STATE OF MINNESOTA DISTRICT COURT

COUNTY OF DAKOTA FIRST JUDICIAL DISTRICT

CASE TYPE: Civil Other/Misc.

Court File No. _____

Tyler Kistner, Tomas Settell, Leilani Holmstadt, Dan Hall, Jose W. Jimenez, Fern A. Smith, Mariah de la Paz, Cynthia Lonnquist, Pam Myhra, Megan Olson, Sandra A. Jimenez, Deborah Coxe, and Greg Buck,

Contestants,

v.

Steve Simon, only in his official capacity as the Minnesota Secretary of State, Andy Lokken, only in his official capacity as the Elections Director for Dakota County, Angie Craig, Matt Klein, Karla Bigham, Lindsey Port, Greg Clausen, Liz Reyer, Rick Hansen, Ruth Richardson, Jessica Hanson, Robert Bierman, and John D. Huot,

Contestees.

NOTICE OF ELECTION CONTEST UNDER MINNESOTA STATUTES CHAPTER 209

INTRODUCTION

Contestants file this Notice of Contest under Minn. Stat. ch. 209 because there were irregularities in the conduct of the November 3, 2020 state general election and the canvass of absentee ballot votes. This contest is brought over the question of who received the largest number of votes legally cast, and on the grounds of deliberate, serious, and material violations of Minnesota Election Law.

Despite being put on notice of serious violations of Minnesota Election Law, the 2020 State Canvassing Board certified Minnesota's election results on November 24, 2020.[1] Contestants bring this action to ensure election integrity in the November 3, 2020 election in Dakota County. The citizens of Dakota County deserve fair elections, untainted by violations of the United States Constitution, the Minnesota Constitution, and Minnesota Election Law.

Dakota County is the third largest county in Minnesota. According to Dakota County's website, there were 283,727 registered voters in the November 3, 2020 election. Dakota County's website states that there were 263,279 votes cast, making the voter turnout an unprecedented 93 percent.[2] According to the Secretary of State's website, there were 173,650 applications for absentee ballots, with 160,481 accepted and no reported rejections.

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[1] *See Tyler Kistner, et al. v. Steve Simon, et al.*, Case No. A20-1486, filed early morning on November 24, 2020 with the Minnesota Supreme Court under Minn. Stat. § 204B.44, requesting the court to enjoin the State Canvasing Board from certifying the election.

[2] Minnesota General Election voter turnout was apparently 79.9 percent. United States Elections Project, www.electproject.org/2020g.

The validity of the results of the November 3, 2020 election in Dakota County are at stake as the result of the Secretary's unauthorized and illegal actions in handling the absentee ballots contrary to Minnesota Election Law. The Secretary, in collusion with the Democratic-Farmer-Labor party, changed the process for handling absentee ballots without the approval or direction of the Minnesota Legislature. As a result, the inclusion and tabulation of absentee ballots is improper and must not be permitted. To allow otherwise would erode the sacred and basic rights of Minnesota citizens in Dakota County (and throughout the state) under the United States Constitution and the Minnesota Constitution to participate and rely upon a free and fair election.

American people have become increasingly polarized along political lines and are now more visibly and vocally divided than has been apparent in generations. The vitriol and distrust between the people and elected officials of opposing parties has continued to grow for many reasons, which in isolation may not be relevant, but taken in totality create a singular truth: The importance of election integrity and security has never been more important to the stability of our Republic than now.

The 2020 election needed to be above reproach. Funds were provided by the federal government under the CARES Act to support the state's efforts to enhance security. The Secretary's duty to prepare the county, city and local officials to fulfill their responsibilities to administer the election is clear. There should never be excuses made for inconsistent, non-transparent, non-secure, and sloppy administration of elections. This year, with such clear stakes, the consequences for mismanagement must be dire.

In addition to the growing political discord, the federal, state and local governments and American citizens have faced unprecedented challenges in 2020 as a

result of COVID-19. Sadly, this virus has been used as a wedge to increase the partisan divide. More damaging, the Democratic-Farmer-Labor party used COVID-19 as a tool to alter long-standing election law and procedure, after the Republican controlled Senate refused to consent to the changes.

