

STATE OF MINNESOTA

IN SUPREME COURT

Case File No.

Bill Kieffer and Erik van Mechelen

Petitioners,

vs.

**The governing body of the municipality
Rosemount, MN,**

Respondent.

PETITION TO CORRECT ERRORS AND OMISSIONS

Under Minnesota Statute § 204B.44

TABLE OF CONTENTS

INTRODUCTION1

ISSUES PRESENTED.....8

RELIEF REQUESTED.....9

PARTIES.....11

JURISDICTION.....16

I. The Supreme Court has proper jurisdiction to issue injunctive relief under Minnesota Statute § 204B.44.16

II. The legislature has granted standing under Minnesota Statute § 204B.44 to “any individual” which is inclusive of the Petitioners.17

III. The claims asserted require a declarative determination to correct the wrongful acts or actions, that have occurred and will occur, of the governing body of the municipality and its election officials through injunctive relief, if necessary.18

FACTUAL BACKGROUND

I. The use of Electronic Voting Systems (EVS) in Minnesota elections is governed by Minnesota statute and corresponding administrative rules. ...19

II. Before being approved for use in Minnesota, the vendor of an EVS must have that EVS certified by an independent testing authority accredited by the Election Assistance Commission (EAC). The independent testing authorities approved by the EAC are Pro V&V (PV&V) and SLI Compliance.24

A. A vendor of an EVS must include the certification of compliance with the federal voting systems guidelines with the application submitted to the MNSOS requesting an examination of and report on that EVS and its compliance with Minnesota election law.

III. Prior to utilizing a new EVS, a municipality must fulfill two specific statutory requirements:29

A. The governing body shall disseminate information to the public about the use of a new voting system at least 60 days prior to the election; and

B. “The governing body shall provide for instruction of voters with a demonstration voting system in a public place for the six weeks immediately prior to the first election at which the new voting system will be used.”

IV.	Until a county or municipality has complied with all required provisions of MINNESOTA statute governing the use of a new EVS, that county or municipality may not utilize that new EVS in a Minnesota election.	30
V.	Every county and municipality must comply with the rules promulgated by the MNSOS that govern the use of a new EVS prior to utilizing that EVS in any Minnesota election.	34
VI.	The city of Rosemount, Minnesota has plans to utilize a new electronic voting system (EVS) to tabulate ballots in the Minnesota State Primary Election on August 9, 2022.	36
	A. Prior to the August 9, 2022 primary, the city of Rosemount, Minnesota used the Dominion Voting System (DVS) Democracy Suite version 4.14 (DS-4.14). This system has been in use in Rosemount, MN since approximately 2015.	
	B. Rosemount, Minnesota plans to use DVS Democracy Suite version 5.5-C (DS-5.5-C) beginning on election day August 9, 2022.	
VII.	The municipality of Rosemount, Minnesota has not complied with the statutory requirements necessary to utilize the new EVS in the August 9, 2022 primary elections.	37

LEGAL ARGUMENT38

CLAIM I VIOLATION OF SEPARATION OF POWERS

I.	Election officials may not ignore statutory requirements without violating the separation of powers doctrine.	39
	A. Election officials are members of the executive department and may not usurp the right of the legislature to make law. The separation of powers doctrine.	
	B. Both the integrity and security of elections are jeopardized when governing bodies of a municipality, city clerks and / or other election officials ignore the statutory requirements for the use of a new EVS. Only the state legislature is responsible to consider and pass election-related statutes that protect the integrity and security of the election process in Minnesota.	
	C. No law allows local election officials to implement a new EVS prior to all statutory requirements being met.	
II.	A county may provide for the use of a new EVS within its boundaries but it may not require the use of a municipality to use that EVS and a municipality	

may not require any one or more precincts to utilize an EVS without approval from the county auditor.43

A. While a county and the municipalities must work together to approve the use of an EVS within a municipality, the municipality must agree to utilize an EVS and is responsible for complying with all statutory requirements related to the utilization of a new EVS.

B. The wrongful acts of the governing body of a municipality and the associated complicity by election officials, including county auditors and/ or city clerks, in violating the separation of powers doctrine is ripe for adjudication under Minnesota Statute §204B.44

CLAIM II VIOLATION OF MINNESOTA ELECTION LAW

The governing body of a municipality must comply with all Minnesota statutes and rules governing the use of a new EVS prior to utilizing that EVS in any Minnesota election. The plain language of the statute, administrative rules and guidebooks issued the Minnesota Secretary of State are determinative.44

A. Both the integrity and security of elections are jeopardized when the governing body of a municipality violates the law when it ignores statutory requirements.

An EVS may not be utilized in any Minnesota election until all statutory and regulatory requirements are met.

RECOMMENDED BRIEFING SCHEDULE47
RELIEF REQUESTED49
INDEX TO EXHIBITSI

INTRODUCTION

Voters across Minnesota have recently begun engaging with local election officials in ways not seen in modern history. These voters are reading election law, attending trainings on voter rights and election official responsibility and demanding accountability for any failure to follow the law or applicable rules. Election officials who may have implemented election law incorrectly, but without correction or accountability, are now being asked to explain past decisions and proposed actions.

With the exception of the emergency consent decrees issued in 2020 related to concerns about COVID-19, the body of law specific to Minnesota Elections has remained remarkably consistent for more than a decade. This is also true about the statutes applicable to electronic voting systems (EVS).

While there have been different sorts of technology in use in Minnesota elections for decades, the technology in use in current elections connects far more voting-related applications, creates new security risks, has a growing potential to interfere with voter rights and requires voters and election officials to have a broader and deeper knowledge and understanding of technology than in the past.

The technology used in an EVS now evolves much more quickly than was either required or possible in the past, in part due to the serious security risks related to any number of possible nefarious actors. While this evolution in technology raises serious concerns about the ability of local governing bodies to secure the election

processes in each of their specific communities, the applicable statutes place clear and serious responsibilities upon the shoulders of the members of governing bodies, election officials and voters to counter those risks. The statutes passed into law by the Minnesota Legislature provide clear requirements to inform and protect voters and to encourage the public trust in every Minnesota election.

When a governing body of a municipality ignores Minnesota statutes and/or administrative rules, that body undermines the entire election system. Willful noncompliance with election law by these municipalities could be considered material violations of election law and could result in voters and/or candidates seeking to invalidate an election. Negligent disobedience of the law also undermines the morale of the people and could also lead to the same result.

Minnesota statutes are not suggestions or guidelines: The Court cannot allow those responsible for protecting our elections to violate the laws they find inconvenient. The Minnesota legislature drafted, debated and passed statutes to control the use of every EVS in the state and has chosen to neither repeal nor amend the requirement that a governing body of a municipality both shall disseminate information to the public about the use of a new voting system at least 60 days prior to the election and shall provide for instruction of voters with a demonstration voting system in a public place for the six weeks immediately prior to the first election at which the new voting system will be used.

Minnesota election laws require governing bodies and election officials to comply with many requirements to ensure an EVS is properly certified before its use in Minnesota. Every component of an EVS must be examined and verified as being included in that EVS. There are no shortcuts in this process because the statutory language is clear.

While state officials may have failed to ensure counties and municipalities have access to the most current EVS or to provide adequate training and information to those entities, it is the governing boards of the municipalities, the county and city clerks and the local election officials who are each obligated to implement state law at the local level.

Over the past several months, residents of Rosemount, Minnesota have met with local election officials, attended public meetings and sought out information about how the election process was being implemented in their local community. Many of these people, who often share information with each other and people in other communities, hope to grow the public's knowledge about Minnesota law to further the effort to restore the people's trust in local elections.

As these people began to talk directly with their local officials and learn information about their local election processes, many developed more serious concerns. Some of these people learned their municipality would be utilizing a different EVS in the upcoming primary election on August 9, 2022.

These individuals began questioning members of the local governing body, their county auditor, city clerk and local election officials about the EVS being secured. These people sought information available from the Election Assistance Commission (EAC) and PRO V & V (the independent testing authority accredited by the EAC) and also acquired the publicly available report detailing the Minnesota Secretary of State (MNSOS) examination and certification of that EVS.

While these individuals hoped they would learn their trusted elected and election officials had complied with all statutory and regulatory requirements, they were disappointed and troubled to learn their county and city failed to comply with multiple Minnesota statutes governing the use of a new EVS.

