

A20-1654

IN THE

SUPREME COURT

STATE OF MINNESOTA

EDWIN HAHN, LISA HAHN, JANINE
HANSON, MARILYN PROULX, LAURIE
CHRISTIANSON, RONALD WHITE,
JANINE KOWALSKI, JOHN KOWALSKI
Contestants & Appellants,

vs.

HEATHER KEELER,
Contestee & Respondent.

Appeal from the District Court of Minnesota,
County of Clay
The Hon. Timothy Chruchwell (Court no. 14-CV-20-4033)

APPELLANTS' OPENING BRIEF

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Appellants Pro Se

TABLE OF CONTENTS

INTRODUCTION	3
STATEMENT OF THE CASE	7
STATEMENT OF APPEALABILITY	8
STATEMENT OF FACTS	9
ARGUMENT	14
1. Irregular Application of Minnesota Statute §203B.121, Ballot Boards	14
2. Certification of Election Before Conferring the Record.....	17
3. Claim: Right to Due Process	18
4. Relief: Based on the Material Outcome of the Contest	20
5. Proper Jurisdiction By Time	23
6. Proper Jurisdiction By Manner	26
7. Proper Jurisdiction By Contents	28
CONCLUSION	29
AFFIDAVIT OF SERVICE CHRIS McCARTHY	31
AFFIDAVIT OF SERVICE EDWIN HAHN	33
DECLARATION OF HEATHER KEELER	35
DECLARATION OF RICK WEIBLE	40

INTRODUCTION

This is an appeal following a dismissal prior to trial in an election contest. A motion to dismiss was granted on the argument of jurisdiction, timeliness, service, and failure to plead. Despite Contestants filing a counter-motion addressing this argument, the Court did not take up the motion. The appellants confer upon the court due process to proceed with the inspection of ballots under Minnesota Statute, Chapter 209.06.

The Facts in a Nutshell

An election contest is to determine if an election was conducted legally, ethically, and materially correct. It is not exclusively to determine who won an election. Because of irregularities in the conduct and processes of the 2020 Legislative District 4A election and post election review, the Appellants served upon the Respondent a Notice of Election Contest under Minnesota Statutes, Chapter 209.

The election irregularities include, and are not limited to: loosening of election integrity requirements; election judge party balance not met; hiring of temporary staff to count ballots, judge ballots, and judge voter applications;

removal of witness requirements on absentee ballots; post election review party balance not met; certification of election before conferring the complete record; lost voter record; votes by illegitimate voters; voters voting twice, by absentee and in-person.

The Error in a Nutshell

Appellants filed an election contest, Respondents filed a motion to dismiss. The District Court ordered to dismiss for lack of jurisdiction. The Court granted to dismiss on three erroneous legal bases:

➤ *Failure to state a claim upon which relief can be granted.* According to the Court, Appellants failed to assert a plain statement showing Appellants are entitled to a decree changing the result of the election.

This ruling was flawed on multiple grounds. The provision of Minn. Stat. § 209, ELECTION CONTESTS does not require any specific relief to be defined before trial, as the type of relief awarded is based on the material outcome of the Contest.¹

¹See Minn. Stat. § 209.07, RESULTS OF CONTEST; Minn. Stat. § 209.10, STATE LEGISLATIVE OFFICE.

- *Timeliness.* The Court ruled Appellants did not timely file their Notice of Contest. The Court ruled that the time began for the contest at the County Election Certification. This ruling was flawed on multiple grounds. The case law taken to boost this argument was dated 1979; the statute has since changed, and in 2006 new language addressing time was added. Minn. Stat. § 206.89 Subd. 10, Time for filing election contest, is very clear. The Appellants' notice was filed on time as the appropriate canvass is not completed and the time for notice of a contest of election does not begin to run until all reviews in the section, including the State Canvass, have been completed.
- *Service upon Keeler.* The Court ruled Appellants failed to properly serve the Notice of Contest upon the Respondent within the time prescribed by law. The Court erred in accepting Respondent's claim that attempted personal service was not made, and that Hahn, a party to the contest, service by Certified mail was not enough to confer jurisdiction on the court. The

fact is, the Respondent was twice attempted to be served by Deputy Sheriffs, with the Respondent refusing to answer the door. Concurrently, the Respondent confirmed timely receipt of service by Certified Mail, served by Certified U.S. Postal Service, and confirmed receipt of service by electronic communication.²

Provided in M. S. § 209.021, Subd. 3., An affidavit of the attempt from the Deputy Sheriff and affidavit from Hahn, who sent a copy of the notice to the contestee by certified mail, is sufficient to confer jurisdiction upon the court to decide the contest.

Despite Respondent's attempts to deny service, the Notice was timely served.³

The judgment should be reversed so that the ballots may be inspected and the Contest can proceed to trial.

² See 2020-12-07 Declaration of Heather Keeler and Ex A.pdf

³ See 11_30_2020_Certified Mail Affidavit Hahn.pdf

STATEMENT OF THE CASE

On November 30, 2021, Contestants and appellants Edwin Hahn, Janine Hanson, Laurie Christianson, Lisa Hahn, Marilyn Proulx, Ronald White, John Kowalski, Janine Kowalski first filed an election contest against Secretary of State Steve Simon, Clay County Auditor Lori Johnson, and Heather Keeler, citing election irregularities, a question of who received the highest number of votes legally cast, and gross violations of Minnesota Election Law. The contest was filed in Clay County District Court, with Judge Timothy Churchwell presiding. The Contestants claim cause of action and assert due process under Minnesota Statute, Chapter 209, Election Contests. For the purposes of this appeal, four of those are at stake:

- First right of due process to proceed with the inspection of ballots and perform discovery.
- Second right of due process for the Court to convene proceedings and hear testimony of the parties.
- Third right of due process for the Court to decide the contest, issue appropriate orders, and make written findings of fact and conclusions of law, transmit the

findings, conclusions, orders, and records of the proceeding to the chief clerk of the house.

➤ Fourth right of due process to call the parties in the Contest before the House of Representatives and be heard, followed by a deciding vote upon the Contest.

Contestees Steve Simon, Lori Johnson, and Heather Keeler each brought a motion for dismissal of, each of the four rights of due process listed above, arguing, the Court lacked jurisdiction. After a hearing, the court granted the motion as to each of the Contestees. The Court denied hearing a verified petition and counter motion filed by Contestants.⁴

STATEMENT OF APPEALABILITY

The judgment entered pursuant to the District Court's order granting the motion to dismiss is an appealable final judgment pursuant to Minnesota Court Rules, APPELLATE PROCEDURE, 103.03, Appealable Judgments and Orders and M. S. 209.10, Subd. 4, Appeal.

⁴See 12_10_2020 Contestants' Petition to Inspect Ballots; 12_10_2020 Contestants' Memo. of Law Motion to Appoint Inspectors and Inspect Ballots; Court File No. 14-CV-20-4033.

STATEMENT OF FACTS

All of the facts in this narrative are drawn from the parties' separate statements and evidence cited therein.

Irregular Conduct of the Election

The 2020 Election was unprecedented in its execution and number of ballots tabulated. Using COVID-19 as justification, Secretary of State Steve Simon petitioned the Minnesota State Legislature for emergency powers to loosen voting requirements, create new rules, and subvert election law. Minnesota elections would “snap back to regular law when this is over,” Simon said. In April 2020, in a hearing before the State Legislature, the Secretary's petition was denied.⁵

Despite this failed attempt in the State Legislature to loosen election integrity requirements, the Secretary continued down an alternative path, participating in friendly lawsuits between fellow Democrat activist groups and judges, with the final result being a consent decree granting the Secretary's voting requirements.

