

## Testimony on SB 217 Hearing Date February 12<sup>th</sup>, 2025

This is written testimony in case I can't be there tomorrow. There is ongoing litigation on an election contest between Randy Deibert, Lawrence County Auditor Brenda McGruder, and the County Commissioners who canvassed their own primary election. Mr. Randy Deibert should probably be recused in the vote on this bill because of the conflict. ES&S provided the illegal test deck for the computer tabulators. The test deck was against ES&S's own DS450 tabulator. This is breach of contract with our county and our Lawrence County Commissioners and Auditor are not doing one action about this breach of contract because of failure to train users properly and providing *illegal* Test Decks to the auditors across this state. Before the primary election in 2024 one tabulator was not even tested on public testing day as state statute requires. I have that in writing by the Auditor McGruder. Expert Rick Weible can verify it was an illegal test deck. I also have another expert that can support my evidence. This expert worked at testing these computer tabulators for over 20 years for the federal government Election Assistance Commission. My evidence of video, experts, and witnesses has never been allowed to be heard in a hearing in the fourth circuit court before Judge Connelly dismissed the contest. The election contest is currently appealing to the SD Supreme Court. The County Auditor and Commissioners refused to turn on the ballot image function before the primary 2024 election after they were notified by myself and others that this violated federal law of "All records" preserved for 22 months. Images are included in "All records" preserved.

(a) Pursuant to Federal 52 USC 20701: "Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his

possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

This Federal Law uses the term "all records".

Pursuant to election expert and IT expert Rick Weible's letter on May 17, 2024, to the Secretary of State and Auditors, our county auditor is violating Federal and State law in regard to keeping "all records". I am attaching a written statement by expert Rick Weible that supported turning on the ballot images. The ballot images are necessary to audit the tabulators. The presence of a physical ballot does not tell us how the machine read the ballot. For example, if a crease in an absentee ballot caused the computer tabulator to read the ballot wrong this ballot image function will tell us. The auditor was supposed to test 10% of folded ballots according to SOS Administrative Rule 5:02:09:01.02. The auditor failed to do this. Lawrence County does not have the software to read the ballot images. This is a solid reason to hand recount this contest. The computer tabulator should not have been certified because the tabulators were not found errorless.

I can prove the Auditor achieved approximately 100 violations of several laws. I can prove this with witnesses, documents, experts, and video. I am enclosing Rick Weible's written statement on the violations he has found so far after going through the half test deck meant for testing of the computerized tabulators.

My statutory rights as a candidate have been violated by the Auditor, County Commissioners serving as the Canvass Board, and the 4<sup>th</sup>

Circuit Civil Court. I am getting the run around and I feel very violated as a Candidate and Citizen of Lawrence County South Dakota. I will also add that my SD Constitutional rights are being violated and my civil right. Pursuant to, "South Dakota Const. art. VII §1 Right to vote. Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. History: 1889 Const., art. VII, § 5; amendment proposed by SL 1974, ch 2, approved Nov. 5, 1974." This is repeated in our constitution in "South Dakota Const. art. VI §19 Bill of Rights, Free and equal elections--Right of suffrage--Soldier voting. Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. Soldiers in time of war may vote at their post of duty in or out of the state, under regulations to be prescribed by the Legislature." This leads into another Bill of right of mine being damaged of, "South Dakota Const. art VI §1 Inherent rights. All men are born equally free and independent, and have certain inherent rights, among which are those of enjoying and defending life and liberty, of acquiring and protecting property and the pursuit of happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed."

I used my own money and other people's money who donated to my campaign to run for office. This contest should be looked into further with a "Writ of Certiorari" and should not have been dismissed nonchalantly. The observance of the principle of universal suffrage means: a) every citizen, upon coming up to the age fixed by the Constitution, laws, has the right to elect and to be elected to the bodies of state power, to local self-governments, other bodies of people's (national) representation, to elective posts on the conditions and in line with procedures stipulated by the Constitution and laws. This was violated and caused damage. This is in accordance with 52 U.S.C. §10102

Interference with freedom of elections under the "color of law" is a violation. Judge Connolly ignored my Constitutional Rights and Federal

Civil Rights when he completely ignored the fact that the laws were broken in the testing of the computerized tabulators. It is as if “laws” do not matter to people who are to enforce the law. Are there special privileges to break laws in this country for people who hold titles of some kind within government offices?

### **Conclusion**

ES&S is providing illegal test decks across this state. These test decks they provided violated their own manual for the DS 450. This third party contractor is not professional and does not deserve the hundreds of thousands of dollars we spend to have them provide illegal test decks to the counties. ES&S has breached a contract with our county of Lawrence and multiple other counties in this state. I was warned a couple of years ago by our Deputy States Attorney Outka that ES&S could sue me. I say to Outka and ES&S bring it on. I look forward to a jury looking over the evidence and not sweeping it under a rug like Judge Connelly did by not allowing the evidence to be heard. I am disgusted at the fact Auditor McGruder and other auditors across this state have conducted illegal certifications of computer tabulators.

The legal definitions of "certification":

1. The procedure of confirming the authenticity or truth of something.
2. The condition of having validity or credibility affirmed.
3. A statement confirmed as true or authentic.

The following is quoted from my brief to the SD Supreme Court. “Why do we have certification laws if they are not followed by authority? Are certification laws just meant for looks to government offices and the justice system? After all my rights have been violated by the government auditor’s office and the 4<sup>th</sup> Civil Court, I can firmly state that these laws for certification are meant to just look good but not to be followed by government offices or the civil court. The election deserved a closer

investigation to see if it was tampered with. I deserve to know if I lost or won. That is right and that is just. We need to know if the illegal test deck that ES&S provided hid the outcome of the election. The remedy of the Supreme Court providing a 100% hand recount to investigate is completely within reach of the Supreme Court. That is the relief I asked for in my complaint for contest for the race for the legislature race in district 31. What is the big deal of hand recounting a 4,000 ballot election? If Randy Deibert and Judge Connelly are so confident he won then prove it. It should be proven because the computerized tabulators were certified illegally. Our Federal law Federal 52 USC 20701 requires auditors to keep election records for 22 months. There is a reason this law allows for 22 months for issues just like this. Illegally certifying the computer tabulators is more than sufficient grounds for a 100% hand recount."

You, legislators write the laws and the other branches of government in our state are not held accountable to them. We should be allowed to recall commissioners based on "legal grounds" and not political motives, with a grand jury "investigation" of commissioner's conduct based on legal grounds, by a citizens petition to the district clerk of courts.

THANK YOU FOR READING THIS! Please Do Pass.

Respectfully,  
Kate Crowley Johnson