The identified issues include the following:

- The governing body of Rosemount failed to provide the required 60-day notice informing the public a new EVS would be utilized in the primary election; and
- The governing body of Rosemount failed to provide for instruction of voters with a demonstration voting system in a public place for the six weeks immediately prior to the first election at which the new voting system will be used.

After realizing their local election officials were planning to utilize an EVS that was not properly examined by the MNSOS, these Minnesotans shared their

concerns with the appropriate governing body, fully expecting those elected officials to take the information, research the concerns and to comply with Minnesota law. Instead, these concerned citizens were provided with incorrect information.

Minnesota voters, regardless of party affiliation, have the right to expect and to know the EVS being used in their local elections complies with Minnesota law. They also should expect the governing body of their municipality to take immediate corrective action after learning the EVS was not in compliance with MN law.

The individuals who have joined together to stop these elected officials from knowingly violating Minnesota law expect Minnesota's election laws to be upheld, as they are written. There is nothing ambiguous about the election laws governing the use of an EVS. Statutory compliance is not optional. The elected and election officials who knowingly, and intentionally, violate Minnesota election law must be held accountable by the Court.

When a county or a representative from the office of the MNSOS provides a municipality with information, the municipality has a duty to its citizens to use due diligence and confirm the information provided. Under Minnesota law, it is the governing body of the municipality that has the ultimate responsibility and ability to protect the people from corrupt and nefarious actors who may seek to undermine the security of the elections.

The law is unambiguous: the governing body of a municipality must meet and approve a new voting system. If a governing body agrees to provide a new EVS in any of its precincts, it must then provide public notice about that new EVS at least 60 days prior to its use in an election AND it must provide for instruction of voters with a demonstration voting system in a public place for the six weeks immediately prior to the first election at which the new voting system will be used.

The administrative rules restate the statutory requirements that bind the governing body of a municipality after it votes to use a new EVS.

The 2022 guidebook issued by the Minnesota Secretary of State to municipal city clerks across Minnesota further demonstrates, through its use of the plain language of the statutes and rules, the absolute statutory requirements that bind the governing body of a municipality. Page 31, 6.3 Electronic Voting System Notice Requirements states the following:

6.3 ELECTRONIC VOTING SYSTEM NOTICE REQUIREMENTS

6.3.1 Notice of Public Accuracy Test (PAT)

Public notice of the time and place of the Public Accuracy Test (PAT) must be given at least two days in advance by publication once in official newspapers. The PAT of the voting system must be performed within 14 days before Election Day. [M.S. 206.83](#)

6.3.2 Notice to OSS of Use of New Equipment

When using new voting equipment, the clerk must submit a plan for the use of this equipment to the OSS more than 60 days before the first election where the municipality will use the new equipment. This plan must include information regarding the acquisition of sufficient facilities, computer time, and professional services. The plan must be signed and notarized before it is submitted to the OSS. The OSS shall review each plan for sufficiency. Within 20 days of receiving the plan, the OSS shall notify each reporting authority of the sufficiency or insufficiency of its plan. [M.S. 206.58](#); [206.80](#); [206.82](#)

6.3.3 Notice to Public of New Voting System

The governing body of a municipality must provide information to the public regarding the use of a new voting system at least 60 days prior to the election. A demonstration voting system must be provided in a public place for the six weeks immediately prior to the first election at which the new voting system will be used. [M.S. 206.58](#)

Office of the Minnesota Secretary of State
2022 City Clerk Election Guide

31

If this Court does not take the action necessary to prevent the county and local municipalities from brazenly violating MINNESOTA election law, even if at the direction of the MNSOS, they and others will be emboldened to continue their disregard of election laws. This disregard of election law would jeopardize the integrity of election results, perpetuate and further the mistrust of voters in the election system and deepen the divide between Minnesotans.

ISSUES PRESENTED

I

Election officials may not ignore statutory requirements without violating the separation of powers doctrine.

Whether election officials or members of the executive department violate separation of powers principles when they take action that disregards specific requirements of properly passed, valid Minnesota statutes.

II

Governing bodies of a municipality, must comply with all Minnesota statutes and rules governing the use of a new EVS prior to utilizing that EVS in any Minnesota election because both the integrity and security of elections are jeopardized when governing bodies of a municipality, county auditors, city clerks and / or election officials ignore statutory requirements.

Whether an EVS may be utilized in any Minnesota election before all statutory and regulatory requirements related to its use are met.

RELIEF REQUESTED

This Petition seeks relief under Minnesota Statute §204B.44, subd. (a)(4) against the governing body of Rosemount, Minnesota, a municipality within Dakota County, which is charged with conducting elections and which has violated Minnesota law and which has declared its intent to commit wrongful acts in the August 9, 2022 statewide primary. Declaratory and injunctive relief is sought to stop additional illegalities from being committed on election day.

Petitioners seek an injunction against the governing body of Rosemount, Minnesota requiring them to

- comply with Article III Section 1, Division of powers
- comply with all applicable Minnesota Statutes §§ 206.55 to 206.90 and corresponding rules
- implement and utilize, if necessary, the Minnesota Election Emergency Plan developed in cooperation with Dakota County in compliance with MN Stat. §204B.181

And declare that

- a governing body of a municipality violates the separation of powers principle in the Minnesota Constitution when it takes action that disregards and violates Minnesota statutes; and
- a governing body of a municipality violates the rights of their citizens, granted to it by the Minnesota Constitution and legislature, when it takes action that eliminates the ability of those citizens to exercise those rights.

PARTIES

Petitioner Bill Kieffer

1. Bill Kieffer is a resident of Rosemount, Minnesota who seeks to ensure the election laws passed by the Minnesota Legislature to protect the integrity of Minnesota elections and the rights of eligible voters are implemented by the public officials in Rosemount, Minnesota because those officials have an obligation to act in accordance with those laws.

Petitioner Erik van Mechelen

2. Erik van Mechelen is a candidate for Minnesota Secretary of State and is included on the ballot for this office in the Minnesota state primary election to be held on August 9, 2022.

Respondent The governing body of the municipality Rosemount, MN

3. Respondent the governing body of the municipality Rosemount, MN, a statutory city within Dakota County, MN. The governing body of Rosemount, MN, also referred to as the Rosemount City Council, has the duty to ensure Minnesota election laws are followed by all city employees and hired and appointed election officials. The Rosemount City Council consists of 5 members. The Rosemount City Council acts on behalf of the city of Rosemount Minnesota in exercising the city's duties regarding federal, state, county and local elections. The election process includes the decision whether to provide for the use of an electronic voting system

in one or more precincts within its boundaries. If this governing body does provide for the use of a new EVS, that body shall “disseminate information to the public about the use of a new voting system at least 60 days prior to the election and shall provide for instruction of voters with a demonstration voting system in a public place for the six weeks immediately prior to the first election at which the new voting system will be used.”¹

- a. Bill Droste, Mayor of Rosemount, serves as a member of the Rosemount City Council. He is named and served only in his official capacity, as an elected official who serves as a member of the Rosemount Minnesota City Council. Elected officials have a duty to follow Minnesota election law when exercising their duties regarding federal, state, county and local elections. Members of a governing body of a municipality who vote to adopt a new EVS for use within that municipality must comply with all statutory obligations prior to using that EVS in any election, as noted previously in paragraph 2 of this section.
- b. Tammy Block, serves as a member of the Rosemount City Council. She is named and served only in her official capacity as an elected

¹ Minn. Stat § 205.58, subd. 1.

official who serves as a member of the Rosemount Minnesota City Council. The Rosemount City Council is the governing body of Rosemount, Minnesota, a municipality responsible for administering elections within its boundaries. Elected officials have a duty to follow Minnesota election law when exercising their duties regarding federal, state, county and local elections. Members of a governing body of a municipality who vote to adopt a new EVS for use within that municipality must comply with all statutory obligations prior to using that EVS in any election, as noted previously in paragraph 2 of this section.