⁵ See <https://www.house.leg.state.mn.us/SessionDaily/Story/15220>

Following the issuance of the consent decree, the Secretary proceeded to issue these new requirements to county election officials to execute the 2020 election.

Some of the new requirements were: encouraging fear of the coronavirus, advocating the public to vote absentee, allowing unlimited ballot harvesting, elimination of the absentee ballot witness requirement, and allowing ballots to be received and counted after the election date of November 3, 2020. The election processes had many more irregular requirements, of which resulted in violations of Minnesota Election Law and tabulation of an unprecedented number of illegitimate absentee ballots. Under the guise of “voter accessibility,” these measures destroyed the voter’s confidence in a legitimate election, and overwhelmed election officials' capacity to properly execute the election.

The Contestants and Appellants have covered many of the irregularities in the initial Notice and subsequent filings. The irregularity and violation of Minnesota elections law we shall focus on here are twofold:

1. The hiring of temporary staff to count ballots, judge ballots, and judge voter applications.

➢ On public record and of common knowledge, Clay County Auditor and Election Official Lori Johnson hired temporary staff without party balance to conduct the election and act as election judges.

2. The certification of election before conferring the record.

➢ Due to the massive influx of absentee ballots overwhelming election judges, the election was certified with 91.6% of absentee ballots not being “accepted and connected to a voter record.”⁶

Service of Notice by Personal Service

On November 30, 2020, Contestants and Appellants filed an election contest under M. S. § 209, in Clay County District Court. Also on November 30, 2020, Contestants and Appellants issued personal service instructions to Clay County Sheriff's department to personally serve Contestee and Respondent Heather Keeler at her last known address. On December 1, 2020, Contestants and Appellants received

⁶ See 01_14_2021_Declaration of Rick Weible.pdf

notice from the Court the acceptance of the election contest and Court File Number: 14-CV-20-4033. Subsequently, two Clay County Sheriff Deputies attempted personal service upon Contestee and Respondent Keeler twice, once on November 30, 2020 and again on December 1, 2020. On December 1, 2020, being unable to locate Keeler, the Sheriff Deputies issued to the Court a Certificate of Service. See also the affidavit of Chris McCarthy, filed with both the District Court and Minnesota Supreme Court on January 5, 2021. In a declaration dated December 7, 2020, filed in District Court, Keeler states to have been home “almost at all times” due to COVID-19 restrictions and denies the attempts at service by Clay County Sheriff Deputies.⁷

Service of Notice by Certified Mail

On November 30, 2020, Contestants and Appellants sent the Notice for Election Contest to Contestee and Respondent Heather Keeler at her last known address via Certified U.S. Mail. Concurrently, Contestant and Appellant

⁷See 2020-12-07 Declaration of Heather Keeler and Ex A.pdf

Edwin Hahn filed an affidavit of service with the Court. On December 4, 2020, Hahn received notice from the U.S. Postal Service that at 2:02 pm, the U.S. Postal Service had delivered to Keeler the Notice of Election Contest. In a declaration dated December 7, 2020, filed in District Court, Keeler states receiving notice of attempted delivery of the Notice by the U.S. Postal Service December 2, 2020, and receipt of the Notice of Election Contest from an agent of the U.S. Postal Service on December 4, 2020.⁷

Service of Notice by Electronic Communication

On November 30, 2020, Contestants and Appellants issued service of the Notice of Election Contest via electronic communication to Contestee and Respondent Heather Keeler to her last known email address. In a declaration dated December 7, 2020, filed in District Court, Keeler states to have received receipt of the Notice of Election Contest in .pdf form and Minnesota State Court e-filing, from Contestant and Appellant Edwin Hahn on November 30, 2020.⁷

⁷ See 2020-12-07 Declaration of Heather Keeler and Ex A.pdf

ARGUMENT

- 1 -

Irregular Application of Minnesota Statute § 203B.121, Ballot Boards

By hiring temporary staff to conduct the 2020 Election, Clay County Auditor and Election Official Lori Johnson operated outside of the regular and accepted application of Minnesota Election Law.

On public record and of common knowledge, Ballot Board members in the 2020 election did not meet the qualifications per M. S. § 203B.121 BALLOT BOARDS:

Subdivision 1. Establishment; applicable laws. (a) The governing body of each county, municipality, and school district with responsibility to accept and reject absentee ballots must, by ordinance or resolution, establish a ballot board. The board must consist of a sufficient number of election judges trained in the handling of absentee ballots and appointed as provided in sections 204B.19 to 204B.22. The board may include deputy county auditors or deputy city clerks who have received training in the processing and counting of absentee ballots.

Part time employees were hired by Clay County to assist with absentee voter registration and ballot process (Oct. 8, 2020 - The Extra). Absentee voter registration and ballot process duties, per Minnesota Statutes, are to be completed by

election judges, and/or deputy county auditors, and/or deputy city clerks.

The opposing party may argue the part time employees hired by Clay County to assist were deputy county auditors, and/or deputy clerks. They in fact, were not. Being deputized and labeled as deputy county auditors and/or deputy clerks, to subvert the party balance requirements, these deputies did not perform the majority of duties in which deputy county auditors and/or deputy clerks are to be assigned. The majority duties of a deputy auditor/clerk include assisting administration of: property transactions, property taxes, city/county board business, and performing the division of motor vehicle licensing duties. The exclusive performance of election duties and processing ballots by these part time employees makes these staff election judges, not a deputy auditor/clerk.

Since these staff were part time employees hired exclusively for the purpose of absentee ballot processes, they were hired as election judges, not deputy county auditors or deputy clerks. Therefore, as election judges, party affiliations must be verified by the major parties to ensure party balance

requirements were met in accordance with M.S. § 204B.19,

ELECTION JUDGES; QUALIFICATIONS,

§ Subd. 5. Party balance requirement. 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.

and M.S. § 204B.21, APPOINTMENT OF ELECTION JUDGES,

§ Subd. 2. ...At least two election judges in each precinct must be affiliated with different major political parties. If no lists have been furnished or if additional election judges are required after all listed names in that municipality have been exhausted, the appointing authority may appoint other individuals who meet the qualifications to serve as an election judge....

§ Subd. 2. ...An individual who is appointed from a source other than the list furnished pursuant to subdivision 1 must provide to the appointing authority the individual's major political party affiliation or a statement that the individual does not affiliate with any major political party. An individual who refuses to provide the individual's major political party affiliation or a statement that the individual does not affiliate with a major political party must not be appointed as an election judge....

Deliberately, the major party status was not verified on these pseudo-staff election judges and therefore the conduct of the election was not in accordance with Minnesota Election Law. Without verification and participation of bi-partisan election judges, the validity and integrity of this election is called into question. It is to be placed before the State Legislature whether this legal, ethical, and material corruption shall invalidate this election.

Certification of Election Before Conferring the Record

The research and testimony of expert witness, Rick Wieble, confirms election officials were not able to properly process and record the overwhelming number of absentee ballot records as required by Minnesota Statute § 203B.121, Ballot Boards, Subd. 3., Record of voting; M.S. § 203B.081; and M.S. § 203B.24.⁸

In addition, Mr. Wieble states in his declaration, from November 29, 2020 to December 14, 2020, a continual modification of the record and shifting of voter tallies (#9).⁸

This delay and changing of the record calls into question the accuracy of the voter history and legitimacy of what is happening behind the scenes. For voter confidence to be restored, an audit of election materials must be conducted immediately.