In 2016, there were 674,566 accepted absentee ballots in Minnesota. Each of these were properly witnessed. In 2020, there were nearly two million accepted absentee ballots none requiring a witness.[3] This sudden, massive increase in absentee ballots adversely impacted the ability of the canvassing boards and Secretary to complete their duties in a manner that maintained voter trust and election integrity.

While Minnesotans watched people riot and protest without consequence, they were warned voting in person would be dangerous. They were told they could go to restaurants and bars but they should mail in their vote to avoid getting sick. People were told they could wear masks and socially distance and safely go to grocery and retail stores, but voting in person was dangerous.

Minnesota state officials intentionally created a campaign to increase early voting. These same officials had a responsibility to ensure the safeguards that existed at the polling places would be present at the Ballot Boards. These officials had an obligation to ensure the county Ballot Boards were aware of and followed Minnesota Election Law to ensure each eligible voter was treated equally. However, the Ballot Boards in Dakota County failed to utilize election judges of different major political parties as required by

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[3] However, there is anecdotal evidence that some absentee applications requested by Republican voters were rejected for not having a witness signature and that the return envelopes were designated "R" and "D" presumably for Republican and Democratic-Farmer-Labor party voters.

Minn. Stat. § 203B.121, subd. 2(a). These officials were responsible to ensure the absentee ballots were properly accepted or rejected in accordance with Minn. Stat. § 203B.121, subd. 2(b). The Ballot Boards in Dakota County failed to allow bipartisan review of the absentee return envelopes to determine if they should be accepted or rejected.

In the past three weeks, the entire world has been following the news about the alleged tampering with Dominion voting machines. Minnesota has many areas that use these machines, including Dakota County. There are many examples of similar vote count anomalies in Minnesota as well as issues with systems being down or experiencing unexplained so-called "glitches" during the night allowing for the alteration of vote counts.

Minnesota candidates for office and voters have come forward with affidavits detailing concerns and observations about the ignored and failed election processes in counties across the state. There are issues related to the lack of transparency, procedures, observers, and election judge access, voter intimidation, lost ballots, lost absentee envelopes, missing election materials and questionable ballots. There are concerns about voting equipment transmitting results during the early counting period and on election day. There is a serious question about a new 520-pound Dominion voting machine delivered FEDEX to Dakota County *after* the election and just a few days prior to its November 16, 2020, postelection review.[4]

[4] County Auditors must perform a "postelection review" (PER) pursuant to Minn. Stat. § 206.89 of the state general election.

Minnesota voters, regardless of party affiliation, have the right to know election results are accurate and each eligible voter is treated the same. Minnesota citizens attempted to participate in the postelection reviews, hoping to learn our voting systems were secure. They saw the opposite -- our voting system has crashed in many areas of the state, including Dakota County.

PARTIES

Contestants

1. **Tyler Kistner** ran for the U.S. Representative seat in the 2nd Congressional District in the November 3, 2020 election.

2. **Tomas Settell** ran for the State Senate seat in District 52 in the November 3, 2020 election.

3. **Leilani Holmstadt** ran for the State Senate seat in District 54 in the November 3, 2020 election.

4. **Senator Dan Hall** ran for reelection for State Senate seat in District 56 in the November 3, 2020 election. He has served in this capacity since 2011.

5. **Jose W. Jimenez** ran for the State Senate seat in District 57 in the November 3, 2020 election.

6. **Fern A. Smith** ran for the State House seat in District 51B in the November 3, 2020 election.

7. **Mariah de la Paz** ran for the State House seat in District 52A in the November 3, 2020 election.

8. **Cynthia Lonnquist** ran for the State House seat in District 52B in the November 3, 2020 election.

9. **Pam Myhra** ran for the State House seat in District 56A in the November 3, 2020 election.

10. **Megan Olson** ran for the State House seat in District 57A in the November 3, 2020 election.