- c. Paul Essler serves as a member of the Rosemount City Council. He is named and served only in his official capacity as an elected official who serves as a member of the Rosemount Minnesota City Council. The Rosemount City Council is the governing body of Rosemount, Minnesota, a municipality responsible for administering elections within its boundaries. Elected officials have a duty to follow Minnesota election law when exercising their duties regarding federal, state, county and local elections. Members of a governing body of a municipality who vote to adopt a new EVS for use within that municipality must comply with all statutory

obligations prior to using that EVS in any election, as noted previously in paragraph 2 of this section.

d. Heidi Freske serves as a member of the Rosemount City Council. She is named and served only in her official capacity as an elected official who serves as a member of the Rosemount Minnesota City Council. The Rosemount City Council is the governing body of Rosemount, Minnesota, a municipality responsible for administering elections within its boundaries. Elected officials have a duty to follow Minnesota election law when exercising their duties regarding federal, state, county and local elections. Members of a governing body of a municipality who vote to adopt a new EVS for use within that municipality must comply with all statutory obligations prior to using that EVS in any election, as noted previously in paragraph 2 of this section.

e. Jeff Weisensel serves as a member of the Rosemount City Council. He is named and served only in his official capacity as an elected official who serves as a member of the Rosemount Minnesota City Council. The Rosemount City Council is the governing body of Rosemount, Minnesota, a municipality responsible for administering elections within its boundaries. Elected officials have

a duty to follow Minnesota election law when exercising their duties regarding federal, state, county and local elections. Members of a governing body of a municipality who vote to adopt a new EVS for use within that municipality must comply with all statutory obligations prior to using that EVS in any election, as noted previously in paragraph 2 of this section.

JURISDICTION

I. The Supreme Court has proper jurisdiction to issue injunctive relief under Minnesota Statute § 204B.44.

1. The court's original jurisdiction is proper under Minnesota Statute § 204B.44, governing election errors and omissions.

2. Minnesota Statute § 204B.44 (a)(4) governing errors and omissions states that any individual may file a petition 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. The Court has subject matter jurisdiction because of the power of the Court to “hear and determine cases that are presented to the court.”² The Court’s authority to hear and determine a case depends upon the claims made.³

3. The Petitioners argue the past wrongful acts of these individuals who are charged with specific statutory duties concerning an election, and therefore have the responsibility to implement Minnesota’s election law so as to safeguard the election process, have undermined the Minnesota state primary election by engaging

² *State v. Losh*, 755 N.W.2d 736, 739 (Minn. 2008).

³ *See Robinette v. Price*, 214 Minn. 521, 526, 8 N.W.2d 800, 804 (1943) (describing our jurisdiction as the authority to “hear and determine a particular class of actions” (emphasis added)). *League of Women Voters Minnesota v. Ritchie*, 819 N.W.2d 636,643 (Minn. 2012).

in conduct which violated Minnesota statutes and administrative rules. Additionally, those respondents have clearly indicated their intent to utilize a new EVS in the August 9, 2022 primary despite their failure to comply with the requirements detailed in Minnesota law. The egregious conduct of the members of the governing bodies requires the Court to intercede to correct previous errors and to prevent future violations of the law.

4. Original jurisdiction exists because this petition relates to a statutory duty breached by the governing body of a municipality in relation to a specific election.

5. This petition does not challenge an election law properly passed by the legislature, but rather the failures of state and county officials to enforce the law in this specific election, the Minnesota Statewide primary on August 9, 2022.

6. The ongoing and extreme political division in the state has persisted since the 2020 elections. People across political parties have a strong interest in restoring fairness, integrity and transparency to Minnesota's election process. This division supports the need for the Court to exercise original jurisdiction over this petition.

II. The legislature has granted standing under Minnesota Statute § 204B.44 to "any individual" which is inclusive of the Petitioners.

7. MINNESOTA Statute §204B.44 (a) states “Any individual may file a petition in the manner provided in this section for the correction of any of the following errors, omissions, or wrongful acts which have occurred or are about to occur...” Subdivision 4 includes: “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.”

8. The Petitioner is an “individual” under §204B.44 and therefore has standing.

9. Minnesota Statute § 204B.44 provides that “[a]ny individual may file a petition in the manner provided in this section for the correction of any of the following errors, omissions, or wrongful acts which have occurred or are about to occur.” This statutory provision constitutes a legislative grant of standing, making the individual petitioner a proper party to this lawsuit.

III. The claims asserted require a declarative determination to correct the wrongful acts or actions, that have occurred and will occur, of the governing body of the municipality and its election officials through injunctive relief, if necessary.

10. This petition grants the Court original jurisdiction.

11. Minnesota Statute §§ 555.01 grants Courts within their jurisdictions with the power to “declare rights, status, and other legal relations whether or not further relief is or could be claimed.”

FACTUAL BACKGROUND

Introduction

I. The use of Electronic Voting Systems (EVS) in Minnesota elections is governed by Minnesota statutes §§206.55 to 206.90.

12. Minnesota voters expect the statutes passed by the legislature will be followed by elected officials and those people hired by counties and municipalities to assist those elected officials in the management of all affairs of those counties and municipalities, including those specific to elections.

A. When authorized by the legislature, the MNSOS has the authority to issue corresponding administrative rules to provide guidance to those obligated to implement those laws and facilitate the implementation of statutes by election officials.

13. Minnesota Statute §206.57 authorizes the MNSOS to adopt permanent rules consistent with sections 206.55 to 206.90 relating to the examination and use of electronic voting systems.

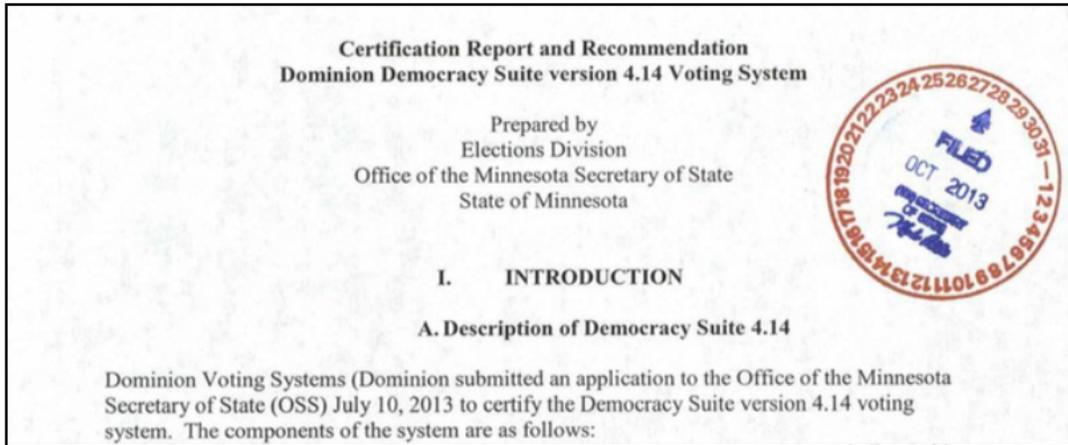
14. While the MNSOS may not use rules to undermine the intent of the legislature, the MNSOS may provide guidance. When the MNSOS chooses to not

issue rules that provide that additional guidance related to a specific statute, the county and municipality must adhere to the plain language of that statute.

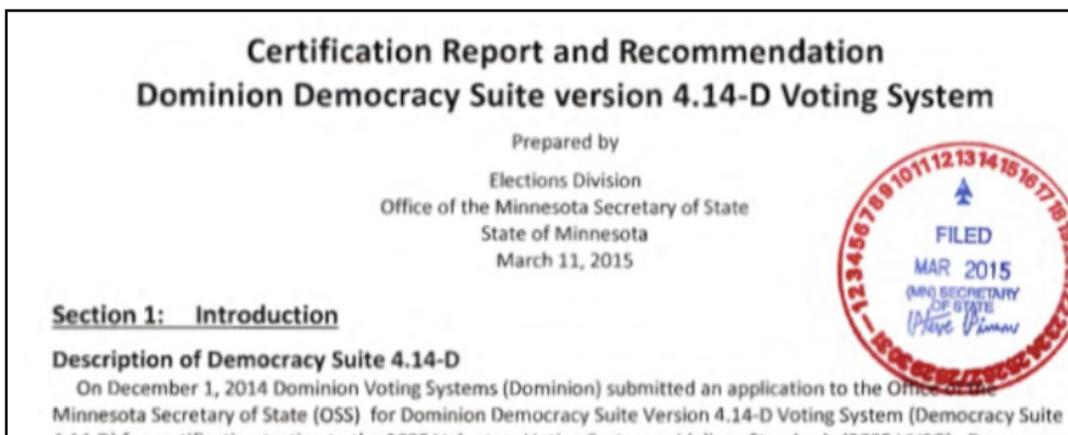
15. In compliance with Minnesota Administrative Rule 8220.0325, which requires a vendor seeking an initial certification of a new electronic voting system, to submit that request between December 1 of an even numbered year and December 1 of the following odd numbered year, Dominion Voting Systems “submitted an application dated May 10, 2021, and Technical Data Package (TDP) to the Office of the Minnesota Secretary of State (OSS) to certify the Dominion Democracy Suite version 5.5-C (D-Suite 5.5-C) and Dominion Democracy Suite 5.5-CS (D-Suite 5.5-CS) voting systems to the 2005 Voluntary Voting System Guidelines (VVSG).”

