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Office of the Attorney General
STATE OF SOUTH DAKOTA

November 22, 2021

Government Accountability Board
2000 E 52nd Street North
Sioux Falls, SD 57104

Re: Supplemental Report to Government Accountability Board

Dear Members of the Board:

I am in receipt of your letter dated November 5, 2021. I presume 2021-03 is the complaint regarding the daughter/conflict of interest issue [REDACTED]

I will attempt to supplement the record from the time of my September 28, 2021, letter.

In regards to 2021-03, as you are likely aware, there is an on-going review being conducted by the Government Operations and Audit Committee (GOAC) on this issue. On October 28, 2021, a hearing was held before GOAC wherein the following people testified:

South Dakota Secretary of Labor Marcia Hultman

Amber Mulder, Attorney for the Department of Labor

Sandra Gresh, Professional Appraisal Association of South Dakota

Amy Frink, Professional Appraisal Association of South Dakota

Craig Steinley, Professional Appraisal Association of South Dakota

Craig Ambach, Executive Director of the Office of Risk Management

Rob Anderson, General Counsel for the PEPL Fund

Public Comment period

Daryl Washechek

GOAC met for nearly eight hours that day, but only the first three hours approximately are relevant to this matter. I have had a transcript prepared of the relevant portion and that is attached as Exhibit A. You may also listen to the entire audio at the following link:

<https://sdpb.sd.gov/sdpbpodcast/2021/interim/goa10282021.mp3>

Exhibit B is the agenda and the documents related to that hearing.

To put some of the items discussed at the October 28, 2021 hearing in context, I have also attached as Exhibit C, a copy of the Administrative Rules relating to Appraisers. Attached is Exhibit D which is the “Charge of Discrimination” filed by Sherry Bren on December 28, 2020. I am also attaching as Exhibit E, the “Settlement Agreement and Release” signed March 31, 2020, by Sherry Bren and April 1, 2021, by Secretary Marcia Hultman relating to the “Charge of Discrimination” matter. It should also be noted that Ms. Bren declined to attend and there is correspondence from her attorney in the documents.

As you will hear/read from the October 28, 2021 hearing, there was a lot of time spent educating the legislators and the public about the program. Further, I would say there were three portions of the testimony, one from Secretary Hultman regarding the appraisal program and what occurred at the July 2020 meeting; Ms. Gresh and her industry perspective of the changes that have occurred and education about the program and lastly; Craig Ambach regarding the \$200,000 settlement paid to Ms. Bren and the Risk Management process in general.

One can tell from the questioning and statements made by the GOAC members they believed that they were being told there was a plan in place prior to the July 2020 meeting.

In fact, following the October 28, 2021 GOAC meeting there were multiple media accounts that a plan was in place for Kassidy Peters prior to the meeting occurring. This resulted from the testimony of Secretary Hultman and will be discussed later in detail. The idea was that if there was a plan in place prior to the meeting, the meeting itself could not have exerted any influence or intimidation against Ms. Bren. Ms. Bren also made statements in the press seeming to indicate she hoped to address the testimony of the October 28, 2021, and correct the false statements that were made therein. I believe Ms. Bren along with many others need to be deposed where statements and specific details can be addressed in a setting that better allows a natural flow to questions and with a consistent line of questioning.

On November 5, 2021, Governor Noem released through social media a video, which I have attached as Exhibit F. In the video, she made public claims that Associated Press reporter Stephan Groves lied. Beyond the general accusations I could not find any specific accusations of what he lied about. Governor Noem made claims that she and/or her staff had provided Mr. Groves with further documentation which she claimed he did not use. These documents should be obtained to determine whether they are relevant and/or the nature of those documents.

Furthermore, in the video two important themes were discussed, namely 1) whether Kassidy Peters’ certification was discussed at the July 2020 meeting and 2) whether there was a plan in place prior to the meeting.

In addressing whether Kassidy Peters’ certification was discussed, the Governor stated Kassidy Peters’ appraisal certification was not addressed in the July 2020 meeting. This directly contradicts Secretary Hultman’s testimony before GOAC on October 28, 2021. Both statements, therefore, cannot be true; it was either discussed or it was not.