11. **Sandra A. Jimenez** ran for the State House seat in District 57B in the November 3, 2020 election.

12. **Deborah Coxe and Greg Buck,** are eligible voters and taxpayers in Minnesota. As such, each one of these individuals have standing to challenge the officials' certification of the Dakota County election results based on illegal votes counted, legal votes not counted, counting errors and illegalities to nullify any election result.

13. All Contestants have standing under Minn. Stat. § 209.02 because they are either a candidate or an eligible voter in the November 3, 2020 election.

Contestees

14. **Minnesota Secretary of State Steve Simon** is a constitutional executive officer sued only in his official capacity. As the chief election official in Minnesota, the Secretary of State partners up with local election professionals to administer elections and adopt rules to administer elections. The Secretary acts on behalf of the State of Minnesota in exercising his duties regarding federal, state, county, and local elections, promulgating and executing elections laws within the State. The election process includes the registration process for persons seeking to vote in any election within the State. The Secretary is the statewide election officer responsible for the policies relating

to the conduct of elections within the State. The Secretary is also a member of the 2020 State Canvassing Board who certified the election on November 24, 2020.

15. **Elections Director, Andy Lokken,** is the elections official for Dakota County, appointed by the Dakota County Auditor and/or Steve Simon.

16. **Angie Craig** ran for the U.S. Representative seat in 2nd Congressional District 2 in the November 3, 2020 election.

17. **Matt Klein** ran for the State Senate seat in District 52 in the November 3, 2020 election.

18. **Karla Bigham** ran for the State Senate seat in District 54 in the November 3, 2020 election.

19. **Lindsey Port** ran for the State Senate seat in District 56 in the November 3, 2020 election.

20. **Greg Clausen** ran for the State Senate seat in District 57 in the November 3, 2020 election.

21. **Liz Reyer** ran for the State House seat in District 51B in the November 3, 2020 election.

22. **Rick Hanson** ran for the State House seat in District 52A in the November 3, 2020 election.

23. **Ruth Richardson** ran for the State House seat in District 52B in the November 3, 2020 election.

24. **Jessica Hanson** ran for the State House seat in District 56A in the November 3, 2020 election.

25. **Robert Bierman** ran for office for the State House seat in District 57A.

26. **John Huot** ran for office for the State House seat in District 57B in the November 3, 2020 election.

STANDING

Contestants have standing to bring this election contest under Minn. Stat. Ch. 209 because "any eligible voter, including a candidate, may contest . . . the election of any person for whom the voter had the right to vote if that person is . . . elected to the senate or the house or representatives of the United States, or to a statewide . . . legislative . . . office[.]" Minn. Stat. § 209.02.

STATEMENT OF FACTS

I. Federal Constitutional Protections for Free and Public Elections

Free, fair, and transparent public elections are crucial to democracy – a government of the people, by the people, and for the people. The Elections Clause of the United States Constitution states that "[t]he Times, Places, and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof[.][5] U.S. Const. Art. I, § 4, cl 1. The Legislature is "the representative body which ma[kes] the laws of the people."[6]

Because the Democratic-Farmer-Labor party was unable to secure the elimination of election laws that created barriers to fraudulent voting, the party's advocacy groups filed multiple lawsuits against the Secretary of State Steve Simon. Several of these lawsuits were assigned to a Ramsey County judge who happened to have been the state political director for Democratic-Farmer-Labor party Senator Amy Klobuchar. The most

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[5] U.S. Const. Art. I, § 4, cl 1.
[6] *Smiley v. Holm*, 285 U.S. 355, 365 (1932).

consequential of these suits sought to remove the witness requirement for ALL voters because a small number of voters apparently feared having physical contact with a person to witness the ballot.

Consequently, the Democratic-Farmer-Labor party entered into an overly broad stipulated settlement agreement limited to the August 11 primary election, approved by the assigned judge, on June 17, 2020, to waive the witness requirement on all absentee ballots, thus allowing anyone who intercepted an absentee ballot to return it without fear of rejection. On August 3, 2020, a second agreement was entered into and approved without legislative oversight or consideration: The agreement was extended to include the general election on November 3, 2020.

