

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF RICE

THIRD JUDICIAL DISTRICT

Case Type: Other Civil

Benda for Common-sense, a Minnesota  
Non-Profit Corporation, and Kathleen Hagen,

Court File No. 67-CV-22-2022  
Judge: The Honorable Carol M. Hanks

Plaintiff,

vs.

**NOTICE OF DEPOSITION DUCES  
TECUM OF THE CUSTODIAN OF  
RECORDS OF THE OFFICE OF THE  
MINNESOTA SECRETARY OF STATE**

Denise Anderson, Director of Rice County  
Property and Tax Elections,

Defendants.

To: The Custodian of Records of the Office of the Minnesota Secretary of State, through their attorney, Nathan Hartshorn, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101; and Denise Anderson, Defendants above-named, through her attorney, Amy Goering, 444 Cedar Street Ste. #2100, Saint Paul, MN 55101.

PLEASE TAKE NOTICE, that at 10:30 a.m. on the 13<sup>th</sup> day of October, 2022, the Plaintiffs in the above-entitled action will take the deposition of **the Designated Custodian of Records of the Office of the Minnesota Secretary of State** upon **oral examination and duces tecum** (see attached duces tecum schedule) pursuant to the Rules of Civil Procedure for the District Courts of Minnesota. Said deposition will be taken before a Notary Public or before some other officer authorized by law to administer oaths at The Rice County Courthouse conference room A3, 218 Third Street NW, Faribault, MN 56007. The oral examination will continue from day to day until completed.



**DUCES TECUM SCHEDULE**

Please produce any and all Documents, Communication and Correspondence related in any way to the operation, maintenance, software or hardware updates and purchases and the Certification of any Electronic Voting Systems utilized by Rice County. Such request is to include but is not limited to the following documents:

1. Documents, Communication and Correspondence related in any way to the operation, maintenance, software or hardware updates and purchases and the certification of any Electronic Voting Systems utilized by Rice County
2. The Election Systems and Software (ES&S) application and all attachments dated November 17, 2021 submitted to the Office of the Minnesota Secretary of State (OSS) for the ElectionWare Voting System version 6.0.6.0 (EVS 6.0.6.0), as referenced in OSS Document Number: 222914.
  - a. Said application is to include all documents received from ES&S which were reviewed by OSS and referenced in Section 1.2 Application Review, as referenced in OSS Document Number: 222914.
3. The Pro V&V Test Report dated November 12, 2021 relating to the EVS 6.0.6.0, as referenced in OSS Document Number: 222914.
4. Any records, reports or Documents resulting from the OSS Certification Team testing and examination conducted From Monday, January 24, 2022 to Friday, January 28, 2022 as reference in Section 4 in OSS Document Number: 222914.
5. The Election Systems and Software (ES&S) application and all attachments dated January 10, 2022 submitted to the Office of the Minnesota Secretary of State (OSS) for the ElectionWare Voting System version 6.0.7.0 (EVS 6.0.7.0), as referenced in OSS Document Number: 222920
  - a. Said application is to include all documents received from ES&S which were reviewed by OSS and referenced in Section 1.2 Application Review, as referenced in OSS Document Number: 222920.
6. The Pro V&V Test Report dated December 15, 2021 relating to the EVS 6.0.7.0, as referenced in OSS Document Number: 222920.
7. Any records, reports or Documents resulting from the OSS Certification Team testing and examination conducted From Monday, January 24, 2022 to Friday, January 28, 2022 as reference in Section 4 in OSS Document Number: 222920.

## **DEFINITIONS**

**"Document"** referred to herein, shall be understood to include all written or recorded matter of every nature whatsoever, including hard copy, computer, digital, or audio, relating or referring to the subject matter of the request, including, but not limited to: all correspondence, letters, telegrams, memoranda, lists, summaries, statistics, tables, forms, investigation reports, photographs, calendars, journals, e-mails, and notes regardless of origin or source, and shall include notes, records, and recordings of conversations, including conversations or communications between or among agents, employees or representatives of Defendant and between any other persons, and agents, and employees or representatives of Defendant.