In regard to whether there was a plan in place prior to the meeting, Governor Noem when asked if Cassidy Peters' situation was discussed stated that, "The decision was already made about her path forward." This statement concerning the plan is in line with what Secretary Hultman originally said at GOAC on October 28, 2021, that the plan was already determined prior to the meeting. However, Governor Noem's statement on November 4, 2021, is in direct conflict with the "Stipulation Agreement" and Secretary Hultman's November 16, 2021 letter to the Executive Board as discussed below, where Secretary Hultman then says the plan was not complete prior to the meeting.

Everyone who attended the July 2020 meeting needs to be interviewed to determine which statements are accurate and what actually occurred before, during and after the July 2020 meeting.

In the video, Governor Noem also stated that Cassidy Peters received no special treatment. That seems to yet be in serious question especially in light of the discrepancies that have already been uncovered. The video does cut off abruptly. It is unclear if there was more to the press conference or if there was just a selective portion released.

On November 15, 2021 GOAC, met for a second hearing. At this hearing GOAC voted eight to two to seek subpoenas of the plan seemingly developed for Cassidy Peters prior to the July 2020 meeting and to compel the testimony of Sherry Bren. I have had a transcript prepared of that hearing and it is attached as Exhibit G. The Agenda and Documents relating to this hearing are attached as Exhibit H.

The approximately 23 minute hearing can be found at the following link if you would like to listen to the audio:

<https://sdpb.sd.gov/sdpbpodcast/2021/interim/goa11152021.mp3>

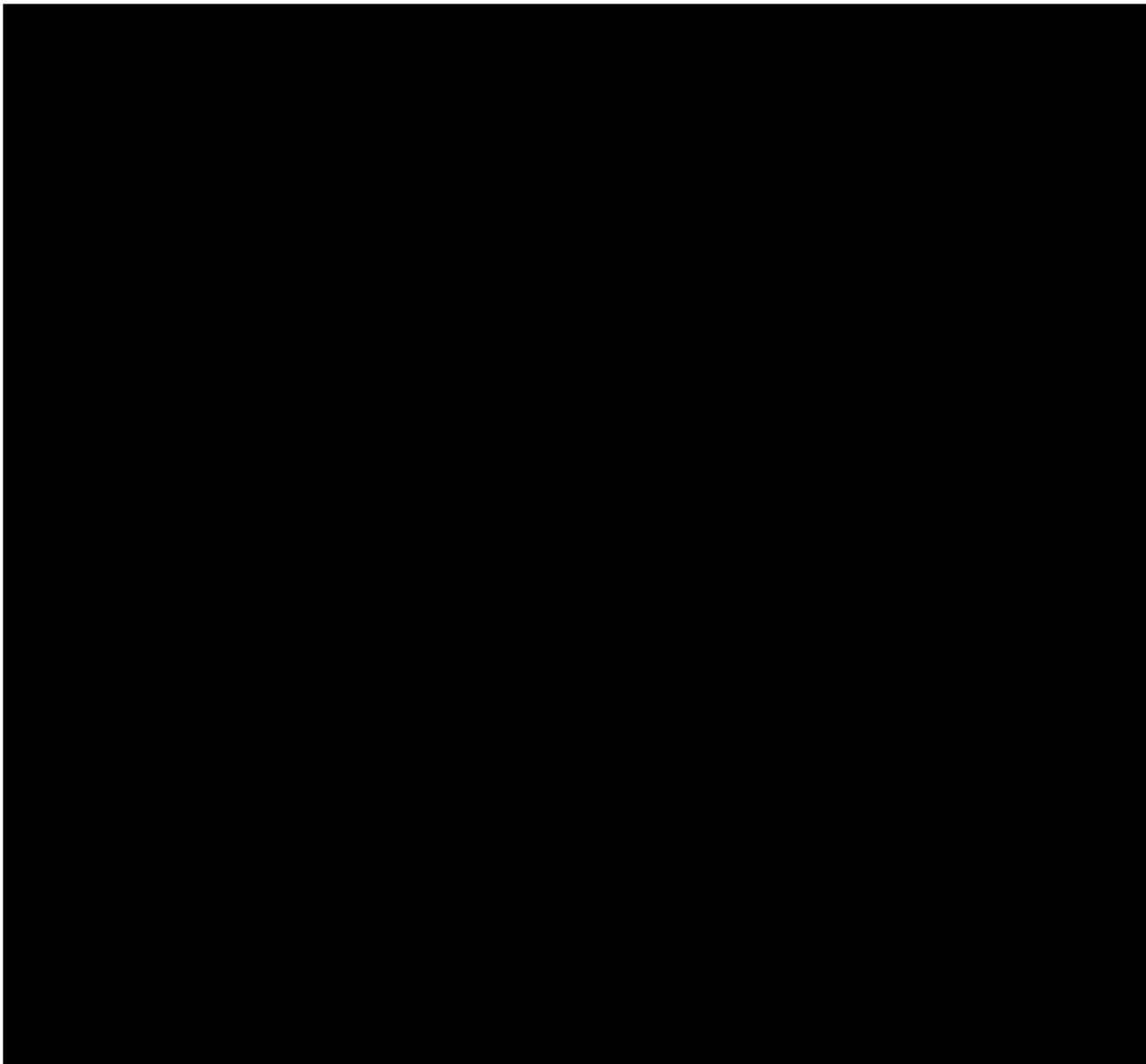
I would also point out you will hear testimony that members of GOAC believe your Board is already investigating this matter. This testimony demonstrates further confusion about what matters were dismissed and what matters are moving forward. Ultimately, as indicated above the members of GOAC voted to seek subpoenas from the Executive Board and continue their inquiry. See, Exhibit G, page 8 lines 33-49 and page 9 lines 1-49 and page 10, lines 1-3.

