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STATE OF MINNESOTA
COUNTY OF RICE

DISTRICT COURT
CIVIL DIVISION
THIRD JUDICIAL DISTRICT

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

Court File No. 66-CV-22-2022

vs.

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

ORDER FOR DISMISSAL

and

Minnesota Secretary of State Steve Simon,
Intervenor.

The above-entitled matter came before Carol M. Hanks, Judge of District Court, on October 26, 2022, for a remote Motion Hearing upon various motions filed by the parties. The above-entitled matter also came before Carol M. Hanks, Judge of District Court, on December 14, 2022, for a remote Motion Hearing for Judgment on the Pleadings. Plaintiffs appeared for said hearings and were represented by Attorney Matthew Benda of Peterson, of Kolker, Haedt & Benda, Ltd. Defendant appeared for said hearings and was represented by Attorney Ann R. Goering of Ratwik, Roszak & Maloney, P.A.. Intervenor Minnesota Secretary of State Steve Simon was represented by Assistant Attorney General Nathan J. Hartshorn. Because the motions are dispositive of this matter, the Court issues this joint Order.

Based on the files and record herein, the Court makes the following:

ORDER

1. Defendant's motion to dismiss this action is hereby granted and Plaintiffs' Complaint is hereby **DISMISSED**.
2. The Motion Hearing set for **February 15, 2023, at 9:30 a.m.** shall be cancelled.
3. The attached memorandum is incorporated herein.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

I hereby certify that the foregoing Order
constitutes the Judgment of the Court.

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Judge of District Court

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MEMORANDUM OF LAW

Facts and Procedural Background

Complaint and Answers:

On August 23, 2022, Benda for Common-sense, A Minnesota Non-Profit Corporation, and Kathleen Hagen (“Plaintiffs”) filed a Complaint and Petition for Correction of Errors and Omissions Under Minn. Stat. 204B.44 against Denise Anderson, Director of Rice County Property and Tax Elections (“Defendant”). Said Complaint was 10 pages in length, plus it included 155 pages of various documents attached to the Complaint. In said Complaint, Plaintiffs allege that leading up to the May 24, 2022, Special Election Primary for Minnesota’s 1st Congressional District, Plaintiff served a request for data under the Minnesota Government Data Practices Act (MGDPA) and that Defendant has yet to comply with the request, giving rise to a legal suit. Plaintiffs seek relief from the Court to:

- (1) Compel Defendant’s immediate production of the data requested by Plaintiffs.
- (2) Declare that Defendant has not produced the data requested by Plaintiffs.
- (3) Declare that Defendant’s procedures and resources for processing data requests and producing public data in response to them violate Plaintiffs’ rights under the MGDPA because they are insufficient to ensure appropriate and prompt access to public data.
- (4) Permanently enjoin Defendant from using improper procedures in response to data requests by Plaintiffs and other parties.
- (5) Order Defendant to reform its procedures to comply with the MGDPA.
- (6) Assess a civil penalty against Defendant as authorized in Minn. Stat. § 13.08, subd. 4.
- (7) Award Plaintiff reasonable attorney fees, costs, and disbursements, as authorized in Minn. Stat. § 13.08, subd. 4 and pursuant to a proper post-judgment request for the same.
- (8) For an order requiring Defendant to take all steps necessary to generate a Cast Voter Report from the Rice County Electronic Voting System.
- (9) For an order restraining Rice County from using any Electronic Voting System that has hardware, software or features that are not properly approved, certified or secure.
- (10) For an order prohibiting Defendant from destroying any electronic or paper data subject to the requests in this action, including but not limited to all data and documents scheduled to be destroyed on or after September 1, 2022 pursuant to Minn. Stat. 204B.40.

On September 13, 2022, Defendant filed an Answer to the Complaint with affirmative defenses, including:

- (1) Affirmatively allege that all or part of the Complaint fails to state a claim upon which relief can be granted.
- (2) Affirmatively assert that Defendant, at all times relevant to this action, acted in good faith and in compliance with applicable laws, rules, policies and procedures.
- (3) Affirmatively alleges that Plaintiffs failed to properly serve the Complaint on the appropriate parties, including the appropriate parties for an action under Minn. Stat. § 204B.44.
- (4) Affirmatively allege that this case is or may be barred, in whole or in part, by insufficiency of service of process.