II. Postelection Review (PER)

County Auditors must perform a postelection review (PER) of the state general election. Minn. Stat. § 204C.33 requires each county canvassing board to set the date time and location of the PER at its canvass of the state primary. Minn. Stat. § 206.89, subd. 2, requires the county canvassing board to select, by lot, the required number of precincts to be reviewed at its canvass following the general election. Selecting the precincts by lot gives the appearance of randomness so as to add credibility to the process.

As soon as the canvassing board determines the location, date and time of the PER and the selected precincts, the Secretary of State must be notified. This notice allows voters the opportunity to participate in the PER process by properly observing the county boards review of the election results to ensure the law was followed.

PERs are governed by Minnesota's Open Meeting Law under Minn. Stat. § 13D.01 which requires all meetings, including executive sessions, must be open to the public when the meetings are required by law to transact public business. The public's right to be informed about the events occurring in the meeting will be weighed against the governments interest in closing the meeting to the public.[7] This law is liberally construed to protect the public's right to full access to the decision-making process of public bodies governed by statute.[8] The purpose of the Open Meeting Law is to assure public's right to information, and give public opportunity to express its views. [9]

The attendees at the PER must be able to view the process in a meaningful manner that allows them to see and hear the information being verified. If the public is are not given adequate access, there is no point to the process it is rendered meaningless.

The PER must include the votes cast for President or Governor; United States Senator; and United States Representative. The PER may include review of votes cast for down ticket candidates.[10] The PER must be conducted by postelection review official who may be assisted by election judges designated by the postelection review official for this purpose. Election judge qualifications are statutory. Election judges used in the PER must be properly trained. Minn. Stat. § 204B.25 requires election judges be trained in accordance with the rules established by the Secretary of State. To serve as an election

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[7] *Berglund v. City of Maplewood, MN*, D.Minn.2001, 173 F.Supp.2d 935, affirmed 50 Fed.Appx. 805, 2002 WL 31609767, *cert. denied* 123 S.Ct. 2655, 539 U.S. 965, 156 L.Ed.2d 667.

[8] *St. Cloud Newspapers, Inc. v. District 742 Community Schools*, 1983, 332 N.W.2d 1.

[9] *Mankato Free Press Co. v. City of North Mankato,* App.1997, 563 N.W.2d 291.

[10] Candidate and Contestant, Tomas Settell requested a review of votes case for his race for a State Senate seat but was refused by Andy Lokken.

judge, a person must successfully complete a basic training course that meets the requirements of Minn. Rule part 8240.1600.

The PER must comply with the party balance requirement of Minn. Stat. § 204B.19. No more than half of the election judges in a precinct may be members of the same major political party unless the election board consists of an odd number of election judges, in which case the number of election judges who are members of the same major political party may be one more than half the number of election judges in that precinct.

The PER must consist of a manual count of the polling place ballots and absentee ballots used in the precincts selected and must be performed in the manner provided by Minn. Stat. § 204C.21. The PER requires the public be allowed to observe the counting of the ballots to confirm the process as required by statute is being followed. The PER must be conducted in the manner provided for recounts under Minn. Stat. § 204C.361 to the extent practicable.

The Secretary of State must adopt rules according to the Administrative Procedure Act establishing uniform recount procedures. Minn. Rule part 8235.0800 establishes that ballots must be segregated by precinct and returned to sealed containers according to precinct when not being counted to maintain the segregation of ballots by precinct.