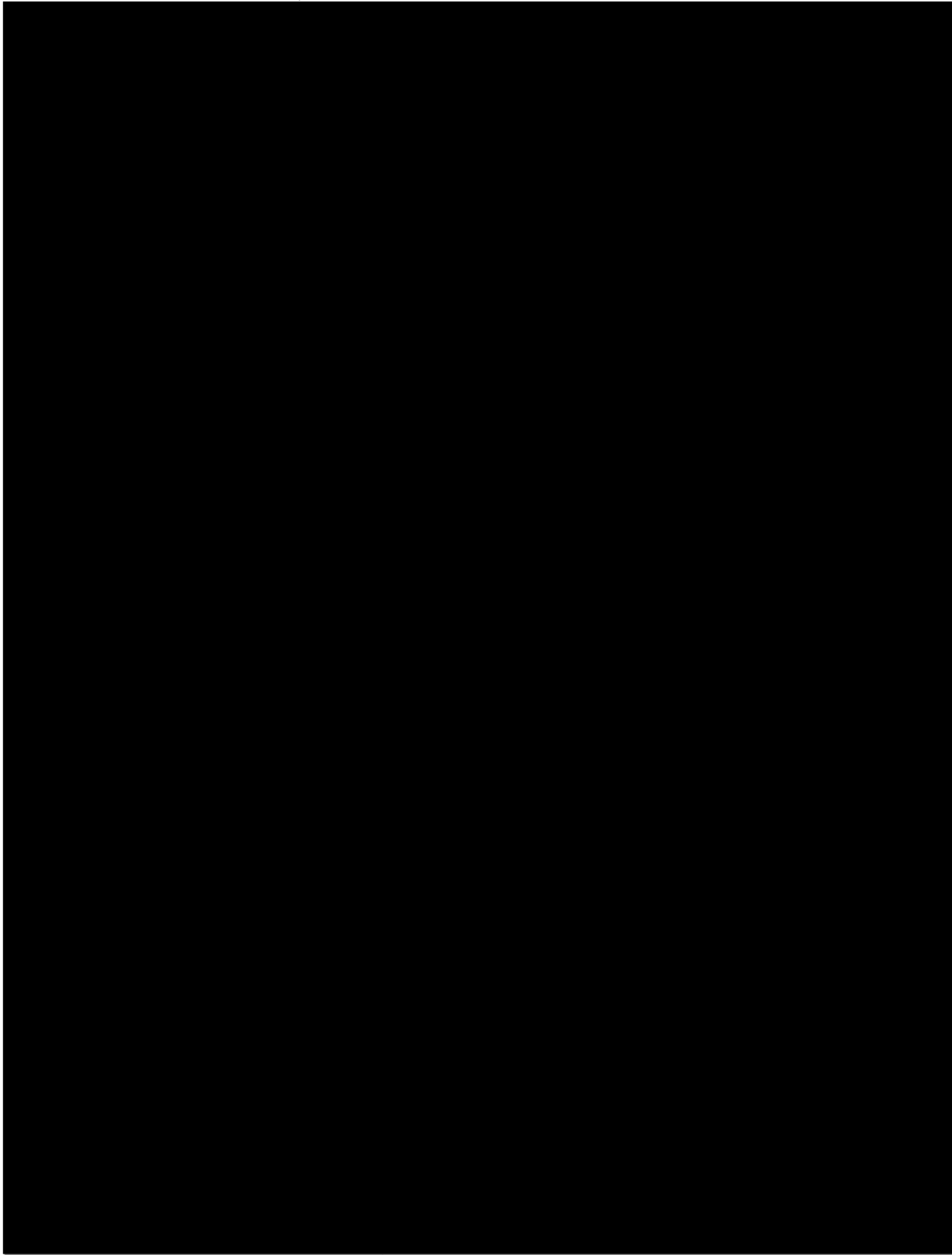
Late in the afternoon of the next day November 16, 2021, attorney Tom Frieberg sent a letter to Secretary Hultman which attached a letter from Cassidy Peters and a Stipulation Agreement for Case #19-596. I have attached copies of these documents as Exhibit I. The "Stipulation Agreement" is the alleged work plan for Cassidy Peters to gain her appraisal certification. However, the document is dated August 5, 2020, which is after the time of the July 2020 meeting. Amy Frink, who had previously testified at the October 28, 2021 GOAC hearing also has publicly stated that she has never heard of the document that Cassidy Peters released. See, Exhibit J.