- (5) Affirmatively allege that Plaintiffs' claims in whole or in part are barred by the doctrines of waiver, estoppel, laches, and/or unclean hands.
- (6) Defendant gave notice that she intends to rely upon any such other affirmative defenses as may become available or apparent during the course of discovery and this reserves the right to amend its Answer to assert such defenses.

On September 16, 2022, the Minnesota Secretary of State Steve Simon ("the Intervenor") filed an Answer in Intervention containing the following affirmative defenses:

- (1) Plaintiffs have failed to state a claim on which relief can be granted.
- (2) Plaintiffs' claims are barred by laches.
- (3) Plaintiffs' claims exceed the subject matter jurisdiction provided to this Court by Minnesota law.
- (4) The Secretary reserves the right to supplement or amend his affirmative defenses as the action progresses.

Plaintiffs did not object to the Secretary of State Steve Simon's notice of intervention.

October 26, 2022 Motion Hearing:

On September 21, 2022, Plaintiffs filed a Notice of Motion and Motion for an Order to Correct Errors and Omissions as to Count III of their Complaint. Plaintiffs seek relief from the Court for:

- (1) Prohibiting Defendant from using any modem function in all DS-200 Electronic Voting Systems used in voting precincts in Rice County.
- (2) Prohibiting Defendant from using any modem function in the DS-450 Electronic Voting System used at the Rice County Counting Center.
- (3) Requiring Defendant to submit to the Court a certification from the manufacturer of the Rice County Electronic Voting Systems that the modem function on said machines has been disabled or otherwise made inoperable.
- (4) Requiring that said Order be published on the Rice County Elections website and the local newspaper and that every election official in Rice County be provided a copy of the Order.

Plaintiffs filed several Affidavits and a legal Memorandum in support of Plaintiffs' motion.

On September 29, 2022, Defendant filed a Notice of Motion and Motion to Dismiss Petition for Correction of Errors and Omissions. Defendant filed an Affidavit of Ann R. Georing and legal Memorandum in support of Defendant's motion.

On October 13, 2022, Intervenor Secretary of State filed a Response to Minn. Stat. § 204B.44 Petition alleging the Minnesota Secretary of State Steve Simon tests and certifies every piece of electronic hardware and computer software used in elections in Minnesota. Intervenor seeks denial of Plaintiffs' Petition based on:

- (1) This Court lacks subject-matter jurisdiction over the petition both because (a) it pertains to elections for numerous *state* offices, while section 204B.44 grants this Court jurisdiction only over claims pertaining to county, municipal, and school-district elections, and (b) it pertains to election administration in general, rather than a specific election for office.
- (2) Plaintiffs disregarded the statutory requirement to serve their petition on all candidates for office whose races the petition could fundamentally alter.

- (3) Laches bars the petition because Plaintiffs waited for months after Rice County announced the electronic voting system it is using in the 2022 elections to file a petition that seeks drastic alterations to election procedures at the eleventh hour.
- (4) The foundational theory of the petition is factually wrong: every hardware and software product that Rice County is using in the 2022 general election has been properly tested and certified.

Intervenor filed several Affidavits and a legal Memorandum in support of his Response to the Petition.

On October 19, 2022, Defendant Anderson filed a Reply Memorandum in support of Defendant's motion to dismiss the Petition and a Reply Memorandum in support of the motion to prohibit use of uncertified electronic voting systems in Rice County.

On October 19, 2022 Plaintiff Hagen filed a Reply Affidavit, with attachments, in support of the motion to prohibit use of uncertified electronic voting systems.

Said motions were heard by the Court on October 26, 2022 and the Court took the motions under advisement.

December 14, 2022, Motion for Judgment on the Pleadings:

On November 14, 2022, Defendant filed a Notice of Motion and Motion for Judgment on the Pleadings. Defendant seeks a Court order adjudging that a civil action cannot be brought against Denise Anderson under the Minnesota Government Data Practices Act, as she is not and has not been alleged to be the responsible authority, and as such, Plaintiff has not alleged a legally sufficient claim for relief. Defendant seeks dismissal with prejudice of all claims remaining against Defendant Denise Anderson. Defendant filed a legal Memorandum in support of her motion.