⁸ See 01_14_2021_Declaration of Rick Weible.pdf

Claim: Right of Due Process

As set forth in the original brief and contest, the 2020 election suffered from significant irregularities in the Contestants and Appellants jurisdiction, and a question of who received the largest number of votes legally cast.

3.1 Based on the evidence presented at trial and findings of the court, the State House shall decide the final outcome of the Contest and relief granted, as provided in Minn. Stat. § 209.07 RESULTS OF CONTEST.

§Subdivision 1. **Generally.** If a nomination is contested, the court shall decide which candidate, if any, was nominated and is entitled to be named in print on the official ballots. When the court decides an election contest for any office *other than state senator or state representative*, and the time for appeal has expired or, in case of an appeal, if the contestant succeeds in the contest, the court may invalidate and revoke any election certificate which has been issued to the contestee. If the contest involved an error in the counting of ballots, the official authorized to issue the certificate of election shall issue the certificate to the person entitled to it, but if a contestant succeeds in a contest where there is no question as to which of the candidates received the highest number of votes cast at the election, the contestant is not, by reason of the disqualification of the contestee, entitled to the certificate of election.

3.2 In this Contest, the court does not have final authority on claim or relief.⁹

⁹ See Exhibit, Minn. Stat. 209.10 STATE LEGISLATIVE OFFICE.pdf

In this court, any ONE of THREE claims confer proper pleading on the claim and grounds of contest.

Minn. Stat. § 209.02 CONTESTANT; GROUNDS.

§Subdivision 1. **General.** Any eligible voter, including a candidate, may contest in the manner provided in this chapter: (1) the nomination or election of any person for whom the voter had the right to vote if that person is declared nominated or elected to the senate or the house of representatives of the United States, or to a statewide, county, legislative, municipal, school, or district court office; or (2) the declared result of a constitutional amendment or other question voted upon at an election. [1] The contest may be brought over an *irregularity in the conduct of an election or canvass of votes*, [or 2] over the question of who received the largest number of votes legally cast, [or 3] over the number of votes legally cast in favor of or against a question, or on the grounds of *deliberate, serious, and material violations of the Minnesota Election Law*. (emp. added)

3.3 Since jurisdiction by statute is conferred not by pleading, but by the notice served on parties, any arguments vacating jurisdiction by virtue of pleadings are null. M. S. § 209.021 NOTICE OF CONTEST.

§Subd. 3. **Notice served on parties.** In all contests relating to the nomination or election of a candidate, the notice of contest must be served on the candidate who is the contestee, a copy of the notice must be sent to the contestee's last known address by certified mail, and a copy must be furnished to the official authorized to issue the certificate of election. If personal or substituted service on the contestee cannot be made, an affidavit of the attempt by the person attempting to make service and the affidavit of the person who sent a copy of the notice to the contestee *by certified mail is sufficient to confer jurisdiction upon the court to decide the contest.*

3.4 Arguments regarding dismissal on the basis of relief are moot. The Court's duty is to confirm jurisdiction, allow inspection of ballots, convene proceedings, hear testimony of the parties, decide the contest, issue appropriate orders, and

make written findings of fact and conclusions of law, transmit the findings, conclusions, orders, and records of the proceeding to the chief clerk of the house.⁹

- 4 -

Relief: Based on the Material Outcome of the Contest

4.1 The Minn. Stat. § 209, ELECTION CONTESTS is a very specific legal vehicle, in which any eligible voter or candidate, may pursue relief allowed by law. Unlike a typical civil suit, in an Election Contest, the following relief is awarded by, Minn. Stat. § 209.07 RESULTS OF CONTEST,

§Subdivision 1. **Generally.** If a nomination is contested, the court shall decide which candidate, if any, was nominated and is entitled to be named in print on the official ballots. When the court decides an election contest for *any office other than state senator or state representative*, and the time for appeal has expired or, in case of an appeal, if the contestant succeeds in the contest, the court may invalidate and revoke any election certificate which has been issued to the contestee. If the contest involved an error in the counting of ballots, the official authorized to issue the certificate of election shall issue the certificate to the person entitled to it, but if a contestant succeeds in a contest where there is no question as to which of the candidates received the highest number of votes cast at the election, *the contestant is not, by reason of the disqualification of the contestee, entitled to the certificate of election.* (emp. added)

§Subd. 2. **Defective ballots.** In a contested election, if the court decides that a serious and material defect in the ballots used changed the outcome of the election for the contested office, *the election must be declared invalid* for that office. (emp. added)

⁹ See Exhibit, Minn. Stat. 209.10 STATE LEGISLATIVE OFFICE.pdf

4.2 The provision of Minn. Stat. § 209, ELECTION CONTESTS does not require any specific relief to be defined before trial, as the type of relief awarded is based on the material outcome of the Contest.

4.3 In this Contest, the State Legislature is the final authority to award relief. Minn. Stat. § 209.10 STATE LEGISLATIVE OFFICE,

§ Subd. 3. **Duties of court**....The judge shall decide the contest, issue appropriate orders, and make written findings of fact and conclusions of law. Unless the matter is appealed to the supreme court, the judge, by the first day of the legislative session, shall transmit the findings, conclusions, orders, and records of the proceeding to the chief clerk of the house of representatives or the secretary of the senate, as appropriate.

§Subd. 5. **Legislative hearing, procedure.** In hearing a contest, the house of representatives or senate shall proceed as follows:...

...(d) The vote upon the contest must be *viva voce*, any member may offer reasons for an intended vote, and a *majority of the votes given decides the issue*.... (emphasis added)

4.4 Furthermore, Minn. Stat. § 209, ELECTION CONTESTS grants specific powers to the Contestants before trial begins, Minn. Stat. § 209.06 INSPECTION OF BALLOTS,

§Subdivision 1. **Appointment of inspectors.** After a contest has been instituted, either party may have the ballots inspected before preparing for trial. The party requesting an inspection shall file with the district court where the contest is brought a verified petition, stating that the case cannot properly be prepared for trial without an inspection of the ballots and designating the precincts in which an inspection is desired....

4.5 And, Minn. Stat. § 209.05 GUARDING THE BALLOTS,

§In any election, upon demand made of the custodian of the ballots and upon notice to the candidate's opponent, a candidate may keep a continuous visual guard over the ballots until the expiration of the time for instituting contests. In case of a contest, the contestant or contestee may keep a visual guard over the ballots. The guard may be maintained either by the candidate, contestant, or contestee, or by their duly authorized agents, not exceeding two at a time for each party to the contest. If a candidate, contestant, or contestee seeks to guard the ballots, the custodian of the ballots shall appoint some suitable person to guard the ballots so they are not in the sole custody of the candidate, contestant, contestee, or their agents.

4.6 Minn. Stat. § 209.07 RESULTS OF CONTESTS, Minn. Stat. § 209.06 INSPECTION OF BALLOTS and Minn. Stat. § 209.05 GUARDING THE BALLOTS, demonstrates the unique nature of the Election Contest and how the Contest differs from the traditional claim upon which relief can be granted.