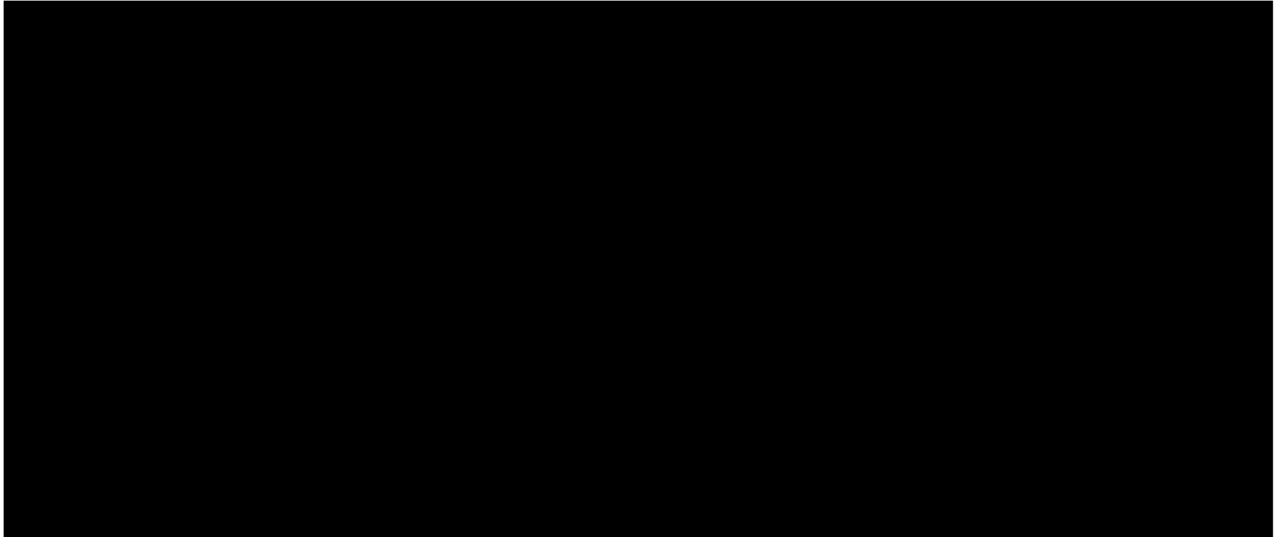
Shortly thereafter on the same date within hours Secretary Hultman sent a letter to the Executive Board seeking to have the matter dismissed entirely now that Cassidy Peters had agreed to turn over her certification. I have attached a copy of this letter as Exhibit K.

