



August 13, 2025

South Dakota State Board of Elections
500 East Capitol Ave
Pierre, South Dakota 57501-5070
sdsos@state.sd.us

Dear State Board of Elections:

The League of Women Voters of South Dakota and Campaign Legal Center (CLC) write to follow up on our May 6, 2025 correspondence and to provide feedback on the draft proposed rules to implement SB 185 in the hopes of preventing frivolous challenges to voter eligibility under the new challenger process in order to minimize the burden on election administration and protect the rights of voters.

The League of Women Voters of South Dakota is a nonpartisan organization dedicated to encouraging informed and active participation in government at all levels. It works to increase understanding of major public policy issues and influences public policy through education and advocacy. Membership is open to people of all genders and ages. The League of Women Voters of South Dakota is the state affiliate of the national League of Women Voters. With over 700 affiliates in all 50 states, the League of Women Voters is one of the nation's most trusted organizations.

CLC is a nonpartisan, nonprofit organization working to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis, and public education. CLC seeks a future in which the American political process is accessible to all citizens, resulting in representative, responsive, and accountable government. Consistent with that mission, we have worked with election officials across the nation to improve their administrative policies, protect the freedom to vote of citizens within their jurisdictions, and strengthen the democratic process.

I. Overview of SB 185 and Applicable Federal Law Protecting Voters

SB 185 establishes a process by which the Secretary of State, a county auditor, or any registered voter may file an application for the correction of any precinct registration list or challenge any registered voter's right to vote.¹ Sections 3 and 4 of SB 185 require the State Board of Elections to prescribe the application form for that challenge,² and direct the Board to promulgate rules to establish "the form of the affidavit and the documentation that must be included with the affidavit as evidence of the voter's qualifications"³ and "the process by which a county auditor must research a registered voter to establish the validity of a challenge."⁴

Section 2 of SB 185 permits challenges on the basis of registration or voting in another state but "not later than the ninetieth day before the day of a primary, runoff, special, or general election."⁵ However, SB 185 does not specify a time limit on when the out-of-state voting or registration has to have happened for the challenge to be valid.

Absent the State Board of Elections' reasonable interpretation of this new law in its promulgated rules, it is probable that lawfully registered voters who registered to vote or voted in another state during a prior election cycle, but have since become residents and eligible voters in South Dakota will be erroneously and needlessly challenged. This will create unnecessary burdens for both qualified electors and county auditors fielding the challenges, and potential violations of federal law.

The U.S. Constitution and federal law require that each state and political subdivision use uniform, nondiscriminatory standards and processes for evaluating

¹ SB 185, 101st Leg. Sess. §§ 1-2 (S.D. 2025).

² *Id.* at § 3.

³ *Id.*

⁴ *Id.* at § 4.

⁵ "An application for the correction of any precinct registration list or to challenge the right to vote of any registered voter may be filed by the secretary of state, the auditor of the county where the challenged voter is registered, or any other individual who is registered as a voter in the same county where the challenged voter is registered, not later than the ninetieth day before the day of a primary, runoff, special, or general election. The application for correction filed pursuant to this section may only challenge whether a voter:

(1) Has voted or has registered to vote in another state; or

(2) Is a resident of this state, pursuant to § 12-1-4." *Id.* at § 2.

voter eligibility challenges.⁶ The National Voter Registration Act mandates that any voter registration list maintenance activity be “uniform, nondiscriminatory, and in compliance with the Voting Rights Act[.]”⁷ including “any list maintenance activity based on third party submissions.”⁸

We are heartened to see that the latest draft proposed rules packet, as updated on July 31, 2025,⁹ makes substantial steps to create a uniform challenger process. However, additional revisions are needed to stave off potential violations of state and federal law and to protect lawfully registered voters from unduly burdensome challenges.