4.7 Finally, clarification of the relief requested in the Contestants' original filing, *Edwin Hahn, et al. v. Steve Simon, et al.*, Court File Number: 14-CV-20-4033 (Clay Cty. Dist. Ct.) at 4:

Secretary of State Simon is the head election official. His actions regarding the change in ballot counting rendered both Contestants and Contestees from experiencing a free and fair election. Secretary Simon promoted and supported the accepting and rejecting of the absentee ballots throughout the State that is contrary to Minnesota Election Law. In addition, Secretary Simon changed the process for handling absentee ballots. As a result, the inclusion and tabulation of absentee ballots is *improper* and must be *corrected or not be permitted*. (emp. added)

And at 20:

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 through a process of discovery that includes the chain of custody tabulation of the ballots in Legislative District 4A, Clay County. (emp. added)

4.8 The above statements do not waive the Contestants' right to limit, amend, or otherwise cause prior stated relief to be struck.

- 5 -

Proper Jurisdiction By Time

5.1 The Court has Jurisdiction over this contest as the Contestants have filed in accordance with the time pursuant to 209.021 NOTICE OF CONTEST,

§ Subdivision 1. **Manner; time; contents**....Except as provided in section 204D.27, notice must be served and filed within....seven days after *the canvass* is completed in the case of a special or general election. (emphasis added)

5.2 It is common knowledge that the State elections are not complete until the State Board meets to review the election results and certifies the election. The comprehensive statewide review is known as *the canvass*.

5.3 *The canvass* was complete when the Minnesota State Election Board met on November 24, 2020 and certified the

election for State offices. 6 days later, on November 30, 2020, the Contestants' filed with the court a NOTICE OF ELECTION CONTEST UNDER MINNESOTA STATUTES CHAPTER 209. On December 1, 2020, 7 days after the canvass met to certify the 2020 election, Clay County District court accepted and assigned Court Case File: 14-CV-20-4033.¹⁰

5.4 On December 3, 2020, the Contestants and Contestees received an acceptance of the filing by the Honorable Chief Justice Lori Gildea, with a letter stating,

An election contest for House Seat 4A was filed in Clay County District Court on November 30, 2020. The Clay County Court Administrator submitted a copy of the Notice of Contest to me, as required by Minnesota Statutes § 209.10, subdivision 1. I am required by subdivision 2 of section 209.01 to provide the parties with "the names of judges of the judicial district or districts covering the area served by the contested office." Enclosed please find a copy of Minnesota Statutes § 209.10.¹¹

5.5 On December 9, 2020, the Contestants received a letter from Brian J. Melton, Clay County Attorney #0278002. In the letter Mr. Melton describes the filing time of the Contestants' Election Contest,

¹⁰ See *Edwin Hahn, et al. v. Steve Simon, et al.*, 14-CV-20-403.

¹¹ See Letter from Chief Justice Lori Gildea.pdf

“Here, *the canvass* was completed - at the latest - on November 24, 2020. Seven (7) calendar days from November 24, 2020, was December 1, 2020.” (emphasis added)¹²

5.6 Historical record of election contests by which Mr. Charles N. Nauen, # 0121216, represented Contestee, Sen. Al Franken, shows a 2014 Minnesota Election Contest (*Carlson v. Franken*) with proper jurisdiction in the Second Judicial District. In 2014, the General Election was Nov 4, the canvass was completed Nov 25, 2014. Court records show filing of *Carlson v. Franken* was 7 days after the canvass, on December 2, 2014.¹³

5.7 Finally, historical statute establishes no question as to the proper canvass as to which an election contest or recount for State Legislature begins. 2013 Minn. Stat. §204C.35 FEDERAL, STATE, AND JUDICIAL RACES,

§Subdivision 1. **Publicly funded recounts.** (b) In a state general election when the difference between the votes of a candidate who would otherwise be declared elected to:

(1) a *state legislative office* is less than one-half of one percent of the total number of votes counted for that office or is ten votes or less and the total number of votes cast for the office is 400 votes or less; *...Immediately following the meeting of the board that has responsibility for canvassing the results of the general election*, the filing officer must notify the candidate that the candidate has the option to request a recount of the votes at no cost to the candidate. This written request must be received by the filing officer no later than 48 hours after the canvass of the election for which the recount is being sought.

¹² See Lori Johnson’s Memorandum of Law In Support of Her Motion to Dismiss, (Cty. Atty. File 20CI01008), Pg. 6.

¹³ See *Carlson v. Franken*, 62-CV-14-7915.

(c) A recount must not delay any other part of the canvass. The results of the recount must be certified by the canvassing board as soon as possible.

(d) Time for notice of a contest for an office which is recounted pursuant to this section shall begin to run upon certification of the results of the recount by the canvassing board.

- 6 -

Proper Jurisdiction By Manner

6.1 The Court has Jurisdiction over this Contest as the Contestants have filed in the manner specified in Minn. Stat. § 209.021 NOTICE OF CONTEST,

(a) Subd. 2. Notice filed with court.

(i) On November 30, 2020, Contestants filed both electronically and by Certified U.S. Mail, into the Clay County District Court.¹⁴

(ii) Court File Number: 14-CV-20-4033

(b) § Subd. 3. Notice served on parties.

§ In all contests relating to the nomination or election of a candidate, the notice of contest must be served on the candidate who is the contestee...If personal or substituted service on the contestee cannot be made, an affidavit of the attempt by the person attempting to make service and the affidavit of the person who sent a copy of the notice to the contestee by certified mail is *sufficient to confer jurisdiction upon the court to decide the contest.* (emp. added)

¹⁴ See EFILING ACCEPTED Case 14-CV-20-4033.pdf; Certified Mail.pdf

- (i) On November 30, 2020, Contestants filed by deputized service, electronically, and by Certified U.S. Mail, to Contestee, Heather Keeler.¹⁵
- (ii) On December 7, 2020, in the Declaration of Heather Keeler, Keeler provided proof of service; Minn. C. R. Civil P. 4.06; Return,¹⁶

Service of summons and other process shall be proved by the certificate of the sheriff or other peace officer making it, by the affidavit of any other person making it, *by the written admission or acknowledgment of the party served*, or if served by publication, by the affidavit of the printer or the printer's designee. The proof of service in all cases other than by published notice *shall state the time, place, and manner of service*. Failure to make proof of service shall not affect the validity of the service. (emp added)

- (iii) On November 30, 2020, Contestants filed electronically and by Certified U.S. Mail, to Contestees, Steve Simon and Lori Johnson.¹⁷

¹⁵ See Affidavit of McCarthy; Certified Mail.pdf; 11_30_2020_Certified Mail Affidavit Hahn.pdf; EFILING SUBMITTED Case 16377444.pdf

¹⁶ See 2020-12-07 Declaration of Heather Keeler and Ex A.pdf

¹⁷ See Certified Mail.pdf; EFILING SUBMITTED Case 16377444.pdf

Proper Jurisdiction By Contents

7.1 The Court has Jurisdiction over this Contest as the Contestants have filed the contents specified in Minn. Stat.

209.021 NOTICE OF CONTEST,

§Subdivision 1. **Manner; time; contents**....The notice of contest must specify the grounds on which the contest will be made.

7.2 The grounds on which the Contest was made are expounded upon in the original notice, *Edwin Hahn, et al. v. Steve Simon, et al.*, 14-CV-20-4033, at 1:

Contestants file this Notice of Contest under Minn. Stat. §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.

Required by Minn. Stat. §209.06, the contestants request an inspection of ballots, as the case cannot properly be prepared for trial without an inspection of the ballots and designating all precincts within Legislative District 04A, Clay County. The contestants assert, through chain-of-custody, a legitimate ballot includes absentee registrations, absentee ballot envelopes, in-person, and same-day registration records.