These actions appear to be a coordinated effort seeking to have this matter dismissed since these letters came out within hours of each other and the day before the Executive Board meeting. Both letters seemingly seek to redirect the inquiries away from any allegations of conflict of interest or abuse of power to whether or not Cassidy Peters had a license any further. The letters indicate a theme that as long as she turns in her license by the end of the year this whole matter should go away.

This matter is not simply about Cassidy Peters and the status of her certification. It is about what processes were utilized for Cassidy Peters to obtain her certification, the potential conflicts of interest at play here which numerous national scholars already have weighed in as being present and were there any abuses of power by the Governor [REDACTED]







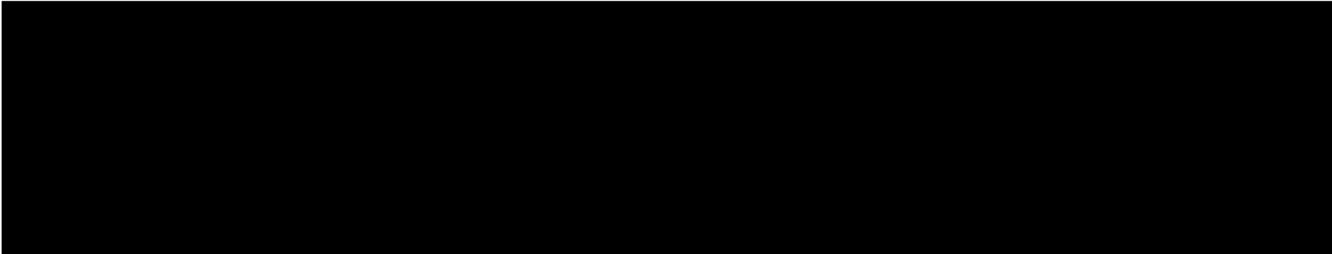
On November 17, 2021, the Executive Board met to consider the requests of GOAC for subpoenas for records and the testimony of Ms. Bren. The GOAC Chairman decided not to seek a subpoena of documents based upon the documents he received from attorney Frieberg/Kassidy Peters. However, he did seek a subpoena for Ms. Bren to publicly testify. The Executive Board voted 14-1 to grant the subpoena of Ms. Bren. As of this writing, that hearing has not been scheduled.


For your convenience, the relevant portion of the hearing starts approximately the three hour and nine minute mark and lasts approximately 10 minutes. I have had a transcript prepared of this relevant 10 minute portion and it is attached as Exhibit L. You may listen to the entire audio at the following link:


<https://sdpb.sd.gov/sdpbpodcast/2021/interim/exe11172021.mp3>

I believe further documents are needed. Specifically, but not exclusively, all test scores and/or relevant materials relating to the certification of Kassidy Peters.

In the October 28, 2021 GOAC meeting, it was mentioned and it is listed in the administrative rules that an applicant may only take the test four times before reapplying. I have anecdotal evidence that Ms. Peters failed the process four times before the July 2020 meeting. The records are needed to verify if that is true or not. If that is correct, then she could not have obtained her appraisal certifications from July 2020 to November 2020 as the process in the administrative rules states that an applicant must wait six months before reapplying. There are not six months between that time. *See*, Exhibit C, Rule 20:14:05:02.