II. The Risk of Unnecessary and Burdensome Challenges

Given the United States’ decentralized election administration system, most voters do not cancel their voter registrations prior to moving to a new jurisdiction and registering to vote at their new residence.¹⁰ Without a national system of voter registration, such voters often remain on the voter rolls in their former jurisdiction, even after registering at their new address, until the original jurisdiction completes its list maintenance protocol.¹¹ Thus, it is not uncommon that voters who move across state lines may temporarily remain registered in more than one jurisdiction. In fact, a 2012 Pew study found that approximately 2.75 million Americans were registered to vote in more than one state with over 70,000 Americans registered to vote in three or more states.¹² Accordingly, many South Dakota voters may also be

⁶ See *Bush v. Gore*, 531 U.S. 98, 104 (2000) (finding that the lack of uniform standards across counties for when to count a ballot violates the Constitution’s Equal Protection Clause); National Voter Registration Act of 1993, 52 U.S.C. §§ 20501–20511[b].

⁷ 52 U.S.C. § 20507(b).

⁸ U.S. Dep’t of Justice, *Voter Registration List Maintenance: Guidance under Section 8 of the National Voter Registration Act*, 52 U.S.C. § 20507 at 3 (Sept. 2024). See attachment to May 6, 2025 letter.

⁹ South Dakota State Board of Elections, “8-14-25 BOE Rules Packet AMENDED,” (uploaded July 31, 2025), <https://boardsandcommissions.sd.gov/bcuploads/8-14-25BOERulesPacket.pdf>.

¹⁰ Wendy Underhill, “More Withdrawals From Voter Data Group ERIC Likely,” National Conference of State Legislatures (June 20, 2023), <https://www.ncsl.org/state-legislatures-news/details/more-withdrawals-from-voter-data-group-eric-likely>.

¹¹ *Id.*

¹² Inaccurate, Costly, and Inefficient: Evidence That America’s Voter Registration System Needs an Upgrade, PEW Ctr. on States 5 (Feb. 2012); see also *Statistics*, Electronic Registration Information Center (ERIC), (May 31, 2025) <https://ericstates.org/statistics/> (identifying over 13 million voter registrations flagged as cross-state movers by ERIC system between 2013-2025).

registered in states where they previously resided without any intent to vote or remain registered in those states.¹³ Though a voter who fills out the South Dakota voter registration application authorizes the cancellation of their previous registration,¹⁴ there will undoubtedly be instances where voters who were previously registered in their prior state of residence may not have their cancellation processed by their prior jurisdiction in a timely manner. For example, every federal election cycle, there will be voters who move to South Dakota between the federal primary voting period and the general election. Some of these voters will have participated in the primary election in their previous state but will have become South Dakota residents in time to lawfully register to vote in the general election in this state. The cross-jurisdiction collaboration needed to cancel prior voter registrations will be even less likely to occur in a timely manner during the busiest periods of an election cycle, when election officials are focused on more time-sensitive election-related duties.

In sum, many eligible voters who registered to vote and/or voted in other states before becoming South Dakota residents and registering to vote in South Dakota will unintentionally remain on the voter rolls of their previous states of residence without having any intention of committing fraud or double voting, or indeed, without violating any law in this or another state. However, these voters are more likely to be subject to imprecise and burdensome challenges under SB 185 unless the State Board of Elections promulgates an administrative rule that puts commonsense safeguards in place for these voters.

https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2012/pewupgradingvoteregistrationpdf.pdf.

¹³ Importantly, while federal and state law each prohibit voting in more than one jurisdiction, 52 U.S.C. § 10307(e); SDCL § 12-26-8, the mere fact of being registered in more than one state is not a violation of state or federal law.

¹⁴ See South Dakota Voter Registration Form, <https://sdsos.gov/elections-voting/assets/VoterRegistrationFormFillable.pdf>.

III. Comments on Draft Regulations Implementing SB 185 (Sections 5:02:24:01- 5:02:24:06)

a. Suggestions for 5:02:24:01 (Combined application form and affidavit.)

We support efforts by the Secretary of State's Office to produce a combined affidavit and challenger application that can be uniformly used by county auditors. However, changes are needed to prevent the unlawful disclosure of voters' personal information. At subsection (3), the challenge application should not request that the challenger application include the challenged voter's social security number, South Dakota driver license number or nondriver identification card number, or the voter's passport number. Section 3 of SB 185 states that "An individual's social security number, driver license number, South Dakota nondriver identification card number, passport number, or contact information, may not be made public as part of a challenge. An individual who intentionally makes public any information that is confidential, pursuant to this section, is guilty of a Class 2 misdemeanor." SDCL § 12-4-60. Accordingly, 5:02:24:01(3) should be amended to reflect that confidential information protected from disclosure by state law should not be solicited on the Voter Registration Challenge Application Form.

