

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
Case Type: Other Civil

Carrie A. Austin, Kari M. Watkins,
Michael J. Swierczek, Jeremy J. Pekula,

Court File No. 62-CV-22-4700

Tracey A. Schowalter, Gregory W. Telste,
Stephen A. Minor,

Judge Laura Nelson

Plaintiffs,

**PLAINTIFFS'
MEMORANDUM
OPPOSING MOTION TO
DISMISS**

vs.

Steve Simon, in his official capacity as
Secretary of State of Minnesota,

Defendant.

We, the Plaintiffs: Carrie Austin, Kari Watkins, Michael Swierczek, Jeremy Pekula, Tracey Schowalter, Gregory Telste, and Stephen Minors ask the court to consider a ruling in favor of a temporary injunction on all election materials as proposed in original claim because Defendant has not allowed access to anyone since the 2020 election and the People have exhausted all means available to get this access. Therefore, Defendant's claim of laches is moot.

FACTS

The legal basis to require the Defendant to preserve election materials discontinue use of election voting machines is this:

1. Access has been requested in several manners from County Commissioners and Election Commissioners which has been denied by the Defendant. Laches argument is moot.
 - a. The notion that 'it's always been done this way' doesn't mean the system is solid and fool proof from possible fraud and tampering.
 - b. The claim that 'extensive' post-election review is a stretch. One percent of the votes are audited in the post-election review. This is 'extensive'. Definition: "Extensive. Widely extended in space, time, or scope; great or wide or capable of being extended." Black's Law Dictionary 5th edition.

2. Minnesota State statute 204C.19 COUNTING VOTES; PENALTY has been violated:

Subdivision 1. Procedure. When the hours for voting have ended and all voting has concluded, the election judges shall immediately count the votes cast at the election. The count shall be held at the polling place and shall be public. It shall be continued without intermission until it is completed and the results are declared, except that the election judges may recess for meals or other necessary purposes. During the count no one except the election judges shall handle the ballots. Any other individual who touches or interferes with ballots during the counting or any election judge who permits such touching or interference is guilty of a misdemeanor.

Subd. 2.Counting ballots. Except as otherwise provided in this subdivision, the ballot boxes shall be opened, the votes counted, and the total declared. The election judges on each counting team shall be evenly divided between the major political parties. The numbers entered on the summary sheet shall not be considered final until the ballots in all the boxes have been counted and corrections have been made if ballots have been deposited in the wrong boxes.

This statute has been violated because of the following reasons:

- A voting machine is a closed system and the counting/tabulating is not done in a way that can be observed by the public.
- A machine is not a sanctioned handler of the ballots, only election judges.

3. Machines 206.80 ELECTRONIC VOTING SYSTEMS has also been violated:

Voters are not voting in secret because the ballot is recorded as a number which is supposed to be randomly shuffled. The CVR (cast vote record) and ballot images can be rearranged (Exhibit B) back to the original order in which a person could determine how specific individuals voted by comparing that to the order they check in at the poll pad, via video camera or in person surveillance.