A. In 2013, the elections division of the Office of the MNSOS took less than 4 months to complete the certification report for the DDS 4.14 voting system after receipt of an application from Dominion Voting Systems.⁴

⁴ See Certification Report and Recommendation, Dominion Democracy Suite, version 4.14 Voting System at <https://officialdocuments.sos.state.mn.us/Files/GetDocument/69096>



B. In 2015, the elections division of the Office of the MNSOS took less than 4 months to complete the certification report for the DDS 4.14-D voting system after receipt of an application from Dominion Voting Systems.⁵



⁵ See Certification Report and Recommendation, Dominion Democracy Suite, version 4.14-D Voting System at <https://officialdocuments.sos.state.mn.us/Files/GetDocument/98788>

C. In 2016, the elections division of the Office of the MNSOS took less than 5 months to complete the certification report for the DDS 4.14-E voting system after receipt of an application from Dominion Voting Systems.⁶

Certification Report and Recommendation
Dominion Democracy Suite, version 4.14-E Voting System

Prepared by
Elections Division
Office of the Minnesota Secretary of State
State of Minnesota
January 12, 2016

Section 1: Introduction

On August 19, 2015, Dominion Voting Systems (Dominion) submitted an application dated August 17, 2015, and Technical Data Package (TDP) to the Office of the Minnesota Secretary of State (OSS) to certify the Dominion Democracy Suite version 4.14-E (D.S. 4.14-E) voting system to the 2005 Voluntary Voting System Guidelines (VVSG). D.S. 4.14-E is a modification to the Democracy Suite version 4.14-D (D.S. 4.14-D) voting system. Both systems, 4.14-D and 4.14-E received a recommendation for certification from National Technical Systems Huntsville (NTS Huntsville), an approved independent testing authority on November 19, 2014, and June 25, 2015, respectively. For a complete list of voting system revision history, refer to subsection 5.1. The OSS issued a limited certification of D.S. 4.14-D on April 7, 2015. The components of the D.S. 4.14-E are as follows:

Components

- Democracy Suite Election Management System (EMS)
- ImageCast Evolution (ICE) – precinct polling place optical scanner that incorporates a ballot marking device to accommodate accessibility needs
- ImageCast Central (ICC) – central count optical scan ballot tabulator. (Using Commercial-off-the-shelf (COTS) Canon DR-G1130 Scanner)

Software:

- Election Event Designer - version 4.14.38 - EMS software
- Results Tally and Reporting – v. 4.14.38 – EMS software
- File System Service – v. 4.14.38 – EMS software
- Audio Studio – v.4.14.38 – EMS software
- Data Center Manager – v. 4.14.38 – EMS software
- Application Server – v. 4.14.38 – EMS Software
- EMS Database Server – v. 4.14.38
- EMS Election Data Translator (EDT) – v. 4.14.38



D. Between 2021 and 2022, in the time period before what will be one of the most watched and likely contested elections in the history of both Minnesota and the United States, the elections division of the Office of the MNSOS took nearly a year to respond to a request from Dominion Voting

⁶ See Certification Report and Recommendation, Dominion Democracy Suite, version 4.14-E Voting System at <https://officialdocuments.sos.state.mn.us/Files/GetDocument/103332>

Systems to complete the certification report for the DDS 5.5-C voting system and file the report necessary to allow counties and municipalities to provide this new system in the 2022 elections.⁷

Certification Report and Recommendation
Dominion Democracy Suite, version 5.5-C Voting System

Prepared by
Elections Division
Office of the Minnesota Secretary of State
State of Minnesota
April 12, 2022

Section 1: Introduction

Dominion Voting Systems (Dominion) submitted an application dated May 10, 2021, and Technical Data Package (TDP) to the Office of the Minnesota Secretary of State (OSS) to certify the Dominion Democracy Suite version 5.5-C (D-Suite 5.5-C) and Dominion Democracy Suite 5.5-CS (D-Suite 5.5-CS) voting systems to the 2005 Voluntary Voting System Guidelines (VVSG).

The D-Suite 5.5-C is a modification from the previously certified Democracy Suite 4.14-E Voting System (D-Suite 4.14-E). The D-Suite 5.5-C Voting System received a recommendation for certification from Pro V & V, an independent testing authority, on July 7, 2020 and the D-Suite 5.5-CS Voting System received a recommendation for certification from Pro V & V on July 15, 2020. D-Suite 5.5-C is a paper-based optical scan voting system. D-Suite 5.5-C consist of the following major components:

- The **Election Management System (EMS) v. 5.5.40.2** – the application software used at Election Central to define the election, program the voting machines, and report results.
- **ImageCast Evolution (ICE) v. 5.5.6.5** – an optical scanner that incorporates a ballot marking device to accommodate accessibility needs (with either the primary display on the ICE unit or with a secondary display attached to the ICE unit).
- **ImageCast Central (ICC) v 5.5.41.0002** – a high speed solution for absentee scanning.

The components of the D-Suite 5.5-C are as follows:

EMS Software Component Descriptions:

- EMS Election Event Designer (EED) - version 5.5.40.2
- EMS Results Tally and Reporting (RTR) - version 5.5.40.2
- EMS Application Server – version 5.5.40.2
- EMS File System Service (FSS) – version 5.5.40.2
- EMS Audio Studio (AS) – version 5.5.40.2
- EMS Data Center Manager (DCM) – version 5.5.40.2
- EMS Election Data Translator (EDT) – version 5.5.40.2
- EMS ImageCast Voter Activation (ICVA) version 5.5.40.2
- Smart Card Helper Service – version 5.5.40.2

EMS Client/Server Software Component Descriptions:

- Microsoft Windows Server – version 2012 R2 Standard
- Microsoft Windows version 10 Professional
- .NET framework – version 3.5
- Microsoft Visual J# - version 2.0
- Microsoft Visual C++ 2013 Redistributable – version 2013
- Microsoft Visual C++ 2015 Redistributable – version 2015

Document Number: 222949
Filed: April 13, 2022
Office of the Minnesota
Secretary of State Steve Simon

⁷ See Certification Report and Recommendation, Dominion Democracy Suite, version 5.5-C Voting System at <https://officialdocuments.sos.state.mn.us/Files/GetDocument/131989>

E. While the date a new voting system is certified by the MNSOS may make it difficult for a county or municipality to comply with related statutory requirements that must be met before using a new EVS, compliance with clear statutory requirements is not waived because of the MNSOS delay.

II. Before being approved for use in Minnesota, the vendor of an EVS must have that EVS certified by an independent testing authority accredited by the Election Assistance Commission (EAC). The independent testing authority approved by the EAC is Pro V&V (PV&V).

A. A vendor of an EVS must include the certification of compliance with the federal voting systems guidelines with the application submitted to the MNSOS when requesting an examination of and report on that EVS and its compliance with Minnesota election law.

16. Each of the certification reports available through the official documents portal on the MNSOS website include information that indicates the MNSOS received the required information from Dominion Voting System with the application for review of the voting system.

17. The Certification of Dominion Democracy Suite Version 5.5-C Voting System issued by the Minnesota Secretary of State on May 2, 2022 clearly includes the information in the Pro V & V report that determined the DDS 5.5-C is a modification from the D-Suite 5.0 system configuration.⁸

⁸ See Exhibit 1, Declaration of Rick Weible, footnote 12 referencing p. 4 of the “Certification of Dominion Democracy Suite Version 5.5-C Voting System” found at <https://officialdocuments.sos.state.mn.us/Files/GetDocument/131989> Last Accessed on July 29, 2022.