Finally, to discourage unlawful disclosure of private information by challengers, the Board should include in Section 4 of the challenger application the potential criminal liability language from Section 3 of SB 185, and require challengers to acknowledge that: "An individual's social security number, driver license number, South Dakota nondriver identification card number, passport number, or contact information, may not be made public as part of a challenge. An individual who intentionally makes public any information that is confidential, pursuant to this section, is guilty of a Class 2 misdemeanor." SDCL § 12-4-60. By requiring affirmation and acknowledgement of this provision, individuals filing an application and challenger affidavit will receive a clear warning of the law, which will prevent unintentional disclosure of confidential information.

b. Suggestions for 5:02:24:02 (Documentation required for challenge.)

To prevent frivolous and burdensome challenges to voter eligibility, we propose additional changes to the regulation outlining the documentation required for a challenge. For example, at subsection (3), there is no time limit for challenges based on being registered to vote or having voted in another state. The Board should promulgate a rule stating that challenges based on voting or registering to vote in

another state require evidence of the challenged elector voting in another state in the same election for which their eligibility is being challenged¹⁵ or evidence that the challenged voter's most recent in time voter registration is not in South Dakota. For example, a challenge to an individual's eligibility to vote in the 2024 general election based on evidence that the individual voted in another state during the same 2024 general election would be valid. However, a challenge based on evidence that the individual voted in another state during the 2024 primary election could be summarily rejected.

At minimum, subsection (3) should be amended to read:

“(3) If the combined application form and affidavit asserts that the challenged voter has voted or registered to vote in another state:

(a) A **current** voter file obtained from an election official in another state indicating that the challenged voter ~~is~~ registered to vote in the state **after the date of their most recent South Dakota voter registration**; or

(b) A **current** voter history file obtained from an election official in another state indicating that the challenged voter has **already** voted **or requested a ballot to vote** at any upcoming election held in the state or **has registered to vote in the state after the date of their most recent South Dakota voter registration**~~-offered to vote at any election held in the state~~; or”

Without time-limiting the basis for these challenges, a voter simply having voted or registered in a previous state of residence *at any time in the past* could be grounds to challenge their right to vote. This kind of unnecessary challenge would result in the South Dakota voter having to expend considerable time and resources to rebut a frivolous challenge with their county auditor and could result in their potential removal simply for having moved to South Dakota after being a registered voter elsewhere. This is especially true given that many states and local jurisdictions do not have a centralized process for voters to request to have their registration cancelled and list maintenance laws can prevent removal until a voter has missed two federal election cycles.¹⁶ By time-limiting the basis for these types of challenges, the Board will alleviate the burden on election workers fielding them, will prevent baseless and misguided challenges to registered voters for having simply exercised their voting rights in a previous state of residence, and will still maintain the

¹⁵ For example, a cast ballot record or request for an absentee or early voting ballot.

¹⁶ See *supra*, Part II.

legislature’s intent to allow for challenges of voters based on “double voting” across multiple states in the same election.

Next, we draw the Board’s attention to potentially unreliable evidence that should not be used to establish a voter lacks South Dakota residency.

At subsection (4)(a), a driver license or nondriver identification card issued by another state should not be relied upon for evidence that a voter is not a resident of South Dakota because it has the potential to unduly burden new South Dakota residents. South Dakota has a 90-day grace period to transfer an out-of-state driver’s license to a South Dakota license¹⁷ while the residency requirement to vote in South Dakota is 30 days.¹⁸ As the new proposed draft regulation for 5:02:03:01 notes, South Dakota law makes clear that 30 days of residency is judged from the date of the election contest, which may not have elapsed by the time the challenger files the challenge application (no later than 90 days before the election). Accordingly, a driver license or nondriver identification card issued by another state should not be listed as acceptable evidence to establish a voter lacks South Dakota residency for a voter challenge given its potential to burden new residents.