4. Accreditation for the Pro V&V was not up to date in 2020. Please see accreditation standards in the HAVA of 2002 (H. R. 3295—20) Subtitle B, Sec. 231:
- *(b) LABORATORY ACCREDITATION.—(1) RECOMMENDATIONS BY NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—Not later than 6 months after the Commission first adopts voluntary voting system guidelines under part 3 of subtitle A, the Director of the National Institute of Standards and Technology shall conduct an evaluation of independent, non-Federal laboratories and shall submit to the Commission a list of those laboratories the Director proposes to be accredited to carry out the testing, certification, decertification, and recertification provided for under this section.*
 - Please see attachment of last known certificate of accreditation for election machines before the 2020 election. Certification cannot be done in arrears of an election per the HAVA code stated above.
 - In the U.S. EAC publication on September 4, 2020, it states: “**Baseline HAVA Requirements:** State statutes and/or regulations do not explicitly state that voting systems must be tested to federal standards or be certified by a federal agency or federally accredited laboratory. However, voting systems must, at a minimum, meet standards for voting equipment set forth by the 2002 Help America Vote Act (HAVA).” Minnesota has set forth standards for testing and certification as seen on page 30 of Exhibit. The lack of Pro V&V’s certification was a violation of these standards.
 - A complaint in Georgia regarding the Elections Assistance Commission (EAC) brings forth many deficiencies and what appears to be outright falsifications of documents and certifications. It clearly shows that the Pro V&V certification had expired and had not been renewed until 2/1/2021. While the EAC tries to say that Pro V&V was in good standing because their certification was not revoked, that does not negate that the certification had expired and therefore in violation of the HAVA act. See page 12 of Exhibit.
 - EAC also states that the Accreditation lapsed due to the “outstanding circumstances” posed by Covid-19. The certificate of accreditation would have expired two years after the last known certificate, which was 2/24/2015. This accreditation expired in 2017, a full three years before Covid-19 became a problem in the U.S. See Exhibit
5. Big Lake Township, Sherburne County - equipment failure exhibits that machines are vulnerable to being problematic. We have been told of other serious problems in these areas and others as well. See Exhibit for notes on the problems with both the poll pads

and the tabulators, some of which appear to be countywide based on the response from Auditor-Treasurer Diane Arnold and Dominion (attached to this Memorandum).

6. Court File 66-CV-22-2022 Benda for Common Sense vs. Denise Anderson, Rice County ruling in favor of Plaintiff - Ex Parte Order to Suspend the Destruction of Election Materials
7. Press Release by Senators Warner, Klobuchar, Reed, and Peters - *“The integrity of our elections remains under serious threat. Our nation’s intelligence agencies continue to raise the alarm that foreign adversaries are actively trying to undermine our system of democracy, and will target the 2020 elections as they did the 2016 and 2018 elections,”* the senators wrote. *“The integrity of our elections is directly tied to the machines we vote on – the products that you make. Despite shouldering such a massive responsibility, there has been a lack of meaningful innovation in the election vendor industry and our democracy is paying the price.”* - March 26, 2019; Exhibit
8. Statements by Defendant defaming and attacking character of Terpsehore Maras, affiant in Exhibit A, are not legal defense.
 - Claims are based on a CIVIL lawsuit (Case No. 2018-CV-01339) in which the North Dakota Attorney General Wayne Stenejem claimed she made fraudulent purchases from a charitable fund in the amount of \$500.
 - Ms. Maras’ counterclaim was denied solely on a technicality of improper noticing and not on the merits of her claims.
 - Mysteriously 3 days after AG Stenejem’s death every one of his communications has been deleted.
 - Meanwhile, AG Stenejem was being investigated for “An audit requested by the Legislature’s Audit and Fiscal Review Committee has shed more light on a nearly \$2 million cost overrun on a building in Bismarck leased by the North Dakota Attorney General’s Office.” per KVRr report out of Bismarck, ND ([https://www.kvrr.com/2022/09/27/audit-finds-discrepancies-associated-with-build ing-leased-by-nd-attorney-generals-office/](https://www.kvrr.com/2022/09/27/audit-finds-discrepancies-associated-with-build-ing-leased-by-nd-attorney-generals-office/))
 - If there is to be a claim of character, then the point shall be moot as AG Stenejem is deceased and can not fend for himself in this matter, but also has possible criminal activity attached to his character.
 - Ms. Maras’ affidavit has never been refuted or disproven, rather she has been attacked and slandered personally and professionally.
 - Ms. Maras’ affidavit (Exhibit A) has been accepted in the following lawsuits:

Texas Case 4:22-cv-00576-P-BJ
South Carolina -- 2022-CP-40-04438
Iowa EQCEO87911
Kansas 22CV1532
Oklahoma 120659
Florida 8:22-cv-01955-WFJ-MRM
Hawaii 22-03810JMJ-WRP
Kentucky 3-22-cv-45-REW
California 2:22-cv-05105-mcs-gjsx