Plaintiffs filed a legal Memorandum in opposition to Defendant's motion for judgment on the pleadings on November 30, 2022. Defendant filed a reply on December 7, 2022. Attorney for Intervenor, Nathan Hartshorn, filed correspondence that Intervenor takes no position on Defendant's motion for judgment on the pleadings.

On November 30, 2022, Attorney Benda filed an Affidavit and a legal Memorandum in opposition to Defendant's motion for judgment on the pleadings. Attorney Benda also filed a Notice of Motion and Motion for Joinder and to Compel Disclosure of Information with supporting documents. However, said motion was not timely served on the parties prior to the December 14, 2022, hearing so this motion is scheduled before the Court on February 15, 2023, at 9:30 a.m.

At the December 14, 2022, hearing, the Court heard arguments from the parties and then took the matter under advisement.

Legal Analysis

Judgment on the Pleadings:

The issue before the Court is whether Defendant is the responsible authority to be subject of this lawsuit. The Minnesota Rules of Civil Procedure define a motion for judgment on the pleadings as the following:

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on such motion, matters

outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided for in [a summary judgment motion],¹ and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by [summary judgment]. Minn. R. Civ. Pro. 12.03.

To grant such a motion, the Court must determine whether the complaint sets forth a legally sufficient claim for relief. *Security Bank & Trust Company v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 916 N.W.2d 491, 495 (Minn. 2018); *Midwest Pipe Insulation, Inc. v. MD Mech., Inc.*, 771 N.W.2d 28, 31 (Minn. 2009); *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008); *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997). If a district court determines that the pleadings fail to set forth a legally sufficient claim for relief, then the motion must be granted. *Security Bank & Trust v. Larkin, et. al.*, 897 N.W.2d at 825 (Minn. Ct. App. 2017). Only the allegations of the pleadings are considered, and the Court must consider only the pleadings. See *Stephenson v. Plastics Corp. of America*, 276 Minn. 400, 402; 150 N.W.2d 668, 671 (1967). If matters outside the pleadings are considered, the motion can be converted to a motion for summary judgment. In that case, the procedural requirements of Rule 56 must be met. Just like a summary judgment motion, in a motion for Judgment on the Pleadings, the movant would have to show there is no genuine issue as to any material fact and they would be entitled to a judgment as a matter of law.

Defendant argues she is a “designee” as opposed to a “responsible authority” for Rice County Property and Tax Elections. Definitions under Government Data Practices are defined by Minn. Stat. § 13.02. A designee is “any person designated by a responsible authority to be in charge of individual files or systems containing government data and to receive and comply with requests for data.” Minn. Stat. § 13.02, subd. 6. Plaintiffs allege Defendant is responsible for matters involving MGDAP, which making her a designee is appropriate. “Responsible authority” is different from “designee.” The statute defines responsible authority as the following:

- (a) "Responsible authority" in a state agency or statewide system means the state official designated by law or by the commissioner as the individual responsible for the collection, use and dissemination of any set of data on individuals, government data, or summary data.
- (b) "Responsible authority" in any political subdivision means the individual designated by the governing body of that political subdivision as the individual responsible for the collection, use, and dissemination of any set of data on individuals, government data, or summary data, unless otherwise provided by state law. Until an individual is designated by the political subdivision's governing body, the responsible authority is:
 - (1) for counties, the county coordinator or administrator. If the county does not employ a coordinator or administrator, the responsible authority is the county auditor. Minn. Stat. § 13.02, subd. 16.

When a party is bringing a claim against a County, the responsible authority is liable.

A responsible authority or government entity which violates any provision of this chapter is liable to a person or representative of a decedent who suffers any damage as a result of the violation, and the person damaged or a representative in the case of private

¹ The Court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. Minn. R. Civ. Pro. 56.01.

data on decedents or confidential data on decedents may bring an action against the responsible authority or government entity to cover any damages sustained, plus costs and reasonable attorney fees. Minn. Stat. § 13.08, subd. 1.