**"Communication"** and **"Correspondence"** as used herein, refers to any contact or exchange of information or data, whether written or oral, directly or indirectly, between or among the parties or person inquired of, including, but not limited to face-to-face meeting, telephone, facsimile, electronic mail, computer on-line contact, U.S. Mail, hand delivery, Federal Express, or other courier, letter, memorandum, or note.

Peterson, Kolker, Haedt & Benda, Ltd.

Dated: September 28, 2022

/s/ Matthew L. Benda  
Matthew L. Benda (#026376X)  
Attorney for Plaintiffs  
1811 Broadway Avenue SE  
Albert Lea, MN 56007  
Phone: (507)373-6491  
Fax: (507)373-7863

## **ACKNOWLEDGMENT OF MINNESOTA STATUTES § 549.211**

The Plaintiff's counsel hereby acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

Dated: September 28, 2022

/s/ Matthew L. Benda  
Matthew L. Benda

**State of Minnesota**

**District Court**

County of: Rice	Judicial District: Third
	Court File Number: 66-CV-22-2022
	Case Type: Other Civil

Benda for Common-sense and Kathleen Hagen,  
Plaintiff/Petitioner (first, middle, last)

and

Denise Anderson  
Defendant/Respondent (first, middle, last)

**SUBPOENA IN A CIVIL CASE**

(COMMAND TO APPEAR)

Minn. R. Civ. Pro. 45

**TO:**

Designated Custodian of Records of the Office of the Secretary of State  
Name

180 State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, MN 55155  
Address

☐ You are commanded to appear as a witness in the district court to give testimony at the place, date, and time specified below.

Place of Testimony

Courtroom Date Time

☒ You are commanded to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

<u>Rice County Courthouse Conference Room A3</u>	<u>10/13/2022</u>	<u>10:30 AM</u>
Place of Deposition	Date	Time

☒ You are commanded to produce and permit inspection and copying of the listed documents or objects at the place, date and time specified below (attach list of documents or objects if necessary):

Place Date Time

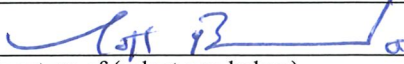
☐ You are commanded to permit inspection of the following premises at the date and time specified below.

Premises Date Time

EXHIBIT

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Person requesting subpoena: Matthew L. BendaTelephone Number: 507-373-6491**WARNING: FAILURE TO OBEY A SUBPOENA WITHOUT BEING EXCUSED IS A CONTEMPT OF COURT**

 Signature of (select one below)	Date: <u>9/28/2022</u>
<input type="checkbox"/> Court Administrator <input checked="" type="checkbox"/> Plaintiff's Attorney <input type="checkbox"/> Defendant's Attorney	SEAL (if issued by Court Administration)
Matthew L. Benda, 507-373-6491	
1811 Broadway Avenue S.E., Albert Lea, MN 56007	
Name, Address and Phone Number (if issued by Attorney as an Officer of the Court)	

**IMPORTANT: Both pages of this document must be served on the person receiving the summons.****RETURN OF SERVICE**

I hereby certify and return that on \_\_\_\_\_ I served a copy of this subpoena upon the person named thereon. Service was made by:

- ☐ personally handing to and leaving with him or her a true and correct copy; or  
☐ leaving a true and correct copy at his or her usual place of residence

\_\_\_\_\_

Address

with \_\_\_\_\_ a person of suitable age and discretion.