CONCLUSION

The Minnesota Election Contest is a very specific legal vehicle, unlike any civil suit, in which jurisdiction is conferred by Notice of Parties and relief is granted in statute by the outcome of the contest, and not conferred by claim or stated relief. Relief is not limited to: issuance of the certificate of election, no question as to who received the highest votes, disqualification, or invalidation of the election. By statute, specific powers are granted to the Contestants and Contestees, including inspection of ballots to prepare for trial, and guarding of the ballots.

Properly filed in the Seventh Judicial District on November 30, 2020, as required by Minn. Stat. §209.021, the court has jurisdiction in this Contest. In a verified petition filed with the court December 8, 2020, the Contestants requested an inspection of ballots, as the case cannot properly be prepared for trial without an inspection of the ballots, designating all precincts within Legislative District 04A, Clay County. The contestants asserted, through chain-of-custody, a legitimate ballot includes absentee registrations, absentee ballot envelopes, in-person, and same-day registration records. Accordingly, this contest must proceed.

Dated: January 13, 2021

APPELLANTS PRO SE

By: /s/ Edwin Hahn
Edwin Hahn
4140 16th Ave S
Moorhead, MN 56560
edwinforhouse@gmail.com
Phone: (218) 686-3970

By: /s/ Marilyn Proulx
Marilyn Proulx
1304 4th St S
Moorhead, MN 56560
vmproulx@midco.net
Phone: (218) 329-3231

By: /s/ Janine E Kowalski
Janine E Kowalski
3177 11th Ave S
Moorhead, MN 56560
Johnnjank@gmail.com
Phone: (701) 729-5042

By: /s/ Lisa Hahn
Lisa Hahn
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Moorhead, MN 56560
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By: /s/ Laurie Christianson
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By: /s/ John J Kowalski
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By: /s/ Janine Hanson
Janine Hanson
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By: /s/ Ronald White
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Moorhead, MN 56560
rwhite58433@gmail.com
Phone: (701) 535-1261

STATE OF MINNESOTA
CLAY COUNTY

DISTRICT COURT
7TH JUDICIAL DISTRICT

Case type: Civil/Other

Edwin Hahn, Janine Hanson, Laurie Christianson, Lisa Hahn, Marilyn Proulx, Ronald White, John Kowalski, Janine Kowalski

Court File Number: 14-CV-20-4033
Honorable Timothy M. Churchwell

Contestants,

AFFIDAVIT OF SERVICE

vs.

Steve Simon, only in his official capacity as the Minnesota Secretary of State, Lori Johnson, only in her official capacity as the Auditor-Treasurer for Clay County, Heather Keeler

Contestees.

TO: Clay County District Court and the above-named Contestees and their attorneys; Brian Melton, County Attorney, Clay County Attorney's Office, 807 11th St. N. Lower Level Moorhead, MN 56560, representing Clay County Auditor, Election Official, and Custodian of the Ballots, Lori Johnson; Nathan J. Hartshorn, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, Minnesota 55101-2134, representing Secretary of State Steve Simon; and Charles N. Nauen, Lockridge Grindal Nauen, P.L.L.P., 100 Washington Avenue South, Suite 2200, Minneapolis, MN 55401-2159, attorney for Heather Keeler.

STATE OF MINNESOTA)
) ss.
COUNTY OF CLAY)

I, Deputy Chris McCarthy, being first duly sworn on oath states as follows:

1. I am over the age of 18 years and competent to testify herein.

2. I hereby certify and return that at 8:00 AM on the 1st day of December, 2020, in the City of Moorhead, I attempted service of the within and attached:

- a. Notice of Election Contest Under MN Statutes Chapter 209;
- b. Affidavit of John Kowalski, Affidavit of Janine Hanson, Affidavit of Laurie Christenson, Affidavit of Marilyn Proulx, Affidavit of Ronald White, Affidavit of Edwin Hahn.

3. UPON THE FOLLOWING PARTY: **Heather Keeler**

4. I made a diligent Search and Inquiry, and was unable to find said defendant within said County.

5. Attempts:

11/30/2020 6:05 PM by Deputy Bouma

12/1/2020 8:00 AM by Deputy McCarthy

6. Remarks:

At 4210 16th Ave S, Moorhead, MN 56560 Clay County, State of Minnesota

FURTHER YOUR AFFIANT SAYETH NAUGHT

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Date: December 30, 2020

/s/ CHRIS McCARTHY
Deputy Chris McCarthy
911 11th St N
Moorhead, MN 56560

**STATE OF MINNESOTA
7th Judicial District
Clay County Court
Case File No. _____**

Edwin Hahn, Janine Hanson, Laurie Christianson, Lisa Hahn, Marilyn Proulx, Ronald White,
John Kowalski, Janine Kowalski,

Petitioners,

vs.

Steve Simon, only in his official capacity as the Minnesota Secretary of State,
Lori Johnson, only in her official capacity as the Auditor-Treasurer for Clay County, Heather
Keeler,

Respondents,

AFFIDAVIT OF EDWIN HAHN

STATE OF MINNESOTA)
) ss.
COUNTY OF CLAY)

EDWIN HAHN, being first duly sworn on oath states as follows:

1. I am over the age of 18 and competent to testify herein. I am a registered voter in the state of Minnesota.
2. I have personal knowledge of the facts stated herein and know them to be true and correct.
3. I have sent a copy of the NOTICE OF ELECTION CONTEST UNDER MINNESOTA STATUTES CHAPTER 209 to the contestee(s) by certified mail.

FURTHER YOUR AFFIANT SAYETH NAUGHT

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Date: 11/30/2020 /s/ Edwin Hahn
Edwin Hahn

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CLAY

SEVENTH JUDICIAL DISTRICT

CASE TYPE: Civil Other/Misc.

Edwin Hahn, Janine Hanson, Laurie Christianson, Lisa Hahn, Marilyn Proulx, Ronald White, John Kowalski, Janine Kowalski

Court File No. 14-CV-20-4033

Contestants,

v.

Steve Simon, only in his official capacity as the Minnesota Secretary of State, Lori Johnson, only in her official capacity as the Auditor-Treasurer for Clay County, Heather Keeler,

Contestees.

**DECLARATION OF HEATHER KEELER
IN SUPPORT OF CONTESTEE'S MOTION TO DISMISS**

I, Heather Keeler, hereby declare as follows:

1. I was the Democratic-Farmer-Labor candidate, and am now the State Representative-Elect, in District 4A, and I am named as a Contestee in the above-captioned proceeding. I submit this Declaration in support of my Motion to Dismiss.
2. I have never been personally served with the notice of contest in this matter, nor has a copy of the notice been left at my home with any person.
3. On December 2, 2020, I received a notice in my mailbox from the U.S. Postal Service attempting to deliver a large envelope, but not delivering the envelope itself. I was able to retrieve the envelope from the post office on December 4. It listed Edwin Hahn as the return addressee and contained a copy of the notice of contest that had been sent by certified mail. The

postage on the envelope indicated that it had been sent on November 30.

4. Because we have been complying with public-health guidance during the ongoing COVID-19 pandemic, either I or another member of my household eligible to accept service has been at our home at almost all times since at least the November 3, 2020 general election. I live with my partner, my fourteen-year-old child, and (on a shared-custody basis) my partner's fifteen-year-old child. The two children both attend school online, from home, every weekday. If anyone had attempted to serve the notice at my home, it is highly likely that they would have found at least one of us there to receive service.