Similarly, at subsection (4)(b), a resident hunting license should also not be relied upon as evidence a voter is not a resident of South Dakota. In some states, resident hunting licenses can last for years or a lifetime. As a result, new South Dakota voters may have obtained a resident license when they lived in another state and then moved to South Dakota before the license expired.

Finally, at subsection (4)(c), a national change of address (NCOA) cannot lawfully be relied upon as evidence that a voter is not a resident of South Dakota. It is well studied that NCOA data can possess inaccuracies (e.g., false positives) and NCOA matches do not necessarily indicate that voters have changed residency.¹⁹ This is

¹⁷ SDCL § 32-12-26.1; South Dakota Department of Public Safety, *South Dakota Driver License Manual* at 5 (“If you have a valid out of state non-commercial license, you are required to apply for a South Dakota driver license within 90 days of establishing residency in South Dakota.”), available at https://www.sd.gov/dps?id=cs_kb_article_view&sysparm_article=KB0043733&sys_kb_id=1c1ee80f476e6e50237fbd51026d4357&spa=1.

¹⁸ SDCL §§ 12-3-1, 12-1-4.

¹⁹ All Voting is Local, Demos, Lawyers' Committee for Civil Rights Under Law, & Voices Vote Now, *Understanding the Flawed Data Methodologies Underlying Mass Voter Challenges* (Sept. 18, 2024), <https://www.demos.org/policy-briefs/understanding-flawed-data-methodologies-underlying-mass-voter-challenges>.

why the NVRA does not allow use of NCOA data to remove voters without additional safeguards.²⁰

For these reasons, the Board should revise its examples of documentation sufficient to establish a voter eligibility challenge on the basis of residency and put in place reasonable time-limits on the documentation used for a challenge based on having voted or registered in another state.

c. Suggestions for 5:02:24:03 (Documentation required to rebut challenge.)

To support eligible voters against erroneous and burdensome challenges to their eligibility, we also recommend additional changes to the regulation outlining the documentation required to rebut a challenge. In this first paragraph of draft regulation 5:02:24:03, the personal identification documentation required to rebut a voter challenge should track South Dakota's voter ID requirements, SDCL 12-18-6.1, including a valid South Dakota student ID.

Next, at subsection (4), we are very concerned that the documentation required to rebut a challenge on the basis of registering or having voted in another state is exceedingly difficult for a challenged voter to overcome. As discussed, *supra* Part II, election administrators may be unable to cancel a voter registration in a timely manner during the busiest periods of an election cycle when election officials are focused on more time-sensitive election-related duties (including within 90 days of an election). Thus, a challenged voter should not be required to contact and rely upon a third-party election official from another state to prove their eligibility to vote in South Dakota. One can imagine many scenarios where an out-of-state election official refuses or is unable to provide documentation of cancellation to a challenged voter that would be necessary to satisfy subsection (4)(a) or (4)(b). Moreover, it is not unlawful for a voter to remain unintentionally registered to vote in more than one state if they have no intention to vote in more than one state. Voters who move residences should not be punished by imprecise voter challenges simply as a byproduct of our country's decentralized voting system.²¹ Similar to the suggested revisions to 5:02:24:02, this draft regulation should also be amended at

²⁰ Under the NVRA, if a voter's registration is matched to an NCOA request, that registration can be removed only if the voter has not responded to a mail notice sent by the registrar and has not voted or appeared to vote in two federal general elections. 52 U.S.C. § 20507(c)(1)(B)(i).