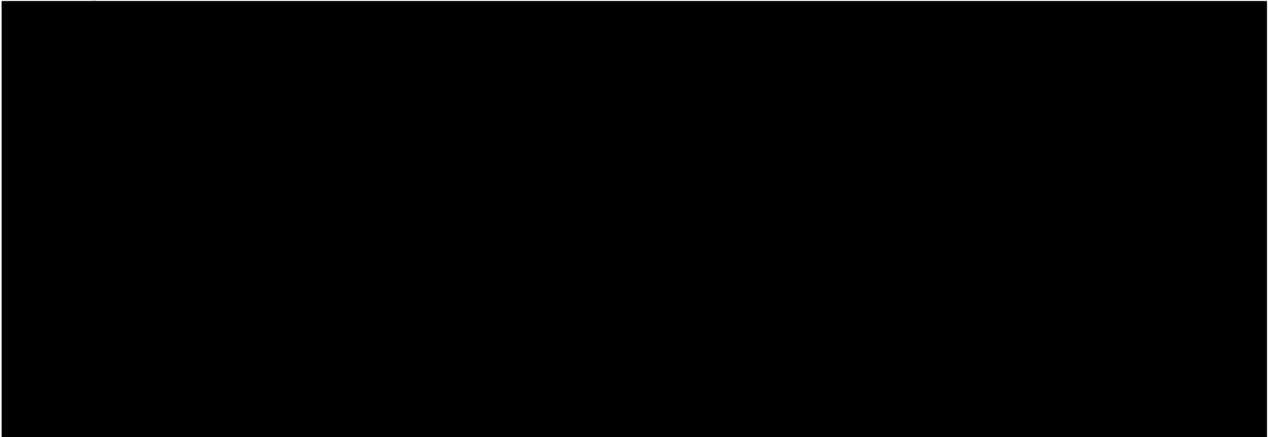


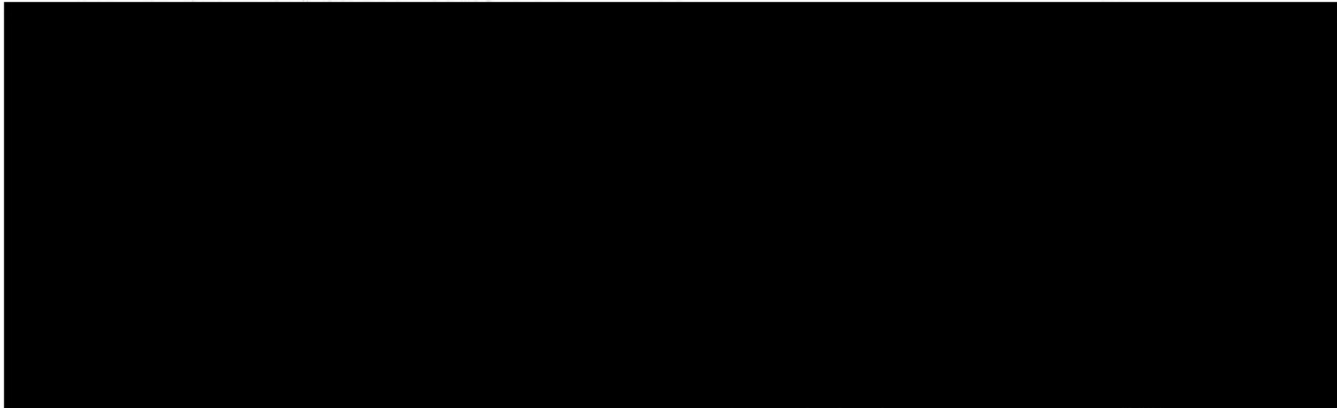


It has been revealed since my September 28, 2021 submission that the meeting in which the Governor called Ms. Bren in to talk to her had an additional witness who was previously unknown. Graham Oey, an attorney for the Department of Labor, was present. Mr. Oey, along with the other witnesses to the July 2020 meeting, would be able to testify as to what occurred at the meeting as noted above there have already been contradictory statements made about the meeting. There were also numerous non-lawyers in the room so any attorney-client privilege would be moot with regard to discussions with non-lawyers present such as the governor's daughter, who also is not a governmental employee. Secretary Hultman also testified that Amber Mulder was not in the meeting as an attorney, but there because of her expertise with the appraisal program. 

It has also been uncovered that this meeting did not take place at the State Capitol or a government office, but at the Governor's mansion.

I would further state I believe anyone who has testified before GOAC, as previously listed, should be included as a possible witness for the investigation. Anyone that was at the July 2020 meeting would be a potential witness. Attorney Melanie Carpenter would be a potential witness as she handled the age discrimination lawsuit for the State. Graham Oey and Amber Mulder would have knowledge of the process, along with what occurred at the meeting.





The numerous inconsistencies and the lack of candor by [redacted] Governor Noem [redacted] are extremely troubling. An investigation of these matters is the only way to find out what the facts are of these matters and to be transparent with the people of South Dakota so that they may have faith in there government officials.

As stated above, there are still areas of this matter that are being reviewed and I will supplement as information becomes available.

Respectfully,

Jason Ravensborg
ATTORNEY GENERAL OF
SOUTH DAKOTA