

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

Case Type: Other Civil

Tyler Kistner, Thomas 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,

Court File No.: 19AV-CV-20-2183

Contestants,

v.

**CONTESTEE ANGIE CRAIG'S
ANSWER TO NOTICE OF CONTEST**

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.

**Contestee Representative Angie Craig (“Contestee”), by and through her attorneys,
submit the following Answer to Contestants’ Notice of Contest (the “Contest”). Contestee
responds to the allegations in the Contest as follows*:**

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. **[This paragraph contains mere characterizations, legal contentions, and**

conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]

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. **[Contestee admits that the State Canvassing Board certified Minnesota's election results on November 24, 2020. This Paragraph and footnote 1 otherwise contain mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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. **[Contestee admits the allegations in this Paragraph and footnote 2.]**

***Contestants have failed to comply with Minn. R. Civ. P. 10.02, which requires "[a]ll averments of claim or defense shall be made in numbered paragraphs," in almost every section of the Contest. Contestee has therefore included the text of Contest where paragraph numbers are missing and responds to Contestants' allegations in bold typeface so as to clearly identify Contestee's responses.**

****For ease of comparison, Contestee recites the headings used in the Contest. These headings are not allegations to which a response is required. To the extent a response is required, Contestee denies the allegations.**

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 Canvassing 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.

[Contestee denies the allegations in this paragraph.]

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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. **[This paragraph contains mere**

characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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. **[Contestee is without sufficient information or knowledge with which to form a belief as to the truth or falsity of footnote 3 or the number of absentee ballots discussed in this paragraph and therefore denies the same. Contestants deny the remaining allegations in this paragraph.]**

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.

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.

[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]

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 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. **[Contestee is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in this paragraph regarding the actions of the “Minnesota state officials” and the Dakota County Ballot Boards and therefore denies the same. This paragraph otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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. **[Contestee is without sufficient information**

or knowledge with which to form a belief as to the truth or falsity of the allegations in this paragraph regarding the actions of the “entire world” and therefore denies the same. This paragraph otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]

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 **[Contestee denies the allegation that a new, 520-pound Dominion voting machine was delivered by FEDEX to Dakota County after the election and prior to the County’s postelection review. Contestee is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in this paragraph and therefore denies the same. Footnote 4 contains mere characterizations, legal contentions, and conclusions to which no response is required.]**

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 -

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

- our voting system has crashed in many areas of the state, including Dakota County. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

PARTIES

Contestants

1. **[Contestee admits the allegations in Paragraph 1.]**
2. **[Contestee admits the allegations in Paragraph 2.]**
3. **[Contestee admits the allegations in Paragraph 3.]**
4. **[Contestee admits the allegations in Paragraph 4.]**
5. **[Contestee admits the allegations in Paragraph 5.]**
6. **[Contestee admits the allegations in Paragraph 6.]**
7. **[Contestee admits the allegations in Paragraph 7.]**
8. **[Contestee admits the allegations in Paragraph 8.]**
9. **[Contestee admits the allegations in Paragraph 9.]**
10. **[Contestee admits the allegations in Paragraph 10.]**
11. **[Contestee admits the allegations in Paragraph 11.]**
12. **[Contestee is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 12 and therefore denies the same.]**
13. **[Paragraph 13 contains mere characterizations, legal contentions, and conclusions to which no response is required.]**

Contestees

14. **[Contestee admits that Contestee Steve Simon is the Minnesota Secretary of**

State. Paragraph 14 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required.]

15. **[Contestee admits that Contestee Andy Lokken is the Dakota County Elections Director. Contestee is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in Paragraph 15 and therefore denies the same.]**

16. **[Contestee admits the allegations in Paragraph 16.]**

17. **[Contestee admits the allegations in Paragraph 17.]**

18. **[Contestee admits the allegations in Paragraph 18.]**

19. **[Contestee admits the allegations in Paragraph 19.]**

20. **[Contestee admits the allegations in Paragraph 20.]**

21. **[Contestee admits the allegations in Paragraph 21.]**

22. **[Contestee admits the allegations in Paragraph 22.]**

23. **[Contestee admits the allegations in Paragraph 23.]**

24. **[Contestee admits the allegations in Paragraph 24.]**

25. **[Contestee admits the allegations in Paragraph 25.]**

26. **[Contestee admits the allegations in Paragraph 26.]**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required.]**

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 **[This paragraph and footnotes 5 and 6 contain mere characterizations, legal contentions, and conclusions to which no response is required.]**

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 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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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

⁵ U.S. Const. Art. I, § 4, cl 1.