III. Actual PER Process

The State's PER process was a disaster. Many counties had completely different procedures. Some counties used elections judges as required, some did not. Numerous affidavits from voters indicate that there was little to no transparency. Ramsey County, without notice, changed its PER date from November 14, 2020, to November 16, 2020

after people showed up to observe the PER on November 14, 2020. Hennepin County closed its doors the night before the PER and performed it via YouTube with only one camera which only displayed one precinct without any sound. These are just a few of the irregularities and lack of transparency in the PER process for the November 3, 2020 election.[11]

Dakota County performed its PER contrary to Minnesota Election Law. The hand-written results from the PER do not match the reported results to the Secretary of State.[12] Dakota County also failed to separate the absentee ballots from the polling place ballots which is required by Minn. Stat. § 206.89 subd. 2.[13]

When asked if Dakota County had party balance for the counters as required by Minn. Stat. §§ 206.89, subd. 3, and 204B.19, Mr. Lokken stated he did not have any election judges as he was only using his staff. He stated he did not designate any election judges.[14] He said the counters were his staff and city staff. However, after getting the names of various counters, Christina Gevara, claimed she *was* an election judge. She was counting for West St. Paul and according to a web search, works for Metro State University and appeared very biased against the public and candidate and contestant Tomas Settell who was observing the PER.

Mr. Lokken refused to allow the public to meaningfully observe the counting process by requiring the public to stand six feet from any table which did not allow the

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[11] *See* Affidavits of Jane L. Volz, Nora L. Feltman (who witnessed ballots being delivered to the Dakota County PER in a large white purse, brown cardboard boxes, and manilla envelopes, all unsealed); and Deborah Coxe.
[12] *See* Affidavit of Jane L. Volz, Exhibits B & C.
[13] *See* Volz Affidavit.
[14] *Id.*; *see also* Affidavit of Deborah Coxe.

public to see the ballots in any meaningful way even though the counters were within a few feet of each other.

Ballots were delivered to the Dakota County in a variety of ways. Many were not in sealed transfer cases as required by Minnesota Election Law. There were ballots brought in brown cardboard boxes with clear packing tape, ballots in a blue plastic tote, and ballots in plastic bags. Boxes and bags of ballots were delivered throughout the morning. A stack of ballots was delivered in a large white purse by some employee of the City of Hastings who refused to identify herself other than her first name.[15]

While the public was not allowed to stand within six feet of the tables, when all of the precincts were finished except for Eagan, Jane Volz was allowed to observe a little closer as Mr. Lokken decided to spread out the Eagan count into two tables. However, she could not see the actual votes but could see the different piles of votes for the U.S. Representative races. A large pile of ballots was set on a table to review. The pile was perfectly squared up like it came out of a box of a ream of paper. The pile had slight fold marks to indicate an absentee ballot. However, the ballots looked as if they were put through a folding machine but were laid out flat like they came out of a machine with an identical crease that ran through the pile in the same direction. When the counter was separating the ballots for the 2nd Congressional District race, nearly every single ballot in that pile was for Angie Craig.[16]

In a white ballot "tote" next to the Eagan precinct count, Ms. Volz noticed a FEDEX receipt for a 520-pound Dominion voting machine that was, according to the

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[15] *See* Volz Affidavit and Affidavit of Nora L. Feltman.
[16] *See* Volz Affidavit.

receipt, apparently delivered or shipped to Hastings on November 11, 2020, well after the November 3, 2020 general election, but prior to the Dakota County PER.[17]

Mr. Lokken promised Ms. Volz he would give her a copy of all of the worksheets at the end of the day. However, when all of the counting was done, he refused to give her a copy claiming they were his "notes". He said, however, he would email them to Ms. Volz if she gave him her email address which she did.

The next morning on November 17, 2020, Ms. Volz emailed Mr. Lokken reminding him to email her a copy of the worksheets. He stated in an email to her: "I recycled them yesterday and they are no longer available."[18] All election materials are required to be preserved for at least 22 months. Minn. Stat. § 204B.40. Clearly, the worksheets constitute election materials as they were to be signed by an election judge. By email, Mr. Lokken provided Ms. Volz with a computer-generated tally that did not match the I-Phone pictures taken of some of the worksheet totals at the PER. In particular, the blank for office totals and the total votes for many of the candidates do not match the handwritten worksheets.[19]

Mr. Lokken provided a post-election review guide which is also available on the Secretary's website.[20] When comparing the Secretary's guide to Mr. Lokken's actions, Mr. Lokken failed to follow the required procedures as follows:

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[17] Affidavit of Jane L. Volz, Ex. A.
[18] Volz Aff.
[19] See Volz Affidavit, Exhibits B & C.
[20] Volz Affidavit, Exhibit D.