5. On November 30, 2020 Edwin Hahn sent an email to my campaign email account, purporting to serve me electronically. In the email, he forwarded what appears to be an automated email from the e-filing and e-service system used by the Minnesota state courts notifying him that he had "successfully submitted" a notice of election contest, and attached a .pdf of that notice. A true and correct copy of that email and its attachment is filed herewith at **Exhibit A.**

I declare under penalty of perjury of the laws of the United States of America that everything I have stated in this document is true and correct.

Executed this 7th day of December, 2020, in Clay County, Minnesota.



Heather Keeler

EXHIBIT A

From: **Edwin Hahn** <edwinforhouse@gmail.com>
Date: Mon, Nov 30, 2020, 10:11 PM
Subject: Fwd: EFILING SUBMITTED Case 16377444
To:

Contestee(s),

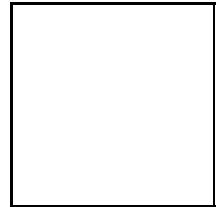
Edwin Hahn, et. al. v. Steve Simon, et al., has been accepted for filing.

Attached and served upon you electronically.

Blessings and gratitude,

Edwin Hahn
edwinforhouse@gmail.com
(218) 686-3970 mobile

----- Forwarded message -----
From: <efilingmail@tylerhost.net>
Date: Mon, Nov 30, 2020 at 9:18 PM
Subject: EFILING SUBMITTED Case 16377444
To: <edwinforhouse@gmail.com>



This message was automatically generated. Do not reply to this e-mail.

Your submission in case 16377444, has been successfully submitted.

Envelope Number: 16377444
Filing Code: Notice by Attorney or Party
Filing Type: EFile
Filing Description: NOTICE OF ELECTION CONTEST UNDER MINNESOTA STATUTES CHAPTER 209
Date Submitted: 11/30/2020 9:17 PM CST

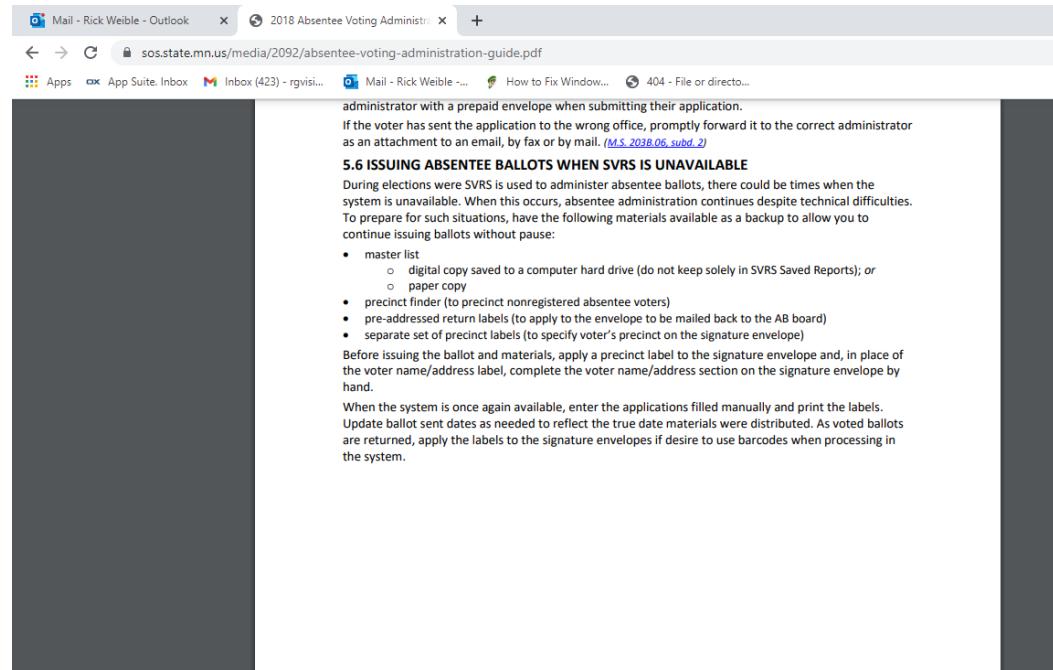
If you have a question about this email or need application support using Minnesota's eFile & eServe (eFS) system, please contact the MN eFile Support Center.

Declaration of Rick Weible

Pursuant to 28 U.S.C Section 1746, I, Rick Weible make the following declaration.

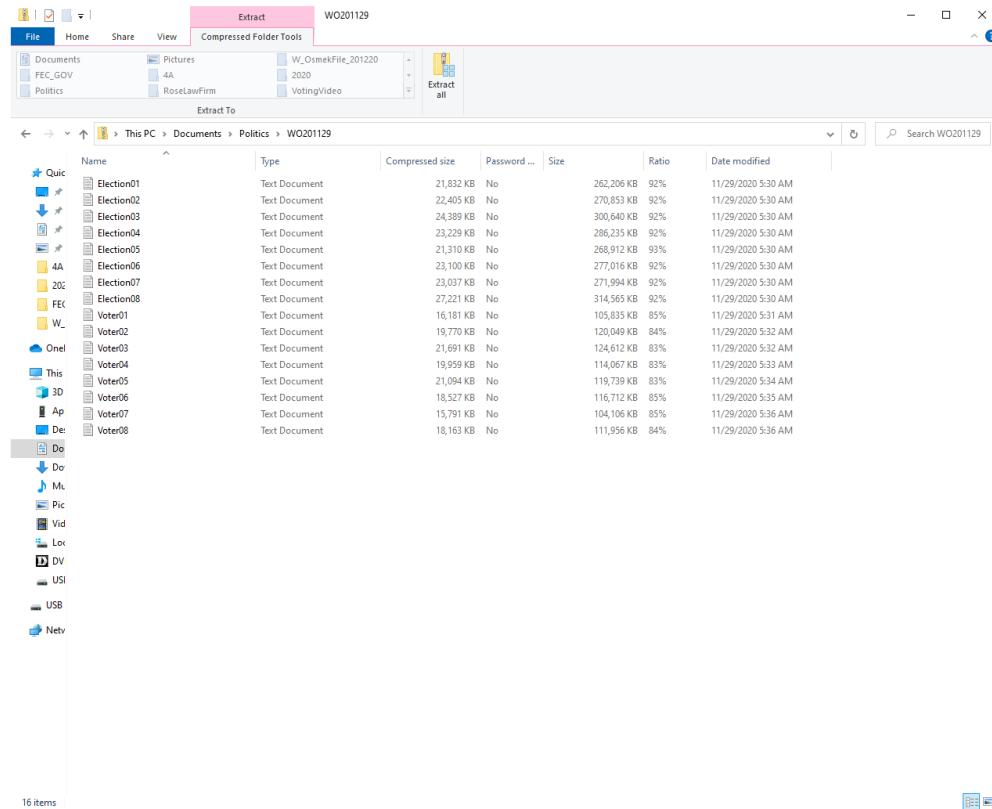
1. I am over the age of 21 years and I am under no legal disability, which would prevent me from giving this declaration.
2. I am a computer network engineer and data analysis expert with over 25 years of industry experience. Owner of a small computer consulting company. Served in public office for 14 years in the City of St. Bonifacius, MN as a Council Member (4), and as Mayor for 10 years. MNGOP CD3-CO-Chair for 8 years and served on the MNGOP State Executive Committee during that time. Participated in multiple recounts in local elections in Hennepin County, MN and 2 MN State Wide recounts. Political consultant in MN and SD helping candidates with issue research, marketing and outreach for local, regional and state wide elections.
3. I moved from of MN 2.5 years ago and I currently reside at 803 Elk Street, Elkton, SD 57026
4. My affidavit highlights possible illegal voters, illegal votes, missing votes, disenfranchisement and misrepresenting data to the Canvassing Board of MN based on data received from the MN Secretary of State, through a group of Minnesotans researching the election, of which I am providing my review of the data at no charge.
5. My affidavit highlights a review of MN SOS Voter Data 11/29/2020, received on Dec 7th by me, that shows as of 5 days after MN State Canvassing Board Certification, the data does not have 1.28 million ballots connected to voters in the Nov 3rd 2020 Election. That is 38.9% missing histories from the missing total vote of the election.
6. My affidavit shows that there is a possible violation of state statute and processes in that there are 736,578 missing Absentee Ballots from the 11/29/2020 MN SOS Voter Data.

