

## FORM 10

### MINUTES OF PUBLIC HEARING State Board of Elections

The State Board of Elections convened a public hearing at 1:00 PM on August 14, 2025, in the Joint Appropriations Committee Room, Room #362, at 500 E. Capitol Avenue, Pierre, SD 57501.

The purpose of the meeting was to conduct a public hearing on the proposed rules of the State Board of Elections numbered §§ 5:02:03:01, 5:02:08:00.01, 5:02:08:01.01, 5:02:10:01, 5:02:10:01.03, 5:02:19:05, 5:02:24:01, 5:02:24:02, 5:02:24:03, 5:02:24:04, 5:02:24:05, and 5:02:24:06, adopted under the authority of SDCL 12-1-9.

**Hearing Officer:** Monae L. Johnson, Secretary of State.

**Members of the Board in Attendance:** Kent Alberty, Michael Buckingham, Jamalia Franzen, Austin Hoffman, Lindley Howard, and Scott McGregor.

**Others in Attendance (In-Person):** Thomas J. Deadrick, Deputy Secretary of State; Rachel Soulek, Director of the Division of Elections; Grant Flynn, Assistant Attorney General; Madisen Vetter, Elections Communication and Education Coordinator; Evan Sippel, Election Coordinator; Larry Eliason; Deb Shafer; Linda Montgomery; Rick Weible; Leah Anderson, Minnehaha County Auditor; Edward A. Walter; Diana Page; and Meta Halverson.

**Others in Attendance (Online):** Twenty (20) people listened to the public hearing of the State Board of Elections online.

**Call to Order:** Secretary of State Monae L. Johnson called the public hearing of the State Board of Elections to order at 1:02 PM.

**Approval of Draft Minutes:** Austin Hoffman moved that the draft minutes from the May 7, 2025, meeting of the State Board of Elections be approved. The motion was seconded by Jamalia Franzen. A roll call vote was taken, and the motion carried unanimously.

**Approval of Meeting Agenda:** Jamalia Franzen moved that the agenda for the August 14, 2025, meeting of the State Board of Elections be approved. The motion was seconded by Austin Hoffman. A roll call vote was taken, and the motion carried unanimously.

**Annual Review of Open Meeting Laws:** Deputy Secretary of State Tom Deadrick reviewed South Dakota's open meeting laws, as required under SDCL 1-25-13.

**Rules Hearing:** The State Board of Elections started consideration of the adoption and amendment of proposed Administrative Rules of South Dakota at 1:06 PM.

#### **5:02:03:01. Voter registration form.**

**Presentation:** Deputy Secretary of State Tom Deadrick presented the proposed rule on behalf of the Secretary of State's office, describing how it incorporated style-and-form edits from the LRC and included language to provide for the registration of federal voters, as required by HB 1208.

**Written Testimony:** No written testimony regarding this proposed rule was submitted for consideration by the State Board of Elections.

**Oral Testimony:**

Minnehaha County Auditor Leah Anderson clarified that people who have already registered in South Dakota but decide to travel can keep their registration as it currently exists, provided that they update their mailing addresses. The new federal ballot would only apply to people who register to vote using a post office box or mail forwarding address as their residential address and do not include a description of where they truly reside.

Rick Weible echoed the previous comments and stated that the new federal ballot was not introduced to punish life-long South Dakotans who decide to travel for retirement.

**Changes Made to the Proposed Rule:** The State Board of Elections made no changes to the proposed rule.

**Final Disposition:** Members of the State Board of Elections discussed how the new federal ballot would work, particularly for voters who have always been registered in South Dakota.

Lindley Howard moved that the proposed rule be approved as introduced. The motion was seconded by Jamalia Franzen. A roll call vote was taken, and the motion carried unanimously.

**5:02:08:00.01. Requirements for counting signatures on petitions.**

**Presentation:** Deputy Secretary of State Tom Deadrick presented the proposed rule on behalf of the Secretary of State's office, noting that the proposed rule was mostly made up of style-and-form edits from the LRC. The only notable change to the content of the existing rule was the inclusion of language stating that a signature on a petition for a statewide ballot question would only be counted if the address on the signature line is substantially the same as the address at which the signer is registered to vote.

**Written Testimony:** Harding County Auditor Kathy Glines, joined by Hughes County Finance Officer Thomas J. Oliva and Lincoln County Auditor Sheri Lund, expressed concern that the term "substantially" was unclear and offered little guidance on whether a signature should be counted.