The D-Suite 5.5-C System is a paper-based optical scan voting system. The D-Suite 5.5-C Voting System configuration is a modification from the EAC approved D-Suite 5.5-B Voting System. The D-Suite 5.5-B system configuration is a modification of the D-Suite 5.5 System configuration. The D-Suite 5.5 System configuration is a modification to the D-Suite 5.0 System configuration. The independent testing authority found that all these system configurations met the requirements set for the in the EAC 2005 VVSG, Volumes I and II. According to Pro V&V, an independent testing authority, in its report on the certification testing of D-Suite 5.5-C, dated July 7, 2020, "the D-Suite 5.5-C Voting System was evaluated against the relevant requirements contained in the EAC 2005 VVSG, Volumes I and II. Pro V&V found:

"The D-Suite 5.5-C Voting System, as presented for testing, successfully met the requirements set forth for voting systems in the U.S. election Assistance Commission (EAC) 2005 Voluntary Voting System Guidelines (VVSG), Version 1.0. Additionally, Pro V&V, Inc has determined that the D-Suite 5.5-C functioned as a complete system during System Integration Testing. Based on the test findings, Pro V&V recommends the EAC grant the D-Suite 5.5-C System...certification to the EAC 2005 VVSG."

18. The EAC deemed the D-Suite 5.0 system a new voting system.⁹

RE: EAC Contact Form Submission

Paul Aumayr <paumayr@eac.gov>
Thu 7/7/2022 12:17 PM
To: Rick Weible <rick@rgvisions.com>
Good Afternoon

The Democracy Suite 5.0 is considered by the EAC to be a new voting system that has not previously been tested to applicable federal standards in the EAC Program. This is stated in the test plan, test report and the EAC certification documentation.

Democracy Suite 5.5-C is considered a modification of Democracy Suite 5.5-B, as stated in the test plan, test report and the EAC certification documentation.

Hopefully this answers your question.

Sincerely

Paul Aumayr | Sr. Election Technology Specialist
Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov
PAumayr@EAC.gov

From: NoReply <no-reply@eac.gov>
Sent: Wednesday, July 6, 2022 7:14 PM
Subject: EAC Contact Form Submission

Submitted on Wed, 07/06/2022 - 7:13 PM

Submitted by: Anonymous

Submitted values are:

First Name
Rick

Last Name
Weible

Address
St. Bonifacius, Minnesota. 55375

Message
In reviewing the Dominion 4.14-E, 5.0, 5.5-C, it appears that the 4.14E is a separate voting system from the 5.0 version, in that the 5.0 is a new voting system. Where as we see some documentation that states "The D-Suite 5.5-C is a modification from the previously certified Democracy Suite 4.14-E Voting System (D-Suite 4.14-E)" we believe that the 5.5-C is a modification from 5.0 and that 5.0 is a new voting system from 4.14E....please let us know what is correct.

Thank you,

Rick

Phone Number
[6123064555](tel:6123064555)

Email
rick@rgvisions.com

Concerning
Voting System Testing And Certification

⁹ See Ex. 1, Email from EAC Senior Election Technology Specialist dated July 7, 2022.

19. The D-Suite 5.0 system configuration was deemed a new voting system by Pro V & V.¹⁰

2.0 PRE-CERTIFICATION TESTING AND ISSUES

2.1 Evaluation of Prior VSTL Testing

The D-Suite 5.0 is a new voting system that has not previously been tested to applicable federal standards in the EAC Program. The Dominion Voting Systems D-Suite 4.14-E system, previously certified by the EAC (Reference NTS Report No. PR036164-01 Rev. C, which is available for viewing on the EAC’s website at www.eac.gov) contains various components of the system currently under test. For this reason, the TDP review that was previously performed will be utilized to meet the requirements of part of the required TDP review; only the updated portions of the TDP will be reviewed as part of this test program.

2.2 Evaluation of Prior Non-VSTL Testing

The D-Suite 5.0 is a new voting system that has not previously been tested to applicable federal standards in the EAC Program.

20. The D-Suite 5.5-C voting system was deemed a modification of the D-Suite 5.0 system by Pro V & V.¹¹

2.1 Revision History

The table below details the version history of the D-Suite 5.5-C System:

Table 2-1. D-Suite 5.5-C System Revision History

System Version	Certification Type	Baseline System	Certification Number
D-Suite 5.0	New System	--- (Original System)---	DVS-DemSuite5.0
D-Suite 5.5	Modification	D-Suite 5.0	DVS-DemSuite5.5
D-Suite 5.5-B	Modification	D-Suite 5.5	DVS-DemSuite5.5-B
D-Suite 5.5-C	Modification	D-Suite 5.5-B	DVS-DemSuite5.5-C*

*Upon grant of certification by the EAC

2.2 Scope of Testing

The scope of testing focused on the addition of the Canon DR-G2140 central count scanner, the HP M501dn printer for the ICX BMD configuration, and the Microsoft Windows 10 Patch (Jan. 14, 2020). To evaluate the D-Suite 5.5-C test requirements, the submitted modifications were

TR-01-01-DVS-38-01.01 25 of 63

¹⁰ See Ex. 1, Affidavit of Rick Weible, p.6, citing https://www.eac.gov/sites/default/files/voting_system/files/Dominion_Voting_Systems_D-Suite_5.0_Test_Plan.pdf p. 9. Last accessed on July 29, 2022.

¹¹ See Ex. 1, Affidavit of Rick Weible, p. 6 citing https://www.eac.gov/sites/default/files/voting_system/files/Dominion%20Voting%20Systems%200%20D-Suite%205.5-C%20Test%20Report-Rev.%2001.pdf p.25. Last accessed July 29, 2022.

21. Minnesota Administrative Rule 8220.0700 requires:

“A modification to hardware or software of an electronic voting system which has been certified by the secretary of state must be submitted for reexamination and be recertified under part 8220.0650 unless the modification has been determined to be de minimis by an independent testing authority.

The vendor must notify the secretary of state of all de minimis modifications, provide the de minimis determination from an independent testing authority and receive a letter of acceptance of the de minimis modifications from the secretary of state before the modified electronic voting system may be used in an election.”

A. As stated previously, the EAC and Pro V & V both determined the DDS 5.0 system was a new system.

i. Dominion did not file an application for certification of the DDS 5.0 system with the MNSOS so the DDS 5.0 EVS was never certified for use in a Minnesota election.

B. The EAC and Pro V & V both determined DDS 5.5-C was a modification to the line of the DDS 5.0 system so, as the first in the line to be

used in Minnesota, the DDS 5.5-C system is required to be treated as a new system in Minnesota.

i. All statutory requirements related to the use of a new EVS must be met prior to the use of that new EVS in a Minnesota election.

C. The DDS 5.5-CS voting system is a modification of DDS 5.5-C voting system.

i. If an independent testing authority determined the DDS 5.5-CS had only de minimis changes from the DDS 5.5-C version, the vendor is required to provide that determination to the MNSOS so as to avoid the need for recertification of the voting system.

III. Prior to utilizing a new EVS, a municipality must fulfill two specific statutory requirements included in Minn. Stat §206.58, subd. 1:

A. “The governing body shall disseminate information to the public about the use of a new voting system at least 60 days prior to the election; and

B. The governing body “shall provide for instruction of voters with a demonstration voting system in a public place for the six weeks immediately prior to the first election at which the new voting system will be used.”

22. Bill Kieffer, a resident of Rosemount, Minnesota completed a search of the Dakota County Tribune (Rosemount, Minnesota official newspaper) for public notices from Rosemount, Minnesota regarding dissemination of information to the public about the use of the new voting system and information about the

demonstration voting system in a public place: No information was found between the dates of April 22, 2022 and June 17, 2022.¹²

23. Rosemount, MN has not complied with the notice to residents about the use of a new voting system.

24. Rosemount, MN has not complied with the statutory requirement to provide a demonstration voting system for the six weeks prior to the election.

IV. Until a county or municipality has complied with all required provisions of MINNESOTA statute governing the use of a new EVS, that county or municipality may not utilize that new EVS in a Minnesota election.

25. Between July 14, 2022 and July 20, 2022 Heidi Flodin, resident of Dakota County, engaged in an email conversation with Erin Fasbender, who identified herself as both the city clerk of Rosemount and the main contact regarding elections.¹³

¹² See Ex. 3, Affidavit of Bill Kieffer.