Page(s)	Section	Irregularities and Violations
9-10	7.1.2	Failed to hand-write the blank for office, and over defective for office and the totals on the worksheet.
10	7.2	Failed to require party balance review of the ballots as required by Minn. Stat. sections 206.89, subd. 3, and 204B.19.
11	7.3	Failed to allow public view of the ballots by requiring 6 foot distance from the precinct tables.
11	7.4	Never fully explained the process and the roles of review officials and staff.
11	8	Failed to count absentee ballots separately as required by Minn. Stat. section 206.89, subd. 2.
16	11.1	Failed to fully explain the differences in the counts.
17	11.2.1	Failed to "input two sets of results into ERS" for polling place results and absentee ballots..
20	11.2.2	Failed to proof the results and revised them from the worksheets fill out by the counters for the blank for office and over/under votes and did not explain the differences.
24	Appendix B	Failed to have election judges sign the post-election review worksheets.

LEGAL ARGUMENT

I.
First Amendment and Equal Protection
U.S. Const. amend. XIV, 42 U.S.C. § 1983,
Minn. Const. Article I

The right of a qualified citizen to vote in a state election involving federal candidates is recognized as a fundamental right under the Fourteenth Amendment of the United States Constitution, which prohibits a state from "deny[ing] to any person within its jurisdiction the equal protection under the laws."[21]

The equal enforcement of election laws is necessary to preserve our most basic and fundamental rights. The requirement of equal protection is particularly stringently enforced as to laws that affect the exercise of fundamental rights, including the right to vote.

[21] U.S. Const. Amend. XIV, § 1.

The Equal Protection Clause requires states to '"avoid arbitrary and disparate treatment of the members of its electorate."'[22] Each citizen "has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction."[23] "Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."[24] Among other things, this requires "specific rules designed to ensure uniform treatment" in order to prevent "arbitrary and disparate treatment to voters."[25]

"The right to vote extends to all phases of the voting process, form being permitted to place one's vote in the ballot box to having that vote actually counted. Thus, the right to vote applies equally to the initial allocation of the franchise as well as the manner of its exercise. Once the right to vote is granted, a state may not draw distinctions between voters that are inconsistent with the guarantees of the Fourteenth Amendment's equal protection clause."[26]

"[T]reating voters differently" thus "violate[s] the Equal Protection Clause" when the disparate treatment is the result of arbitrary, ad hoc processes.[27] Indeed, a "minimum requirement for non-arbitrary treatment of voters [is] necessary to secure the fundamental right [to vote]."[28]

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[22] *Charfauros v. Bd. of Elections*, 249 F.3d 941, 951 (9th Cir. 2001 (quoting *Bush*, 531 U.S. at 105).
[23] *Dunn v. Bloomstein*, 405 U.S. 330, 336 (1972).
[24] *Bush*, 531 U.S. at 104-05.
[25] *Id*. at 106-07.
[26] *Pierce v. Allegheny County Bd. of Elections*, 324 F.Supp.2d 684, 695 (W.D. Pa. 2003) (citations and quotations omitted).
[27] *Charfauros*, 249 F.3d at 954.
[28] *Bush*, 531 U.S. at 105.

The Secretary is not part of the Minnesota Legislature and cannot exercise legislative power to enact rules or regulations regarding the handling of absentee ballots that are contrary to Minnesota Election Law. The Secretary is not allowed to treat absentee ballot voters differently than polling place voters.