In their memorandum and in the testimony, Plaintiffs make two arguments opposing Defendant's motion. First, Plaintiffs argue summary judgment takes precedence over judgment on the pleadings. Plaintiffs believe Defendant is asking for this because she does not want the Court to review Rice County Guidelines and Procedures for the MGDPA, which they submitted into evidence. As Defendant argues in her reply, for the Court to consider a Rule 12 motion, it may only consider the complaint and documents referred to in the complaint. *Martens v. Minnesota Min. & Mfg. Co.*, 616 N.W.2d 732, 739 n.7 (Minn. 2000). Even if Defendant was given responsibilities involving MGDAP, the Court does not need to look further than the statutory language. *Wayzata Nissan, LLC v. Nissan N. Am. Inc.*, 875 N.W.2d 279, 286 (Minn. 2016) (legislature's definition of words in a statute guide its meaning).

Second, Plaintiffs argue that Defendant is the responsible authority, and as such, liable in this suit. Plaintiffs further argue that Defendant is the responsible authority because she has responded to emails regarding MGDAP. The statute designates the "responsible authority" to be the county coordinator or administrator. While there may be such communication as Plaintiffs contend there is, the statutory language does not state that Defendant becomes the responsible authority through such communication. The statutory language designates the *responsible authority* as liable in a civil action.

Plaintiffs argue the Rice County Guidelines and Procedures for the Minnesota Government Data Practices Act override the statutory language. However, they do not provide any case law or legal authority to support their argument. Plaintiffs also argue that a designee can be a liable party because of the interchangeable use of "responsible party or designee" in *Scheffler v. City of Anoka*, 890 N.W.2d 437 (Minn. Ct. App. 2017). However, the Court of Appeals' use of the words do not contradict the statutory language. Plaintiffs assert the Defendant is the liable party on behalf of Rice County. However, the statute specifically states that the county coordinator is the liable party in such an action. For these reasons, the Court finds Defendant does not meet the definition for "responsible authority" to be liable on claims against Rice County. Thus, it is appropriate to grant Defendant's Motion for Judgment on the Pleadings and dismiss Plaintiffs action.

Subject Matter Jurisdiction:

If the Court would find Defendant is the "responsible authority" for Rice County and the Motion for Judgment on the Pleadings is denied, the Court would have to determine if it has proper jurisdiction over this matter. "Subject matter jurisdiction is a court's 'statutory or constitutional power to adjudicate the case.'" *Johnson v. City of Duluth*, 903 N.W.2d 1, 3 (Minn. Ct. App. 2017) (quoting *Giersdorf v. A & M Const., Inc.*, 820 N.W.2d 16, 20 (Minn. 2012); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998)).

Significant to this matter are the explicit requirements to be followed in order to properly file a petition. See Minn. Stat. § 204B.44(b). Minnesota Courts have interpreted this section to limit the jurisdiction over § 204B.44 petitions, finding the statute "does not 'establish original jurisdiction in [District] Court for any and all disputes . . . related to . . . elections in general.'" *Carlson v. Ritchie*, 830 N.W.2d 887, 894 (Minn. 2013) (quoting *Minn. Majority v. Ritchie*, No. A09-0950, Order at 5 (Minn. filed July 22, 2009)). In its review of Minn. Stat. § 204B.44 and the holding of *Minn. Voter Alliance v. Simon*, 885 N.W.2d 660, 665 (Minn. 2016), the court

considered the original jurisdiction provided by this section. *Minn. Voter Alliance* considered “whether the petition presents a challenge in the context of a *single specific election*, rather than a challenge to election policies generally.” *Id.* *Minn. Voter Alliance* further stated, “[t]he broad-ranging challenges alleged here, which respondents dispute, should be addressed first in the district court, where any factual disputes can be fully litigated and resolved.” *Id.* at 666. This line suggests that the district court has jurisdiction over a petition pertaining to general election policies if there is a genuine dispute of fact.

Plaintiffs’ first allegations against Defendant arise under Minnesota Government Data Practices Act (“MGDPA”).² The MGDPA grants jurisdiction through section § 204B.44(a)(4), which provides district courts jurisdiction over petitions filed:

“...in the manner provided in this section for the correction of . . . any wrongful act, omission, or error of any election judge, municipal clerk, county auditor, canvassing board or any of its members, the secretary of state, or any other individual charged with any duty concerning an election.”