⁶ *Smiley v. Holm*, 285 U.S. 355, 365 (1932).

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. **[Contestee denies the allegations in first sentence of this paragraph. Contestee admits that a consent decree was entered on August 3, 2020 waiving the witness requirement for the November 3, 2020 general election. This paragraph otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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 **[This paragraph and footnotes 7 through 9 contain mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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 judge, a person must successfully complete a basic

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.

training course that meets the requirements of Minn. Rule part 8240.1600. **[Contestee is without sufficient information or knowledge with which to form a belief as to the truth or falsity of footnote 10 and therefore denies the same. The remainder of this paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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. **[This paragraph contains mere**

characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]

III. Actual PER Process

The State's PER process was a disaster. **[Contestee denies this allegation.]**

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. **[Contestee is without sufficient information or knowledge with which to form a belief as to the truth or falsity of these allegations and therefore denies the same.]**

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. **[Contestee is without sufficient information or knowledge with which to form a belief as to the truth or falsity of these allegations and therefore denies the same.]**

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 **[Contestee is without sufficient information or knowledge with which to form a belief as to the truth or falsity of these allegations, or those contained in footnote 11, and therefore denies the same.]**

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.

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 Coxé.

¹² See Affidavit of Jane L. Volz, Exhibits B & C.

Stat. § 206.89 subd. 2.¹³ **[Contestee is without sufficient information or knowledge with which to form a belief as to the truth or falsity of these allegations, or those in footnotes 12 and 13, and therefore denies the same.]**

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. **[Contestee is without sufficient information or knowledge with which to form a belief as to the truth or falsity of these allegations, or those contained in footnote 14, and therefore denies the same.]**

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 public to see the ballots in any meaningful way even though the counters were within a few feet of each other. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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

¹³ See Volz Affidavit.

¹⁴ *Id.*; see also Affidavit of Deborah Coxe.

in a large white purse by some employee of the City of Hastings who refused to identify herself other than her first name.¹⁵ **[Contestee is without sufficient information or knowledge with which to form a belief as to the truth or falsity of these allegations, or those contained in footnote 15, and therefore denies the same.]**

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 **[Contestee is without sufficient information or knowledge with which to form a belief as to the truth or falsity of these allegations, or those contained in footnote 16, and therefore denies the same.]**

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 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 **[Contestee denies both that the allegation that a new, 520-pound Dominion voting machine was delivered by FEDEX to Dakota County after the**

¹⁵ See Volz Affidavit and Affidavit of Nora L. Feltman.

¹⁶ See Volz Affidavit.

¹⁷ Affidavit of Jane L. Volz, Ex. A.

election and prior to the County’s postelection review and that the alleged “receipt” referenced in this paragraph and purportedly attached as cited in footnote 17 reflects such a delivery. Contestee is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations and therefore denies the same.]

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. **[Contestee is without sufficient information or knowledge with which to form a belief as to the truth or falsity of these allegations and therefore denies the same.]**

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 **[The allegations in this is paragraph preservation of “election materials” contain mere characterizations, legal contentions, and conclusions regarding Minn. Stat. § 204B.40, to which no response is required. Contestee is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in this paragraph, or in footnotes 18 and 19, and therefore denies**

¹⁸ Volz Aff.

¹⁹ See Volz Affidavit, Exhibits B & C.

the same.]

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:

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.

[Contestee is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in this paragraph and footnote 20 and therefore denies the same.]

²⁰ Volz Affidavit, Exhibit D.

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 **[This paragraph and footnote 21 contain mere characterizations, legal contentions, and conclusions to which no response is required.]**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required.]**

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 **[This paragraph and footnotes 22 through 25 contain mere characterizations, legal**

²¹ U.S. Const. Amend. XIV, § 1.