By entering into two stipulated settlement agreements with the Democratic-Farmer-Labor party to alter the process for handling and accepting absentee ballots, the Secretary unilaterally, and without authority, altered Minnesota Election Law. As a result of the Secretary's usurpation of legislative power, the longstanding witness requirements, well-known to Minnesota voters, were removed. Absentee ballots were processed differently by Dakota County's ballot boards with regard to acceptance or rejection because there was no witness requirement to verify the person who cast the ballot was in fact the registered voter. The election process has been altered in a manner that removes the most important check on voter security. Further, the absentee ballots were not completely segregated from the ballots cast at the precinct. The envelopes for the absentee ballots were not counted, or even shown to exist, at the Dakota County PER.

The rules and regulations created by the two settlement agreements between the Secretary and the Democratic-Farmer-Labor party created an overly broad, arbitrary, disparate, and ad hoc process meant to ensure every ballot was counted, whether legal or not. Whether absentee voters were sent ballots automatically or after requesting them, any person could fill them out and mail them back. The witness requirement served to protect the actual voter from having their individual vote stolen and the legal voters from having the vote diluted by illegal voters. The witness is as close to an election judge as possible in the community. The removal of the witness requirement opened the door to

the unchecked opportunity for illegal votes to be counted in all of our local, state and federal elections. The November 3, 2020 election has been tainted by the intentional actions of Democratic-Farmer-Labor party and complicit government officials.

Voters who cast their ballots in person are subject to a much higher level of scrutiny than absentee voters. Additionally, the burden of going to vote in person was made more difficult by the state's choosing to combine precincts, thereby increasing wait times. This disparate treatment created by removing all safeguards and requirements for the cooperative voters who voted from home is not justified by, and is not necessary to promote, any substantial or compelling state interest.

II.
Violation of the Separation of Powers
Minn. Const. Article III

At the heart of the integrity of election law is the goal of preserving the ability of voters to participate in genuine elections, thereby fostering public confidence throughout the election process. From voter registration, to the casting of votes, the counting of ballots and the PER, our election system must be free of partisanship. When citizens go to the polls to cast their vote, they aspire not only to elect their leaders, but to choose a direction for their state. However, the integrity of an election can be jeopardized and public confidence can be undermined when election officials exercise or exceed powers they do not possess.

The separation of powers doctrine's role in this electoral process is significant. "Under the Separation of Powers Clause, no branch can usurp or diminish the role of

another branch.[29] The three branches of state government are both co-dependent and independent of each other. While they must find ways to cooperate, no one branch can unilaterally control, coerce, or restrain the action, or non-action of any of the others in the exercise of any official power or duty conferred by the Constitution, or by valid law, involving the exercise of discretion.

Similarly, the Minnesota Constitution states "the powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in instances expressly provided in this constitution."[30]

Article III bars any department from assuming or asserting any "inherent powers" – powers not "expressly" given—that properly belong to either of the other departments.[31] No "department can control, coerce, or restrain the action or inaction of either of the others in the exercise of any official power or duty conferred by the Constitution.[32]

The Minnesota Supreme Court has been steadfast in upholding the separation of powers.[33] The authority of the Secretary to alter or amend Minnesota Election Law is

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[29] *See* Minn. Const. art. III, § 1; *Brayton v. Pawlenty*, 768 N.W.2d 357, 365 (Minn. 2010).
[30] Minn. Const. Art. III.
[31] *Brayton*, 768 N.W.2d at 365.
[32] *Id.*
[33] *See, e.g., Sharood v. Hatfield*, 296 Minn. 416, 210 N.W.2d 275, 279 (1973).

vested with the state legislature unless "a provision of the Minnesota Election Law cannot be implemented as a result of an order of a state or federal court[.]"[34]

Here, the provisions of the Minnesota Election Law could only be amended by the state legislature. The Governor had the authority to call a special session to seek an amendment to Minnesota Election Law and declined to do so. Multiple Federal Courts of Appeals have now ruled there is no pandemic exception to the Constitution and have made it clear the state legislators are vested with the authority to create election law, including the Eighth Circuit.[35]

The Secretary and various election officials have violated the separation of powers doctrine by obliterating election law through sham court processes and blatant refusal to administer and follow long-standing Minnesota Election Law.

