

MINUTES OF PUBLIC HEARING
State Board of Elections

The State Board of Elections convened a public hearing at 1:30 PM on August 29, 2025, in the Joint Appropriations Committee Room, Room #362, at 500 E. Capitol Avenue, Pierre, SD 57501.

The purpose of the meeting was to consider petitions for declaratory ruling submitted by Rick Weible and received by the Secretary of State's office, on behalf of the State Board of Elections, between August 7, 2025 and August 26, 2025. The State Board of Elections has the authority to consider petitions for declaratory ruling under SDCL 1-26-15, as implemented by ARSD chapter 5:02:02.

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

Members of the Board in Attendance: Kent Alberty, Jamalia Franzen, Lindley Howard, and Scott McGregor.

Others in Attendance: Thomas J. Deadrick, Deputy Secretary of State; Grant Flynn, Assistant Attorney General; Christine Lehrkamp, Deputy Director of the Division of Elections; Madisen Vetter, Elections Communication and Education Coordinator; Evan Sippel, Election Coordinator; Linda Montgomery; and Rick Weible.

Call to Order: Secretary of State Monae L. Johnson called the public hearing of the State Board of Elections to order at 1:30 PM.

Approval of Draft Minutes: Scott McGregor moved that the draft minutes from the August 14, 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: Lindley Howard moved that the agenda for the August 29, 2025 meeting of the State Board of Elections be approved. The motion was seconded by Kent Alberty. A roll call vote was taken, and the motion carried unanimously.

Discussion of Petitions for Declaratory Ruling: Jamalia Franzen 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 Kent Alberty. A roll call vote was taken, and the motion carried unanimously.

The State Board of Elections moved into executive session at 1:32 PM.

Jamalia Franzen moved that the State Board of Elections come out of executive session. The motion was seconded by Kent Alberty. A roll call vote was taken, and the motion carried unanimously.

The State Board of Elections came out of executive session at 2:08 PM.

Motions: Scott McGregor moved that the State Board of Elections reject all six petitions for declaratory ruling submitted by Rick Weible on the grounds that the petitions "do not substantially conform to ARSD 5:02:02:01 and request the Board of Elections [to] take actions that exceed the scope of the Board's authority under SDCL 1-26-15 in that [the] Petitioner is not requesting the Board of Elections to rule on the applicability of any statutory provision

and all six petitions are not suitable cases for a declaratory ruling because the petitions would require presentation of competing evidence, witness examination or cross-examination, and because the Board of Elections would have to consider extrinsic evidence.” The motion was seconded by Jamalia Franzen. A roll call vote was taken, and the motion carried unanimously.

Public Comments: Secretary of State Monae L. Johnson invited members of the public to offer comments to the State Board of Elections.

Linda Montgomery offered testimony on behalf of Jessica Pollema, stating that ES&S has provided four counties with equipment that was not tested or certified by the Election Assistance Commission (EAC) or the State Board of Elections. This is a major issue because the State Board of Elections has certified hardware and software with specific requirements, including specific laptops that must be used with them. By sending four counties uncertified equipment, failing to provide engineering change orders, cutting off communication with auditors requesting change orders, and ceasing support for Minnehaha County, ES&S has acted deceptively and possibly even with malicious intent. This must be addressed to ensure the integrity of South Dakota’s elections.

Linda Montgomery also offered personal testimony, questioning whether the equipment provided by ES&S was fully hardened. Despite assurances from ES&S that the proper equipment was being provided to counties in South Dakota, that was not the case, and what has been provided is not what has been approved for use in the state.

Rick Weible discussed how Dominion has been diligent in providing engineering change orders for its equipment, while ES&S has consistently failed to do so. Software has specific hardware, processor, and video card requirements, and failing to adhere to them can significantly hinder functionality. That is why it is important to ensure that only equipment that has been tested and certified is being used in South Dakota’s elections. Furthermore, certain processors have known functionality issues and vulnerabilities that make it necessary to have documentation concerning their use and any updates that have been made to them. For example, 13th and 14th generation Intel processors were known to draw too much power and causing system failures, which was an issue that took over a year to be addressed. In addition, 9th generation Intel processors have known security problems that can be exploited to take over whole systems through the processor alone. Only by using certified equipment and diligently keeping track of updates can the integrity of South Dakota’s elections be guaranteed. Given ES&S’ failures, it is important to consider who is responsible for ensuring compliance and security: Is it the state, the county auditor, or the vendor? When issues arise, can a county auditor take action to address it? These are questions that will need to be answered as part of an open dialogue over the coming months. It is important to begin addressing everything now, as elections will be held in 2026. Weible concluded his remarks by informing the State Board of Elections that he would be sending additional petitions and that he would be bringing legislation next year to address these important issues.

General Remarks: Secretary of State Monae L. Johnson offered brief closing remarks, thanking all who attended the hearing for their participation.

Adjournment: Jamalia Franzen moved that the public hearing of the State Board of Elections be adjourned. The motion was seconded by Kent Alberty. After receiving no objections, the motion carried, and the State Board of Elections adjourned at 2:23 PM.