²¹ See *supra*, Part II at n. 11.

subsection (4) to allow a challenge voter to rebut a challenge by providing evidence that their most recent voter registration is in South Dakota:

“(4) If the combined application form and affidavit asserts that the challenged voter has voted or registered to vote in another state:

(a) A record or statement from an election official in the state indicating that the challenged voter is not registered to vote in the state;

(b) A record or statement from an election official in the state indicating that the challenged voter's registration was canceled; or

(c) A record or statement from an election official in the state indicating that the challenged voter has not voted or offered to vote at any election in the state; or

(d) A record or statement provided by the reviewing county auditor indicating that the challenged voter's most recent South Dakota voter registration is dated more recently than the date of registration for the out-of-state registration used to challenge the voter's eligibility; or

(e) An affidavit from the challenged voter attesting that their most recent South Dakota voter registration is dated more recently than the date of registration for the out-of-state registration used to challenge the voter's eligibility and that they do not intend to remain registered or to vote in their state of previous residence while a registered South Dakota voter; or

(f) Any other satisfactory evidence that the challenged voter is an eligible South Dakota resident and has not and will not vote simultaneously in any other state; or”

Without providing challenged voters meaningful opportunities to rebut these challenges, simply having voted or being a registered voter in a previous state of residence *at any time in the past* could be grounds for a challenge. Therefore, these suggested revisions are necessary to prevent the potential for mass challenges resulting in mass disenfranchisement.

d. Suggestions for 5:02:24:04 (Process to establish validity of challenge.)

We support the updated draft language establishing when a county auditor must deem a voter registration challenge invalid, but have additional suggestions for the language addressing how county auditors should investigate challenges.

The underlying statute, SDCL § 12-4-61, references “researching the voter” to determine whether “the affidavit raises a valid challenge.” It also states, “[t]he State Board of Elections shall promulgate rules, pursuant to chapter 1-26, establishing the process by which a county auditor must research a registered voter to establish the validity of a challenge.” SDCL § 12-4-61. As written, this draft regulation does not provide enough information to county auditors explaining how to research challenged voters’ eligibility. Instead, it gives rise to the possibility that mass voter challenges will occur and that each county will implement this challenger process differently.

To reduce this risk, the Board should establish that challenges based on being registered to vote in another state may only be investigated by county auditors if there is evidence that a South Dakota voter has registered in a different state after the most recent date of their registration in South Dakota. Moreover, this regulation should also establish that late challenges that are submitted beyond the statutory deadline are invalid.²²

Additionally, the regulation should make clear that matching voter file records solely on the basis of first name, last name, and date of birth is NOT sufficient to establish a case against the challenged voter. As we noted in our May 6, 2025 letter, the U.S. Department of Justice has advised that numerous list maintenance methods commonly used in mass voter eligibility challenges might violate Section 8 of the National Voter Registration Act of 1993 (NVRA),²³ including “comparing voter files to outdated or inaccurate records or databases, taking action that erroneously affects a particular class of voters (such as newly naturalized citizens), or matching records based solely on first name, last name, and date of birth.”²⁴ To ensure compliance with the NVRA, the Board’s rules should make clear that a challenge affidavit is insufficient to sustain a valid challenge if the attached documentation of alleged registration or voting in another state is based solely on information from a public nongovernmental database or involves comparing voter

²² See SDCL §§ 12-4-58–12-4-59.

²³ 52 U.S.C. § 20507.

²⁴ U.S. Dep’t of Justice, Voter Registration List Maintenance: Guidance under Section 8 of the National Voter Registration Act, 52 U.S.C. § 20507 at 3 (Sept. 2024). See attachment to May 6, 2025 letter.

files solely based on the first name, last name, and date of birth of a qualified elector. This limited information is insufficient to reliably establish whether a voter is registered or has voted in another state.²⁵ Without the Board's instruction to county auditors that this evidence is insufficient to trigger a county auditor's investigation of the voter challenge, countless South Dakota voters may be unnecessarily subjected to an eligibility challenge, thereby threatening their voting rights and potentially violating federal law.

Next, the draft regulation states, "If the county auditor determines that the documentation is authentic, the auditor must send a verification request to the challenged voter pursuant to SDCL 12-4-61."²⁶ The verification request letter sent to a challenged voter needs to provide the voter with adequate notice of what documentation or evidence of eligibility will be required to rebut the challenge. We suggest that Secretary of State's Office produce a standardized verification request letter for county auditors that can be uniformly used across the state, similar to the combined affidavit and challenger application that is contemplated in draft regulation 5:02:24:01.