**Oral Testimony:**

Minnehaha County Auditor Leah Anderson also expressed concern over the term "substantially" and further noted that the wording of the proposed rule, which required that a signer's name be legible, could potentially disqualify signatures from certain individuals.

Rick Weible echoed the aforementioned concerns and suggested that "substantially" be replaced with "drastically different." Weible also noted that only month and day would be required when an individual signs a petition, with the year being optional. Finally, Weible stated that the application of certain aspects of the proposed rule to only specific petitions might raise legal issues.

**Changes Made to the Proposed Rule:** Due to the use of the term “substantially” in statute, the State Board of Elections chose not to amend the proposed rule. For the other concerns raised, the State Board of Elections expressed a desire to revisit the rule at a future meeting.

**Final Disposition:** Members of the State Board of Elections asked whether a signature would be counted if a person moved after signing and were told that a signature would be assessed based on the records existing on the date of signing. Members of the State Board of Elections also asked for the Secretary of State’s understanding of the term “substantially” and were told that it allowed for minor address formatting or spelling errors but not wrong street names, building numbers, etc.

Austin Hoffman moved that the proposed rule be approved as introduced. The motion was seconded by Kent Alberty. A roll call vote was taken, and the motion carried unanimously.

#### **5:02:08:01.01. Certification of partisan candidate for lieutenant governor.**

**Presentation:** Deputy Secretary of State Tom Deadrick presented the proposed rule on behalf of the Secretary of State’s office, stating that it was meant to provide a form that partisan gubernatorial candidates could use to nominate their running mates, as required by HB 1164.

**Written Testimony:** No written testimony regarding this proposed rule was submitted for consideration by the State Board of Elections.

#### **Oral Testimony:**

No oral testimony was provided by members of the public for consideration by the State Board of Elections.

**Changes Made to the Proposed Rule:** The State Board of Elections chose not to amend the proposed rule, but did express a desire to revisit the rule at a future meeting.

**Final Disposition:** Members of the State Board of Elections asked whether another form was necessary and were informed that the proposed rule was based on an existing rule that applied only to independent candidates. In response, members of the State Board of Elections stated that it might be better to have a single form for all candidates.

Scott McGregor moved that the proposed rule be approved as introduced. The motion was seconded by Austin Hoffman. A roll call vote was taken, and the motion carried unanimously.

#### **5:02:10:01. Application for absentee ballot.**

**Presentation:** Deputy Secretary of State Tom Deadrick presented the proposed rule on behalf of the Secretary of State’s office, describing how it continues the Secretary of State’s effort to remove forms from rule to allow for increased flexibility and would provide for the designation of a federal voter, as required by HB 1208.

**Written Testimony:** No written testimony regarding this proposed rule was submitted for consideration by the State Board of Elections.

**Oral Testimony:**

Minnehaha County Auditor Leah Anderson discussed the cost of printing the Secretary of State's new voter registration form and expressed concern that the absentee ballot application form would also represent a greater burden on county finances. If permissible, Anderson stated that she would like to proceed with the development of a condensed form for her own county.

**Changes Made to the Proposed Rule:** The State Board of Elections chose not to amend the proposed rule.

**Final Disposition:** Members of the State Board of Elections discussed the removal of the absentee ballot application form from rule, debating whether it would allow each county auditor to develop their own forms. In response, Deputy Secretary of State Tom Deadrick stated that the Secretary of State expected counties to use a common form, but that they could technically develop their own based on the established guidelines.

Jamalia Franzen moved that the proposed rule be approved as introduced. The motion was seconded by Michael Buckingham. A roll call vote was taken, and the motion carried with six (6) votes in favor and one (1) vote in opposition.

**5:02:10:01.03. Combined absentee ballot application/return envelope.**

**Presentation:** Deputy Secretary of State Tom Deadrick presented the proposed rule on behalf of the Secretary of State's office, noting that it incorporated a number of style-and-form edits from the LRC and would provide for the designation of a federal voter, as required by HB 1208.

**Written Testimony:** No written testimony regarding this proposed rule was submitted for consideration by the State Board of Elections.

**Oral Testimony:**

No oral testimony was provided by members of the public for consideration by the State Board of Elections.

**Changes Made to the Proposed Rule:** The State Board of Elections made no changes to the proposed rule.

**Final Disposition:** The State Board of Elections did not discuss any issues with the proposed rule.

Scott McGregor moved that the proposed rule be approved as introduced. The motion was seconded by Lindley Howard. A roll call vote was taken, and the motion carried unanimously.