- i. MN SOS Web Site States – “*All ballots are tracked individually and linked to a voter in Minnesota’s voter registration database. Once a ballot is accepted, if that voter tries to vote again, the election official or election judge will see that the voter has an accepted ballot. Lists in the polling place are even updated throughout election day as ballots are accepted.*”
<https://www.sos.state.mn.us/elections-voting/how-elections-work/absentee-ballot-process/>
- ii. **MN Stat. 203B.121 requires:**
Subd. 3. Record of voting. (a) When applicable, the county auditor or municipal clerk must immediately record that a voter's absentee ballot has been accepted. After the close of business on the seventh day before the election, a voter whose record indicates that an absentee ballot has been accepted must not be permitted to cast another ballot at that election. **In a state primary, general, or state special election for federal or state office, the auditor or clerk must also record this information in the statewide voter registration system.**
- iii. **MN Stat. 203B .081 requires:**
Subd. 3. d. The election official must immediately record that the voter has voted in the manner provided in section [203B.121, subdivision 3](#).
- iv. **MN Stat. 203B.24 requires:**
Subd. 2. Recording accepted and rejected ballots. The election judges shall compare the voter's name with the names recorded under section 203B.19 in the statewide registration system. **For each returned ballot, the election judges must indicate on the record in the statewide registration system whether the absentee ballot was accepted or rejected.**
 1. Even during an outage of the SVRS system, there is a process. <https://www.sos.state.mn.us/media/2092/absentee->

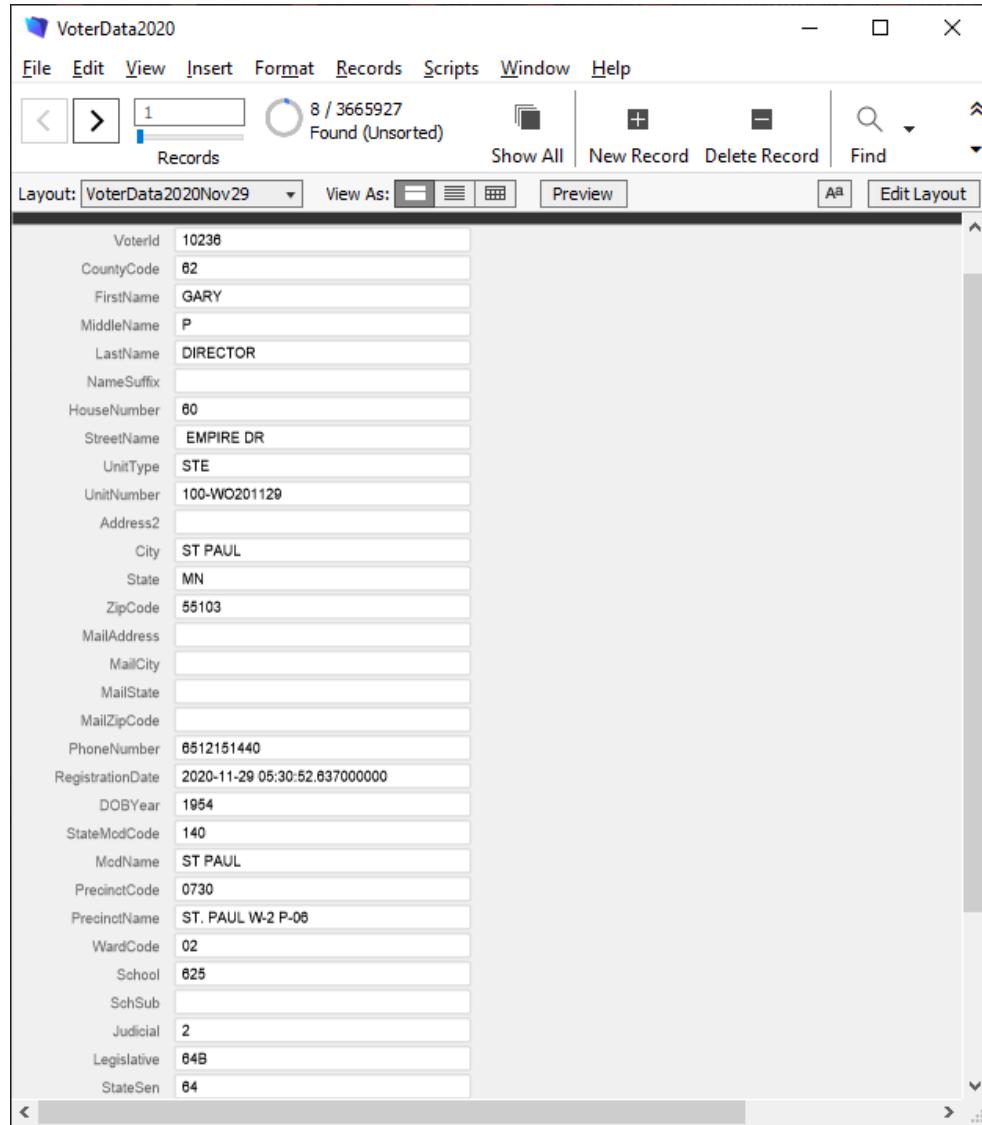


7. Here is evidence of the data from the MN SOS

a. Screen shot from inside the ZIP File.