Additionally, because SDCL § 12-4-58 and § 12-4-59 require that voter challenges cannot occur either 30 or 90 days before an election, depending on the basis for the challenge, this regulation also needs to instruct county auditors when their review of the challenge needs to be completed in order to allow the voter to have sufficient notice and opportunity to contest and rebut their challenge and possible removal. As currently drafted, a voter challenged based on SDCL § 12-4-58 would not have enough time to rebut the challenge within 30 days of the postmarked verification request letter if the county auditor does not process the challenge by the 30th day before an election.

IV. Conclusion

SB 185 provides the State Board of Elections with great authority in promulgating rules establishing the process and the form in which a challenge to voter eligibility

²⁵ See Robyn Sanders & Alice Clapman, *Protections Against Mass Challenges*, Brennan Ctr. for Just. (July 17, 2024), <https://www.brennancenter.org/our-work/research-reports/protections-against-mass-challenges-voter-eligibility>. One common database is Eagle AI, which experts have criticized for its frequent identification of eligible voters as ineligible. See Alice Clapman & Andrew Garber, *A New Antidemocracy Tool*, Brennan Ctr. for Justice (Sept. 5, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/new-antidemocracy-tool>.

²⁶ South Dakota State Board of Elections, "8-14-25 BOE Rules Packet AMENDED" at 42.

may take place. Our hope is that the Board uses this authority to develop regulations for adjudicating such challenges where necessary while mitigating potential harm and disruption caused by frivolous and burdensome voter eligibility challenges. Thank you for your consideration and please do not hesitate to reach out with any questions.

Respectfully,

Nieema Thasing

President
League of Women Voters of South Dakota
PO Box 1572
Sioux Falls, SD 57101
lwvsouthdakota@gmail.com

Mel Neal

Legal Counsel, Voting Rights
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, D.C. 20005
mneal@campaignlegalcenter.org



August 13, 2025

South Dakota State Board of Elections
500 East Capitol Ave
Pierre, South Dakota 57501-5070
sdsos@state.sd.us

Dear State Board of Elections:

Below, please find a summary of the League of Women Voters of South Dakota and Campaign Legal Center's suggested revisions to the Board's Draft Regulations Implementing SB 185 (Sections 5:02:24:01- 5:02:24:06), which are discussed at further length in the accompanying letter.

Suggestions for 5:02:24:01 (Combined application form and affidavit.)

- We support a combined affidavit and challenger application that can be uniformly used by county auditors.
- Subsection (3) should be amended to read:

“(3) One or more of the following regarding the challenged voter:
(a) Voter identification number;
~~(b) Social security number;~~
~~(c) South Dakota driver license or South Dakota nondriver identification card number;~~
~~(d) Passport number;~~ or
(e) Year of birth;”
- 5:02:24:01(3) should be amended to reflect that confidential information protected from disclosure by state law should not be solicited on the Voter Registration Challenge Application Form. *See* SDCL § 12-4-60.
- The Board should include in Section 4 of the challenger application the potential criminal liability language from Section 3 of SB 185, and require challengers to acknowledge that: “An individual's social security number,

driver license number, South Dakota nondriver identification card number, passport number, or contact information, may not be made public as part of a challenge. An individual who intentionally makes public any information that is confidential, pursuant to this section, is guilty of a Class 2 misdemeanor.” SDCL § 12-4-60.

Suggestions for 5:02:24:02 (Documentation required for challenge.)

- Subsection (3) should be amended to read:

“(3) If the combined application form and affidavit asserts that the challenged voter has voted or registered to vote in another state:

(a) A **current** voter file obtained from an election official in another state indicating that the challenged voter is registered to vote in the state **after the date of their most recent South Dakota voter registration**; or

(b) A **current** voter history file obtained from an election official in another state indicating that the challenged voter has **already** voted **or requested a ballot to vote** at any upcoming election held in the state or **has registered to vote in the state after the date of their most recent South Dakota voter registration** ~~offered to vote at any election held in the state~~; or”

- Subsection (4) should be amended to read:

“(4) If the combined application form and affidavit asserts that the challenged voter is not a resident of South Dakota, as defined in SDCL 12-1-4:

~~(a) A driver license or nondriver identification card issued by another state;~~

~~(b) A resident hunting, fishing, or trapping license issued by another state; (c)~~

~~A national change of address with the United States Post Office indicating that the challenged voter has moved to another state;~~

~~(da)~~ State or county records for a property owned by the challenged voter in another state indicating that the property is subject to a homestead exemption;

~~(eb)~~ Tax documents indicating that the challenged voter is a resident of another state for the purpose of taxation; or

~~(fc)~~ A completed residency affidavit or certificate from another state.

a. Suggestions for 5:02:24:03 (Documentation required to rebut challenge.)

