criteria for approving electronic ballot marking systems. 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:

- (1) Accurately mark 250 ballots with at least 10 races on each ballot with no ballot jams;
- (2) If the system has the capability of marking a ballot on the back side, the races must be split between the front and back of the ballot;
- (3) Enables the voter to vote in absolute secrecy;
- (4) Presents the entire ballot to the voter in a series of sequential screens that include methods to ensure the voter sees all ballot options on all screens before completing the vote and allows the voter to review all ballot choices before casting a ballot;
- (5) Prevents any voter from selecting more than the allowable number of candidates for any office to prevent overvoting, alerts the voter on the screen if the voter attempts to overvote, and provides information on how to correct the overvote;
- (6) Alerts the voter to any undervote prior to marking the ballot;
- (7) Accurately marks a paper ballot for each vote for each position voted;
- (8) Is an electronic computer-controlled voting system that provides for marking of votes cast;
- (9) Has a battery back-up system that, at a minimum, allows voting to continue uninterrupted for two hours without external power;
- (10) Is designed to accommodate multiple ballot styles in each election precinct and have an option to handle multiple precincts;
- (11) Has a real-time clock capable of recording and documenting the total time polls are open in a precinct and capable of documenting the opening and closing of polls;
- (12) Complies with the disability voting requirements of the Help America Vote Act of 2002 as of January 1, 2005;
- (13) Has a color touch-screen that is at least fifteen inches in diagonal measure;
- (14) Has an option to accommodate a voter who uses a mobility device without intervention of the poll worker other than a minor adjustment such as the angle of the display, and the voter must be able to vote in a face-first position so that privacy is maintained with the ballot surface adjusted to a vertical position;
- (15) Has wheels so that the system may be easily rolled by one person on rough pavement and rolled through a standard thirty-inch door frame if the net weight of the system, or aggregate of voting device parts, is over twenty pounds;

EXHIBIT ☐

(16) Has a method to activate the system for each individual voter and which shall prevent any voter from voting more than once;

(17) Has internal operating system software or firmware, that:

- (a) Is specifically designed and engineered for the election application;
- (b) Is contained within each voting device;
- (c) Is stored in a nonvolatile memory within each terminal;
- (d) Includes internal quality checks such as parity or error detection and correction codes; and
- (e) Include comprehensive diagnostics to ensure that failures do not go undetected; and

(18) Marks ballots that can be accurately counted as provided in § 5:02:09:02.01 for each automatic tabulating system which will be counting ballots.

Source: 31 SDR 214, effective July 4, 2005; 42 SDR 15, effective August 11, 2015.

General Authority: SDCL 12-17B-17(1).(3).

Law Implemented: SDCL 12-17B-2.



South Dakota Secretary of State

Monae L. Johnson
Secretary of State

ThomasJ. Deadrick
Deputy Secretary of State

SOUTH DAKOTA ELECTION EQUIPMENT CERTIFICATION TEST

**WEDNESDAY, JANUARY 21, 2026
THROUGH
FRIDAY, JANUARY 23, 2026**

**8:00 AM (CST) - 5:00 PM (CST)
EACH DAY**

**AMERICINN CONFERENCE CENTER
312 ISLAND DRIVE
FT. PIERRE, SD 57532**

SOO EAST CAPITOL AVENUE, PIERRE, SD 57501-5070 | TELEPHONE: (605) 773-3537 / FAX: (605) 773-6580

www.SDSOS.sds.gov | sdsos@state.sd.us

[EXHIBIT 2]

About the Testing & Certification Program

HAVA mandates that EAC accredit voting system test laboratories and certify voting equipment, marking the first time the federal government has offered these services to the states. Participation by states in EAC's certification program is voluntary. The EAC's full accreditation and certification program became effective in January 2007. For more information, view the [Voting System Testing and Certification Program Manual](#).

Voting systems will be tested against the [voluntary voting system guidelines \(VVSGL\)](#), which are a set of specifications and requirements to determine if the systems provide all of the basic functionality, accessibility and security capabilities required.

View system information for each manufacturer below.

[Certified Voting Systems](#) | [Voting Systems Under Test](#) | [Terminated Systems](#) | [Withdrawn or Decertified Systems](#)

Voting System Name	Manufacturer	Testing Standard
	-Any-	VVSG1.1


Certification Date From


mm/dd/yyyy ☐

Certification Date To

mm/dd/yyyy ☐

Reset





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2/9/2026

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EXHIBIT 3]



South Dakota Secretary of State

Monae L. Johnson
Secretary of State

Thomas J. Deadrick
Deputy Secretary of State

State Board of Elections Meeting Agenda

Friday, February 13, 2026
11:30 AM (CST)
Call-In Information: (605) 679-7263
Phone ID: 610 319 592#
Teams: SOS BOE Hearing

LRC Committee Room #412
500 E. Capitol Avenue, Pierre, SD 57501

- A) Call to Order
- B) Roll Call
- C) Approval of Meeting Agenda
- D) Approval of Draft Minutes from November 18, 2025
- E) Report on Election Equipment Testing (January 21-23) for Certification
- F) Certification of Election Equipment
- G) Public Comments
- H) General Remarks**
- I) Adjournment



United States Election Assistance Commission

Certificate of Conformance

ES&S EVS 6.1.1.0



The voting system identified on this certificate has been evaluated at an accredited voting system testing laboratory for conformance to the *Voluntary Voting System Guidelines Version 1.0 (VMSG 1.0)*. Components evaluated for this certification are detailed in the attached Scope of Certification document. This certificate applies only to the specific version and release of the product in its evaluated configuration. The evaluation has been verified by the EAC in accordance with the provisions of the *EAC Voting System Testing and Certification Program Manual* and the conclusions of the testing laboratory in the test report are consistent with the evidence adduced. This certificate is not an endorsement of the product by any agency of the U.S. Government and no warranty of the product is either expressed or implied.

Product Name: EVS _____

Model or Version: 6.1.1.0 _____

Name of VSTL: ProV&V _____

EAC Certification Number: ESSEVS6110 _____

Date Issued: July 27, 2020 _____

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Executive Director

Scope of Certification Attached

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About [v](#)

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[EXHIBIT 4]

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[EXHIBIT 4]