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.

contentions, and conclusions to which no response is required.]

“The right to vote extends to all phases of the voting process, from 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 **[This paragraph and footnote 26 contain mere characterizations, legal contentions, and conclusions to which no response is required.]**

“[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 **[This paragraph and footnotes 27 and 28 contain mere characterizations, legal contentions, and conclusions to which no response is required.]**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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,

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.

and without authority, altered Minnesota Election Law. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

As a result of the Secretary's usurpation of legislative power, the longstanding witness requirements, well-known to Minnesota voters, were removed. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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. **[Contestee is without sufficient information or knowledge with which to form a belief as to the truth or falsity of these allegations and therefore denies the same.]**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

Whether absentee voters were sent ballots automatically or after requesting them, any

person could fill them out and mail them back. **[Contestee denies this allegation].**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

The witness is as close to an election judge as possible in the community. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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. **[Contestee denies this allegation.]**

The November 3, 2020 election has been tainted by the intentional actions of Democratic-Farmer-Labor party and complicit government officials. **[Contestee denies this allegation.]**

Voters who cast their ballots in person are subject to a much higher level of scrutiny than absentee voters. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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 paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required.]**

From voter registration, to the casting of votes, the counting of ballots and the PER, our election system must be free of partisanship. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required.]**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required.]**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required.]**

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

²⁹ See Minn. Const. art. III, § 1; *Brayton v. Pawlenty*, 768 N.W.2d 357, 365 (Minn. 2010).

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. **[This paragraph and footnote 29 contain mere characterizations, legal contentions, and conclusions to which no response is required.]**

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 **[This paragraph and footnote 30 contain mere characterizations, legal contentions, and conclusions to which no response is required.]**

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 **[This paragraph and footnotes 31 and 32 contain mere characterizations, legal contentions, and conclusions to which no response is required.]**

The Minnesota Supreme Court has been steadfast in upholding the separation of powers.³³ **[This paragraph and footnote 33 contain mere characterizations, legal contentions, and conclusions to which no response is required.]**

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).

The authority of the Secretary to alter or amend Minnesota Election Law is 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 **[This paragraph and footnote 34 contain mere characterizations, legal contentions, and conclusions to which no response is required.]**

Here, the provisions of the Minnesota Election Law could only be amended by the state legislature. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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 **[This paragraph and footnote 35 contain mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

³⁴ Minn. Stat. § 204B.47.

³⁵ *Carson v. Simon*, 978 F.3d 1051 (8th Cir. 2020).

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required.]**

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 **[This paragraph and footnotes 36 and 37 contain mere characterizations, legal contentions, and conclusions to which no response is required.]**

Among other things, this requires “specific rules designed to ensure uniform treatment” in order to prevent “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 **[This paragraph and footnotes 38 through 40 contain mere characterizations, legal contentions, and conclusions to which no response is required.]**

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

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.

³⁸ *Id.* at 106-07.

³⁹ *Charfauros*, 249 F.3d at 954.

⁴⁰ *Bush*, 531 U.S. at 105.

to ensure that it is properly administered in every county and precinct and that it is otherwise free, fair and transparent. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required.]**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required.]**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

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. **[This paragraph contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Contestee denies the allegations.]**

AFFIRMATIVE DEFENSES

Contestee sets forth her affirmative defenses without assuming the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Contestants.

Moreover, nothing stated here is intended or shall be construed as an admission that any particular issue or subject matter is relevant to the allegations in the Complaint. Contestee reserve the right to amend or supplement their affirmative defenses as additional facts concerning defenses become known.

Contestee alleges as follows:

This Court lacks jurisdiction.

Contestants are precluded from seeking relief in this action.

Contestants fail to state a claim on which relief can be granted.

Contestants' claim is barred by the doctrine of laches.

PRAYER FOR RELIEF

WHEREFORE, Contestees respectfully request that this Court:

- A. Deny that Contestants are entitled to any relief;
- B. Dismiss this Contest in its entirety, with prejudice; and
- C. Grant such other and further relief as the Court may deem just and proper.

DATED: December 8, 2020

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

s/Charles N. Nauen

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