

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. 66-CV-22-2022  
Assigned to: Judge Carol M. Hanks

Plaintiffs,

vs.

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

**1<sup>st</sup> AMENDED NOTICE OF MOTION  
AND MOTION TO SUSPEND THE  
DESTRUCTION OF ELECTION  
MATERIALS AND OTHER RELIEF**

Defendant.

TO: All Parties and the District Court Administrator

PLEASE TAKE NOTICE, that ON THE 8<sup>TH</sup> DAY OF SEPTEMBER 2022, at 1:00 p.m., or as soon thereafter as counsel may be heard, the Plaintiffs, through the undersigned, will make the following motion before the Honorable Carol M. Hanks via Zoom video conference:

1. For an Order requiring Defendant to Suspend the Destruction of Election Materials under Minn. Stat. 204B.40 until further agreement of the parties, or as ordered by the Court.
2. For an Order requiring Defendant to provide a detailed abstract (including description, date and individual) of all Election Materials (as defined in Minn. Stat. 204B.40) that have been destroyed in the past 24 months by Defendant, Rice County staff, and any vendors or third parties.
3. For an Order pursuant to Rule 26.06 (d), and Rule 16 of the Minnesota Rules of Civil Procedure for the issuance of a scheduling order and court ordered discovery plan; and
4. For an Order requiring Defendant to Reimburse Plaintiff for any costs, disbursements and attorney fees as allowed by Minn. Stat. 13.08, Subd. 4.

AUTHORITY IN SUPPORT OF SAID MOTION, Plaintiff further asserts:

WHEREAS, In the interests of justice and to preserve evidence and materials that are subject to this matter which are scheduled to be destroyed on or after September 3, 2022, Plaintiff seeks relief on an expedited basis in accordance with Minn. Gen. R. Prac. 115.07.

ADDITIONALLY, Plaintiff seeks the requested relief under Minn. Stat. 13.08, Subd. 2, which provides, “The court may make any order or judgment as may be necessary to prevent the use or employment by any person of any practice which violates this chapter.”

This Motion is necessary to preserve documents, data, and other materials until the parties have an opportunity fully brief and argue the merits of their claims and/or defenses.

Plaintiffs have been pursuing data requests since as early as October 23, 2021 for Plaintiff Hagen. Complaint at Paragraph 17, and April 18, 2022 for Plaintiff Benda For Common-sense. Complaint at Paragraph 7 and have continued to be in communication with Defendant requesting responses to these data requests.

Finally, the Minnesota Supreme Court has stated its opposition to the affirmative destruction of evidence in a pending matter. Patton v. Newmar Corp., 538 N.W.2d 116 (Minn. 1995); Federated Mutual Ins. Co. v. Litchfield Precision Components, Inc., 456 N.W.2d 434, 437 (Minn.1990).

The undersigned further states that reasonable efforts have been made to complete a discovery conference as required by Rule 26.06 of the Minnesota Rules of Civil Procedure. Such efforts include emails and phone call requesting a discovery conference, and sending a proposed Stipulated Joint Discovery Plan to the Rice County Attorney John Fossum on August 23<sup>rd</sup> (see Exhibit A to Benda Affidavit dated August 25, 2022); and Attorney Ann Goering on August 27<sup>th</sup> and September 1, 2022.

PETERSON, KOLKER, HAEDT & BENDA, LTD.

Dated: September 2, 2022

By: /s/ Matthew L. Benda  
Matthew L. Benda (#026376X)  
Attorney for Plaintiff  
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**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 2, 2022

/s/ Matthew L. Benda  
Matthew L. Benda