Plaintiffs allege District Court jurisdiction is proper under Minn. Stat. §§ 13.08, subd. 4; 484.01; 204B.44. Defendant and Intervenor contend this Court lacks subject-matter jurisdiction over this matter as it pertains to Minn. Stat. § 204B.44:

The petition shall describe the error, omission, or wrongful act and the correction sought by the petitioner. The petition shall be filed with any judge of the supreme court in the case of an election for state or federal office or any judge of the district court in that county in the case of an election for county, municipal, or school district office. Minn. Stat. § 204B.44 (b).

In their Memorandum in Support of Motion to Prohibit Use of Uncertified Electronic Voting Systems in Rice County, which was heard by this court on October 26, 2022, Plaintiffs request the court “carefully fashion a remedy that allows for Rice County to conduct the upcoming elections, but without the use of the modem feature included on their [Electronic Voting Systems].” There are two challenges with this request. First, the 2022 elections Plaintiffs referred to have already passed.³ Thus, the issue is now moot. Second, even if there was merit in Plaintiffs’ argument, Plaintiffs have not properly asked for relief. Plaintiffs’ Petition pertains to general election issues outside the scope of this lawsuit. As Intervenor correctly argues, District Court jurisdiction under Minn. Stat. 204B.44 does not cover broad-ranging challenges to the election process. *Minn. Voters Alliance*, 885 N.W.2d at 660. Additionally, the 2020 and 2022

² The Court must interpret the MGDPA to determine whether the Court has jurisdiction to hear this matter. The Minnesota legislature has provided the guidelines for interpreting legislative intent of statutes:

The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions. When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.

Minn. Stat. § 645.16 (2022). Courts apply a statute’s plain meaning when the legislature’s intent is clear from plain and unambiguous statutory language. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001).

³ The hearing on this motion occurred on October 26, 2022. The general election occurred on November 8, 2022. The court has 90 days to issue an order on said motion and the court did not have ample time to issue an order before the elections occurred on November 8, 2022.

elections included state office election. Thus, a Petition challenging said elections, or elections process, shall be filed with the Supreme Court as required under Minn. Stat. § 204B.44 (b).

The petition here alleges the equipment under Defendant's responsibilities has been and will be used with "hardware, software or features that are not properly approved, certified or secure" and "[s]uch use . . . that [is] not properly approved, certified or secure constitutes a 'wrongful act, omission or error' pursuant to Minnesota Statute § 204B.44 (a)(4)." Defendant denies the machines used for elections are not properly certified. This would normally be a genuine fact in dispute. However, the facts of this case are not in dispute. The components and conditions of the machines Rice County uses in elections are not in dispute. The certifications and licenses of the machines for election use in Rice County are also not disputed. There is a dispute regarding the equipment, but it is not pertaining to the factual state of the equipment or that it is certified or licensed, but whether the certification and licensing process was properly interpreted by Defendant. *Minn. Voter Alliance* interpreted Minn. Stat. § 204B.44 to grant district courts general jurisdiction only in instances where "any factual disputes can be fully litigated and resolved." *Minn. Voter Alliance*, 885 N.W.2d at 666. Because there is no factual dispute as it relates to Minn. Stat. § 204B.44, this court does not have jurisdiction over Count III of Plaintiffs' complaint.

Additionally, Plaintiffs must "serve a copy of the petition on the officer, board or individual charged with the error, omission, or wrongful act, on *all candidates for the office in the case of an election for state, federal, county, municipal, or school district office*, and on any other party as required by the court." Minn. Stat. § 204B.44(b) (emphasis added). Plaintiffs do not dispute that they failed to serve all the candidates for office on the election ballot. Because service of process was deficient, this action cannot proceed and must be dismissed.

Based on the above, this Court does not have jurisdiction over this subject matter.

Conclusion

The Court finds that Plaintiffs do not in their complaint set forth a legally sufficient claim for relief against the named Defendant. Therefore, Defendant's motion for Judgment on the pleadings is granted. The Court also does not have subject matter jurisdiction over the relief sought by Plaintiff. Thus, this case shall be dismissed.

C.M.H.