¹³ See Ex. 4, Affidavit of Heidi Flodin.

Sent: Friday, July 15, 2022 at 8:48 AM
From: "Fasbender, Erin" <Erin.Fasbender@ci.rosemount.mn.us>
To: "hflodin@mail.com" <hflodin@mail.com>
Subject: RE: A couple of questions...

Hi Heidi,

I'm the City Clerk for Rosemount and the main contact regarding elections. I'm unsure if I understand your question regarding the new electronic voting system; are you referencing pollpads?

At this time the Public Accuracy Test (as required by [state statute](#) prior to each election) is tentatively scheduled for July 26th at 12:30 p.m. here at City Hall. However, the posting requirement is at least 2 days prior to the test. The [Dakota County Tribune](#) is our official newspaper where all required legal documents and notices will be published.

Let me know if you'd like to chat to further discuss any questions you have.

Thanks,

26. Flodin provided the city clerk with facts related to both the D-Suite 4.14 version used previously by Rosemount and the new system Rosemount plans to use, DDS 5.5-C.¹⁴

¹⁴ See Ex. 4, Aff. Flodin.

From: Heidi Flodin <hflodin@mail.com>
Sent: Friday, July 15, 2022 11:50 AM
To: Fasbender, Erin <Erin.Fasbender@ci.rosemount.mn.us>
Subject: Re: RE: A couple of questions...

Hello, Erin!

Thank you for responding so quickly. No, I am not asking about e-poll pads or e-poll books.

Dakota County was using Dominion Voting System software version 4.14E until May of this year. This voting system included Microsoft operating system and server software that was beyond end-of-life and no longer supported. The software had not received any security patches or updates since January of 2020, yet was used in all of the 2020 and 2021 elections and some 2022 township elections.

Perhaps in an effort to amend this lack of security and support, at the end of May the county with the assistance of the Office of the Secretary of State upgraded to a new Dominion Voting System version 5.5C. 5.5C is a newer, though not the newest, modification of Dominion's new Voting System 5.0. According to the Elections Assistance Commission (EAC) 5.0 was a completely new voting system software unrelated to version 4.14E. Therefore the change is an upgrade to something new rather than just an update of something in use, and it even included the need for newer, faster hardware in the form of a new server.

The Office of the Secretary of State is certifying that because 5.5C is a modification of 5.0, this change is just a modification. However, the county did not update from 5.0 to 5.5C, instead they upgraded from 4.14E directly to 5.5C. If 5.0 is a new voting system completely separate from 4.14E, then any modification of 5.0 is also a new voting system completely separate from 4.14E, and the Office of the Secretary of State is in error and not in agreement with the EAC.

7/21/2022, 9:18 AM

- RE: RE: A couple of questions...

<https://3c-lxa.mail.com/mail/client/mail/print;jsessionid=C366BF089>

Dakota County has a new electronic voting system. I was just wondering if you knew about it, and the statutory requirements for municipalities that go with it?

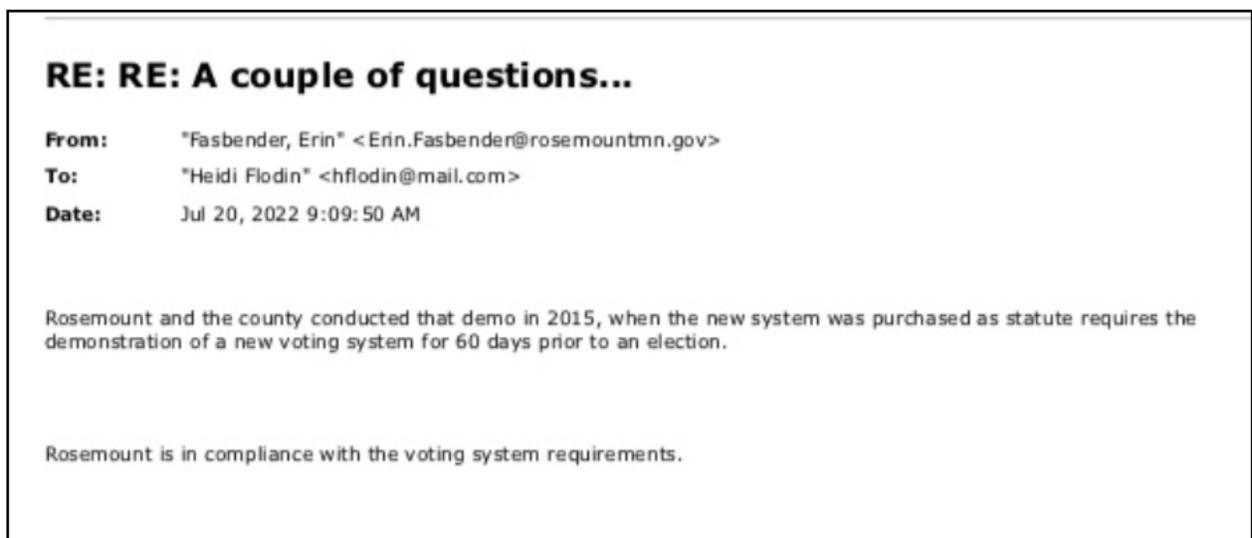
Respectfully,

Heidi Flodin

27. Flodin also explicitly informed the clerk the DDS 5.5-C is a new voting system and asked the Clerk Fasbender if she was aware of the statutory requirements related to municipality's use of a new voting system.¹⁵

28. The City Clerk responded to those facts with an email that stated the county conducted the demo for the system in 2015, when the new system was purchased.¹⁶

29. The City Clerk stated Rosemount is in compliance with the voting system requirements.¹⁷



30. The municipality (Rosemount, Minnesota) has not complied with the requirements of Minn. Stat. §206.58, subd. 1.¹⁸

¹⁵ See Ex. 4, Aff. Flodin.

¹⁶ See Ex. 4, Aff. Flodin.

¹⁷ See Ex. 4, Aff. Flodin.

¹⁸ See Ex. 3, Aff. Kieffer.

V. Every county and municipality must comply with the rules promulgated by the MNSOS that govern the use of an EVS which has been modified unless the modifications are de minimis.

31. The independent testing authority, Pro V & V, determined the D-Suite 5.0 was a new voting system, as noted in paragraphs 12 and 13.

32. The Certification Report and Recommendation, Dominion Democracy Suite, version 5.5-C Voting System, prepared by the Elections Division of the Office of the Minnesota Secretary of State and dated April 12, 2022, states:

“The D-Suite 5.5-C is a modification from the previously certified Democracy Suite 4.14-E Voting System (D-Suite 4.14-E). The D-Suite 5.5-C Voting System received a recommendation for certification from Pro V & V, an independent testing authority, on July 7, 2020 and the D-Suite 5.5-CS Voting System received a recommendation for certification from Pro V & V on July 15, 2020.”¹⁹

33. The April 12, 2022 Certification Report incorrectly stated the D-Suite 5.5-C was a modification of Democracy Suite 4.14-E. This misinformation was corrected in the actual certification document signed by the secretary of state on May 2, 2022, as noted in paragraph 10.

34. The D-Suite 4.14-E Voting System was a modification from the line of D-Suite version 4.0 voting system, as noted on page 18 of the January 28, 2016

¹⁹ See Ex. 1 Affidavit of Rick Weible, p. 3, referencing <https://officialdocuments.sos.state.mn.us/Files/GetDocument/131606> page 1. Last accessed July 29, 2022.

“Amended Certification Report and Recommendation for Dominion Democracy Suite, version 4.14-E Voting System”²⁰, prepared by the Elections Division of the Office of the Minnesota Secretary of State. This system was first certified for use in Minnesota on January 7, 2014.

²⁰ See Amended Certification Report and Recommendation, Dominion Democracy Suite, version 4.14-E Voting System, page 18 at <https://officialdocuments.sos.state.mn.us/Files/GetDocument/103651> Last accessed on July 29, 2022.