**5:02:19:05. Candidate's petition for recount.**

**Presentation:** Deputy Secretary of State Tom Deadrick presented the proposed rule on behalf of the Secretary of State's office, stating that it would remove recount petition instructions from the existing rule to comply with LRC style-and-form edits. The rule, both as originally introduced and edited by the LRC, would effectively implement the requirement that recount petitions for multi-county legislative districts be filed with the Secretary of State, as enacted in SB 173.

**Written Testimony:** No written testimony regarding this proposed rule was submitted for consideration by the State Board of Elections.

**Oral Testimony:**

No oral testimony was provided by members of the public for consideration by the State Board of Elections.

**Changes Made to the Proposed Rule:** The State Board of Elections made no changes to the proposed rule.

**Final Disposition:** The State Board of Elections did not discuss any issues with the proposed rule.

Jamalia Franzen moved that the proposed rule be approved as introduced. The motion was seconded by Kent Alberty. A roll call vote was taken, and the motion carried unanimously.

**5:02:24:01. Combined application form and affidavit.**

**Presentation:** Deputy Secretary of State Tom Deadrick presented the proposed rule on behalf of the Secretary of State's office, describing how it would allow the Secretary of State to establish a form that could be used for the new voter registration challenge process established by SB 185.

**Written Testimony:** Harding County Auditor Kathy Glines, joined by Hughes County Finance Officer Thomas J. Oliva and Lincoln County Auditor Sheri Lund, expressed concern about the inclusion of an individual's social security number, driver's license number, or passport number as forms of identification without provisions for redaction. In the absence of provisions for redaction, these forms of identification should be removed.

Nieema Thasing, President of the League of Women Voters, and Mel Neal, Legal Counsel for the Campaign Legal Center, stated that an individual's social security number, driver's license number, and passport number be removed as potential forms of identification, and that the application should include clear statements that confidential information would not be made public. These written comments were not submitted in a timely manner.

**Oral Testimony:**

Minnehaha County Auditor Leah Anderson stated that the rule could be amended to allow the last four (4) digits of a social security number to be provided, instead of the whole number, or that it could be removed entirely. The voter identification number would be sufficient on its own.

Rick Weible asked that the form include a place for a challenger to indicate that they want the challenged voter to be moved to the inactive list, instead of having their voter registration canceled.

Diana Page echoed the previous comments, describing how she visited addresses that were no longer home to some of the people registered at them.

**Changes Made to the Proposed Rule:** Austin Hoffman moved that the proposed rule be amended by removing subdivisions (3)(b) and (3)(d), which allowed a social security number or passport number to be provided as part of the voter registration challenge process. The motion was seconded by Michael Buckingham. A roll call vote was taken, and the motion carried unanimously.

No other requested changes were made because the members of the State Board of Elections agreed that they lacked the statutory authority to enact them.

**Final Disposition:** Members of the State Board of Elections discussed the inclusion of an individual's social security number, driver's license number, and passport number as potential forms of identification and agreed that the social security number and passport number should be removed.

Austin Hoffman moved that the proposed rule be approved as amended. The motion was seconded by Jamalia Franzen. A roll call vote was taken, and the motion carried unanimously.

#### **5:02:24:02. Documentation required for challenge.**

**Presentation:** Deputy Secretary of State Tom Deadrick presented the proposed rule on behalf of the Secretary of State's office, noting that it would establish an exclusive list of documents required to support a voter registration challenge.

**Written Testimony:** Harding County Auditor Kathy Glines, joined by Hughes County Finance Officer Thomas J. Oliva and Lincoln County Auditor Sheri Lund, expressed concern about the use of homestead exemptions and tax documents as support for a voter registration challenge.

Nieema Thasing, President of the League of Women Voters, and Mel Neal, Legal Counsel for the Campaign Legal Center, stated that clarification was needed to ensure that new voters are not challenged on the grounds of pre-existing voter registration records in other states, and that driver's or hunting licenses could not be relied as proofs of residency for voter registration challenges. These written comments were not submitted in a timely manner.

#### **Oral Testimony:**

No oral testimony was provided by members of the public for consideration by the State Board of Elections.

**Changes Made to the Proposed Rule:** The State Board of Elections chose not to amend the proposed rule.

**Final Disposition:** Members of the State Board of Elections discussed the inclusion of state felonies as the foundation for a voter registration challenge, when a referenced statute only mentioned federal felonies.

Assistant Attorney General Grant Flynn advised the State Board of Elections that state felonies should be included.