III.
Due Process
U.S. Const. amend. XIV, 42 U.S.C. § 1983
Minn. Const. Article I

Voting is a fundamental right protected by the Fourteenth Amendment to the U.S. Constitution. The Fourteenth Amendment protects the right to vote from conduct by state officials that undermine the fundamental fairness of the electoral process.[36] "Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."[37] Among other things, this requires "specific rules designed to ensure uniform treatment" in order to prevent

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[34] Minn. Stat. § 204B.47.
[35] *Carson v. Simon*, 978 F.3d 1051 (8th Cir. 2020).
[36] *See Marks v. Stinson*, 19 F.3d 873, 889 (3d Cir. 1994); *Griffin v. Burns*, 570 F.2d 1065, 1077-78 (1st Cir. 1978).
[37] *Bush*, 531 U.S. at 104-05.

"arbitrary and disparate treatment to voters."[38] "[T]reating voters differently" thus "violate[s] the Equal Protection Clause" when the disparate treatment is the result of arbitrary, ad hoc processes.[39] Indeed, a "minimum requirement for non-arbitrary treatment of voters [is] necessary to secure the fundamental right [to vote]."[40]

In statewide and federal elections conducted in Minnesota, including without limitation, the November 3, 2020 general election, all candidates, political parties, and voters, have a vested interest in being present and having meaningful access to observe and monitor the electoral process to ensure that it is properly administered in every county and precinct and that it is otherwise free, fair and transparent.

The Secretary has a duty to guard against deprivation of the right to vote and to ensure that all candidates, political parties, and voters, have meaningful access to observe and monitor the electoral process, including the November 3, 2020 general election and Dakota County's PER in order to ensure that the electoral process is properly administered in every precinct and is otherwise free, fair and transparent.

Rather than heeding these mandates and duties, the Secretary and Mr. Lokken arbitrarily and capriciously denied the public, including candidates, to meaningfully observe and monitor the electoral process in the PER.

RELIEF REQUESTED

Contestants seek (1) guarding of the absentee ballots and all related election materials pursuant to Minn. Stat.§ 209.05; (2) inspection of the absentee ballots under Minn. Stat. § 209.06 and all election materials related to the ballots including: (a) all

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[38] *Id*. at 106-07.
[39] *Charfauros*, 249 F.3d at 954.
[40] *Bush*, 531 U.S. at 105.

return envelopes by precinct; (b) all absentee ballot applications by precinct; (c) all voter registration applications by precinct; (d) all documents to support the absentee ballots that were rejected but later cured; (e) description of the procedures followed for the security, sealing, and storage of absentee ballots (f) all information regarding the chain of custody for all absentee ballots and envelopes; (g) the reconciliation of all absentee ballot requests including the applications, whether they were returned, whether they were rejected or accepted; (h) voting machine tapes to support the absentee ballot count by precinct including the cutoff of election day receipts of absentee ballots; (3) guarding of the Dominion Voting machine delivered to Dakota County on or about November 11, 2020, as well as the ability to inspect the machine; (4) all information regarding that same Dominion Voting machine including the purchase order, bill of lading, shipping invoices, instruction manual, training protocols, software used and version of the software, maintenance reports, specifications, and when it was used; (5) a list of all Dominion voting systems used in Dakota County; (6) the names and political affiliation of all persons who served on the Ballot Boards in Dakota County and any training they may have received and oaths administered; (7) the names of all of the PER counters, their party affiliation, their employer, their training, if any, for the PER, and any oaths they swore to prior to performing the PER.

CONCLUSION

Every illegitimate absentee ballot cast in the November 3, 2020 election disenfranchises one legitimate vote. This cannot be tolerated and Contestants respectfully request that this court remedy this injustice by allowing a true count of the legally cast votes by the eligible voters in Dakota County.

The undersigned hereby acknowledges that sanctions may be awarded pursuant to Minnesota Statues § 549.211.

DATED: November 27, 2020.

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