Section 5: Appendix**5.1 Version History**

Version history and Certification Dates from NTS and OSS of Dominion Democracy Suite

System Version	System Modified	NTS Certification Date	OSS Certification Date
Democracy Suite 4.0	Original	05/10/2012	
D-Suite 4.14	D-Suite 4.0	07/18/2013	01/07/2014
D-Suite 4.14-A	D-Suite 4.14	9/20/2013	
D-Suite 4.14-B	D-Suite 4.14-A	01/07/2014	
D-Suite 4.14-D	D-Suite 4.14-B	11/25/2014	04/07/2015
D-Suite 4.14-E	D-Suite 4.14-D	06/25/2015	TBD

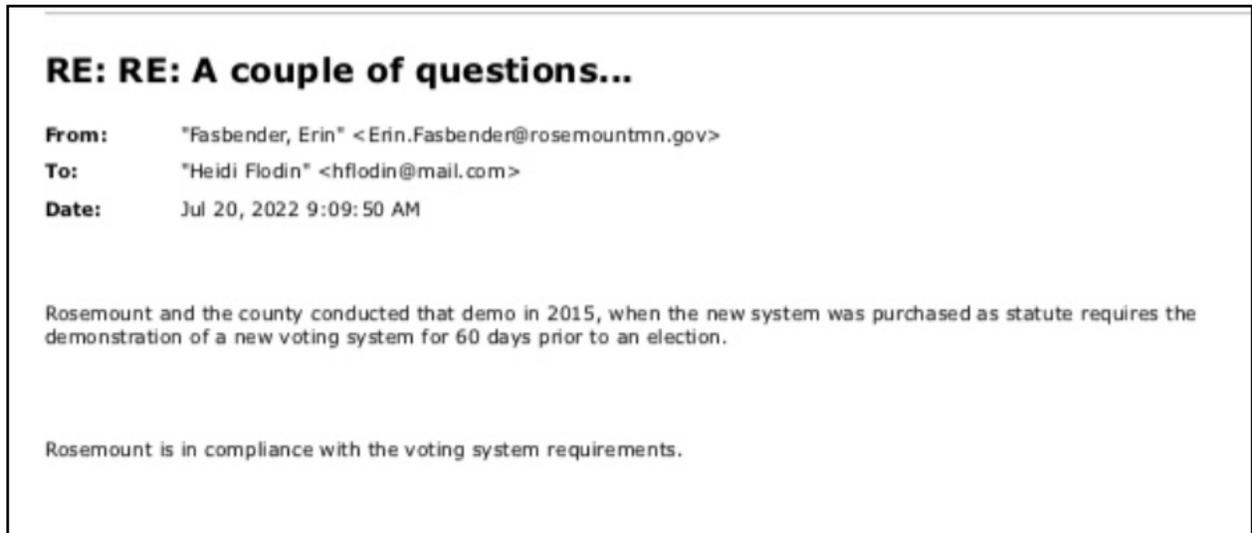
5.2 Democracy Suite 4.14-E Voting System Capacities

Maximum Number of:	Value
Precincts in Election	1000
Offices and Issues	4000
Candidates per Office	462
Candidates in Tabulator	10000
Ballot Styles in Election	4000
Contests in a ballot style	156
Ballot Styles in a Precinct	5
Vote For in Contest	30
Number of Parties	30

- VI. The city of Rosemount, Minnesota has plans to utilize a new electronic voting system (EVS) to tabulate ballots in the Minnesota State Primary Election on August 9, 2022.**
- A. Prior to the August 9, 2022 primary, the city of Rosemount, Minnesota used the Dominion Voting System (DVS) Democracy Suite version 4.14 (DS-4.14). This system has been in use in Rosemount, MN since approximately 2015.**

35. The city of Rosemount, MN has been informed of the fact that the DDS 5.5-C voting system is a new system.

36. The city clerk's response indicates she has knowledge there are statutory requirements of the municipality when it uses a new voting system because she noted the city did provide the required 60-day demonstration of the new voting system in 2015.



B. Rosemount, Minnesota plans to use DVS Democracy Suite version 5.5-C (DDS-5.5-C) beginning on election day August 9, 2022.

VII. The municipality of Rosemount, Minnesota has not complied with the statutory requirements necessary to permit the municipality to utilize the new EVS on August 9, 2022.

37. A municipality must comply with the statutory requirements of MINNESOTA Stat. 206.58 prior to using the new voting system in the election.

38. Minn. Stat, §206.66, subd. 1 establishes the penalties for violations of Minnesota Statute §§206.55 – to 206.90: A person who intentionally violates any of the provisions of sections 206.55 to 206.90 is guilty of a felony.

39. Minn. Stat, §206.66, subd. 2 establishes the penalties for violations of the rules applicable to Minnesota Statute §§206.55 – to 206.90: A person who violates any of the rules adopted by the secretary of state where an EVS is used is guilty of a misdemeanor.

LEGAL ARGUMENT

INTRODUCTION

40. Election officials are bound by Minnesota statutes governing elections, including those statutes which only apply in rare circumstances.

41. Election officials are expected to know the laws by which they are bound because ignorance of the law offers no protection. An election official who has not taken the time to learn the law risks violating the rights of the voters who depend upon that official to protect their voting rights.

42. When any person responsible for the implementation of a requirement of an election statute fails to comply with a statutory requirement, that person has likely undermined the integrity of the election, the rights of the voter and the will of the people.

43. An election official who disregards a statutory requirement violates the principles of separation of powers between the executive and the legislative departments. There is no provision in the Minnesota Constitution or law that allows a member of the executive department, including election officials at any level, to usurp the right of the legislature to make election law by ignoring or amending those laws.

44. Election officials who attempt to implement the use of a new election voting system in secret, without providing eligible voters with the information statutorily required to be shared, are violating Minnesota election law and must be held accountable for their actions.

45. The Court will violate the separation of powers if it chooses to ignore the blatant disregard of the law being showcased by members of the governing body of Rosemount, MN and counties and municipalities across Minnesota.

CLAIM 1

I. Election officials may not ignore statutory requirements without violating the separation of powers doctrine.

A. Election officials are members of the executive department and may not usurp the right of the legislature to make law.

The separation of powers doctrine

46. Each paragraph previously asserted is incorporated in the instant claim as if fully restated. The paragraphs and allegations in whole or in part support the instant claim as asserted.

47. The separation of powers doctrine has become an increasingly important issue in Minnesota over the past two years as eligible voters realized that this vital constitutional safeguard was under attack by nefarious actors who seek to usurp the legislative body and force the will of the executive branch upon the people.

48. As the blurring of lines is created by those elected and appointed officials, we must step back to regain the appropriate and necessary focus:

“Under the Separation of Powers Clause, no branch can usurp or diminish the role of another branch.”²¹

49. The legislative department, the executive department and the judicial department are interdependent however also have unique rights and responsibilities that may not be encroached upon by the other.

50. The Minnesota Constitution, Article III, clearly states “No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.”

²¹ See Minn. Const. art III§1; *Brayton v. Pawlenty*, 768 N.W.2d 357, 365 (Minn. 2010).

51. The Minnesota Constitution provides no express power to any person belonging to the executive department or the judicial department related to the violation of election laws properly passed by the Minnesota legislative department.

52. The legislature has provided a clear path to stop the impending violations of Minnesota election law by any individual charged with any duty concerning an election through the filing of a petition to correct errors and omissions under Minnesota Statute § 204B.44 (a)(4).

53. The Court has a duty to stop the impending violation of election law by the governing body of Rosemount, MN.

A. Both the integrity and security of elections are jeopardized when governing bodies of a municipality, city clerks and / or other election officials ignore the statutory requirements for the use of a new EVS.

54. Eligible voters have the right to demand election officials implement every law passed by the legislative department. These laws provide the framework within which election officials and others bound by those laws must work. This framework creates predictability and accountability at every step of the voting process.

55. When any person charged with a specific duty to the election process, and therefore to eligible voters, fails to fulfill that duty, the integrity and validity of the election becomes questionable by those eligible voters.

56. The governing body of Rosemount, Minnesota is charged with fulfilling specific responsibilities to the eligible voters in Rosemount in relation to the use of a new EVS system.

57. The governing body of Rosemount has already failed to comply with two statutory requirements of Minnesota Statute 206.58, subd 1., both of which must be completed before a new election voting system may be used in an election.

58. The governing body of Rosemount made clear its intent to ignore those responsibilities and use a new election voting system in violation of MN election law.

59. If Rosemount election officials proceed to use a new election voting system in the August 9, 2022 primary elections, the governing body and the election officials will all engage in conduct which violates both Minnesota Statute §206.58, subd. 1 and subd. 4.