Kent Alberty moved that the proposed rule be approved as introduced. The motion was seconded by Scott McGregor. A roll call vote was taken, and the motion carried unanimously.

### **5:02:24:03. Documentation required to rebut challenge.**

**Presentation:** Deputy Secretary of State Tom Deadrick presented the proposed rule on behalf of the Secretary of State's office, stating that it would establish an exclusive list of documents required to rebut a voter registration challenge and demonstrate a voter's qualifications.

**Written Testimony:** Harding County Auditor Kathy Glines, joined by Hughes County Finance Officer Thomas J. Oliva and Lincoln County Auditor Sheri Lund, again expressed concern about the inclusion of an individual's social security number as a potential form of identification and the use of homestead exemptions and tax documents as a rebuttal to a voter registration challenge.

Nieema Thasing, President of the League of Women Voters, and Mel Neal, Legal Counsel for the Campaign Legal Center, stated that student identification cards should be included as a proof of identity for voter registration challenges, and that the documentation that could be used to rebut a challenge on the grounds of voter registration in another state be clarified. These written comments were not submitted in a timely manner.

#### **Oral Testimony:**

Minnehaha County Auditor Leah Anderson questioned whether tax documents should be included as a way for a challenged voter to rebut a challenge on the grounds of residency, considering that residency is defined differently for the purpose of taxation. In response, Deputy Secretary of State Tom Deadrick stated that the next rule that would be considered was intended to give county auditors significant discretion when considering evidence presented during the voter registration challenge process.

**Changes Made to the Proposed Rule:** The State Board of Elections chose not to amend the proposed rule.

**Final Disposition:** The State Board of Elections did not discuss any issues with the proposed rule.

Austin Hoffman moved that the proposed rule be approved as introduced. The motion was seconded by Kent Alberty. A roll call vote was taken, and the motion carried unanimously.

### **5:02:24:04. Process to establish validity of challenge.**

**Presentation:** Deputy Secretary of State Tom Deadrick presented the proposed rule on behalf of the Secretary of State's office, describing how it would provide for an auditor-driven process to establish the validity of a voter registration challenge based on the sufficiency of the provided information and documentation as well as its authenticity.

**Written Testimony:** Harding County Auditor Kathy Glines, joined by Hughes County Finance Officer Thomas J. Oliva and Lincoln County Auditor Sheri Lund, expressed concern about the requirement that voter registration challenge documentation be scanned without any provisions for redaction.

Nieema Thasing, President of the League of Women Voters, and Mel Neal, Legal Counsel for the Campaign Legal Center, stated that the process to establish the validity of a voter registration challenge should be clarified to ensure greater uniformity and prevent frivolous challenges. These written comments were not received in a timely manner.

**Oral Testimony:**

No oral testimony was provided by members of the public for consideration by the State Board of Elections.

**Changes Made to the Proposed Rule:** The State Board of Elections chose not to amend the proposed rule.

**Final Disposition:** The State Board of Elections did not discuss any issues with the proposed rule.

Michael Buckingham moved that the proposed rule be approved as introduced. The motion was seconded by Jamalia Franzen. A roll call vote was taken, and the motion carried unanimously.

**5:02:24:05. Challenged voter qualification hearing.**

**Presentation:** Deputy Secretary of State Tom Deadrick presented the proposed rule on behalf of the Secretary of State's office, noting that it would also provide for an auditor-driven process to hold a hearing at which a voter may demonstrate their qualifications when confronted with a challenge.

**Written Testimony:** No written testimony regarding this proposed rule was submitted for consideration by the State Board of Elections.

**Oral Testimony:**

No oral testimony was provided by members of the public for consideration by the State Board of Elections.

**Changes Made to the Proposed Rule:** The State Board of Elections made no changes to the proposed rule.

**Final Disposition:** The State Board of Elections did not discuss any issues with the proposed rule.

Kent Alberty moved that the proposed rule be approved as introduced. The motion was seconded by Lindley Howard. A roll call vote was taken, and the motion carried unanimously.

**5:02:24:06. Resolution of challenge.**

**Presentation:** Deputy Secretary of State Tom Deadrick presented the proposed rule on behalf of the Secretary of State's office, stating that it would provide for a clear process to end a voter registration challenge that would ensure that the challenge is documented and that all of the parties involved are informed of its outcome as well as any potential recourse that may be available to them.



**Written Testimony:** Harding County Auditor Kathy Glines, joined by Hughes County Finance Officer Thomas J. Oliva and Lincoln County Auditor Sheri Lund, again expressed concern about the requirement that voter registration challenge documentation be scanned without any provisions for redaction.