- Per SDCL § 12-18-6.1, the first paragraph should be amended to read:

“5:02:24:03. Documentation required to rebut challenge. For a challenged voter to demonstrate the sufficiency of the voter's qualifications, the voter must provide the county auditor with an original or a photocopy of the voter's South Dakota driver license or South Dakota nondriver identification card, Social Security Administration account number card, passport or identification card issued by an agency of the United States Government, or tribal identification card ~~issued by a federally recognized Indian tribe located wholly or partially within South Dakota,~~ **or current student identification card, issued by a high school or an accredited institution of higher education, including a university, college, or technical school, located within the State of South Dakota, and:**”

- Subsection (4) should be amended to read:

“(4) If the combined application form and affidavit asserts that the challenged voter has voted or registered to vote in another state:

(a) A record or statement from an election official in the state indicating that the challenged voter is not registered to vote in the state;

(b) A record or statement from an election official in the state indicating that the challenged voter's registration was canceled; or

(c) A record or statement from an election official in the state indicating that the challenged voter has not voted or offered to vote at any election in the state; or

(d) A record or statement provided by the reviewing county auditor indicating that the challenged voter's most recent South Dakota voter registration is dated more recently than the date of registration for the out-of-state registration used to challenge the voter's eligibility; or

(e) An affidavit from the challenged voter attesting that their most recent South Dakota voter registration is dated more recently than the date of registration for the out-of-state registration used to challenge the voter's eligibility and that they do not intend to remain registered or to vote in their state of previous residence while a registered South Dakota voter; or

(f) Any other satisfactory evidence that the challenged voter is an eligible South Dakota resident and has not and will not vote simultaneously in any other state; or”

b. Suggestions for 5:02:24:04 (Process to establish validity of challenge.)

- As written, this draft regulation does not provide enough information to county auditors explaining how to research challenged voters' eligibility per SDCL § 12-4-61. Instead, it gives rise to the possibility that mass voter challenges will occur and that each county will implement this challenger process differently.
- The Board should establish that challenges based on being registered to vote in another state may only be investigated by county auditors if there is evidence that a South Dakota voter has registered in a different state after the most recent date of their registration in South Dakota.
- This regulation should also establish that late challenges that are submitted beyond the statutory deadline are invalid. *See* SDCL §§ 12-4-58–12-4-59.
- To ensure compliance with the NVRA, the regulation should make clear that a challenge affidavit is insufficient to sustain a valid challenge if the attached documentation of alleged registration or voting in another state is based solely on information from a public nongovernmental database or involves comparing voter files solely based on the first name, last name, and date of birth of a qualified elector.
- The verification request letter sent to a challenged voter pursuant to SDCL 12-4-61 needs to provide the voter with adequate notice of what documentation or evidence of eligibility will be required to rebut the challenge.
- We suggest that Secretary of State's Office produce a standardized verification request letter for county auditors that can be uniformly used across the state, similar to the combined affidavit and challenger application that is contemplated in draft regulation 5:02:24:01.
- Because SDCL § 12-4-58 and § 12-4-59 require that voter challenges cannot occur either 30 or 90 days before an election, depending on the basis for the challenge, this regulation also needs to instruct county auditors when their review of the challenge needs to be completed in order to allow the voter to have sufficient notice and opportunity to contest and rebut their challenge and possible removal. As currently drafted, a voter challenged based on SDCL § 12-4-58 would not have enough time to rebut the challenge within 30 days of the postmarked verification request letter if the county auditor does not process the challenge by the 30th day before an election.