60. When election officials openly violate any election law, voters will rightly question what other laws those election officials are failing to implement.

61. Violations of Minnesota Statute §206.58 must be stopped and all relief available and necessary under Minnesota Statute § 204B.44 placed in effect to prevent the governing body from violating the rights of the people in Rosemount, Minnesota.

B. No law allows local election officials to implement a new EVS prior to all statutory requirements being met.

62. There is no statute that allows a governing body of a municipality or the local election officials of a municipality to ignore statutory requirements mandated through legislation.

II. While a county and the municipalities must work together to approve the use of an EVS within a municipality, the municipality must agree to utilize an EVS and is responsible for complying with all statutory requirements related to the utilization of a new EVS.

A. The wrongful acts of the governing body of a municipality and the associated complicity by election officials, including county auditors and/ or city clerks, in violating the separation of powers doctrine is ripe for adjudication under Minnesota Statute §204B.44

63. The Rosemount, MN governing body will violate Minnesota election law if allowed to utilize the DDS 5.5-C voting system in the August 9, 2022 Minnesota primary elections.

64. The documentation from the EAC and the independent testing authority Pro V & V leaves no room for discussion about the fact the DDS 5.5-C system is, in fact, in the DDS 5.0 line, and a new EVS in Rosemount, MN.

65. This fact that the DDS 5.5-C voting system is a new system, certified for use in Minnesota on May 2, 2022, triggers the requirements of Minnesota Statute §206.58, subd. 1 and subd 4, which MUST occur prior to the use of the voting system in any Minnesota election.

66. The Court is now aware of the impending violation of election law and has a duty to the eligible voters of Rosemount to stop those illegal acts from occurring.

67. If the Court does not take action to ensure the governing body of this municipality adheres to the law, this Court will be emboldening those nefarious actors who encouraged this conduct.

68. While Rosemount, MN must not use the DDS 5.5-C system in the August 9, 2022 state primary election, the governing body should quickly revisit this matter with the MNSOS, the county commissioners, county auditor and election manager of Dakota County if it intends to use the new EVS in the general election in November 2022. The governing body must fully understand their responsibilities under Minnesota state law and make plans to fully comply with the law prior to September 8, 2022.

69. Minnesota Statute §204B.44 enables the violations of Minnesota Statute § 206.58 to be prevented to safeguard the right of the people to be informed about the election systems being used in their municipality and to prevent election officials from violating their duty to voters: All relief necessary, including injunctive relief to protect the security and integrity of the August 9, 2022 state primary elections should be placed in effect.

CLAIM II
VIOLATION OF MINNESOTA ELECTION LAW

I. The governing body of a municipality must comply with all Minnesota statutes governing the use of a new EVS prior to utilizing that EVS in any Minnesota election. The plain language of the statute, administrative rules and guidebooks issued the Minnesota Secretary of State are determinative.

A. Both the integrity and security of elections are jeopardized when the governing body of a municipality violates the law when it ignores statutory requirements.

70. Each paragraph previously asserted is incorporated in the instant claim as if fully restated. The paragraphs and allegations in whole or in part support the instant claim as asserted.

71. The plain language of Minnesota Statute § 206.58 leaves no room for debate. The illegal actions of members of a governing body of a municipality and other election officials must not be ignored by the Court.

72. The plain language of Minnesota Statute § 206.58, subd. 1 provides voters with a statutory right to be informed about their municipality's decision to use a new EVS at least 60 days prior to an election in which that system will be used. The DDS 5.5-C is a new EVS to Rosemount, MN.

73. The plain language of Minnesota Statute § 206.58, subd. 1 provides voters with a statutory right to access a demonstration voting system, in a public place, for the 6 weeks immediately prior to an election in which a new voting system will be utilized.

74. The legislature granted the right to voters to receive information about new voting systems to ensure those voters have the opportunity to decide if their elected officials have acted properly to protect the rights and resources of the people.

75. Voters who do not agree with the decision to adopt a new voting system have the right to go to their governing body with their concerns.

76. When those people with a solemn duty to enforce the election laws of Minnesota openly violate those laws so as to deny the people the opportunity to engage in the discussion about how elections are administered, they both discourage ethical voters from participating in what appears to be fraudulent and biased process and encourage those with an interest in influencing elections to be more aggressive in achieving their goals.

77. The governing body of Rosemount, Minnesota has failed to comply with either requirement in Minnesota Statute § 206.58, subd. 1.

78. A new EVS may not be utilized in any Minnesota election until the governing body of Rosemount, MN has complied with all statutory requirements of Minnesota Statute § 206.58, subd. 1.

79. If Rosemount, MN utilizes a new EVS before complying with the requirements of Minnesota State §206.58 it will be an error and wrongful act under Minnesota Statute § 204B.44.

RECOMMENDED BRIEFING SCHEDULE

80. The Petitioners request the Court schedule a hearing on Thursday, August 4, 2022.

81. The matter before the Court has occurred because the Respondents have engaged in, and will engage in, egregious conduct that violates Minnesota election law threatens to further undermine the integrity of Minnesota's elections.

82. Respondents have chosen to adopt a new voting system for the August 9, 2022 primary rather than adopt the use of the system in the general election, after they have complied with the statutory requirements.

83. The urgency in utilizing a new system without proper notice to the people will result in those nefarious actors arguing after the fact that "because the system was used in an election, the matter is moot."

84. The residents of Rosemount are largely unaware of the plans to utilize a new EVS because the governing body failed to inform them about that system.

85. The city of Rosemount was made aware of the impending violations of the statute and have chosen to proceed with the proposed use of a new voting system regardless of those violations.

86. Because the nature of the claims asserted under Minnesota Statute § 206.58 affect the upcoming August 9, 2022 state primary elections, there is an

extremely limited window for the court to intervene and stop Rosemount from violating Minnesota law.

RELIEF REQUESTED

This Petition seeks relief under Minnesota Statute §204B.44, subd. (a)(4) against the governing body of Rosemount, Minnesota, a municipality within Dakota County, which is charged with conducting elections and which has violated Minnesota law and which has declared its intent to commit wrongful acts in the August 9, 2022 statewide primary. Declaratory and injunctive relief is sought to stop additional illegalities from being committed on election day.

Petitioners seek an injunction against the governing body of Rosemount, Minnesota requiring them to

- comply with Article III Section 1, Division of powers
- comply with all applicable Minnesota Statutes §§206.55 to 206.90 and corresponding rules
- implement and utilize, if necessary, the Minnesota Election Emergency Plan developed in cooperation with Dakota County in compliance with MN Stat. §204B.181

And declare that

- a governing body of a municipality violates the separation of powers principle in the Minnesota Constitution when it takes action that disregards and violates MINNESOTA statutes; and

- a governing body of a municipality violates the rights of their citizens, granted to it by the Minnesota Constitution and legislature, when it takes action that eliminates the ability of those citizens to exercise those rights.

Date: August 1, 2022

_____/s/ Susan Shogren Smith _____
 Susan Shogren Smith (Atty # 0340467)
 Shogren Smith Law
 600 62nd Avenue North
 Brooklyn Center, MN 55430
 shogrensmithlaw@protonmail.com
 612-812-8160
 ATTORNEY FOR CONTESTANTS

I declare under penalty of perjury that everything I have stated in this document is true and correct.

<u>August 1, 2022</u>	<u>Hennepin County, MN</u>	<u>/s/Susan Shogren Smith</u>
Date	Location	Name

Acknowledgment Required by Minn. Stat. § 549.211, Subd. 2

The undersigned hereby acknowledges that, pursuant to Minn. Stat. § 549.211, costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass, or committed a fraud upon the Court.

Dated August 1, 2022

_____/s/ Susan Shogren Smith _____
Susan Shogren Smith (Atty # 0340467)
Shogren Smith Law
600 62nd Avenue North
Brooklyn Center, MN 55430
612-812-8160
Email: shogrensmithlaw@protonmail.com
Attorney for Petitioners

EXHIBITS INDEX

EXHIBIT 1 – DECLARATION OF RICK WEIBLE 1
EXHIBIT 2 – EMAIL FROM THE EAC 12
EXHIBIT 3 – AFFIDAVIT OF WILLIAM KIEFFER13
EXHIBIT 4 – AFFIDAVIT OF HEIDI FLODIN18