- All cases are using Maras' affidavit and not one disproved the information provided nor had the affidavit removed for any reason. Cases may be denied due to procedures but the information stands as factual.
9. Per the Los Angeles County's District Attorney's Office issued a News Release stating: *"October 4, 2022: Head of Election Worker Management Company Arrested in Connection with Theft of Personal Data."* A copy of the press release will be included with this memorandum for the court's review (Exhibit). The company that Eugene Yu, the charged party, worked for is Konnech Corp. This is the same corporation that Minnesota has a contract with (Action# 2020A-0626, included for review) *"for the support and maintenance of the City's Elections Management System."* This raises the question: **How can our elections be secure with machines that have been breached by the very employees working for the company that is responsible for maintaining them?**
10. KNOWiNK Pollpads are iPads and all Apple Macs, iPads and phones had a recent "serious security vulnerability". This is a quote from the AP article explaining this potentially disastrous outcome; Apple's explanation of the vulnerability means a hacker could get "full admin access" to the device. That would allow intruders to impersonate the device's owner and subsequently run any software in their name, said Rachel Tobac, CEO of SocialProof Security.
- <https://apnews.com/article/technology-monterey-8d58552356c74bd3e0dec76fa75c631c>
- Per Apple's admission to security vulnerabilities it would then make it necessary to retain the election records from the 2020 election (and all future elections) as this "serious security vulnerability" could have been

used and without the records we would not be able to make sure the election was secure.

- Number one in the Common Roster Notations is the ballot has already been cast. See below excerpt from the Wright County Poll Pad Election Judge Training
- COMMON ROSTER NOTATIONS A. B. or Absentee Ballot Voter has already cast an absentee ballot and cannot vote again in person

<https://slidetodoc.com/poll-pad-election-judge-training-introducing-the-poll/>

11. Many cyber security experts have expressly stated that all electronic voting systems are vulnerable. Their recommendation for accurate elections our voting should be done with anti-counterfeit security paper and hand counting the votes.

12. Modems/routers/WiFi enabling cards are also electronic voting equipment and there is no certification or testing. Security experts say they are too dangerous to trust as reported in this Politico article:

<https://www.politico.com/news/2022/10/14/wireless-modems-could-endanger-midterms-00061769>

13. Numerous courts over the years have recognized that persons whose vote was diluted or debased through some action, be it by gerrymandering, ballot box stuffing, or prohibitions on the freedom to exercise their right to vote, have standing to assert a claim of grievances. In doing so, the United States Supreme Court reasoned that “confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.” **Purell v Gonzales, 549 U.S.1 (2006).**

BALANCE OF HARMS

The Plaintiff(s) were unjustly denied their Equal Protection and Due Process rights to ensure only legal votes were counted in the 2020 election. Minnesota has long recognized that members of a community, whether as citizens, residents, taxpayers, or voters, may be injured when their local government fails to follow the law. Government at all levels has a legal duty to follow the law; a local government owes that legal duty to its

citizens, residents, taxpayers, or voters (i.e., community stakeholders), and the violation of that legal duty constitutes an injury that our case law has recognized as conferring standing to those community stakeholders, even if the Voters may be injured when elections are not administered according to the law or when elected officials fail to follow the laws so voters may have standing to vindicate public rights.

Lastly, Attorney Nathan Hartshorn, stated the following at the hearing:

- Elections can't be held up and people need to take office

Rebuttal:

- Elections are not a necessary function of the business of government. If an election doesn't happen for some reason (i.e. a pandemic), the business of the officials gets put on hold until a proper election is conducted. No services to the citizens would halt. City, county, and state employees are hired and appointed, therefore they would continue their jobs as usual. Services to the citizens would not halt.

- How will elections be run without machines?

Rebuttal:

- Paper ballots that are watermarked and created just like money. Each ballot would be unique with a serial number, watermark, hologram, and tag which is currently being used in larger US bills.
- Hand counting and tabulating can be achieved by making voting districts smaller so that people can handle smaller amounts of ballots in a shorter amount of time.