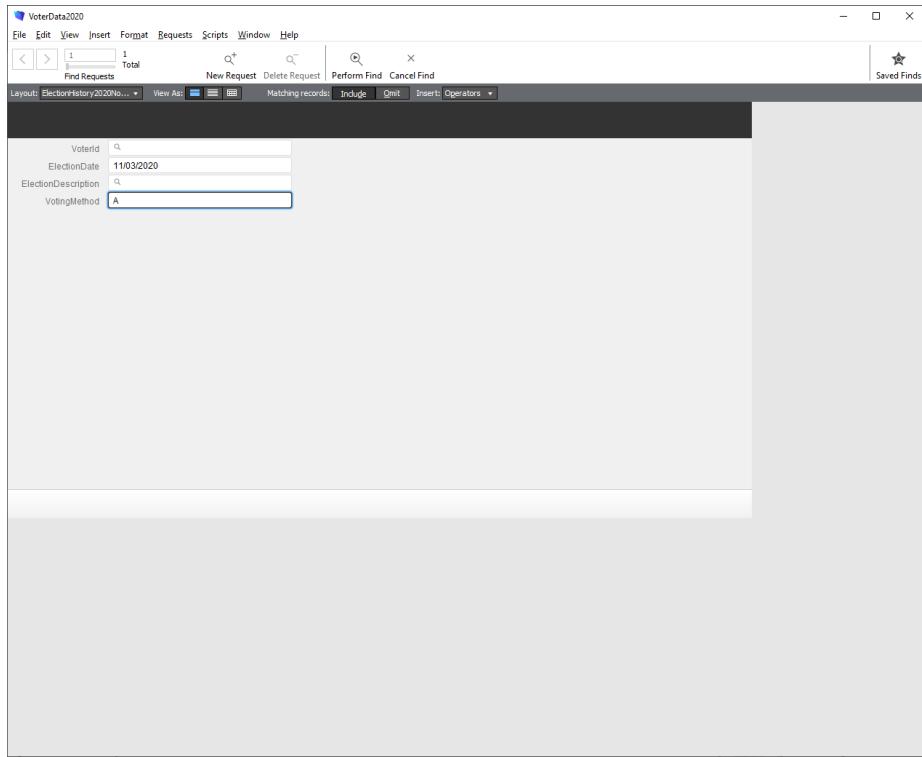
b. Screen shot of a record that identifies the data time stamp, the Unit Number matches the file name, and the Registration Date is when the data export happened by MN SOS office.



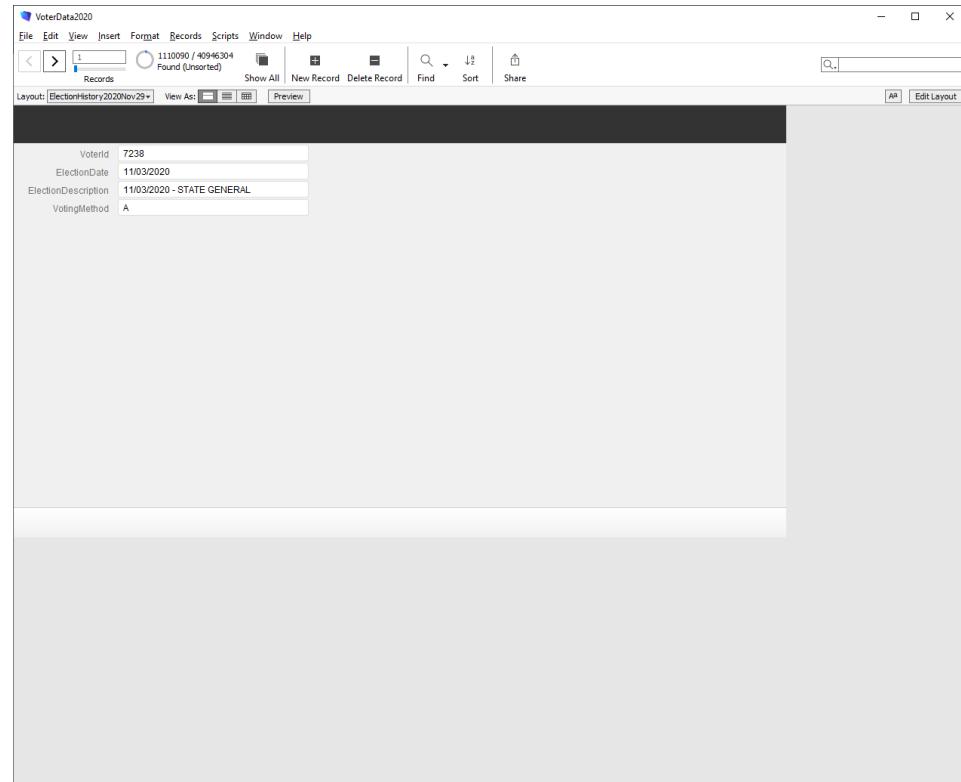
The screenshot shows a software application window titled "VoterData2020". The window has a menu bar with File, Edit, View, Insert, Format, Records, Scripts, Window, and Help. Below the menu is a toolbar with buttons for back, forward, search, and record management. The main area displays a list of voter registration fields and their values. The voter ID is 10236. The registration date is 2020-11-29 05:30:52.837000000. The file name is VoterData2020Nov29.

	VoterId	10236
CountyCode	62	
FirstName	GARY	
MiddleName	P	
LastName	DIRECTOR	
NameSuffix		
HouseNumber	60	
StreetName	EMPIRE DR	
UnitType	STE	
UnitNumber	100-WO201129	
Address2		
City	ST PAUL	
State	MN	
ZipCode	55103	
MailAddress		
MailCity		
MailState		
MailZipCode		
PhoneNumber	6512151440	
RegistrationDate	2020-11-29 05:30:52.837000000	
DOBYear	1954	
StateModCode	140	
ModName	ST PAUL	
PrecinctCode	0730	
PrecinctName	ST. PAUL W-2 P-06	
WardCode	02	
School	625	
SchSub		
Judicial	2	
Legislative	64B	
StateSen	64	

c. Doing a search on raw voting histories



d. I get 1,110,090 Absentee Ballots, not the 1,846,668 reported on the MN SOS Web Site. **That is a difference of 736,578**



8. I also have data from Dec 13th, Dec 20th and Dec 27th, from the Secretary of State Office and I am willing to show evidence from those as needed, due to the quick turn around needed for this documentation I have not included screen shots at this time, but can if given more time.

9. Here are some quick notes that I have from the 4A Race in MN

a. MN SOS Site Shows the following:

Registered Voters 7 AM 24,138

Edwin Hahn	8,748
Heather Keeler	11,487
Write in	36
Total	20,271 Votes

Source:

<https://electionresults.sos.state.mn.us/results/Index?ErsElectionId=136&scenario=State Representative&DistrictId=361&show=Go>

b. **Nov 29th Data – MN SOS Data Set Shows**

Total Registered Voters	24,525
Absentee Votes	1,034 (999 Registered on 11/3/2020)
Mail Votes	236
Precinct Votes	4 (4 Registered on 11/3/2020)
Total Ballots	1,273

That is only 6.28% Total Reporting 5 Days after State Certification (1,273/20,271)

c. **Dec 13th Data – MN SOS**

Total Registered Voters	25,616
Absentee Votes	12,297 (However Dec 20 th Data has removed 13 voters)
Mail Votes	236
Precinct Votes	8606 (However Dec 20 th Data has removed 19 voters)
Total Ballots	21,139

d. **Dec 20th Data – MN SOS**

Total Registered Voters	25,575
Absentee Votes	12,285
Mail Votes	237
Precinct Votes	8584 (Now more voters shifted-22)
Total Ballots	21,106 (Now there's 33 less ballots)

* Note - 233 Voters Registered after 11/3/2020 – 80 of them voted (32-P, 47-A, 1-M)

10. The State law allow Polling place ballots, an additional 6 sixes for entry and voter history matching, the law is specific to that process, and is separate from the Absentee ballot laws. We are not contesting the in place Polling ballots, since the data show that the Counties are mostly within the law at this point, and within the Jan 12th extension.

11. For the 4A legislative race, Nov 29th MN SOS Voter History Data, indicates an issue with ad hearing to MN Statues 203B.121 3. in regards to processing Absentee ballots. Only 8.4% Absentee Ballots were “accepted and connected to a voter record” 5 days after State Canvassing Board Certification, (1,034/12,297). That means that at least 11,263 ballots were not properly handled by law, and need to be reexamined and potentially excluded.



Rick Weible

01/14/2020

803 Elk Street
Elkton, SD 57026