Name of Person

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: \_\_\_\_\_

Freeborn County, Minnesota

County and State where signed

Signature \_\_\_\_\_

Name: Matthew L. BendaAddress: 1811 Broadway Avenue S.E.City/State/Zip: Albert, Lea 56007Telephone: 507-373-6491E-mail address: mbenda@albertlealaw.com



Rule 45, Minnesota Rules of Civil Procedure, provides that:

- A subpoena may be served by any person who is not a party and is not less than 18 years of age.
- Service of a subpoena shall be made by delivering a copy to the person named in the subpoena or by leaving a copy at the person's usual place of abode with some person of suitable age and discretion who resides there.
- A witness who is not a party to the action or an employee of a party (except a person appointed pursuant to Rule 30.02(f)) and who is required to give testimony or produce documents relating to a profession, business, or trade, or relating to knowledge, information, or facts obtained as a result of activities in such profession, business, or trade, is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing such documents and is entitled to have the amount of those expenses determined prior to complying with the subpoena.
- A person is not obligated to attend as a witness in a civil case unless one day's attendance and travel fees are paid or tendered in advance (see fees below), unless the subpoena is issued on behalf of the state of Minnesota, or the state's officer or agent.

Fees to be paid to witnesses shall be as follows (Minn. Stat. § 357.22):

- For attending in any action or proceeding in any court of record or before any officer, person or board authorized the take examination of witnesses, \$20 for each day.
- For roundtrip travel estimated from the witness's residence at 28 cents per mile. If a witness lives outside the state, travel costs shall be estimated from the boundary line of the state where the witness crossed into Minnesota at 28 cents per mile. (Additional fees may be available for out of state witnesses).

In any proceeding where a parent or guardian attends the proceeding with a minor witness and the parent or guardian is not a witness, one parent or guardian shall be compensated in those cases where witness compensation is mandatory under Minn. State. § 357.22, and may be compensated when compensation is discretionary under those sections. No more than a combined total of \$60 may be awarded to the parent or guardian and minor witness. Minn. Stat. § 357.242.

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STATE OF MINNESOTA

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COUNTY OF RICE

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Benda for Common-sense, a Minnesota  
Non-Profit Corporation, and Kathleen Hagen,

Court File No. 67-CV-22-2022  
Judge: The Honorable Carol M. Hanks

Plaintiff,

vs.

**FIRST AMENDED NOTICE OF  
DEPOSITION DUCES TECUM OF THE  
CUSTODIAN OF RECORDS OF THE  
OFFICE OF THE MINNESOTA  
SECRETARY OF STATE**

Denise Anderson, Director of Rice County  
Property and Tax Elections,

Defendants.

To: The Custodian of Records of the Office of the Minnesota Secretary of State, through their attorney, Nathan Hartshorn, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101; and Denise Anderson, Defendants above-named, through her attorney, Amy Goering, 444 Cedar Street Ste. #2100, Saint Paul, MN 55101.

PLEASE TAKE NOTICE, that at 3:00 p.m. on the 18<sup>th</sup> day of October, 2022, the Plaintiffs in the above-entitled action will take the deposition of **the Designated Custodian of Records of the Office of the Minnesota Secretary of State** upon **oral examination and duces tecum** (see attached duces tecum schedule) pursuant to the Rules of Civil Procedure for the District Courts of Minnesota. Said deposition will be taken before a Notary Public or before some other officer authorized by law to administer oaths at The Rice County Courthouse conference room A3, 218 Third Street NW, Faribault, MN 56007. The oral examination will continue from day to day until completed.

EXHIBIT

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**"Communication"** and **"Correspondence"** as used herein, refers to any contact or exchange of information or data, whether written or oral, directly or indirectly, between or among the parties or person inquired of, including, but not limited to face-to-face meeting, telephone, facsimile, electronic mail, computer on-line contact, U.S. Mail, hand delivery, Federal Express, or other courier, letter, memorandum, or note.

Peterson, Kolker, Haedt & Benda, Ltd.

/s/ Matthew L. Benda

Dated: October 10, 2022

Matthew L. Benda (#026376X)

Attorney for Plaintiffs

1811 Broadway Avenue SE

Albert Lea, MN 56007

Phone: (507)373-6491

Fax: (507)373-7863

**ACKNOWLEDGMENT OF MINNESOTA STATUTES § 549.211**

The Plaintiff's counsel hereby acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

Dated: October 10, 2022

/s/ Matthew L. Benda

Matthew L. Benda