CONCLUSION

“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most

basic, are illusory if the right to vote is undermined.” **Wesberry v. Sanders, 376 U.S. 1, 17 (1964).**

The lack of transparency on behalf of the Defendant has led to injury on the people of Minnesota:

1. Failure to follow the law set forth by Minnesota statutes
2. Failure to properly follow federal regulations put forth by HAVA
3. Failure to prove that the elections are safe and secure from tampering or fraud

Disenfranchisement of the people has been established, and the Defendant has not followed law to show that he is upholding integrity and transparency for the benefit of the people. Instead, many laws have been broken and a ‘rules for thee, but not for me’ stance has been taken by Secretary of State Simon. The people deserve to be heard, respected, and treated as important factors of the electoral process. Instead, the people have been defamed by being called ‘lay people’ and not qualified to be involved in the processes and auditing of elections. If the government is its only auditor, who then is accountable when it is not following law?

Mr. Hartshorn also proceeded to threaten plaintiffs with a misdemeanor for filing a ‘frivolous’ lawsuit. Being that Plaintiffs are ProSe this does not apply, and Mr. Hartshorn being an attorney by trade should already be aware of that fact, therefore has stated this for intimidation factor. His attempt at bullying the plaintiffs and defamation is short-sighted and frivolous in its own right. Please take notice that as this suit is ProSe and the Plaintiffs are the People in which by the Minnesota Constitution Art 1, Sec 1 have all political power, we have taken time from our private lives to bring these facts to the attention of the court so that you may be aware of the infringements that have occurred.

We, the Plaintiffs, respectfully thank the court for your time, energy and attention to this matter.

Dated: November 5, 2022

Respectfully submitted:

CARRIE A. AUSTIN
KARI W. WATKINS
MICHAEL J. SWIERCZEK
JEREMY J. PEKULA
TRACEY A. SCHOWALTER
GREGORY W. TELSTE
STEPHEN A. MINOR

Please see attached EXHIBITS that correspond to our Findings of Facts:

Exhibit for Fact #2 - Minnesota Statutes 2022, Section 204C.19.pdf

thenationalpulse_com_Election_Integrity_Experts_Identify_Privacy.pdf

Exhibit for Fact #3 SERIOUS' _FLAW_DISCOVERED_IN_DOMINION_VOTING_MACHINES_REPORT_Crime.pdf

Exhibit for Fact #4 - Pro_VandV_accreditation_certificate_2015.pdf
Pro_VandV_Accreditation_Renewal_delay_memo012721.pdf
Georgia Complaint of EAC.pdf
Press-Release-GA-Supreme-Court-Rules-Voters-Have-Standing.pdf
State_Requirements_and_the_U_S_Election_Assistance_Commission_Voting.pdf
supreme court Georgia Case Voters Have Standing.pdf

Exhibit for Fact #5 - SherburneCountyLtr.pdf

20220928-Regular-Meeting-Minutes.pdf

Exhibit for Fact #6 - 66CV222022 Benda Rice Order.pdf

Exhibit for Fact #7 - Ranking_Members_Klobuchar,_Warner,_Reed,_and_Peters_Press_Election.pdf,
Senators_demand_to_know_why_election_vendors_still_sell_Voting_machines.pdf

071219 Wyden Windows 7 Letter to EAC.pdf

Exhibit for Fact #8 - EXH 13 - Declaration TPM 11 30 20.pdf,
Audit_finds_discrepancies_associated_with_building_leased_by_ND.pdf

See Exhibit #4

Exhibit for Fact #9 - Head_of_Election_Worker_Management_Company_Arrested_in_Connection.pdf

- Exhibit for Fact #10 - Where We Are - KNOWiNK Locations.pdf
- Apple_warns_of_security_flaws_for_iPhones,_iPads_and_Macs_NPR.pdf
- POLL PAD ELECTION JUDGE TRAINING INTRODUCING THE POLL.pdf
- Exhibit for Fact #11 - Jeff_Lenberg_Dominion's_Erroneous_Code_and_Unsolved_Anomalies.pdf
- Hacking America's Computerized Voting System - Part III.pdf
- Why_a_Data_Security_Expert_Fears_U_S_Voting_Will_Be_Hacked_WSJ.pdf
- Exhibit for Fact #12 - The_voting_machine_hacking_threat_you_probably_haven't_Heard_about.pdf

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