**Oral Testimony:**

Minnehaha County Auditor Leah Anderson stated that county auditors never redact information before it is scanned into the voter registration system. Furthermore, there was no need for a special provision to allow for the redaction of information when requested by the public, since that was already a requirement.

Larry Eliason stated that there needed to be more clarity in what happens when a voter wants to appeal to their county commission. Eliason suggested that the appeal be filed with the county state's attorney since the county auditor would be a party to the challenge, that the appeal be considered as a contested case under SDCL chapter 1-26, and that the county commission be given forty-five (45) days to hear the appeal.

Rick Weible offered a suggestion on where the new language could be placed in the rule.

**Changes Made to the Proposed Rule:** Scott McGregor moved that subsection (4) be amended by adding that "If the appeal is made to the county commission, the appeal shall be filed with the state's attorney of the county. The commission shall consider the appeal as a contested case, pursuant to SDCL chapter 1-26, within forty-five days." The motion was seconded by Kent Alberty. A roll call vote was taken, and the motion carried unanimously.

**Final Disposition:** Members of the State Board of Election discussed the possibility of including a provision for redacting certain information, as requested by certain county auditors.

Kent Alberty moved that the proposed rule be approved as amended. The motion was seconded by Jamalia Franzen. A roll call vote was taken, and the motion carried unanimously.

**Discussion of Petitions for Declaratory Judgement:** Michael Buckingham moved that the State Board of Elections move into executive session, pursuant to SDCL 1-25-2(3), for the purpose of consulting with legal counsel about proposed or pending litigation. The motion was seconded by Austin Hoffman. A roll call vote was taken, and the motion carried with six (6) votes in favor and one (1) vote in opposition.

The State Board of Elections moved into executive session at 3:06 PM, and the public hearing resumed at 3:47 PM.

**Public Comments:** Secretary of State Monae L. Johnson invited members of the public to offer comments to the State Board of Elections for a period of ten (10) minutes.

Rick Weible discussed the need to stay ahead of implementation deadlines outlined in President Trump's recent executive order. Weible stated that South Dakota, unlike other states like Minnesota, was collaborating with the federal government in its efforts to improve oversights and administration of voter rolls. Additionally, Weible noted that previous Secretary of State administrations had been proactive in approving Voluntary Voting System Guidelines (VVSG) 2.0 for certification use in South Dakota. Despite that, Weible described how South Dakota's election-system vendor, Election Systems and Software (ES&S), has failed to produce new equipment that meets the VVSG 2.0 guidelines and continues to provide soon-to-be-retired equipment (e.g., DS 200 tabulating machines) and software (Windows 10). Weible urged the Secretary of State and the State Board of Elections to push for improved compliance from ES&S in an effort to acquire equipment that meets current security and functionality standards. Weible also called for the expanded use of complex test decks, ballot images, and cast vote records (CVRs) to ensure that tabulating machines are being adequately tested and guarantee that ballots are counted as intended. Weible concluded his remarks by expressing a desire that the State Board of Elections would begin to meet more frequently to ensure that the people of South Dakota will have proper oversight of the state's elections and greater confidence in their results.

Minnehaha County Auditor Leah Anderson discussed the need for the Secretary of State to take President Trump's recent executive order seriously and to provide county auditors with the guidance needed to implement it as required. Anderson also described how ES&S has provided Minnehaha County with an incorrect and uncertified laptop for use in its elections, potentially putting them at risk. Anderson concluded her remarks by calling on the Secretary of State and the State Board of Elections to address the issue and help protect county auditors.

Linda Montgomery thanked the State Board of Elections for giving her an opportunity to speak and described her concerns with elections in Lincoln County. In particular, Montgomery stated her belief that ES&S intentionally provided Lincoln County with an uncertified laptop for use in six (6) elections and that her county commissioners, auditor, and state's attorney are all at risk of being complicit despite their lack of knowledge on the issue. Montgomery concluded her remarks by asking the State Board of Elections to address the issue.

**General Remarks:** Secretary of State Monae L. Johnson offered brief closing remarks, thanking members of the public for their comments and the State Board of Elections for its approval of the proposed rules.

**Adjournment:** Austin Hoffman moved that the public hearing of the State Board of Elections be adjourned. The motion was seconded by Jamalia Franzen. After receiving no objections, the motion carried, and the State Board of Elections adjourned at 4:02 PM.